BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of an Investigation into Limitations of Liability for Public Utilities.	))	**Case No. AO-2012-0173**

STAFF'S SECOND REPORT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and submits the remainder of Staff's Report respecting the Missouri Public Service Commission's ("Commission") *Order Opening Investigation* as to the limitations of liability for public utilities. Based on the information obtained through Staff's investigation, Staff recommends the Commission continue to review tariff liability language on a case-by-case basis. In support of Staff's recommendation, Staff states as follows:

1. On December 7, 2011 the Commission issued its *Order Opening Investigation*, directing Staff to investigate tariff provisions addressing the liability of public utilities for damages. Staff was ordered to submit a Report to assist the Commission in its consideration of whether adopting uniform standards for liability tariff provisions would be beneficial to public utilities, customers and third persons. The Staff was further directed to "survey provisions currently in effect, examine other states' policies on such provisions, and file a report."

2. On March 30, 2012, Staff filed *Staff's Status Report and Motion for Extension of Time*. Staff submitted part of Staff's report with that filing, specifically addressing Staff's analysis and conclusions with respect to liability limiting tariff provisions maintained by Missouri public utilities. Staff requested additional time to

submit Staff's report pertaining to how limitations of public utility liability were addressed in other states.

2. Staff was ordered to file the remainder of Staff's Report by August 3, 2012. This filing complies with that Order.

3. Staff did a survey of all states regarding this issue and received responses from thirty-one (31) states. The results of that survey are analyzed in Staff's Memorandum and documented in the graphs and spreadsheets included with this filing as Attachment 1.

WHEREFORE, Staff respectfully submits *Staff's Second Report* for the Commission's information and consideration.

Respectfully submitted,

/s/ Goldie Tompkins
Goldie Tompkins
Missouri Bar Number 58759
Legal Counsel

/s/ Kevin Thompson
Missouri Bar Number 36288
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-8700 (Voice)
573-526-6969 (Fax)
Goldie.tompkins@psc.mo.gov

Attorneys for the Staff of the Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **1st day of August, 2012,** on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Goldie Tompkins

M E M O R A N D U M

To: Missouri Public Service Commission Official Case File
Case No. AO-2012-0173

From: Natelle Dietrich 7/31/12
Tariff, Safety, Economic
and Engineering Analysis Department

Goldie Tompkins 7/31/12
Staff Counsel Department

Subject: Staff's second report and recommendation on investigation

Date: July 31, 2012

On December 7, 2011, the Commission issued its Order Opening Investigation directing Staff to investigate tariff provisions addressing liability for damages. The Commission further directed Staff to survey provisions currently in effect, examine other states' policies and file a report with recommendations on the matter. On March 30, 2012, Staff filed its first report and requested additional time to gather information from other states. Staff's second report is due August 3, 2012.

In its initial report, Staff indicated that most of the existing tariff liability language was reasonable for the electric, natural gas, water and sewer utilities. Staff also indicated the liability language it reviewed for telecommunications companies was egregious. Staff recommended the Commission continue to review tariff liability language on a case-by-case basis.

Staff has received liability policy information from 31 states. Various graphs and spreadsheets outlining these responses can be found in Attachment 1. As discussed more fully below, most states have similar liability language and policies as Missouri. Based on this additional information, Staff continues to recommend the Commission review tariff liability language on a case-by-case basis.

Summary of Responses

Staff attempted to combine state responses into various categories of liability or limitations thereof; however, it was not always possible to clearly align the response to a category, so best efforts were made in compiling the results. These responses were then compared to the tariff liability language for Missouri utilities as previously described in the March 30, 2012, Staff report.

Following is a comparison of those categories with Missouri tariff language.

Liability Limitations on Standards of Behavior (Attachment 1.A)

- Sixteen states, *including Missouri*, indicated there were liability limitations related to a public utility's negligence. For example, the state of Arizona has a state statute that says "If any public service corporation does or permits to be done anything forbidden or declared unlawful, or omits to do anything required to be done, by the constitution or laws of the state, or by orders of the commission, the corporation is liable to the persons affected thereby for all loss, damages or injury caused thereby or resulting therefrom." A.R.S. § 40-423A.
- Nine states indicated no liability limitations.

Limitations Related to the Reliability of Service (Attachment 1.B)

- Ten states, *including Missouri*, indicated that public utilities were not liable when it came to irregularities and interruptions of service.
- Nine states indicated companies were not liable for interruptions due to repairs or regular maintenance.
- Nine states indicated companies were not liable if the unreliable service was a result of things such as acts of God or terrorism.

Limitations on Damages (Attachment 1.C)

- Sixteen states, *including Missouri*, indicated there were limitations on liability related to indirect, consequential or special damages.
- Five states indicated there were no limitations on liability related to damages.
- Three states indicated there were limitations on liability for all types of damages.

Indemnity (Attachment 1.D)

- Thirteen states, *including Missouri*, indicated that the public utility could be indemnified, and therefore held harmless by the customer when damage is on the customer's side of the meter.
- Three states indicated directors, employees, agents, etc. are indemnified from liability.

Commission Enforcement of Violations (Attachment 1.E)

- Five states, *including Missouri*, indicated that penalties for tariff violations must be sought through civil court.
- Two states indicated that the commission can invoke penalties for tariff violations.
- Pennsylvania indicated it has the authority to award monetary damages.

As can be seen in this summary, Missouri's limitations on liability for its public utilities are similar to the liability limitations in the majority of responding states. Staff recommends the Commission continue to address limitation of liability issues and tariff language on a case-by-case basis.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In The Matter of an Investigation Into Limitations of Liability for Public Utilities.	))	Case No. AO-2012-0173

AFFIDAVIT OF NATELLE DIETRICH

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Natelle Dietrich of lawful age, on oath states: that she participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of her knowledge and belief.

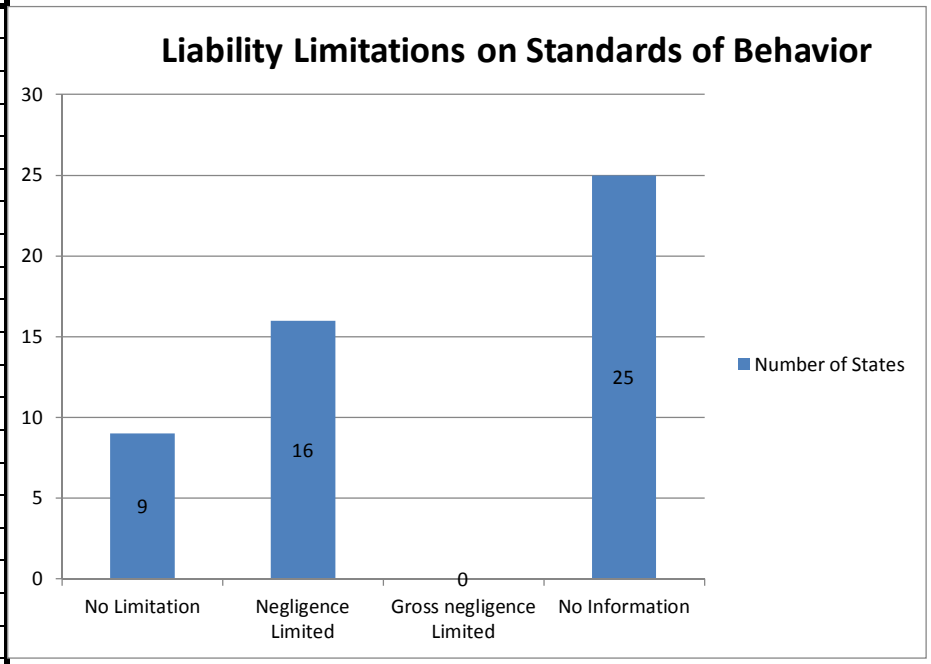
Natelle Dietrich

Subscribed and sworn to before me this 1st day of August, 2012.

SUSAN L. SUNDERMEYER
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: October 03, 2014
Commission Number: 10942086

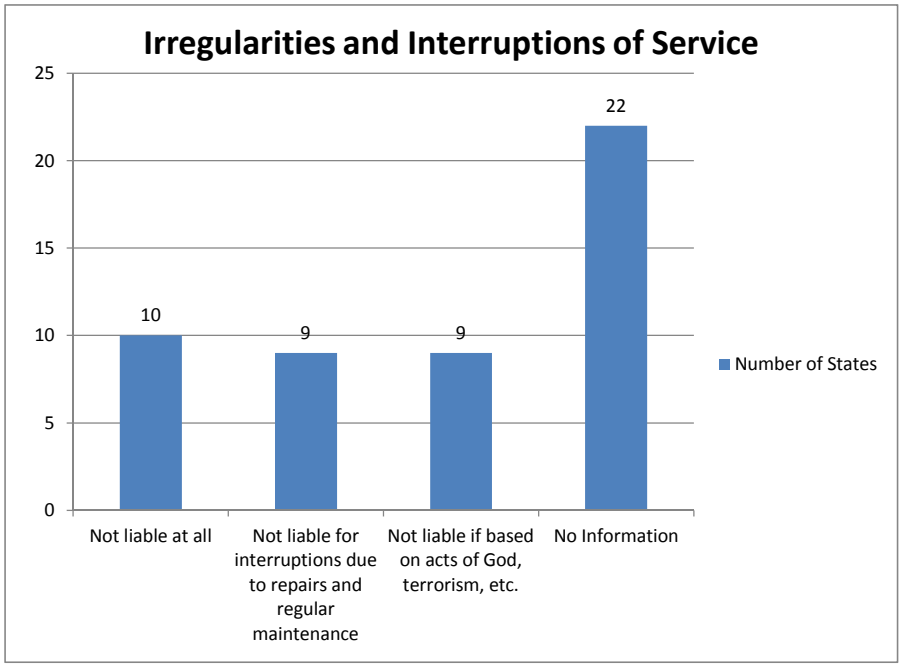
Notary Public

State	No Limitation	Negligence Limited	Gross negligence Limited	No Information
Alabama				1
Alaska		1		
Arizona	1			
Arkansas				1
California		1		
Colorado	1			
Connecticut	1			
Delaware				1
Florida		1		
Georgia				1
Hawaii				1
Idaho				1
Illinois				1
Indiana		1		
Iowa		1		
Kansas		1		
Kentucky				1
Louisiana				1
Maine		1		
Maryland		1		
Massachusetts	1			
Michigan		1		
Minnesota		1		
Mississippi				1
Missouri		1		
Montana		1		
Nebraska				1
Nevada	1			
New Hampshire				1
New Jersey				1
New Mexico				1
New York				1
North Carolina				1
North Dakota				1
Ohio		1		
Oklahoma				1
Oregon				1
Pennsylvania	1			
Rhode Island	1			



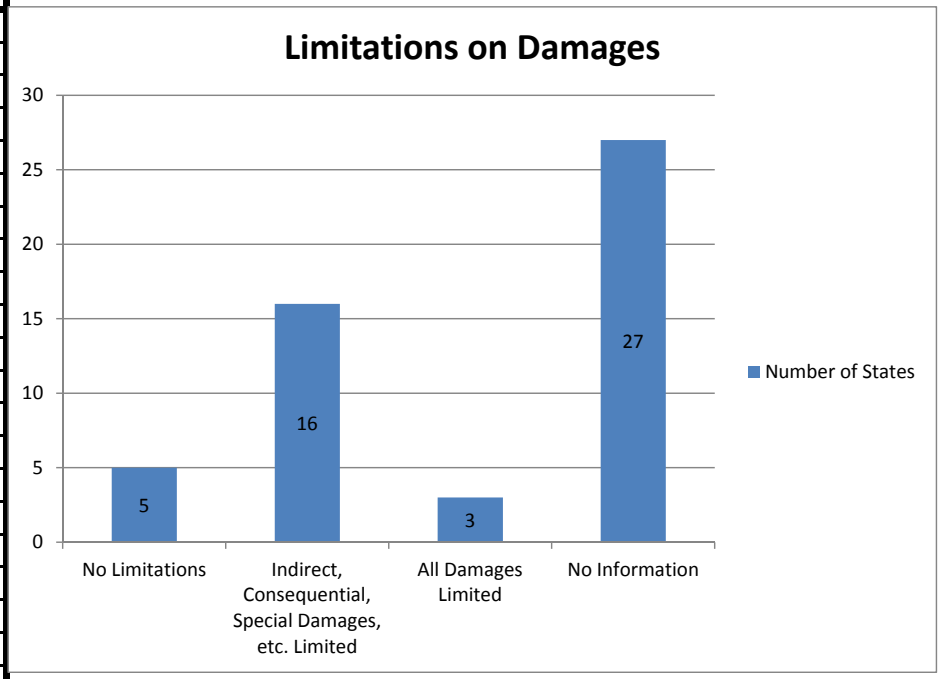
South Carolina				1
South Dakota		1		
Tennessee				1
Texas				1
Utah	1			
Vermont				1
Virginia				1
Washington	1			
West Virginia		1		
Wisconsin		1		
Wyoming				1
Totals	**9**	**16**	**0**	**25**

State	Not liable at all	Not liable for interruptions due to repairs and regular maintenance	Not liable if based on acts of God, terrorism, etc.	No Information
Alabama		1		
Alaska			1	
Arizona		1		
Arkansas				1
California		1		
Colorado			1	
Connecticut	1			
Delaware				1
Florida			1	
Georgia				1
Hawaii				1
Idaho				1
Illinois				1
Indiana			1	
Iowa		1		
Kansas	1			
Kentucky				1
Louisiana				1
Maine			1	
Maryland	1			
Massachusetts	1			
Michigan		1		
Minnesota		1		
Mississippi				1
Missouri	1			
Montana		1		
Nebraska	1			
Nevada				1
New Hampshire				1
New Jersey				1
New Mexico				1
New York	1			
North Carolina			1	
North Dakota				1
Ohio			1	
Oklahoma				1
Oregon				1
Pennsylvania	1			



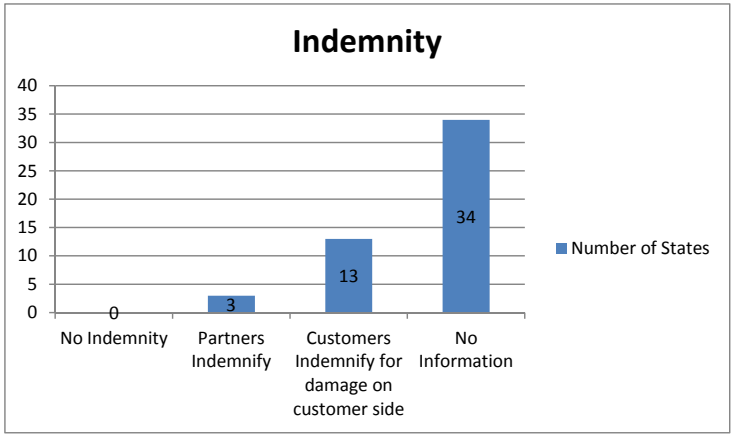
Rhode Island				1
South Carolina				1
South Dakota				1
Tennessee				1
Texas	1			
Utah		1		
Vermont			1	
Virginia				1
Washington		1		
West Virginia			1	
Wisconsin	1			
Wyoming				1
Totals	10	9	9	22

State	No Limitations	Indirect, Consequential, Special Damages, etc. Limited	All Damages Limited	No Information
Alabama				1
Alaska		1		
Arizona	1			
Arkansas				1
California		1		
Colorado				1
Connecticut		1		1
Delaware				1
Florida		1		
Georgia				1
Hawaii				1
Idaho				1
Illinois				1
Indiana	1			
Iowa		1		
Kansas		1		
Kentucky				1
Louisiana				1
Maine			1	
Maryland		1		
Massachusetts		1		
Michigan		1		
Minnesota				1
Mississippi				1
Missouri		1		
Montana	1			
Nebraska		1		
Nevada		1		
New Hampshire				1
New Jersey				1
New Mexico				1
New York		1		
North Carolina				1
North Dakota				1
Ohio		1		
Oklahoma				1
Oregon				1



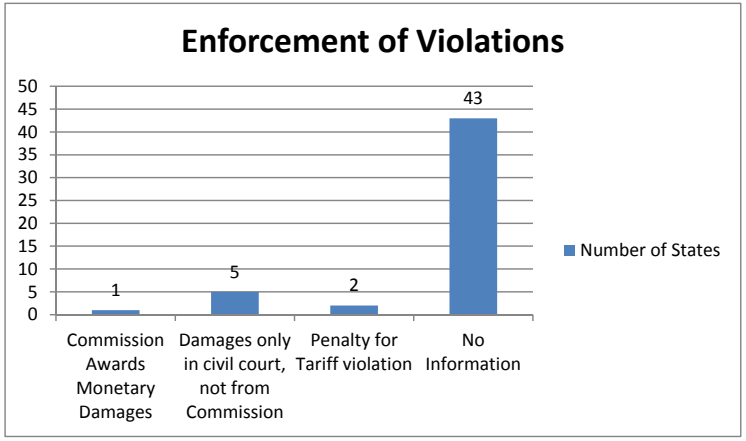
Pennsylvania	1			
Rhode Island		1		
South Carolina				1
South Dakota				1
Tennessee				1
Texas			1	
Utah				1
Vermont				1
Virginia				1
Washington	1			
West Virginia			1	
Wisconsin		1		
Wyoming				1
Total	5	16	3	27

State	No Indemnity	Partners Indemnify	Customers Indemnify for damage on customer side	No Information
Alabama			1	
Alaska				1
Arizona				1
Arkansas				1
California			1	
Colorado			1	
Connecticut			1	
Delaware				1
Florida			1	
Georgia				1
Hawaii				1
Idaho				1
Illinois				1
Indiana				1
Iowa			1	
Kansas				1
Kentucky				1
Louisiana				1
Maine				1
Maryland				1
Massachusetts		1		
Michigan		1		
Minnesota				1
Mississippi				1
Missouri			1	
Montana			1	
Nebraska				1
Nevada				1
New Hampshire				1
New Jersey				1
New Mexico				1
New York				1
North Carolina			1	
North Dakota				1
Ohio			1	
Oklahoma				1
Oregon				1
Pennsylvania				1
Rhode Island			1	
South Carolina				1



South Dakota			1	
Tennessee				1
Texas				1
Utah		1		
Vermont				1
Virginia				1
Washington				1
West Virginia			1	
Wisconsin				1
Wyoming				1
Totals	**0**	**3**	**13**	**34**

State	Commission Awards Monetary Damages	Damages only in civil court, not from Commission	Penalty for Tariff violation	No Information
Alabama				1
Alaska				1
Arizona				1
Arkansas				1
California				1
Colorado				1
Connecticut				1
Delaware				1
Florida				1
Georgia				1
Hawaii				1
Idaho		1		
Illinois				1
Indiana				1
Iowa				1
Kansas				1
Kentucky				1
Louisiana				1
Maine		1	1	
Maryland				1
Massachusetts				1
Michigan				1
Minnesota				1
Mississippi				1
Missouri		1		
Montana				1
Nebraska				1
Nevada				1
New Hampshire				1
New Jersey				1
New Mexico				1
New York			1	
North Carolina				1
North Dakota				1
Ohio				1
Oklahoma				1
Oregon				1
Pennsylvania	1			
Rhode Island				1
South Carolina				1
South Dakota				1



Tennessee				1
Texas				1
Utah		1		
Vermont				1
Virginia		1		
Washington				1
West Virginia				1
Wisconsin				1
Wyoming				1
Totals	**1**	**5**	**2**	**43**