

**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-2024-0256
Intervention	)	
	)	

**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 amendments to current Rule 20 CSR 4240-2.075 is to clarify and expand on the requirements that must be met by a party seeking to intervene in cases before the Commission. The Office of the Public Counsel (“OPC”) believes that the proposed amendment presents meaningful concerns that could have significant impact on practice before the Commission. The OPC therefore presents these comments to outline its concerns and offers a suggestion as to how to eliminate these problems while still moving forward collaboratively.

As a general matter, the OPC supports an expansive and lenient application of the PSC’s rules regarding intervention. This serves to benefit the Commission by encouraging the development of a robust evidentiary record with contributions from a diverse range of interested parties. It further serves to safeguard due process of law for all those who may be impacted by a Commission decision. Finally, allowing for easy intervention helps best ensure the Commission’s decisions promote the public interest by allowing the most members of the public to present their case directly to the Commission.

In addition, the OPC notes that the Missouri Supreme Court has interpreted the intervention right of those appearing before the Commission in a very liberal manner:

Considering the Public Service Commission Act as a whole, it seems apparent that parties to cases before the Commission, whether as complainants or intervenors are not required to have a pecuniary interest, or property or other rights, which will be directly or immediately affected by the order sought or even its enforcement. The reasonable construction seems to be that the interest necessary to authorize intervention should be the same as that required to become a complainant upon whose complaint a case is commenced. Any local partisan interest in the situation involved, such as a customer, representative of the public in the locality or territory affected; or as a competitor for the same territory or privilege is surely sufficient to show an interest similar to that of complainants described in Section 5686; and, therefore, is likewise a sufficient basis for intervention.<sup>1</sup>

For these reasons, among many others, the OPC believes that the Commission should err on the side of allowing intervention in most cases. The proposed amendments offered by the Commission, however, do not appear to be intended to further this objective.

As written, the Commission's proposed amendments appear to be placing more hurdles between a party and its ability to intervene with very little apparent justification. For example, the OPC does not understand why the Commission believes it is necessary to require a party to explain why it cannot take a position in a case the moment it intervenes or to guess as to when it might be able to stake a definitive position. Would these factors impact whether the Commission allowed the

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<sup>1</sup> *State ex rel. Consumers Pub. Serv. Co. v. Pub. Serv. Com.*, 80 S.W.2d 40, 46 (Mo. banc 1944) (internal citations omitted).

party to intervene? If yes, the OPC does not understand how or why the Commission would base allowing intervention on a party's ability to stake an affirmative position and fears that this might result in dismissing parties before they are able to properly develop their case. If the answer to the question posed is no, then the requirement seems to serve no purpose other than to set a trap for would-be intervenors whose possible lack of experience could foreclose their access to meaningful legal review due to relatively petty procural problems.

To demonstrate its concerns, the OPC would ask the Commission to examine how its proposed rule would operate in actual practice with a very simple hypothetical. Please consider a potential intervenor in the form of a large industrial customer who currently operates on a special fixed rate (a not uncommon occurrence in Missouri). The utility that serves this customer files for a rate increase but does not seek to change the special rate for this industrial customer. At first blush, this industrial customer would therefore have no apparent position to take in the case if it were to intervene. However, other parties to the case (for example the Commission's Staff or the OPC) might argue for a change to the special rate being applied to this industrial customer as part of the rate case. If that were to happen, the industrial customer would have a definite interest in the case and would normally seek to intervene. Yet the industrial customer would have no way of knowing its interests were under threat until after other parties to the case had filed direct testimony, which would not occur until well past the intervention deadline.

Under the rule as it is currently written, the industrial customer would most likely intervene in the case as soon as it was filed (within the thirty-day window set by the Commission's rules), citing their unique rate as the reason for intervention. However, the industrial customer would also most likely state they were unsure of its position because, at that point, the industrial customer's interests would not be under threat. It would be, simply put, just "monitoring" the case and waiting to act if their own unique rate became an issue at some later date. Again, this is a common occurrence in current Commission practice with many large-scale customers regularly intervening to monitor cases that *might* have an actual impact on them.

The Commission's proposed amendment would complicate the actions of the hypothetical industrial customer. Said customer would still be expected to intervene within the thirty-day window of the case beginning but potentially long before the industrial customer's specific rate became an issue. As such, the industrial customer would find it very difficult to take a position and, by extension, explain *why* it could not take a position. Further, the industrial customer would have no way of knowing when or even *if* its special rate was going to become an issue in the case and hence would find it extremely difficult to determine when a position could be asserted. Worse, if the industrial customer truthfully states that its special rate is not an issue in the case yet (because the utility has not addressed it and no other party has had an opportunity to), the Commission might feel inclined to deny the intervention entirely. However, if another party were to then later raise the industrial customer's special rate in their own direct case, the industrial customer would have no ability to

defend its interests having already been denied intervention. This would not only be manifestly unjust, it could also expose the Commission to a potential appeal by the industrial customer and thereby waste administrative resources.

Given the issues just described, as well as the apparent lack of any explanation as to how this amendment furthers the public interest, the OPC does not believe it is in the best interest of the Commission or the State to make the proposed amendment. Again, this amendment appears to only serve to limit or restrict intervention by parties that, in the absence of the change, would have a strong justification for being permitted to intervene. The OPC therefore strongly encourages the Commission to not make the proposed amendment and instead open a workshop where the Commission can present its concerns to interested stakeholders and allow for collaborative discussions of how best to address those concerns. Whatever has led the Commission to believe this amendment is necessary can be resolved in a manner that would avoid the problems discussed herein if the Commission were to solicit input from all stakeholders prior to the commencement of a formal rulemaking.

Respectfully submitted,

By: /s/ Marc Poston  
Marc Poston (Mo Bar #45722)  
Missouri Office of Public Counsel  
P. O. Box 2230  
Jefferson City MO 65102  
(573) 751-5318  
(573) 751-5562 FAX  
[marc.poston@opc.mo.gov](mailto:marc.poston@opc.mo.gov)