

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Amendment of)	
the Commission's Rule Regarding)	Case No. OX-2024-0255
Stipulations and Agreements)	
)	

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

According to the documentation provided by the Public Service Commission (“PSC” or “the Commission”) to the Missouri Secretary of State (as filed in EFIS), the purpose of the proposed amendment to current Rule 20 CSR 4240-2.115 is to require a party that objects to a stipulation and agreement to state the specific provisions of the stipulation and agreement to which it objects and the specific reasons it objects. The Office of the Public Counsel (“OPC”) does not believe this amendment negatively impacts the current nature of Commission proceedings in principle but does note possible issues that might arise with this amendment in practice. The OPC offers these comments to outline those concerns and provide possible solutions.

Requiring parties to specify what provisions of a stipulation and agreement are being objected to is not problematic. In fact, this requirement is *de facto* in effect for Commission staff assisted small rate cases under Rule 20 CSR 4240-10.075(11)(D). It should not be an issue to expand the requirement to all cases appearing before the Commission. Instead, the portion of the amendment that warrants attention is the requirement that “[t]he objecting party shall state with specificity the basis for the objection[.]” In particular, it is the requirement for “specificity” that gives concern for the simple reason that providing sufficient “specificity” is a subjective determination.

Put simply, the OPC's concern is that arguments between parties regarding what constitutes the necessary "specificity" to object could result in unnecessary delays in cases and the waste of resources. Of particular importance is how this requirement would be enforced for what are colloquially known as "black box" settlements. In black box settlements, which occur frequently in Commission practice, parties will agree to a final number that settles the ultimate issue in the case but not specify the underlying math used to reach that number. This leaves each party free to establish how it arrived at the settlement figure based on the arguments that party presented. The use of black box settlements is an extremely important tool, without which the ability of parties appearing before the Commission to settle cases would be significantly diminished. The OPC is worried, however, the inherently opaque nature of the black box settlement may make objecting to it with "specificity" problematic.

To illustrate the point, please consider an extremely simple yet common form of black-box settlement: a rate increase request by a utility is settled through a stipulation and agreement under which the signatory parties agree that "the final revenue requirement for the utility shall be \$X million" and nothing more. Now imagine a non-signatory party files an objection to the stipulation and agreement which (1) identifies the preceding statement as the provision of the stipulation and agreements to which the non-signatory party objects and (2) states that the non-signatory party is objecting because the dollar amount identified is too high, in that, it has not taken into account the imprudence disallowance put forward in the non-

signatory party's pre-filed testimony. If such an objection is sufficient to meet the requirement for "specificity" outlined in this amendment, then there is no problem. If, on other hand, the Commission believes that greater specificity would be required to meet the requirements of the amendment, the amendment poses a significant concern simply because the lack of detail in the stipulation and agreement itself would make adding additional specificity to the objection quite challenging.

Because the concern identified by the OPC relates more to the potential application of the amended rule, the OPC does not oppose the amendment in principle. However, the OPC offers that the issue identified could be easily remedied by omitting the "with specificity" language of the proposed amendment. In the alternative, the OPC offers this language to substitute for the proposed amendment: "The objecting party shall identify the specific provisions of the stipulation and agreement that are objected to and provide a reason for each such objection." These subtle changes would avoid the potential problems outlined herein. The OPC therefore recommends that the Commission alter the language of the proposed amendment as the OPC has suggested, but otherwise supports the amendment.

Respectfully submitted,

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