

FILED
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Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 12603
Date Printed: 3/2/2011
Rule Number: 4 CSR 240-2.080
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

Print

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Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

Rule Number 4 CSR 240-2.080

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), (3), (5), (8), (12), (14), (15), (16), (20), and (21), adding (2), (9), and (15), renumbering (7), (9), (13), (17), and (19), and deleting (4), (6), (10), (11), and (18).

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

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JEFF DAVIS

TERRY M. JARRETT

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Missouri Public Service Commission

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JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
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WESS A. HENDERSON
Executive Director

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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 240-2.080 Pleadings, Filing, and Service

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, appearing to read "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 240-2.080, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

David D Kerr

David Kerr

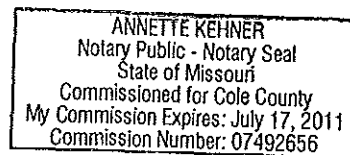
Director

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 Cal, State of
Missouri, and my commission expires on 17 July 2011

Janette Kerner
Notary Public

Notary Public



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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

4 CSR 240-2.080 Pleadings, Filing, and Service The commission is amending sections (1), (2), (3), (5), (8), (12), (14), (15), (16), (20), and (21), adding a new section (2), (9), and (15), renumbering sections (7), (9), (13), (17), and (19), and deleting sections (4), (6), (10), (11), and (18).

PURPOSE: A majority of the proposed amendments to this rule are to simply reorganize its current requirements and rewrite sentences for clarity. Section (3) is amended to require a statement of facts in pleadings. Sections (5) and (14) make the rejection of pleadings discretionary instead of mandatory. Section (8) is amended to remove the requirement to file unnecessary paper copies. Section (11) is amended so that electronic filings are considered filed on the date they are electronically received and paper filings may be made during regular business hours of the commission. Section (12) allows the caption of a pleading to contain more than one case caption. Old sections (15) and (20) are amended to conform with the actual practice and the parties expectations that they have ten (10) days to respond to pleadings unless otherwise ordered. Section (21) is amended to remove overly detailed requirements for setting out issues for hearing that the parties often asked to be waived.

(1) Every pleading or brief shall be signed by *[at least one (1)]* an attorney of record with the attorney's individual name or, if a natural person is not represented by an attorney, shall be signed by the natural person.

(2) By signing a pleading, the signer represents that he or she is authorized to so act.

[(2)3] [Each p]Pleadings or briefs shall [state]include the signer's address, [Missouri] state bar number(s), electronic mail address, fax number and telephone number, if any. [If the attorney is not licensed in Missouri the signature shall be followed by the name of the state in which the attorney is licensed and any identifying number or nomenclature similarly used by the licensing state.]

[(3)4] Each pleading shall include a clear and concise statement of the relief requested, [and] a specific reference to the statutory provision or other authority under which relief is requested, and a concise statement of the facts entitling the party to relief.

[(4) Except when provided by rule or statute, pleadings or briefs need not be verified or accompanied by affidavit.]

(5) An unsigned pleading or brief *[shall]may* be rejected.

JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES

[(6) By signing a pleading, the signer represents that he or she is authorized to so act, and that the signer is a licensed attorney-at-law in good standing in Missouri or has complied with the rules below concerning any attorney who is not a Missouri attorney or is appearing on his or her own behalf.]

[(7)6] By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that—

[(8)7] Any person filing a pleading or a brief shall file with the secretary of the commission either:

- (A) [One (1) paper] **The** original [and eight (8) paper copies of the pleading or brief]; or*
- (B) An electronic copy[of the pleading or brief as permitted elsewhere in these rules].*

[(9)8] Each pleading may be accompanied by a cover letter which states the subject matter. This cover letter shall contain no matter for commission decision.

[(10) The party filing a pleading or brief shall serve each other party a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.]

[(11) The date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission. Pleadings or briefs received after 4:00 p.m. will be stamped filed the next day the commission is regularly open for business.]

(9) Any document's filing date shall be the date and time the document is physically or electronically stamped as filed by the secretary of the commission. Documents physically received in the commission's data center during regular business hours shall be stamped on the date received. Documents physically received in the commission's data center after regular business hours shall be stamped the next day that the commission has regular business hours. Documents submitted electronically to the commission's Electronic Information and Filing System (EFIS) will be stamped filed by EFIS on the date and time the document is received in EFIS.

[(12)10] Pleadings and briefs in every instance shall display on the cover or first page the case number and the title of the case. In the event the title of a case contains more than one (1) name as applicants, complainants or respondents, it shall be sufficient to show only the first of these names as it appears in the first document commencing the case, followed by an appropriate abbreviation (et al.) indicating the existence of other parties. [Unless a case is consolidated, pleadings or briefs shall be filed with only one (1) case number and title thereon.]

~~([13]~~**11**) Pleadings and briefs that are not electronically filed shall be bound at the top or at an edge, shall be typewritten or printed upon white, eight and one-half by eleven-inch (8 1/2" x 11") paper. Attachments to pleadings or briefs shall be annexed and folded to eight and one-half by eleven-inch (8 1/2" x 11") size whenever practicable. Printing on both sides of the page is encouraged. Lines shall be double-spaced, except that footnotes and quotations in excess of three (3) lines may be single-spaced. Reproduction of any of these documents may be by any process provided all copies are clear and permanently legible. Electronically filed pleadings or briefs shall be formatted in the same manner as paper filings.

~~([14]~~**12**) Pleadings and briefs which are not in substantial compliance with this rule, applicable statutes or commission orders ~~[shall]~~**may** not be accepted for filing. In addition, filings will be scanned for computer viruses before being uploaded into the commission's electronic system and may not be accepted if the filing is infected. The secretary of the commission may return these pleadings or briefs with a concise explanation of the deficiencies and the reasons for not accepting them for filing. Tendered filings which have been rejected ~~[shall]~~**may** not be entered on the commission's docket. The mere fact of filing shall not constitute a waiver of any noncompliance with these rules and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading.

~~([15]~~**13**) Parties shall be allowed ~~[not more than]~~ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

~~([16]~~**14**) Any ~~[party seeking]~~ **request for expedited treatment** ~~[in any case]~~ shall include ~~[in the title of the pleading]~~the words "Motion for Expedited Treatment~~[']~~" **in the title of the pleading.** The pleading shall also set out with particularity the following:

- (A) The date by which the party desires the commission to act;
- (B) *The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and*
- (C) That the pleading was filed as soon as it could have been or an explanation why it was not.

(15) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the staff counsel and the public counsel, a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.

~~([17]~~**16**) Methods of Service.

[18) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the general counsel and the public counsel, a copy of the pleading or brief and cover letter.]

~~([19]~~**17**) Every pleading or brief shall include a certificate of service. Such certificate of service shall be adequate proof of service.

(~~[20]~~18) Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission. **Parties shall be allowed ten (10) days from the date of filing in which to respond to an amended pleading unless otherwise ordered by the commission.**

(~~[21]~~19) Any list of issues ordered by the commission must **set out each** [*contain one (1) or more*]question[s] presented for decision. **Each question presented should be clear and concise.**[*, stated in the following form per issue: in three (3) separate sentences, with factual and legal premises, followed by a short question; in no more than seventy-five (75) words; and with enough facts woven in that the commission will understand how the question arises in the case.*

(A) The questions must be clear and brief, using the style of the following examples of issue statements, which illustrate the clarity and brevity that the parties should aim for:

1. Example A: The Administrative Procedures Act does not require the same administrative law judge to hear the case and write the final order. ABC Utility Company filed an appeal based on the fact that the administrative law judge who wrote the final order was not the administrative law judge who heard the case. Is it reversible error for one administrative law judge to hear the case and a different administrative law judge to write the final opinion?

2. Example B: For purposes of establishing rates, ABC Utility Company is entitled to include in its costs expenses relating to items that are used or useful in providing services to its customers. ABC Utility Company has spent money to clean up environmental damages resulting from the operation of manufactured-gas plants some 70 to 80 years ago. Should ABC Utility Company be allowed to include these expenses among its costs in establishing its future natural gas rates?]

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 15, 1980, effective Sept. 12, 1980. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002. Amended: Filed May 21, 2002, effective Dec. 30, 2002. Amende: 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 240-2.080 Pleadings, Filing, and Service

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: The Commission used its past experience with pleadings and service and comments from practitioners representing both small and large utilities, individuals, and businesses to develop this rule, and considered the impact on all the various parties who appear or may appear before it.

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

The Commission used its past experience with pleadings and service 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.

The Commission will save personnel expense from no longer having to handle unnecessary paper copies, and from not having to explain previously unclear parts of this rule.

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

These are procedural requirements and therefore, no small business is required to comply with this rule unless it wants to appear before the Commission. Small businesses should not be adversely affected by the clarification and other amendments to this rule.

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

There are no additional costs created by the amendments to this rule. These changes should reduce costs to both the Commission and the parties appearing before it by reducing the number of copies needed and making deadlines for filing clear.

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

All utilities, large and small, and all ratepayers, residential or commercial, that appear before the Commission will benefit from the rule being clarified and from unnecessary paper copies being eliminated.

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.