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BEFORE THE PUBLIC SERVICE COMISSION
OF THE STATE OF MISSOURI

In the Matter of the Amendment)
Of the Commission's Rule)
Regarding Stipulations and)File No. OX-2024-0255
Agreements)
In the Matter of the Amendment)
of the Commission's Rule)File No. OX-2024-0256
Regarding Intervention.)
)

HEARING

TAKEN AT THE GOVERNOR OFFICE BUILDING
200 MADISON STREET
JEFFERSON CITY, MISSOURI 65101

JUNE 4, 2024

VOLUME 1

PRESIDING JUDGE:
NANCY DIPPELL

COMMISSIONERS PRESENT:
KAYLA HAHN, Chair
GLEN KOLKMEYER

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P R O C E E D I N G S

JUDGE NANCY DIPPELL: I think it's 10 o'clock and we can go ahead and get started. Let's go on the record. The Commission has set this time for rule comment hearing in files captioned File No. OX-2024-0255 - In the Matter of the Amendment of the Commission's Rule Regarding Stipulations and Agreements, and File No. OX-2024-0256 - In the Matter of the Amendment of the Commission's Rule Regarding Intervention.

My name is Nancy Dippell. I'm the regulatory law judge presiding today. I also have with me Chair Hahn and Commissioner Mitchell online. I expect the other Commissioners will be joining us soon. Since this is a rulemaking hearing, it's not the same kind of procedures that we usually have in our Commission hearings. It's just to take comments on the rule in opposition or support.

And I will -- and anyone is allowed to comment. I will ask people to come up to the podium to speak or to speak into a microphone and I will ask you to identify yourself and spell your name for the court reporter before you give comments. All of the comments will be taken down and transcribed and then the

1 Commission will proceed with those comments through the
2 regular rulemaking process, eventually with an order of
3 rulemaking to be filed with the Secretary of State.

4 Do I have any questions before we get started?

5 MR. OPITZ: Your Honor, this is Tim Opitz
6 for MCEG. There are two separate cases. When we make
7 our comments, do you want us to make them one, sit
8 down, come back up for the other, sit down, or just
9 make all our comments at the same time?

10 JUDGE NANCY DIPPELL: It will be fine to
11 make both of your comments at the same time, but if you
12 could make your comments for one rule and identify
13 which rule, and then for the other rule and identify
14 those, that will be fine. As long as we can keep them
15 -- identifying which rule is being commented on. But
16 since these are fairly simple rules, I don't think it
17 will be a problem to give all your comments in one
18 time.

19 MR. OPITZ: Okay. Thank you for that
20 clarification.

21 JUDGE NANCY DIPPELL: Thank you. Any
22 other questions before we begin? Okay. Our rule
23 usually states that we begin with comments in support
24 of the rule and then comments opposing. If you have
25 both kinds of comments, maybe you support one rule and

1 maybe you oppose the other, you can give those at the
2 same time also.

3 So I'm going to begin just asking if -- I'm
4 trying to figure out -- we have some people online that
5 are going to want to testify. We have some people
6 obviously here in the hearing room. I'm going to allow
7 staff to go last. But maybe I could begin with Public
8 Counsel. Mr. Clizer, are you willing to start us off?

9 MR. CLIZER: Did you want to stick with
10 the comments in support going first?

11 JUDGE NANCY DIPPELL: I do. If you don't
12 have any comments in support, then we can come back to
13 you.

14 MR. CLIZER: I think it would be more
15 fairly accurate to reflect our comments as not in
16 support, although I want to qualify that a little bit,
17 so I'm going to hold off for now.

18 JUDGE NANCY DIPPELL: All right.
19 Mr. Coffman, would you like to go next?

20 MR. COFFMAN: I have a mixture of comments
21 in support and issues of concern. I probably have more
22 issues of concern. But if you'd like me to start off
23 with some comments, I suppose I could do that. If I
24 take this opportunity to make comments, will I have an
25 opportunity to respond later to things that are

1 brought?

2 JUDGE NANCY DIPPELL: I suspect I will
3 allow responses if they don't get too wordy.

4 MR. COFFMAN: Okay.

5 JUDGE NANCY DIPPELL: Could I get you to
6 come up to the podium?

7 MR. COFFMAN: Sure.

8 JUDGE NANCY DIPPELL: Go ahead. And if
9 you could state your name and who you represent and
10 spell it.

11 MR. COFFMAN: Sure. John B. Coffman. I'm
12 appearing on behalf of the Consumers Council of
13 Missouri. Would you like an address? Okay. Maybe the
14 court reporter probably has that. The Consumers
15 Council is generally supportive of the rules that have
16 been proposed by the Commission. The changes do not
17 seem to be of a nature that would change much of the
18 way that we engage in cases, at least as far as they
19 are.

20 And let me just start with the intervention
21 rule, which is the 0256 case. Merely stating the
22 reason for intervention is entirely reasonable as well
23 as explaining whatever position statement might be
24 available at the time that the petition for
25 intervention is filed as well as an explanation for why

1 a position could not be asserted.

2 I think what I would hope that the Commission
3 would keep in mind is that a lot of information is held
4 by utilities and we don't have that. So we have to
5 intervene in order to do discovery to find out the
6 information. There are a couple of cases right now
7 where much of the most crucial information is
8 designated as highly confidential. So that puts us in
9 a position where we need to intervene to find out more,
10 you know, substantively what's going on and what our
11 position is.

12 This is our interest -- we're trying to
13 protect, say, the residential class or some subgroup of
14 residential customers and this is our concern. And as
15 the case proceeds forward, we would be able to give
16 more detailed information as we receive more
17 information and as the back and forth of testimony
18 goes.

19 So, you know, the type of position that would
20 be possible is going to be a much more summary one than
21 what might come up later. And very often in a general
22 rate case, this is even more difficult, because there
23 are issues that can be raised by other parties who are
24 attempting to intervene, and so often there are issues
25 that you had no idea from the original utility

1 application could come about.

2 I guess this would then lead me into the
3 second rulemaking case that we're here for, which is
4 0255 case on stipulations. Generally, we have no big
5 concern with the idea of specifying objection. That's
6 already, I think, good practice to be specific, and
7 it's in the interest of someone objecting to a
8 stipulation to be very specific about what it is that
9 is a concern.

10 I think it's important to remember that
11 sometimes, especially in the general rate case, when
12 there are multiple issues of revenue requirement and
13 rate design, that sometimes issues get pulled in from
14 outside the case. It's not uncommon for a stipulation
15 that's reached between some parties, a nonunanimous
16 stipulation, to attempt to settle other issues, maybe,
17 you know, withdrawing an appeal or some other related
18 commission matter, or to create some new program or
19 something. So sometimes issues will be presented in a
20 stipulation that have never been -- that no one had to
21 file written testimony on yet.

22 So that is -- is a concern with some of the
23 things that we saw in the comments of Spire in this
24 case, which would say that -- would attempt to prohibit
25 someone from objecting to a stipulation if they had not

1 previously had written testimony on it. And that's a
2 real concern if the issue comes up for the first time
3 in the stipulation.

4 COMMISSIONER HAHN: Just a quick question,
5 Mr. Coffman. Your concern is about their suggested
6 additions to the rule, not about the actual rule as it
7 currently is written; is that right?

8 MR. COFFMAN: That's right. You mean as
9 proposed by the Commission?

10 COMMISSIONER HAHN: Yes.

11 MR. COFFMAN: We could live with the rules
12 as proposed by the Commission with kind of the context
13 that I gave earlier, but we do have serious concerns
14 with the two proposals proposed by Spire. We think
15 that those would violate due process and would put some
16 parties at a severe disadvantage and maybe a catch 22
17 whereas issues, you know -- issues are raised later in
18 the case, maybe in surrebuttal or actually in the
19 stipulation itself, and we would not have time to put
20 written testimony in.

21 We often have limits on our budget to even
22 have expert witnesses. But if a rule was put in place
23 that you had to have raised an issue in written
24 testimony, otherwise you couldn't even object at the
25 hearing or regarding a stipulation, it would put us in

1 a situation of considering having to have witnesses
2 objecting to everything in order to preserve our
3 opportunity to be able to have our day in court at the
4 end of the case.

5 So I don't think that there has been a problem
6 in the years that I've litigated the Commission whereby
7 the Commission, if it has a nonunanimous stipulation
8 and there are some parties who cannot -- those parties
9 can then just pull out the issues that they have a
10 concern with and have a full hearing on it.

11 And, again, I think it's important to
12 understand that a litigant has the opportunity to try
13 to make their case on cross examination, not just with
14 direct testimony. That's difficult and it's rarely
15 successful, but it is a legal right, a due process
16 right that I feel like we would have to try to poke
17 holes in someone else's case and to try to show what we
18 think might be a better position on cross examining a
19 witness who has raised an issue, not necessarily having
20 to pay for an expert witness ourselves.

21 And I can recall some cases -- and this was a
22 long time ago -- a case where there was a renewable
23 energy program that, in our opinion, we thought was
24 kind of a scam and we didn't have anyone to be an
25 expert witness on that, but we were allowed the

1 opportunity to cross examine and point out weaknesses
2 in that proposal and would hope the Commission would
3 respect our right to be able to do that if we felt it
4 necessary in a case.

5 So I think there might be other concerns that
6 we could raise. I'm interested to hear what Spire has
7 to say in support of its particular issues, but the --
8 we were rather alarmed by what we saw in their
9 comments, first as saying you would have had to have
10 written testimony or else not even be allowed to object
11 to a stipulation, and also their proposal that when a
12 stipulation is being considered, that the Commission
13 would somehow by rule be required to give that more
14 weight than someone else who had a differing opinion.

15 It seems like the Commission should be able to
16 weigh that information itself and if that's the way the
17 Commission feels, that's fine, but not to have some
18 sort of a burden of proof switch written into the rule
19 itself. I don't know if that would help the Commission
20 process things any quicker, but it certainly does feel
21 like we would become a third class citizen as far as
22 our due process rights goes. I hope you would keep
23 that in mind. I guess that's all I have. I would
24 reserve the right to maybe comment on anything else
25 that comes up that I haven't heard about yet.

1 JUDGE NANCY DIPPELL: Would any of the
2 Commissioners have any other questions for Mr. Coffman?
3 I'm not hearing any, so thank you, Mr. Coffman.
4 Mr. Opitz, would you like to go next?

5 MR. OPITZ: May it please the Commission.
6 Tim Opitz on behalf of Midwest Energy Consumers Group.
7 Just as a preliminary matter, I did -- I'm going to
8 state my comments, but I did type them up. I can offer
9 them to you now or, if you'd prefer, I can file them in
10 the docket, if that's acceptable.

11 JUDGE NANCY DIPPELL: I can take them now.

12 MR. OPITZ: May I approach?

13 JUDGE NANCY DIPPELL: Sure. Just for ease
14 of putting them in EFIS later, I'll mark these each as
15 Exhibit 1 in their respective cases.

16 MR. OPITZ: Thank you, Your Honor. I'll
17 start off with the intervention docket. Just as an
18 overview, MECG does not have any strong concerns about
19 the rule as put forward in the register. It's our view
20 that, you know, while it may require us to update our
21 intervention pleadings, we would be able to accomplish
22 that. Now, upon reviewing some of the comments of the
23 other parties who filed them, my comments are
24 essentially replying.

25 So replying to OPC, I would say MECG's notes

1 are in support of the OPC's comments on the
2 intervention docket. I think the issues they raise do
3 raise a concern that there might be a greater benefit
4 to exploring what the Commission is trying to
5 accomplish with this rule or what they intend to
6 accomplish with this rule. I think there would be a
7 good opportunity because, as is, I think there is still
8 some ambiguity with what would be required in the
9 filing under the new rule.

10 Replying to the Division of Energy, the filed
11 comments. You know, I have no issue with that. But I
12 think it, again, substantiates the OPC's concern that
13 this seemingly innocuous rule may have unintended
14 consequences.

15 Replying to Spire, their pre-filed comments
16 say they believe it will avoid unnecessary delays from
17 parties intervening and then determining their interest
18 in a case, and that it will provide all parties an
19 instance where the issues Spire asserts exists or would
20 be remedied, information needed to resolve the case in
21 a timely matter.

22 I'm not aware of any instance where the
23 concerns raised by Spire have come up, you know.
24 Again, I would say that reflects on the advantage of
25 OPC's suggestion that we discuss this more in a working

1 docket. If Spire does have real concerns, I'm happy to
2 hear them and work on addressing them.

3 And then Consumers Council, responding to
4 them, his comments generally align with those of OPC
5 and MCEG, you know, that this is the rule. We could
6 comply with it if the language as filed went forward,
7 but I think that there is some advantage to talking
8 about it and getting more specificity on the rule. So
9 those are my comments on intervention. Are there any
10 questions on that before I move to the stipulation and
11 agreement rule?

12 JUDGE NANCY DIPPELL: Do any of the
13 Commissioners have any questions about that?

14 MR. OPITZ: So on the stipulation and
15 agreement rule, again, as filed, MCEG would comply.
16 Not really an issue. Again, upon reviewing the
17 pre-filed comments in this case, those of OPC seem
18 reasonable and make sense. So MCEG would support the
19 OPC suggested edits to that rule.

20 In reply to Spire Missouri, I share many of
21 the concerns raised by Consumers Council. You know,
22 the company there invites the Commission to pretty
23 dramatically change its rate procedures with the
24 addition of this new language that they're proposing.
25 I understand that's not the rule, but I want to lend my

1 support to opposing what Spire is proposing here.

2 They kind of raise two points. First that
3 parties are required to file testimony before asserting
4 positions or having an ability to weigh in on
5 stipulations, and, second, they suggest that
6 stipulations that are nonunanimous that have a majority
7 or maybe certain favored parties be given deference.

8 A couple concerns I have is, first, their
9 suggestions are contrary to fundamental tenets of
10 Commission practice and rules of evidence. You know,
11 the first thing I'd point out is, whether a
12 nonunanimous stipulation is filed, the burden of proof
13 rests on the party asserting the affirmative of that
14 issue.

15 One case talking about that is Ag Processing
16 BK CPL from 2012. We see this principle in instances
17 where there is a unanimous stipulation and the
18 Commission requires an on-the-record proceeding for
19 parties to talk about it. So it seems counterintuitive
20 that you would adopt a rule that says, well, for
21 nonunanimous, we're going to give them even greater
22 deference than we do to unanimous. I think that's an
23 inappropriate burden.

24 Second, the parties must have pre-filed
25 testimony before objecting, I think violates the rights

1 to parties to cases. There's another case, Black v.
2 State, talks about the right to cross examination is
3 essential and indispensable. The right to cross
4 examine who has testified for the adverse party is
5 absolute and not a mere privilege.

6 I think Consumer Council also referenced a
7 case -- it might have been Fisher -- that is specific
8 to the Public Service Commission, although a little bit
9 older. When a party objects, the signatories can adopt
10 that as a joint position statement, but they still have
11 that burden to prove the underlying facts supporting
12 that stipulation. And I think parties should have a
13 right to cross examine the proponents of those
14 stipulations should they object to certain provisions
15 in it.

16 Third, as a practical matter, Spire's
17 statements that its revisions encourage settlement are
18 just wrong. If anything, its suggestions create a
19 perverse incentive for parties to gain negotiations by
20 talking with certain favored parties to the exclusion
21 of others. I think that's counterproductive.

22 Moreover, to the extent that the Commission
23 wants to favor settlement as a means of administrative
24 expediency, I think that is a factor that should be
25 considered. But ultimately when the Commission is

1 setting just and reasonable rates, just and reasonable
2 rates should take the priority over, you know,
3 administrative expediency.

4 Fourth, setting aside the legal burdens and
5 the rights I just mentioned, Spire's standard of
6 greater deference that they included in the second part
7 of their comments is undefined and it's my view that it
8 would simply create additional controversy. So I would
9 urge the Commission to reject Spire's comments in their
10 entirety.

11 And, lastly, replying to Consumers Council,
12 they don't object to the underlying amendment, which I
13 think is fair, and they oppose the revisions by Spire.
14 I agree with Consumer Council that the Spire comments
15 should be rejected. As I was looking at my comment
16 here, I did -- with your permission -- go back to the
17 intervention rule.

18 Consumer Council mentioned that the Missouri
19 Commission has a pretty short intervention deadline and
20 sometimes that can be difficult for parties who have to
21 get permission from a board, you know, or supporting
22 companies to can intervene in time. That can be
23 difficult.

24 I do want to note that other midwestern states
25 do have more relaxed intervention deadlines than

1 Missouri. You know, as just one example, Kansas, they
2 allow intervention until right up to the hearing. And
3 then in a recent case, they actually allowed
4 intervention even after the rates had gone into effect.
5 So I would encourage the Commission to continue to be
6 permissive in terms of allowing intervention. I think
7 it builds a better case.

8 I don't necessarily endorse allowing in every
9 instance, you know, intervention after the hearing, but
10 I think with the mindset of adjusting as circumstances
11 are presented should be kept in mind. So with that,
12 I'm happy to answer any questions.

13 JUDGE NANCY DIPPELL: Thank you. Are
14 there any Commission questions for Mr. Opitz? Thank
15 you. I'm just going to kind of go through the room and
16 then we'll get to the people online. Mr. Clizer?

17 MR. CLIZER: I'm sorry, when you first
18 started off, I was a bit confused. So I do -- the OPC
19 does have comments.

20 JUDGE NANCY DIPPELL: I understand. Would
21 you like to give those comments now or I was going to
22 kind of come back to you.

23 MR. CLIZER: If that's the case, I'll just
24 wait. I apologize.

25 JUDGE NANCY DIPPELL: All right. We won't

1 forget you. Are there comments? Do you all have
2 comments?

3 MR. WEITZEL: Hello Judge and Chair.
4 Scott Weitzel with Spire. I'm the Vice President of
5 Regulatory and Government Affairs. Weitzel,
6 W-E-I-T-Z-E-L. We'll first start with the
7 intervention. I've got documents here so I can keep
8 all my numbers straight.

9 Spire appreciates the effort the
10 Commission and Commission staff have taken to amend
11 this regulation regarding intervention. Spire is in
12 support of the amendment to 20 CSR 4240-2-075. It's
13 really all I have on intervention.

14 Second item is the stipulations and agreement.
15 Again, Spire appreciates the efforts the Commission and
16 Staff have taken to amend the stipulations and
17 agreement. Spire is in support of the amendment to 20
18 CSR 4240-2.115. There's been some comments about what
19 Spire filed and I just wanted educate and level set for
20 the group on why we approach those potential additions
21 or things for consideration.

22 We have seen in cases where folks in
23 intervening parties do not identify any issue through a
24 procedural schedule. There's no testimony. There's no
25 witnesses. And when we get to an end of a case, there

1 might be a specific issue that parties want to address
2 and, at the same time, we're trying to work on a global
3 stipulation.

4 And sometimes those specific issues and -- you
5 know, the issue that I'm talking about, no party in
6 this room, you know, did this tact. It was others.
7 But they were in the case for one specific tariff and
8 they wanted to use that leverage to derail a global
9 stipulation with the other parties.

10 So simply what Spire is trying to say is, if
11 you're going to object to a stipulation agreement,
12 that's why we're in support of the Commission's
13 agreement, is you got to specify. Why are you
14 objecting to this? Because we would have liked to see
15 that back then. But it's holding up progress in case.
16 It's holding up stipulations and agreement as potential
17 hostage for a specific issue.

18 We just would like folks to be engaged on the
19 front end, state their position through procedural
20 schedule, through testimony, have witnesses, instead
21 of, at the last hour, potentially objecting. But, you
22 know, that could have been just a situation many years
23 ago.

24 Again, none of the folks in this room were
25 that party or parties, but we've seen it in the past.

1 But at least we're confident on what the Commission
2 have put forth with stipulations and agreement and
3 think that's progress towards resolving that issue.
4 Those are the comments Spire has. Thank you for your
5 time, Chair and Judge.

6 JUDGE NANCY DIPPELL: Are there any other
7 Commissioner questions? Thank you, sir. Mr. Fischer,
8 did you have comments?

9 MR. FISCHER: Briefly, Judge. For the
10 record, my name is Jim Fischer. My law firm is Fischer
11 & Dority, P.C. Our address is 2081 Honeysuckle Lane,
12 Jefferson City, Missouri 65109. Thank you very much
13 for the opportunity to be here today. I'm here
14 representing the Evergy companies, Evergy Missouri
15 Metro and Evergy Missouri West.

16 Evergy doesn't have any objections to the
17 Commission's proposed intervention rules, however, we
18 did want to just raise very briefly for your
19 consideration a policy issue related to interventions.
20 For years the Commission granted liberal intervention
21 to all parties, including public utilities, that
22 desired to participate in their sister public utility
23 cases.

24 This promoted the public interest and ensured
25 a complete record on the issues that could directly

1 impact those utilities that were participating. In
2 more recent times, we observed a tendency to be a
3 little bit more reluctant to allow such interventions
4 and I just wanted to discuss an issue or two related to
5 that.

6 The PSC tends to decide cases as consistently
7 as they can based on the records that are in front of
8 them and as a result of that, a public utility may have
9 a decision made in a previous case involving another
10 utility that will directly affect them. And whenever
11 it gets to their case, while there's no stare decisis
12 that requires that it be decided that way, most of the
13 time the Commission does tend to answer the question in
14 a consistent way.

15 We've seen that happen in, for example, fuel
16 adjustment clause cases where you're talking about
17 sharing mechanisms or perhaps MEA cases or perhaps rate
18 case expense issues or other rates case issues.
19 Whenever a utility issue is raised and decided, that
20 often is the way it is decided in the second and third
21 case.

22 We think it would be helpful for the
23 Commission to consider that fact as it's looking at
24 interventions by public utilities in their sister
25 company cases. We recently saw that in that data

1 collection case that I think the Chair is familiar
2 with, where Ameren and Liberty asked to intervene in
3 our case, the Everygy case because it involved
4 industry-wide issues, but they were denied.

5 And then in the hearing there were questions
6 raised about what did Ameren do and what did Liberty do
7 related to data collection or creation of data and they
8 weren't there to answer those questions directly. And
9 we think it would have been helpful to have someone
10 there to clarify or correct the record on those topics.
11 With that, I'll be happy to answer your questions and
12 encourage you to have liberal intervention policy
13 related to public utilities.

14 JUDGE NANCY DIPPELL: Are there any
15 questions for Mr. Fischer?

16 MR. FISHER: Thank you.

17 JUDGE NANCY DIPPELL: Mr. Owen, would you
18 like to make comments?

19 MR. OWEN: I would, Your Honor. If it may
20 please the Commission. My name is James Owen, O-W-E-N,
21 no "s". I am the executive director of Renew Missouri.
22 We are here today to speak in regards to the proposed
23 rules in a general sense as well as the responses from
24 the other parties, required intervenors, intervenors
25 that are optionally involved with these cases.

1 To begin, to speak on both matters, on both
2 proposals, we don't see anything with this language
3 that presents itself as concerning to us, however, to
4 reiterate what the Office of Public Counsel has said,
5 without workshops, without being able to talk to the
6 other parties, it's hard to know exactly what the
7 purpose is for these changes. We hear concerns. We
8 hear issues from some of the other parties that are
9 here.

10 Ultimately, if the question is whether or not
11 the rate case process or the process of approving
12 projects, revenue, et cetera, is a matter of efficiency
13 or effectiveness, one of the arguments that we would
14 make is -- and I speak to this not only as a clean
15 energy advocate, but someone who has also been a
16 consumer advocate in the past as a former public
17 counsel -- is to ask what the purpose of the rate case
18 process is and what the regulatory process hear is.

19 As monopolies, the inclination to work without
20 free market concepts and principles requires there to
21 be some sort of synthetic effort to slow the process
22 down, to make sure consumers are protected, to make
23 sure decisions are made in a deliberative process. I
24 believe any rule or change that affects that could have
25 consequences that we're not aware of sitting here today

1 or contemplating today.

2 So I would just say in that regard, we would
3 ask to have some more discussion, some more
4 collaboration with the parties before we move forward
5 with any changes. That would be one of the things we
6 would urge the Commission to do and we would reiterate
7 what the Office of Public Counsel has said.

8 We also want to reiterate in regards to the
9 intervention rule, the initial intervention rule, that
10 we would echo what has been already said by Consumer
11 Council, by MCEG. We would also ask to reiterate what
12 Mr. Fischer has said, that we would like it to be
13 liberal rules for every intervenor, not just the
14 utilities, because we believe the more voices, the more
15 people that are here are important and necessary.
16 Again, while we don't see any issue with the language
17 as it's written now, interpretations of that could have
18 consequences that we're not aware.

19 In regards to the objections and the
20 stipulations and agreements, again, we would reiterate
21 that we support the comments of Consumer Council, of
22 MCEG. I also would note in regards to, you know,
23 whether or not a party has a witness or things on the
24 record, it's critical from a smaller intervenor,
25 someone who does not have the budget that some of the

1 other intervenors here have, that sometimes we rely on
2 other parties to have expert witnesses involved with
3 these cases, that we might agree with them, might
4 reiterate what they are saying on the record.

5 Just the fact that we don't have an expert
6 witness or we don't have someone speaking to that is a
7 strategic decision. And so to be able to say, like,
8 you know, based on requiring that, as Spire's rules
9 proposals would, that would create inefficiencies and
10 make it harder for smaller intervenors to be involved
11 with this.

12 Moreover, you know, it might require us just
13 to simply have to have an expert witness to object to
14 everything, which, then, I think exacerbates this
15 problem that is seemingly wanting to be solved here.
16 So, again, we would ask for us to continue having a
17 liberal policy for all intervenors when it comes to
18 stipulations and agreements.

19 I think that, you know, if -- Spire, based on
20 their comments, has said it's a party that is not
21 involved here, that is not a part of this rulemaking or
22 conversation is the problem they're trying to address.
23 I would ask, is it necessary, when there are a lot of
24 good actors acting in good faith, that are trying to
25 represent the interests that they represent and that we

1 have to face a potential more strict rule because of
2 one party acting in bad faith or maybe not doing what
3 they should be doing or not operating within what the
4 intentions of the law here is, why we should all have
5 to have consequences as a result. With that, I would
6 be open for any questions from the Commission.

7 JUDGE NANCY DIPPELL: Would there be any
8 questions for this commenter? All right. Thank you,
9 Mr. Owen.

10 MR. OWEN: Thank you.

11 JUDGE NANCY DIPPELL: Is there anyone else
12 in the gallery who wishes to comment? All right.
13 Mr. Clizer, do you want to go ahead now or do you want
14 to wait until we have the others.

15 MR. CLIZER: I guess I'll go now. For the
16 record, John Clizer, C-L-I-Z-E-R. My contact
17 information is with the court reporter. I'm
18 representing the Missouri Office of the Public Counsel.
19 I do want to say at the beginning, we're not
20 steadfastly against either of amendments. I just got
21 slightly confused and felt like this is the more fair
22 way to say it, because we have raised some concerns
23 with both of them. So I apologize, it wasn't my
24 attention to screw up the order there.

25 But to start, I would like to thank the

1 Commission for taking the time to hear our comments.

2 I'm going to start with the Intervention Rule
3 Amendment. That would be 0256. And, again, at the
4 offset, I'd like to echo what has kind of been said by
5 several other people.

6 We at the OPC believe there is a good reason
7 to have a very open intervention policy. The
8 Commission, we believe, exists to promote the public
9 interest and the easiest way to determine what the
10 public interest is, is going to be to solicit feedback
11 from as much of the public at large as possible, and it
12 also helps to ensure that there's a robust evidentiary
13 record as well as protection for due process rights.

14 So as a general matter, again, the OPC
15 supports a liberal and open intervention policy. With
16 that in mind, the OPC has some concerns with the
17 amendment that has been put forward in that we think it
18 will make it marginally more difficult to intervene.

19 That fact alone doesn't necessarily mean it's
20 a bad amendment. For example, there could be a major
21 problem that we're trying to overcome that could make
22 it justified to make it marginally more difficult to
23 intervene, but the OPC, it's not entirely obvious to us
24 what exactly the problem we're trying to overcome is.
25 Instead, it appears the amendment has not been -- or

1 has not considered some of the procedural realities
2 that come with practice in front of the Commission.
3 We've already kind of heard some of those comments
4 today.

5 For example, whenever you have a large rate
6 case, you're going to usually have a large amount of
7 information put on to the record in one go, and then
8 the company -- potential intervenors have a very narrow
9 relative window to actually intervene, so they may not
10 have time to kind of review all the information that's
11 been put forward, which may make it difficult for them
12 to stake a position when they very first file.

13 However, I think the bigger issue is that
14 there are a number of intervenors that regularly show
15 up before this Commission. They're usually very large
16 customers and they intervene because they have an
17 important stake in a company, but then don't normally
18 actually take a specific position in a case.

19 So I'm going to give you a specific example,
20 just to kind of prove what I'm talking about. Nucor
21 Steel of Sedalia, it's a big metal company in Sedalia,
22 Missouri. They're a huge electric consumer because
23 they run smelters that run nearly constantly, so
24 they're constantly smelting. And they're served by
25 Evergy West.

1 Now, Nucor Steel is going to routinely
2 intervene in Evergy West's rate cases because they have
3 a stake. They are a big taker of energy. They
4 actually operate under a special tariff called the SIL
5 tariff. And, in fact, in this current Evergy West rate
6 case, for example, Nucor Steel has intervened and have
7 been granted intervention.

8 But the thing is, Nucor also for various
9 reasons will very rarely need to take an active
10 position in the case because its SIL tariff is very
11 rarely going to become an issue in the case. It still
12 wants to intervene to protect its interest, but it
13 doesn't necessarily have a position going forward. And
14 that's what it states in its intervention. And it's
15 that kind of case, you know, that is what we're most
16 concerned about.

17 I'll give you a second example again just to
18 show you what I'm talking about. Triumph Foods, LLC,
19 will sometimes intervene in Missouri American Water
20 cases. Again, they're a large consumer of the utility
21 service being provided. In the last Missouri American
22 Water case, for example, Triumph Foods intervened. And
23 when they intervened, they didn't state we have a
24 position, but then they later had to file rebuttal
25 testimony to address issues that had been raised by

1 Staff.

2 So these are the kind of cases that we're
3 talking about when we say there's a good reason
4 somebody might need to intervene but not stake a
5 position, because they're protecting their interest.
6 They don't know if their interest is going to become an
7 issue in the case. And that's our biggest concern,
8 really, with the intervention rule as it's been put
9 forward.

10 In our comments we suggested that you can use
11 a workshop. I know that workshops can sometimes run
12 into problems before our Commission. They have a
13 tendency to kind of devolve into a limbo and get lost.
14 I've been a party to many such workshops. A very brief
15 digression, I would offer, if the Commission wants a
16 way to solve that, I would throw out two things that I
17 think you can do to try to fix the workshop problem.

18 The first is that when you start a workshop,
19 you either need to set a timetable or order your staff
20 to basically produce a timetable, much like a
21 procedural schedule in a normal rate case. And then
22 the other thing is, the end goal of each of those
23 workshops should be to file a final recommendation,
24 probably by your staff again.

25 That kind of finality will help you close out

1 the workshops, which when combined with having a
2 definite timetable, should make those a much easier
3 process and much less likely to getting lost in
4 regulatory limbo. So those are my comments on the
5 intervention rule.

6 I'm going to skip over now to the stipulation
7 rule. As we stated in our initial written comments, we
8 have much less concern here. I agree with what I think
9 most of the parties have said, that being specific with
10 what provision is being objected to isn't a problem.
11 Like, we should be able to identify we object to
12 provision 1-A of the stipulation, for example.

13 Our concern mostly comes down to the idea of
14 needing to provide specificity for the reasons. And,
15 really, it's just a matter of how is the Commission
16 going to understand that term in application. And our
17 biggest concern is the fact that a lot of the
18 stipulations that appear before you are very bereft of
19 details, right?

20 We use a lot of black box settlements that
21 come in and they have very little information in them.
22 So how much specificity do you need to have to object
23 to something that doesn't have much specificity to
24 begin with. That's our concern. I think that if you
25 remove that with specificity language that's been

1 proposed, that completely removes that issue. So I
2 would suggest with that change, the OPC doesn't have a
3 concern with the objection language.

4 I want to very briefly touch on the proposals
5 that have been mentioned regarding what Spire has put
6 forward in comments. I do understand where Spire is
7 coming from. I think I know particularly which company
8 they're actually referring to even, but we also have
9 concerns with what Spire has proposed and I don't think
10 they would work.

11 First of all with regard to the issue of
12 requiring you to have testimony in order to object,
13 statute -- specifically section 536.070 requires that
14 for administrative proceedings, parties be able to
15 cross examine witnesses, including on matters for which
16 there was no direct testimony or direct examination,
17 and the Commission, under Statute 386.125, is bound to
18 the Administrative Procedures Act 536 when it passes
19 its rules.

20 It is my belief that it would be a violation
21 of the statute to do what Spire is proposing because
22 you would be blocking off the ability to cross examine
23 witnesses if you didn't have your own direct testimony.
24 So, again, I understand where they're coming from, but
25 I don't think that what they're proposing is legally

1 sound.

2 As for the other proposal, which is to give
3 greater deference to nonunanimous stipulations as long
4 as the majority of the parties, including the company
5 and the staff are in agreement, I don't think that this
6 is constitutionally sound.

7 First of all, we're not entirely sure what
8 greater deference means here. It sounds like it's
9 trying to create an evidentiary presumption. If that's
10 the case, it threatens due process if there's no clear
11 rationale basis between what's being presumed and why.

12 And I also don't understand why exactly the
13 company would need to be a part of the stipulation in
14 order for it to work. Honestly, to me, it kind of
15 seems like blatant company favoritism. But if you
16 remove that, you also immediately see the problem,
17 right?

18 Like, if we just said as long as the majority
19 of the stipulation -- majority of the parties are in
20 the stipulation, then it gets greater deference. Let's
21 imagine if that were to happen.

22 You can easily think of a case where you have
23 OPC, Staff, and let's say two or three other parties,
24 MECG for example, maybe Renew Missouri, We all sign a
25 stipulation that says we think the return on equity

1 should be 6 percent. The company is asking for 10
2 percent.

3 Well, if that 6 percent were given greater
4 deference because there were more of us than there was
5 of the company, the company would probably be screaming
6 bloody murder. And, frankly, I think they would have
7 reason to. Like, that would make sense. So for that
8 reason, I just don't think that that's a very
9 reasonable change and I would strongly suggest that the
10 Commission not adopt either changes proposed by Spire
11 Missouri, although I do respect where they're coming
12 from. So those, I think, are the conclusion.

13 Again, just to summarize for the intervention
14 one, we recommend not moving forward at this time,
15 opening a workshop, trying to figure out what the
16 problem is and solve that problem, while also still
17 allowing companies like Nucor, like Triumph and others
18 to intervene without having to stake a position.

19 And then for the stipulation one, if you
20 remove that "with specificity" language, I think that
21 we don't have any other concerns with it, but I would
22 not propose offering either of those changes offered by
23 Spire Missouri for the reasons I stated. Those are my
24 comments.

25 JUDGE NANCY DIPPELL: Thank you. Are

1 there any Commission questions? I don't see any.

2 Thank you. Okay. I know we have several people online
3 that were wishing to speak. I know Ms. Plescia is
4 online and had comments. Would you like to go ahead?

5 MS. PLESCIA: Yes, I would. Thank you,
6 Judge Dippell. Diana Plescia for the Missouri
7 Industrial Energy Consumers. I share the concerns that
8 were very well stated by all of the parties that have
9 actually gone before. We have serious concerns about
10 the comments raised by Spire regarding simple due
11 process issues with respect to stipulations and
12 agreements as expressed by Mr. Clizer.

13 Regarding intervention, that is a special
14 issue for Industrial Consumers, I think. You have
15 intervenors, for example, like the Office of Public
16 Counsel -- excuse me -- the Consumers Council of
17 Missouri or the MECG who, you know, have to develop
18 their positions after consultation with clients, after
19 review of voluminous data that the utility will put
20 forward in a typical filing. And we're reacting to
21 that and we want to take responsible positions, but it
22 takes sometimes months for consumer parties to develop
23 specific positions in a case.

24 And for my clients in particular, for example,
25 not special contract clients, but just large industrial

1 consumers, in our association we don't have an
2 unlimited number. We have identifiable companies to
3 participate.

4 And each of those companies needs to review
5 the utility's filing, consider it, develop expert
6 consultation and opinions so we can take responsible
7 positions. And that's part of the process that works
8 at the PSC very well, that we are able to develop our
9 positions as we go.

10 I think that -- I don't see a reason for
11 certainly what Spire is requesting and I think it's
12 important for the Commission to recognize that, you
13 know, intervenors are reacting generally to the filing
14 by the utility and need to be given the flexibility to
15 reserve the right to state a position or not to be able
16 to state a specific position at an early stage of the
17 case. And so I would be glad to take any questions
18 from the Commission on this?

19 JUDGE NANCY DIPPELL: Are there any
20 Commission questions? I don't see any. Thank you,
21 Ms. Plescia. I'm not able to actually see who else is
22 online, so I'll just have you speak up if you'd like to
23 comment and we'll sort it out from there.

24 MR. MORRISON: This is Bruce Morrison.
25 I'd love to make a comment, please.

1 JUDGE NANCY DIPPELL: Go ahead,
2 Mr. Morrison.

3 MR. MORRISON: Thank you. I'm a lawyer at
4 Great Rivers Environmental Law Center in St. Louis.
5 Clients before the Public Service Commission have
6 included The Missouri NAACP, Dutchtown South Community
7 Corporation, Metropolitan Congregations United, Homes
8 For All, and a few others.

9 We oppose the proposed change to the rule on
10 intervention because it imposes an unintended barrier
11 to intervention. In my experience, these public
12 interest organizations need the time afforded under the
13 current rule to take a position, to formulate a
14 position. It seems like they've needed every last
15 hour, in fact.

16 These organizations are not unlike many other
17 nonprofits. They are focused on several issues, one of
18 which is energy burden and environmental justice, and
19 the work done within these organizations is largely
20 done by volunteers. Unlike for profit organizations
21 and unlike the regulated entities that appear before
22 this Commission often, they are not people who are paid
23 to stay apprised of matters that come before this
24 Commission.

25 These organizations also are not flush with

1 resources, neither with people or funding, and they
2 need the time afforded under the current rule to
3 assemble people to evaluate an issue and to collaborate
4 with others outside of their organizations before they
5 formulate a position. So I hate -- I don't want to say
6 it's not feasible, it's just not practicable to come up
7 with a formulated position when moving to intervene.
8 More time is needed.

9 One last point, please. And that is that the
10 people doing the work in these matters are not the
11 decisionmakers on the positions to be taken. That
12 usually requires a vote of the body of these
13 organizations or of an executive committee that meets
14 only periodically. For that reason also, asking these
15 organizations to articulate a position at the time of
16 intervention is not practical.

17 So wrapping up, deliberative informed
18 engagement takes time and for that reason we ask that
19 the Commission keep the current rule on intervention
20 without making any changes. Thank you for the time and
21 I'm happy to take any questions.

22 JUDGE NANCY DIPPELL: Thank you. Could
23 you spell your name for the court reporter?

24 MR. MORRISON: First name Bruce,
25 B-R-U-C-E. And last name Morrison, M-O-R-R-I-S-O-N.

1 JUDGE NANCY DIPPELL: Thank you. I wanted
2 to make sure we got that. Are there any Commission
3 questions for Mr. Morrison? All right. Thank you,
4 sir. I can see someone raising their hand. I just
5 can't read your name. So go ahead.

6 MS. GRAY: Yes. Hi. This is Dana Gray.
7 I'm the Community Development Outreach Coordinator for
8 Tower Grove Community Development Corporation. We're
9 an affordable housing provider in St. Louis and I
10 wanted to echo in support the testimony that has
11 already been shared just now by Bruce Morrison of the
12 Great Rivers Environmental Law Center, James Owen of
13 Renew Missouri, and John Coffman of Missouri Consumers
14 Council.

15 I have intervened in PSC cases numerous times
16 in the past. I'm not an energy expert and it takes
17 time for me to understand what the proceedings are
18 involving and to prepare my testimony. And so I just
19 ask the Commission that any changes that make it more
20 challenging for us to intervene, those that are
21 representing vulnerable communities, that that not be
22 allowed. It would be interfering with our ability to
23 participate. And so I hope you will give that
24 consideration and I'm happy to take any questions.

25 JUDGE NANCY DIPPELL: Thank you. Are

1 there any Commissioner questions for this commenter? I
2 don't see any. Thank you, Ms. Gray. Are there other
3 people online that wish to comment? Mr. Jarrett, did
4 you wish to comment?

5 MR. JARRETT: Yes, Judge. Good morning.
6 This is Terry Jarrett. I'm from Healy Law Offices
7 appearing on behalf of the Missouri School Board
8 Association today. My address is 306 Monroe Street,
9 Jefferson City, Missouri 65101.

10 And I would just like to comment that MSBA
11 supports the comments made today and in the filings of
12 Consumers Council, MECG, OPC, Renew Missouri, and Jim
13 Fischer from Evergy regarding some of the concerns with
14 both the stipulations and intervention changes.

15 Particularly, I did want to mention what
16 Mr. Owen and Mr. Fischer talked about regarding the
17 liberality of interventions. That is very important.
18 I can say from my experience practicing before the
19 Commission, I have had more than one occasion where the
20 intervention deadline has passed and an issue will come
21 up in the case that wasn't there at the beginning and
22 my client may have been effectively shut out from
23 intervening because it was too late to do so. So with
24 that, those are the comments of MSBA and I'll take any
25 questions.

1 JUDGE NANCY DIPPELL: Are there any
2 Commissioner questions for Mr. Jarrett? I'm not
3 hearing anything. Thank you.

4 MR. JARRETT: Thank you.

5 JUDGE NANCY DIPPELL: Is there anyone else
6 on line that wishes to comment?

7 MS. WHIPPLE: Yes, Judge Dippell.

8 JUDGE NANCY DIPPELL: Ms. Whipple, go
9 ahead.

10 MS. WHIPPLE: Yes. Thank you kindly.
11 This is Peggy Whipple, W-H-I-P-P-L-E, also of Healy Law
12 Offices, 3010 East Battlefield, Suite A, Springfield,
13 Missouri 65804. And I do appear today on behalf of the
14 Missouri Electric Commission. Its members are 72
15 municipalities in the state of Missouri, serving over
16 350,000 Missourians.

17 And today in both of these dockets, both the
18 intervention rulemaking and the stipulation and
19 agreement rulemaking, MEC joins in the comments of the
20 Office of Public Counsel, MECG Consumers Counsel, Renew
21 Missouri and Evergy. We also stand ready -- if the
22 Commission does decide that it wishes to handle this
23 through a workshop, we stand ready to assist with that
24 in any way that the Commission desires. And I am here
25 to answer any questions that the Commissioners or you,

1 Your Honor, might have of MEC.

2 JUDGE NANCY DIPPELL: Are there any
3 questions for Ms. Whipple? Not hearing any, thank you,
4 Ms. Whipple.

5 MS. WHIPPLE: Thank you, Judge.

6 JUDGE NANCY DIPPELL: Is there anyone else
7 online that wishes to comment? All right. I'm not
8 hearing any other comments online. Would Staff like to
9 make comments?

10 MR. STACEY: Good morning. Scott Stacey
11 with Staff counsel, 200 Madison Street. May it please
12 the Commission. Staff agrees with the changes to the
13 -- in OX-2024-255 and 256. The Commission is allowed
14 by statute in 386.410 to -- allowed by statute to adopt
15 rules for hearings and et cetera, and it may set limits
16 for hearings.

17 Staff has reviewed the comments submitted and
18 the ones we've heard here today. Staff does not agree
19 with the comments or the suggestions submitted by
20 Spire, but we do agree with the way the changes have
21 been made and the Staff does not see where it actually
22 limits anybody from intervention or intervening in the
23 case, it just gives a little bit more explanation as to
24 why you want to intervene. That's all it's asking.
25 It's not preventing anybody from intervening.

1 And the stipulation in 255, the objecting
2 party shall state with specificity the basis for the
3 objection. It's only asking for, give us the basis for
4 your objection. Why are you objecting. It's not
5 asking for any more than that. That's Staff's
6 position.

7 These provide for more specifics to objections
8 to agreements and interventions into the case. Neither
9 of the changes prevent either party from objecting or
10 intervening in the case, but to make it clear on what
11 the party's intentions are. Staff does not believe a
12 workshop is required in this case because we believe
13 that the changes that have been imposed here or
14 proposed are clear as they are currently written.
15 Thank you. Any questions?

16 JUDGE NANCY DIPPELL: Are there any
17 questions for Staff? Not seeing any, thank you.

18 MR. STACEY: Thank you.

19 JUDGE NANCY DIPPELL: And was there any
20 response comments that anyone wish to make? I'll ask
21 in the room first? And online? And did everyone that
22 wanted to comment get a chance to do so? All right.
23 Are there any closing remarks from any of the
24 Commissioners? Chair Hahn.

25 CHAIR HAHN: Thank you, Judge Dippell.

1 Good morning. I just want to offer a few points, but
2 most of all, I want to thank all of you for taking time
3 out of your Tuesday to provide these meaningful
4 comments.

5 As you can tell, the Commission is amending
6 these rules because of some of the concerns that have
7 been raised in cases over parties intervening and not
8 stating any position and then, in the end, also not
9 stating any position in a stipulation agreement and
10 opposing it and forcing a hearing, which is costly.
11 And for the parties that have worked on the case for
12 the entire duration, unfair for those parties. So
13 that's the genesis behind the rules.

14 I had heard comments earlier that this,
15 perhaps, is part of improving our rate case process.
16 That's not the case. This is part of making it better
17 for all parties and making it fair for all parties.
18 Today what I heard from -- what I think I heard from
19 feedback was that with some modifications, the
20 stipulations and agreement rule is largely agreed upon.

21 I think there's concern over the intervention
22 rule and the idea that we should talk about it in a
23 workshop, but what I didn't hear is that it would
24 prevent any party from actually intervening. It
25 actually doesn't do that at all. It only says you can

1 assert a position or you can wait to assert a position
2 until you can figure out what your position may or may
3 not be.

4 So I appreciate the workshop idea, but I've
5 been here a year now and what I've witnessed is that
6 rules go to workshop to never come out. And these are
7 fairly simple rules, where they are fairly simple
8 changes and can significantly improve the process in a
9 fairly short time, so I'm inclined to want to move
10 forward with just the formal rulemaking process as
11 every other state agency does in this state without the
12 workshop process.

13 So with that, you know, I'm thankful for your
14 time. I'm thankful for the written comments. It is
15 helpful for me to understand your concerns or where
16 your comments might be coming from. That helps us make
17 better decisions. So I'm thankful for the hearing this
18 morning and appreciate all the work that's gone into
19 this. Thank you so much.

20 JUDGE NANCY DIPPELL: Thank you. Are
21 there any other Commissioner questions or comments?

22 COMMISSIONER KOLKMEYER: Yes, Judge. This
23 is Commissioner Kolkmeier.

24 JUDGE NANCY DIPPELL: Go ahead,
25 Commissioner.

1 COMMISSIONER KOLKMEYER: Good morning to
2 everyone and thank you for everyone's comments here
3 today. I want to echo the chairman's -- what she just
4 had to say about this whole process. And, here again,
5 I just wanted to thank everybody for attending today.
6 Thanks.

7 JUDGE NANCY DIPPELL: Thank you,
8 Commissioner. Any other Commissioner comments? All
9 right. I'm not hearing any. Well, I will also echo
10 the thanks from the Commissioners. We appreciate the
11 participation in the process. And with that, we can
12 conclude this hearing and go off the record. Thank
13 you.

14 [Whereupon, this hearing is concluded.]
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C E R T I F I C A T E

I, Joann Renee Richardson, Certified Court Reporter, do hereby certify that pursuant to Notice there came before me on June 4, 2024, Public Service Commission Hearing, 200 Madison Street, City of Jefferson, State of Missouri, and was written in machine shorthand by me and afterwards transcribed and is fully and correctly set forth in the foregoing pages; and this hearing is herewith returned.

I further certify that I am neither attorney or counsel for, nor related to, nor employed by any of the parties to this action in which this conference is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

Given at my office in the City of St. James, County of Phelps, State of Missouri, this 20th day of June, 2024.

Joann Renee Richardson

Joann Renee Richardson, CCR 583

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