

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS  
Proposed Rulemaking Hearing  
May 19, 2011  
Jefferson City, Missouri  
Volume 1

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In The Matter Of a Proposed )  
Rulemaking To Amend 4 CSR 240-2 )  
Practice and Procedure ) File No. AX-2011-0094  
Requirements )

NANCY DIPPELL, presiding  
DEPUTY REGULATORY LAW JUDGE  
ROBERT M. CLAYTON, via telephone  
COMMISSIONERS.

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## A P P E A R A N C E S

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1 JUDGE DIPPELL: This is Case No. AX-2011-0094 in  
2 the matter of a proposed rulemaking to amend 4 CSR 240-2;  
3 Practice and Procedure Requirements. My name is Nancy Dippell.  
4 I'm the regulatory law judge assigned to this matter. And we've  
5 come here today to take comments on some proposed amendments and  
6 rules in our Chapter 2.

7 And these were published in the Missouri  
8 register and this time was set for this rulemaking hearing. We  
9 have a few people who have filed comments already and the  
10 written comments. And there's no need to repeat those if you  
11 are here today to comment again, but if you have additional  
12 comments we will take those.

13 We generally take comments in the support and  
14 then opposition, but since we have such a small group, I think  
15 we'll just take comments as they come and just specify if you  
16 will please, the rule number that you're commenting on.

17 And I think that's all we need to begin. I can  
18 start in the order that you all came into the room if you like  
19 unless somebody wants to volunteer to go first.

20 They're all looking at you, Mr. Mills. Would  
21 you like to --

22 MR. MILLS: They can look at me all they want, I  
23 have nothing to offer in addition to the written comments that I  
24 file previously this week.

25 JUDGE DIPPELL: Okay. Mr. McCartney, do you

1 have anything in addition to --

2 Mr. Zucker?

3 MR. ZUCKER: I'll start. Thank you, Your Honor.

4 JUDGE DIPPELL: Well, since our rule says  
5 currently, which is one of the changes we hope to make, that  
6 testimony shall be taken under oath, I'm going to swear you in  
7 even though you're an attorney representing a client here today.

8 (Witness sworn.)

9 JUDGE DIPPELL: Thank you. And if you would  
10 speak into your microphone, that would be helpful.

11 RICK ZUCKER,  
12 Of lawful age, having been produced, sworn, and examined  
13 testifies as follows:

14 MR. ZUCKER: Thank you, Your Honor. My name is  
15 Rick Zucker. I'm here on behalf of Laclede Gas Company. And we  
16 filed joint comments along with Ameren. And Brian McCartney is  
17 here representing Ameren.

18 I'll just briefly summarize our comments. We --  
19 there is a rule that is rule number 2.080 Sub (9). We filed  
20 comments there just to confirm that what the current practice  
21 is, which is when you're filing a pleading by a due date or  
22 testimony that that -- that that filing is due by midnight of  
23 that date when you file electronically.

24 The next issue that we raised had to do -- that  
25 I want to comment here on has to do with the rules on dismissing

1 a case. It's Rule 2.116 (1). And the change involved to this  
2 rule had to do with -- let me look it up real fast -- had to do  
3 with getting the consent of all parties to a dismissal after a  
4 certain point in time. And that point in time was once some  
5 testimony was filed.

6 We feel that because the practice at the  
7 Commission involves pre-filed written testimony early in the  
8 process, that really cuts off the ability of a complainant or an  
9 applicant to withdraw their case at an appropriate time. And we  
10 looked at the Missouri Rules of Civil Procedure, they let you  
11 withdraw a case if you're a plaintiff all the -- all the way up  
12 until the time that evidence is given at the trial.

13 So we suggested here that a plaintiff or -- I'm  
14 sorry -- in front of the Commission, a complainant or an  
15 applicant be able to withdraw their case and dismiss it at any  
16 time within ten days before the hearing. The point being that  
17 there's a line to be drawn somewhere. A line to be drawn such  
18 that the applicant can withdraw their case and end the  
19 litigation, but not so late that parties who have been  
20 inconvenienced and put to a lot of trouble don't have anything  
21 to say about it.

22 We -- and the Missouri Supreme Court draws that  
23 line in regular court cases at the hearing, at the actual trial.  
24 We're willing to say, you know, ten days before the trial. And  
25 then if it's within the ten-day period, you -- a party trying to

1 dismiss their case should have to get the consent of other  
2 parties who have actually filed testimony as opposed to all  
3 parties who may have just intervened in the case. So that is  
4 our comment on that point.

5 One moment, Your Honor. Okay. The next rule  
6 that we filed that I would like to briefly discuss is Rule 2.180  
7 (6) and (8) having to do with comments at rulemakings. We  
8 agreed in our comments, we pointed out that it is usually  
9 appropriate to -- to make comments without having to be sworn in  
10 and having to give testimony. We just didn't want to preclude  
11 that. There may be situations in which it's appropriate for the  
12 person to be sworn and to testify. And so we would be fine with  
13 having both options in the rule.

14 Now, I would like to move on to comments that  
15 Laclede has to the comments offered by the Office of Public  
16 Counsel. They had a number of -- it looks like more than 20 of  
17 them. Most of them are fine with us. I just wanted to speak on  
18 a few of them.

19 On numbers -- on comment number 6 by the Office  
20 of Public Counsel had to do with -- in that comment, to Rule  
21 2.070 Sub (2). The Office of Public Counsel thought that the  
22 presiding officer should not have the discretion to require a  
23 plaintiff to go through the informal complaint process. And we  
24 feel that that's exactly the kind of discretion that a  
25 regulatory law judge should have.

1           It doesn't stop the complainant from -- from  
2     getting to the commissioners, from using the formal complaint  
3     process. But if a regulatory law judge thinks that the case is  
4     more appropriate -- more appropriately handled in the informal  
5     process to start with, that may be a better use of our resources  
6     rather than use the time of the commissioners right away.

7           The next issue is 2.075 (11), is the rule. This  
8     is OPC's Paragraph 9. They bring up an interesting point that  
9     whether pleadings by a non-party should just be in briefs or --  
10    or whether or not non-parties can file other pleadings that are  
11    not at the briefing stage.

12           The Public Counsel doesn't take a specific  
13    position, but says if the Commission intends to allow other  
14    types of filings, it should add a section that specifically  
15    addresses that. We're fine with that. And we think that there  
16    should be an addition, in fact, because there are stages of a --  
17    of a case in which an amicus may want to file a pleading that --  
18    before the briefing stage.

19           In other words, if there is a motion to dismiss  
20    a case or a motion for summary determination and a party would  
21    like to file an amicus waiting for the hearing where a briefing  
22    occurs, would be too late. If there's a jurisdictional issue  
23    for example, waiting -- it may never get to the briefing stage.  
24    So we would like to see that rule refer to briefs or other  
25    pleadings.

1                   Let's see, me -- the final section that I would  
2     like to address with regard to Public Counsel's comments is  
3     Paragraph 19 and the rule is 2.135 (4) and (5). Okay. And this  
4     has come up before the Commission before. And the issue is  
5     whether a non-attorney, who is a party, a pro se party can have  
6     access to -- or have the same access to proprietary and highly  
7     confidential information as do attorneys.

8                   And the rule currently goes to some trouble to  
9     avoid having regular business people see certain information.  
10    And I think to say that that whole scheme comes tumbling down  
11    when a party avoids having an attorney isn't right. And I  
12    hesitate to -- to take a person who is not an attorney, who is  
13    not bound by the rules of ethics and allow them access to, for  
14    example, other customers' information or other sensitive  
15    business information without further thought about that.

16                  So I guess what we're saying is we would oppose  
17    that change at this point and I think it needs some further  
18    study before we decide how and under what circumstances  
19    someone -- a pro se party may see sensitive information. I  
20    don't have a problem with the party seeing their own sensitive  
21    information.

22                  In other words, if a customer files a complaint,  
23    they should be able to see their own -- they should be able to  
24    see highly confidential information having to do with their  
25    account. But I don't think it's a good idea to open up all



1 highly confidential information to someone just because they  
2 have the advantage of not having an attorney. And that  
3 concludes my remarks.

4 JUDGE DIPPELL: All right. Commissioner, did  
5 you have any questions for Mr. Zucker?

6 COMMISSIONER CLAYTON: I don't have any  
7 questions. Thank you.

8 JUDGE DIPPELL: Okay. I just have one for you  
9 before we move on. You had mentioned your comment to 2.080 Sub  
10 (9), which is about the time permitted for filings by midnight.  
11 Can you just -- are you familiar with how that's handled in  
12 state and federal courts, Mr. Zucker?

13 MR. ZUCKER: No. I'm not.

14 JUDGE DIPPELL: Okay.

15 MR. ZUCKER: I mean, I know the rules here are  
16 if you have something in writing, then the office closes at 5:00  
17 and if you bring something in after 5:00 it's going to get  
18 stamped for the next day.

19 JUDGE DIPPELL: Right.

20 MR. ZUCKER: But electronically, we've --  
21 there's been certainly a practice established where people have  
22 filed after 5:00 and there was once an e-mail that came from the  
23 original -- or the Chief Judge then that said midnight was the  
24 deadline. So I just want to clarify that that's what we were  
25 trying to accomplish with that rule.

1 JUDGE DIPPELL: Okay. Mr. McCartney, did you  
2 have some additional comments?

3 MR. MCCARTNEY: Yes. Thank you. Brian M--

4 JUDGE DIPPELL: Let me swear you in. You don't  
5 have to stand. That's fine.

6 (Witness sworn.)

7 JUDGE DIPPELL: Thank you.

8 BRIAN MCCARTNEY,  
9 Of lawful age, having been produced, sworn, and examined  
10 testifies as follows:

11 MR. MCCARTNEY: Brian McCartney of the law firm  
12 of Brydon, Swearngen and England PC appearing today on behalf  
13 of Union Electric Company, d/b/a Ameren Missouri. We generally  
14 concur with Laclede's comments. We jointly filed them and  
15 concur with Mr. Zucker's explanation.

16 I did want to mention one additional comment we  
17 have is comment F on our joint filing. It's about proposed Rule  
18 2.130 Sub (8). This is a rule that would allow in lieu of  
19 direct testimony parties to file summaries of their narratives  
20 and recommendations. I think we're generally okay with that,  
21 but we would like to have some more detailed explanation just so  
22 that there's no -- to get the issues out, up front, and clearly  
23 state them.

24 So we would recommend that the words "and with  
25 complete and comprehensive detail" be inserted to that rule.

1 That would just help clarify the issues as much as possible up  
2 front.

3 One comment that I did have too, and this is not  
4 on behalf of Ameren, but on behalf of the law firm. We took a  
5 look at Staff's pretty short comment filed by Cully Dale earlier  
6 this week about complaints and the interplay between the ethics  
7 rules and complaints.

8 And we've got a little concern with the way that  
9 has fallen out. It's kind of unclear to us whether a complaint  
10 is something that should fall under that 60-day notice rule. I  
11 think that came up before the Commission a couple of months ago  
12 with a company called Nexus. It filed a suit against AT&T.  
13 AT&T responded that you didn't give us 60 days notice, so we  
14 have to start over.

15 I don't think those rules ought to apply to a  
16 complaint like that. I think they ought to apply fairly to all  
17 corporations not just public utilities. So that's something  
18 that we've got a concern about and think needs a closer look.  
19 And again, that's on behalf of the law firm and not Ameren.  
20 Thank you.

21 JUDGE DIPPELL: And Commissioner Clayton, would  
22 you have any questions for Mr. McCartney?

23 COMMISSIONER CLAYTON: I have no questions.

24 JUDGE DIPPELL: Thank you. All right. Then,  
25 Mr. Mills, did you have any -- did you want to make some

1 response?

2 MR. MILLS: Yes, please.

3 JUDGE DIPPELL: All right.

4 (Witness sworn.)

5 LEWIS MILLS,

6 Of lawful age, having been produced, sworn, and examined

7 testifies as follows:

8 MR. MILLS: Just very briefly, with respect to  
9 Mr. Zucker's comments about proposed Rule 116(1) about  
10 dismissal. I think there's a couple of distinctions to draw  
11 between issues before the Public Service Commission issues and  
12 court. And there's reasons why they maybe should be treated  
13 differently.

14 And primarily it's because the Public Service  
15 Commission is generally trying to determine the public interest  
16 rather than simply adjudicating private disputes between  
17 individual parties. And so there may be a broader public  
18 interest in keeping a matter alive even if one of the litigants,  
19 even the moving litigant, wants to dismiss it.

20 And the rule as drafted and as proposed allows a  
21 party to have its case dismissed at any time by leave of the  
22 Commission. So it's not as though that have absolutely no  
23 ability to withdraw after the point at which some prefiled  
24 testimony has been filed. They simply have to get the  
25 Commission to agree that it's in the public interest to allow

1       them to withdraw it. So I think the rule as proposed is just  
2       fine on that and it takes care of that point.

3               With respect to 075 (11), I think Mr. Zucker's  
4       suggestion was to simply add in the phrase "other pleadings" to  
5       the ability to file briefs. And that was not really what my  
6       suggestion was. My suggestion was is that if an entity who is  
7       not a party to a case is going to file something other than a  
8       prehearing brief or a post hearing brief, it ought to be a very  
9       rare event for one thing.

10              Because if they have an interest in the case  
11       they ought to be in the case and so they -- it shouldn't be a  
12       normal course for someone who's not a party to simply be able to  
13       weigh-in on particular issues on a whim.

14              So if the Commission wants to allow things other  
15       than the traditional prehearing briefs or post hearing briefs,  
16       then the Commission should clearly lay out the circumstances in  
17       the rule under which that kind of filing should be allowed so  
18       that it's not just done, you know, whenever somebody thinks  
19       there's an issue that they're interested in but they really  
20       don't have an interest in the case and --

21              Because that can really be inconvenience and  
22       prejudice in fact to the parties that are in the case. If there  
23       are, you know, non-parties who just feel free to weigh-in on an  
24       particular issues, it can make it hard for the parties that are  
25       in the case to actually deal with some of those responses.

1                   And then finally with respect to the question of  
2     pro se litigants and confidential -- highly confidential and  
3     proprietary information. I don't think -- certainly there may  
4     be some circumstances in which there are some information that  
5     those parties should not be allowed access to. But I think the  
6     general rule ought to be that any party in the case ought to be  
7     able to get the information in the case.

8                   Otherwise, you know, I think there's a due  
9     process argument if they're -- if the Commission is relying on  
10    information to decide issues in the case that effect a litigant  
11    and the litigant is not allowed to see that information, I think  
12    there's a real problem there.

13                  So I think, you know, the rule could be drafted  
14    to allow some particular information to be kept from some  
15    litigants. But I think the general rule ought to be if you're  
16    allowed to be a party in the case, you're allowed to have the  
17    information that the Commission has when it's deciding the case.  
18    And that's all I have. Thank you.

19                  JUDGE DIPPELL: Let me just ask you really quick  
20    Mr. Mills, and then maybe I'll have Mr. Zucker respond too. Do  
21    you think that the rule could be drafted such that the -- the  
22    companies or whoever could get a special protection order for  
23    portions of it?

24                  MR. MILLS: There -- there are also in the  
25    rules -- and I think I even commented on this: There is a --

1     this still -- despite the fact of what we call the standard  
2     protective order has been more or less incorporated into the  
3     rules, there is still provisions in the rules that allow a party  
4     in a case to seek a protective order. And I think that could be  
5     done in the case of a pro se litigant that if for example,  
6     there's a concern that allowing a pro se litigant who is a  
7     customer access to other customers' information.

8                 I think a company that wanted to prevent that --  
9     or in fact, Public Counsel may want to prevent that -- could  
10    seek a protective order to prevent that particular kind of  
11    information from getting to that particular litigant.

12                But some of the issues that have come up in  
13    relatively recent cases are, you know, a pro se litigant trying  
14    to get some planning documents from a city was one of them. And  
15    in another case a pro se litigant was trying to get some  
16    information about lighting issues from the utility. And neither  
17    of those have anything to do with customer specific information.  
18    And really neither one of those ever came to a head in terms of  
19    being a contested issue that the Commission had to decide.

20                But I think if they had, and the Commission  
21    decided information -- decided a case based on information that  
22    those litigants wasn't allowed to see, I think that would have  
23    raised some problems for the court. So I think, as I said, the  
24    general rule ought to be that the all parties get access to  
25    information and a protective order could be used to limit that

1 in specific cases as necessary.

2 JUDGE DIPPELL: Would you agree that like  
3 if a pro se has specific issues, say for instance lighting is a  
4 specific issue, that their access to information could be  
5 limited to just the information on their issue. I mean, would  
6 you open up expert reports on rates and --

7 MR. MILLS: No. But I think you have to use  
8 more of the discovery standard than the evidentiary standard,  
9 which is, you know, information that is relevant or likely to  
10 lead to relevant information. I think you have to be a little  
11 more broad before you say, Well pro se litigant Mr. Smith, you  
12 can't get this information because we don't think it has  
13 anything to do with your issue.

14 But yeah, I think there certainly could be  
15 litigants with respect -- and most in fact, the Commission could  
16 do some of that in the order granting intervention. If they --  
17 if a pro se prospective intervener, you know, applies to  
18 intervene only to address certain issues then the Commission, I  
19 think, could reasonably limit a pro se litigant's participation  
20 into the issues in to which they identified.

21 JUDGE DIPPELL: And if there are security  
22 issues, for instance, if what the pro se litigant is asking for  
23 is say, the plans to the nuclear plant or whatever, would you  
24 agree that the Commission would be able to keep that from such  
25 a --



1                   MR. MILLS: Yeah. Yes. Yeah. And I'm not  
2 suggesting that no matter what everybody in a case gets every  
3 piece of paper. Because of the situation you've just raised,  
4 that certainly is -- would be a bad result. But I think the  
5 general rule ought to be more broad and neither the current  
6 rules nor the proposed rules really address this question very  
7 well at all. And I think it needs to be addressed somehow.

8                   JUDGE DIPPELL: All right. Thank you.  
9 Commissioner, did you have any questions for Mr. Mills?

10                  COMMISSIONER CLAYTON: No questions. Thanks.

11                  JUDGE DIPPELL: Thank you. Mr. Zucker, did you  
12 have any further response or want to make any further comments?

13                  MR. ZUCKER: Just briefly, Your Honor. Starting  
14 with the highly confidential information for pro se litigants,  
15 here's what the rule currently says in 2.135 (4): Highly  
16 confidential information may be disclosed only to the attorneys  
17 of record or to outside experts that have been retained for the  
18 purpose of the case. Employees, officers or directors of any of  
19 the parties in a proceeding or any affiliate of any party may  
20 not be outside experts for purpose of this rule.

21                  So we've gone to a lot of trouble to keep  
22 information from employees of a party, from officers of a party,  
23 from directors of a party. And then to be able to have a party  
24 come in and say, well I don't have an attorney, so none of that  
25 applies to me, seems to leave an opening there for the rule to

1 be undercut. Basically to be eliminated.

2 And I certainly don't think we should, under  
3 these circumstances make any change on this without further  
4 study.

5 One other comment as to 2.075 (11), and that was  
6 with regard to the filing of briefs or pleadings. I agree with  
7 Mr. Mills that it should be more of an unusual event to have an  
8 amicus filing as opposed to something that happens routinely.  
9 But the rule provides for a person, not a party, to petition the  
10 Commission for leave to file it.

11 So it's not something that a person who's not a  
12 party would have the right to do -- just to file anything they  
13 want. They have to ask permission and the Commission could  
14 obviously set the standards by when they say yes or no in those  
15 circumstances. So I think it should be open to briefs or other  
16 pleadings subject to the Commission permission.

17 JUDGE DIPPELL: Okay. Thank you. Mr. Mills,  
18 you want to make one last comment?

19 MR. MILLS: I did. And that's respect to the  
20 highly confidential information. I think the portion that  
21 Mr. Zucker pointed out about executives and officers and  
22 directors really isn't germane to this question because those  
23 necessarily presume a corporation which would have to be  
24 represented by an attorney. The only time a pro se litigant  
25 comes in is as a natural person. You can't have a director

1 representing a company.

2 And I think those provisions were designed in  
3 the first instance, a long time ago, to prevent officers and  
4 directors of competing telephone companies from getting  
5 competitive information from their competitors.

6 And I don't think that really applies in the  
7 instance of pro se litigant because under the Commission's rules  
8 any corporation has to be represented by an attorney. It  
9 wouldn't be in here as a pro se.

10 JUDGE DIPPELL: Anything further from anyone?  
11 All right. Then, Commissioner, did you have anything  
12 additionally?

13 COMMISSIONER CLAYTON: No. Thanks.

14 JUDGE DIPPELL: All right. Well, seeing no --  
15 wait a minute. I may have one more question here. I guess this  
16 is a general question and I will ask if you all have a response.  
17 Is an amicus filing preferable to allowing intervention and then  
18 having say that party possibly hold up a stipulation because  
19 they only have a limited interest? I mean would you -- is  
20 having an amicus filing rather than having the party or having  
21 someone come in and intervene, is that preferable?

22 MR. MILLS: I'm not sure that you can really say  
23 that's an either/or kind of thing because at the outset -- I  
24 mean, intervention is generally limited to the beginning of the  
25 case except under exceptional circumstances can somebody

1 intervene later. So whoever might potentially be an amicus  
2 filer later would have to demonstrate at the beginning of the  
3 case that they had some specific interest or could help out.

4 So I -- if the question is, Should -- you know,  
5 at whatever point, say it's a motion for summary judgment, would  
6 we prefer that a party have to seek intervention at that point  
7 as opposed being able to file a brief -- a pleading at that  
8 point, I would say I would -- I would think for something other  
9 than just a typical brief, I would think the party should have  
10 to demonstrate that they've got some interest in the case that  
11 would allow them to file pleadings. So they should be required  
12 to intervene. I think that would be certainly a way to handle  
13 it.

14 JUDGE DIPPELL: Mr. Zucker, did you have an  
15 opinion?

16 MR. ZUCKER: I was almost going to agree with  
17 Mr. Mills there until the end. I think there could be  
18 situations in which someone -- I agree with his beginning, which  
19 is I don't think it's an either/or. I think there may be  
20 situations in which you don't see a reason to intervene in the  
21 beginning of a case, but suddenly you may be monitoring it and  
22 the case takes a turn and you see how it's affecting your  
23 interests and you may want to try to intervene late and really  
24 be more involved in the case.

25 On the other hand, you may just want to file a

1     brief or a pleading at a stage in which you say, Hey I --  
2     they're about to make an important decision here and before they  
3     make that decision I feel like I need to say something. And so  
4     I guess an amicus filing is -- is a minor version of an  
5     intervention.

6                     And again, I think it's already established that  
7     you can do it at the briefing stage. And all we're saying is  
8     that it -- that should be expanded to allow you to file a  
9     pleading that's not a brief in appropriate circumstances.

10                    JUDGE DIPPELL: Mr. Mills?

11                    MR. MILLS: Well, I guess the notion of a  
12     non-party filing a pleading really causes me some concern  
13     because a pleading by definition is asking for some specific  
14     relief. And to allow an entity who's not even a party to the  
15     case who hasn't even demonstrated an interest in the case to  
16     come in and file a pleading which asks for relief is one thing.  
17     And I think it's inappropriate under almost any circumstance.

18                    But to allow a party to file a brief, which is  
19     essentially providing information and guidance to the Commission  
20     on how the Commission should, you know, look at the law and look  
21     at the facts with respect to a certain question, I can  
22     understand how an amicus would want to file briefs.

23                    And there may be particular situations in  
24     particular cases in which certain issues, it would benefit the  
25     Commission to have briefs on even though it's not a post hearing

1     brief or a prehearing brief; it's some issue that's come up in  
2     the case that the Commission would benefit from having the  
3     insight of some entity who's not a party. And I can see how  
4     that can be beneficial.

5                     But again, I think those are very, very rare  
6     situations. And I think the Commission, you know, should -- in  
7     those kinds of situations the Commission should invite entities  
8     to comment. I don't think it should be up to some non-party  
9     entity to say, you know, we want to come in and tell the  
10    Commission what to do even though the Commission hasn't asked us  
11    for our opinion.

12                    So that's how I would do it. I would say that,  
13    you know, unless by order of the Commission, no party shall file  
14    anything other than post hearing or prehearing briefs.

15                    JUDGE DIPPELL: And Mr. Mills, you've been  
16    around the PSC or the Office of Public Counsel for a lot of  
17    years.

18                    MR. MILLS: Long, long time.

19                    JUDGE DIPPELL: And you recall the rule before  
20    it was amicus was allowed for something called participation  
21    without intervention.

22                    MR. MILLS: Yes. Yes.

23                    JUDGE DIPPELL: This has been kind of an  
24    evolution.

25                    MR. MILLS: Yeah. And this -- honestly, this

1 doesn't come up very often. But it has come up and it has --  
2 the only instances I can recall, I was prejudiced because I had  
3 to respond in a short period of time to additional briefs from  
4 entities who didn't even intervene. So that's -- that's my  
5 concern is that it produces a burden on the parties that are in  
6 the case to have to respond on the fly to filings from parties  
7 who are not in the case.

8 JUDGE DIPPELL: Okay. Is -- one more comment?

9 MR. ZUCKER: One more comment, please. I think  
10 that an amicus filing and an intervention are really one in the  
11 same thing or late intervention let's say. Because you have to  
12 ask permission for both of them, to do both of them. And so you  
13 have to have some kind of interest which justifies your  
14 providing an opinion to the Commission.

15 And I think the Commission can -- whether your  
16 filing is in the form of an intervention for purposes of filing  
17 a pleading or a request to file an amicus brief, I think the  
18 Commission can handle those requests and in an appropriate  
19 manner.

20 Again, from my view the expanding it to a  
21 pleading is just for the purposes of say, uh-oh, the case is --  
22 maybe in jeopardy here in terms of being decided on summary  
23 determination, on dismissal for various reasons, on  
24 jurisdictional issues. And someone may want to come in and file  
25 the equivalent of an amicus brief, just at a different stage.

1 JUDGE DIPPELL: Is there any -- any additional  
2 comments?

3 All right. Seeing none, then I believe that  
4 will conclude our rulemaking hearing. I appreciate you all  
5 taking the time to come and give us comments. We can go off the  
6 record.

7 (The hearing was adjourned.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 I, Lisa M. Banks, CCR within and for the State of  
4 Missouri, do hereby certify that the witness whose testimony  
5 appears in the foregoing proceeding was taken by me to the best  
6 of my ability and thereafter reduced to typewriting under my  
7 direction; that I am neither counsel for, related to, nor  
8 employed by any of the parties to the action in which this  
9 hearing was taken, and further, that I am not a relative or  
10 employee of any attorney or counsel employed by the parties  
11 thereto, nor financially or otherwise interested in the outcome  
12 of the action.

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Lisa M. Banks, CCR  
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