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August 08, 2011
Data Center
Missouri Public
Service Commission

Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 13064
Date Printed: 8/8/2011
Rule Number: 4 CSR 240-2.075
Rulemaking Type: Final Order Amendment
Date Submitted to Administrative Rules Division: 8/8/2011
Date Submitted to Joint Committee on Administrative Rules: 7/6/2011

Name of Person to Contact with questions concerning this rule:

Content: Morris Woodruff

Phone: 1-2849

Email: morris.woodruff@psc.mo.gov

Fax:

RuleDataEntry:

Phone:

Email:

Fax:

Included with Rulemaking:

Cover Letter

8/08/2011

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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COPY

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:

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

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

Dear Secretary Carnahan,

Re: 4 CSR 240-2.075 Intervention

CERTIFICATION OF ADMINISTRATIVE RULE

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

Statutory Authority: section 386.410, RSMo 2000

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

Sincerely,

A handwritten signature in cursive script that reads "Nancy Dippell".

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

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

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ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-2.075 is amended.

A notice of proposed rulemaking containing the text of the proposed amendments was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1053). No changes have been made in the proposed amendment, so it is not reprinted here. These proposed amendments become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on the proposed amendments was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and two (2) commenters testified at the public hearing.

COMMENT #1: Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments. They commented that they were in favor of the changes to this rule requiring an intervention request being made as a motion rather than an application.

RESPONSE: No change was made as a result of this comment.

COMMENT #2: Lewis Mills, on behalf of the Office of the Public Counsel, commented in writing and again at the hearing that section (11) should be clarified to state that it applies to only post-hearing or pre-hearing briefs and not to other types of filings. Mr. Mills also stated it should be the exception to the rule for non-parties to make filings in a case.

Rick Zucker, on behalf of Laclede Gas Company, responded at the hearing that there are situations other than post-hearing briefs where non-parties may want to make a filing and where the commission may be interested in what a non-party has to say about the particular situation (for example, jurisdictional questions, motions for summary determination, and motions to dismiss). Mr. Zucker stated that the commission should not limit amicus briefs to the time surrounding the hearing. Mr. Zucker also stated that the rule currently does not allow for the filing of other pleadings and that it should not be changed.

RESPONSE: The commission agrees with Mr. Mills that a non-party filing a pleading should not be a regular occurrence, but rather an unusual event. That is precisely why the rule contains a requirement that such a non-party seek permission to file a "brief." The rule, however, does not need clarification. It clearly states that a non-party may request permission to file a brief. That brief may be filed, with permission of the commission, at any time prior to the filing of "initial briefs." Thus, there is no reason that a non-party cannot request permission to file an

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amicus curiae brief to express its opinion regarding a motion to dismiss, a motion for summary determination, or other jurisdictional or legal question. If the non-party has an interest in the matter, then it may be appropriate for the non-party to seek intervention under the other sections of the rule in order to file pleadings in the matter. The commission makes no changes as a result of these comments.