

FILED
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Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 12600
Date Printed: 3/2/2011
Rule Number: 4 CSR 240-2.075
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 3/2/2011
Date Submitted to Joint Committee on Administrative Rules: 3/2/2011

Name of Person to Contact with questions concerning this rule:

Content: Nancy Dippell	Phone: 1-4393	Email: Nancy.dippell@psc.mo.gov	Fax: na
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter	3/02/2011
Affidavit for public cost	3/02/2011

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.075

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-4393 FAX

Email address Nancy.dippell@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Commission, 9th Fl, Gov.Ofc Bldg, JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Amending sections (1), (2), (5), and (6); adding (4), (5), (6), (7), (8), and (9); renumbering (4); and deleting (3).

Small Business Regulatory Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES



Commissioners

KEVIN GUNN
Chairman

ROBERT M. CLAYTON III

JEFF DAVIS

TERRY M. JARRETT

ROBERT S. KENNEY

Missouri Public Service Commission

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WESS A. HENDERSON
Executive Director

VACANT
Director, Administration and
Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

STEVEN C. REED
Secretary/General Counsel

KEVIN A. THOMPSON
Chief Staff Counsel

March 2, 2011

Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-2.075 Intervention

Dear Secretary Carnahan,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: section 386.410, RSMo 2000

If there are any questions regarding the content of this proposed rulemaking, please contact me at the address and number below.

Sincerely,

A handwritten signature in black ink, reading "Nancy Dippell". The signature is fluid and cursive, with the first name "Nancy" and last name "Dippell" clearly distinguishable.

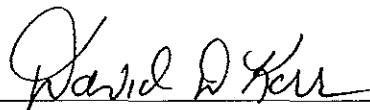
Nancy Dippell, Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4393
Nancy.dippell@psc.mo.gov

Enclosure

**AFFIDAVIT
PUBLIC COST**

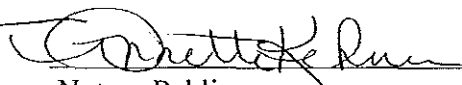
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, David Kerr, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-2.075, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

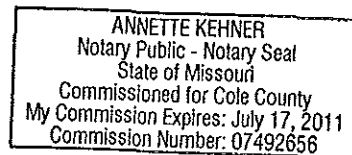


David Kerr
Director
Department of Economic Development

Subscribed and sworn to before me this 18th day of Feb., 2011, I am commissioned as a notary public within the County of COLE, State of Missouri, and my commission expires on 17 JULY 2011.



Notary Public



Title 4--DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240--Public Service Commission
Chapter 2--Practice and Procedure

PROPOSED AMENDMENT

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SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-2.075 Intervention The commission is amending sections (1), (2), (4), (5), and (6), adding a new section (4), (5), (6), (7), (8), and (9), and deleting section (3).

PURPOSE: Sections (1), (4), and (5) are being amended to change "application to intervene" to "motion to intervene," to avoid requiring applicants for intervention to file all the information required in an application, much of which is superfluous. Sections (2) and (3) are amended to include a complete list of the information that must be included in a motion to intervene and to clarify that incorporated associations or entities created by statute do not need to list their members. New section (4) clarifies that the Commission may limit a prospective party's intervention to particular issues or interests in a given case. Section (6) is amended to clarify that any brief filed as an amicus curiae, must comply with all applicable briefing requirements. Changes and additions are also made to this rule in order to minimize confusion associated with an association appearing in different cases under the same name when the members are different in each case. Changes are also made to prevent unincorporated associations from changing its members without following the necessary rules for intervention.

(1) *[An application]* **A motion to intervene or add new member(s)** *[shall comply with these rules and]* shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.

(2) *[An application to intervene shall state]* **A motion to intervene or add new member(s) shall include:**

(A) The legal name of each association, person, or entity, seeking intervention or to be added;

(B) The street and mailing address of the principal office or place of business of each association, person, or entity seeking intervention or to be added, or of their attorney;

(C) The electronic mail address, fax number and telephone number, if any, of each association, person, or entity, seeking intervention or to be added, or their attorney;

(D) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;

(E) **A statement of the proposed intervenor's or new member's interest in the case and reasons for seeking intervention[,]** or to be added; and

(F) *[shall state]* **A statement as to whether the proposed intervenor or new member supports or opposes the relief sought or that the proposed intervenor or new member is unsure of the position it will take.**

JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES

[(3) An association filing an application to intervene shall list all of its members.]

[(4)3] The commission may [on application permit any person to intervene on a showing that—] grant a motion to intervene or add new member(s) if:

(A) The proposed intervenor **or new member(s)** has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

(4) If the commission grants intervention to an association, other than an incorporated association or other entity created by statute, the commission is not granting intervention to the “association,” but is granting intervention to the individual members of the association.

(5) For purposes of 4 CSR 240-2.080(16), service upon counsel for an association satisfies the requirement for service upon the individual members of the association.

(6) If any member(s) of an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission withdraws from the association during the pendency of a case, the association must file a notice of the member’s(s’) withdrawal in the official case file within five days of the member’s(s’) withdrawal.

(7) If an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission wants to add an additional member(s) during the pendency of that case, the association must file a motion to add new member(s).

(8) If the commission finds that the name of any association, other than an incorporated association or other entity created by statute, seeking intervention in a case before the commission could lead to confusion or misidentification of that association or its members, the commission may order that the association be identified by an alternate name in that case.

(9) The commission may limit an intervention to particular issues or interests in a case.

[(5)10] [Applications]Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause. Any motion so filed must include a definitive statement whether or not the entity seeking intervention or to be added as a new member accepts the record established in that case, including the requirements of any orders of the commission, as of the date the motion is filed.

[(6)11] Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. The petition for leave must state the petitioner’s interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are

relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than the initial briefs of the parties **and comply with all applicable briefing requirements**. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002. Amended: Filed*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

PUBLIC ENTITY COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Small Business Regulatory Fairness Board

Small Business Impact Statement

Date: 1-27-11

Rule Number: 4 CSR 240-2.075 Intervention

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Nancy Dippell

Phone Number: 573-751-4393 Email: nancy.dippell@psc.mo.gov

Name of Person Approving Statement: Morris Woodruff, Chief Regulatory Law Judge, Public Service Commission

Please describe the methods your agency considered or used to reduce the impact on small businesses: This rule is procedural in nature and has little to no impact on small businesses.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The Commission used its past experience with interventions and comments from practitioners representing both small and large utilities, individuals, and businesses to develop this rule. The Commission held a roundtable discussion on November 30, 2010, and invited the public to comment informally on the draft of the proposed rules. The Commission subsequently incorporated some changes from that roundtable into the rules for clarity and ease of use.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

No additional fees will be collected or expended by the Commission or any other agency as a result of this rule. There is no monetary cost or benefit to the Commission or any other agency as a result of these amendments.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

No small businesses are "required" to comply with the rule, as the rule is procedural in nature. The rule only sets requirements for how to request intervention, but does not require any party to intervene.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

This is a procedural rule and no costs to comply are associated with these amendments.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Any utility, individual, business, or association that has an interest in utility cases and desires to intervene in a case at the Commission will be required to comply with this rule and will benefit from the changes clarifying it.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No_X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.