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Missouri Public  
Service Commission

**Outline of Comments by Public Counsel at the January 6, 2011**

**Rulemaking Hearing in Case No. EX-2010-0254**

1. We are here today at the end of a lengthy process of reviewing the existing IRP rules and modifying them: (1) to allow increased flexibility, (2) to provide more clarity in the process, (3) to reflect developments in the electric industry over the last 15 years, and (4) to respond to lessons learned from working under the existing rule which has been in place since 1993. My involvement in looking at revisions to the current IRP rule began over 5 years ago when I gave a presentation at the Commission's May 2005 Roundtable that was titled the "IRP for Electric and Natural Gas Utilities Rulemaking workshop." Public Counsel has participated in the more recent workshops on the same subject that began in 2009.

2. Public Counsel's filed written comments on January 3, 2011 that were generally supportive of the Commission's proposed rule. Our comments also included suggested revisions to the rule that were intended to improve and provide greater clarity to the rules. Attachment A to our January 3<sup>rd</sup> written comments contained detailed proposals to change certain portions of the rule. OPC's written comments addressed the reasoning for the most substantive changes being proposed by OPC in Attachment A. There is one correction I would like to make to 22.045(3)(A)4 on page 3 of Attachment A.

After the fourth word "utility" at the top of page 3 in Attachment A, insert "instead of the utility itself."

I would be glad to answer questions from the bench today regarding any of those proposed changes in Attachment A.

**Comments Filed By Other Parties**

3. **Commission Staff Comments.** On pages 2 – 6 of its comments, the Staff recommends 10 relatively minor changes to the proposed rules. OPC is supportive of many of these changes, but not all.

OPC Exhibit No. 1  
Date 01/06/2011 Reporter LMB  
File No. EX-2010-0254

4 CSR 240-22.020(35): OPC supports

4 CSR 240-22.020(52): Oppose – this change appears to be driven by a misunderstanding of whether the Midwest ISO (MISO) is an RTO. FERC approved MISO as the nation's first RTO in December 2001.

4 CSR 240-22.020(53): OPC supports

4 CSR 240-22.030(1)(B): OPC supports

4 CSR 240-22.045(5): OPC is not opposed to this change but prefers the changes made by OPC to 4 CSR 240-22.045.

4 CSR 240-22.045(6): ): OPC is not opposed to this change but prefers the changes made by OPC to 4 CSR 240-22.045

4 CSR 240-22.050(6)(C)2.: OPC supports

4 CSR 240-22.060(3)(A)6.: OPC supports

4 CSR 240-22.080(1): OPC strongly supports

4 CSR 240-22.080(8): OPC believes the Staff suggestion improves this section but is insufficient. OPC only supports the changes to this section that have been recommended by OPC.

**4. Empire Comments.** In paragraph 5 of the its comments, Empire states “the new rule should be flexible and recognize the differences in the electric utilities that operate in Missouri.” Public Counsel is actually concerned that the rules go almost too far in this direction with the special provision in 4 CSR 240-22.080(14) that would only be applicable to Empire because of its much smaller size relative to the other Missouri electric utility. This provision could permit Empire to only do complete IRP filings ever 6 years if it meets certain criteria but we are willing to give it a try and see how this flexibility works.

**5. Ameren Missouri Comments.** In paragraph 3 of its comments, Ameren states that “the Commission should reject the proposed rules and adopt the MEDA

rules.” OPC does not believe that the Commission could “adopt the MEDA rules” in this proceeding because such an action would violate due process and other procedural requirements in the rulemaking process. The Commission cannot simply adopt a rule that has not gone through all of the proper procedural steps, including being published in the Missouri Register and giving parties time to review and comment on the rules. Beyond the legal concerns with Ameren’s request, Public Counsel believes there are strong policy reasons to support the current proposed rule instead of the MEDA rule. It’s important to note that the Commission provided general guidance to its Staff in Agenda sessions on September 2 and September 9 of 2009 because of concerns expressed by utilities that the new rule should “start from scratch” instead of building on the existing rule. The Commission provided guidance that we should not “start from scratch” and provided other general direction which led to the proposed rule that we are considering today.

Ameren also supports Commission acknowledgement of resource plans and the option to seek pre-approval of major resource decisions. Public Counsel opposes the proposal for some form of “acknowledgement” or pre-approval. OPC believes that the triennial filings and annual updates will provide a strong foundation for the discussion of “acknowledgement” or pre-approval as part of a regulatory plan (such as the plans previously approved for Empire and KCPL) or other request for pre-approval. Small organizations like OPC cannot be expected to review every element of a long-range plan for prudence, years before a final business decision is actually made (if it is ever made) to begin executing a part of a resource plan.

In paragraph 2 of its comments, Ameren criticizes the proposed rules as being overly focused on “process rather than the plan, which is the end result.” Later in the Ameren comments, in paragraph 15, Ameren urges the Commission to remove many of the rule provisions that do in fact focus on the plan that resulted from the analysis such as requirements for “notification of plan changes, annual updates, and certification of other filings as consistent with the filed plan.” Public Counsel does not agree with removing these provisions.

OPC does not support any of the changes in Ameren's comments.

**6. KCPL/GMO Comments.** KCPL makes it clear that it would prefer the MEDA rules over the current proposed rules. This issue was addressed earlier in OPC's comments on the Ameren Missouri comments. Public Counsel supports the changes recommended by KCPL/GMO to 4 CSR 240-22.060(4)(B)3 and 4 CSR 240-22.060(4)(B)6. OPC had proposed different changes to both of these items with the same goal of clarifying these items and we believe that the changes proposed by KCPL/GMO do a better job of clarifying these items than the language proposed by OPC in Attachment A to our January 3, 2011 written comments.

**7. Comments of Others.** No prepared remarks but I can answer any questions that Commissioners may have.