



(4) A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.

**AUTHORITY:** section 386.410, *RSMo Supp.* 1998.\* *Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

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

#### 4 CSR 240-2.117 Summary Disposition

**PURPOSE:** *This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.*

##### (1) Summary Determination.

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each

denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings—Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.

**AUTHORITY:** section 386.410, *RSMo* 2000.\* *Original rule filed March 26, 2002, effective Nov. 30, 2002.*

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

#### 4 CSR 240-2.120 Presiding Officers

**PURPOSE:** *This rule states the duties of presiding officers and the procedure for disqualifying them.*

(1) A presiding officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of cases, to maintain

order, and shall possess all powers necessary to that end. The presiding officer may take action as may be necessary and appropriate to the discharge of duties, consistent with the statutory authority or other authorities under which the commission functions and with the rules and policies of the commission.

(2) Whenever any party shall deem the presiding officer for any reason to be disqualified to preside, or to continue to preside, in a particular case, the party may file with the secretary of the commission a motion to disqualify with affidavits setting forth the grounds alleged for disqualification. A copy of the motion shall be served by the commission on the presiding officer whose removal is sought and the presiding officer shall have seven (7) days from the date of service within which to reply.

**AUTHORITY:** section 386.410, *RSMo Supp.* 1998.\* *Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

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

*Union Electric Co. v. PSC*, 591 SW2d 134 (Mo. App. 1979). *Prohibition will be under common law rule to disqualify a PSC commissioner who was a party in a case now pending before her.*

#### 4 CSR 240-2.125 Procedures for Alternative Dispute Resolution

**PURPOSE:** *This rule establishes procedures which will allow parties to utilize alternative dispute resolution methods in order to resolve issues or the entire matter in dispute.*

##### (1) Settlement Negotiations.

(A) When the parties agree that the participation of a presiding officer in the settlement process would be beneficial, those parties shall file a motion for appointment of a settlement officer for that case. The motion shall contain—

1. A statement that all parties agree to the procedure;

2. A list of the issues to be addressed or matters the parties wish the presiding officer to aid them in resolving;

3. If there is no prefiled testimony, a description of the issues of each party; and



4. A date by which a settlement will be reached or settlement negotiations under this procedure will end.

(B) If the commission grants the motion for a settlement officer, it shall issue an order scheduling a settlement conference and shall appoint a presiding officer to participate in settlement negotiations.

(C) The negotiations and statements of the parties or attorneys made at the settlement conference shall be off the record and shall not be made a part of the official case.

(D) If a settlement is not reached before the date specified by the parties in their motion, the procedure shall end unless the parties all agree to an extension and the procedure is extended by order of the commission.

(2) Mediation.

(A) The commission may order that mediation proceed in a complaint case before any further proceeding in such case.

(B) As the commission deems appropriate, or upon the filing of a request for mediation by any party, mediation services may be provided by a presiding officer or by a neutral third party for the purpose of identifying the issues and attempting a resolution.

(C) The written application for mediation services should include the case number, the names of each party and a brief explanation of the case.

(3) The settlement officer or the mediator, if that mediator is also a presiding officer, shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the settlement or mediation discussions in the case to any commissioner or the presiding officer appointed to preside over the case.

(4) The commission may order parties to engage in alternative dispute resolution with a commission authorized mediator.

(5) At any time, upon the request for mediation or upon the issuance of an order requiring mediation, the commission may order that all other actions on the case cease and all time limitations be tolled pending the completion of mediation process.

(6) Failure to appear and participate in good faith in commission ordered mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

*AUTHORITY: section 386.410, RSMo Supp. 1998.\* Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and read-*

*opted: Filed Aug. 24, 1999, effective April 30, 2000.*

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

#### 4 CSR 240-2.130 Evidence

*PURPOSE: This rule prescribes the rules of evidence in any hearing before the commission.*

(1) In any hearing, these rules supplement section 536.070, RSMo.

(2) If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document shall be specifically identified and are relevant and material.

(3) The presiding officer shall rule on the admissibility of all evidence. Evidence to which an objection is sustained, at the request of the party seeking to introduce the same or at the instance of the commission, nevertheless may be heard and preserved in the record, together with any cross-examination with respect to the evidence and any rebuttal of the evidence, unless it is wholly irrelevant, repetitious, privileged or unduly long. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings shall be unnecessary and need not be taken.

(4) In extraordinary circumstances where prompt decision by the commission is necessary to promote substantial justice, the presiding officer may refer a matter to the commission for determination during the progress of the hearing.

(5) The rules of privilege are effective to the same extent that they are in civil actions.

(6) Prepared testimony may be filed electronically. If prepared testimony is not filed electronically it shall be typed or printed, in black type on white paper eight and one-half inches by eleven inches (8 1/2" × 11"); it shall be double-spaced and pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1; it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form; and it shall

have the following margins: left-hand margin, one inch (1"); top margin, one inch (1"); right-hand margin, one inch (1"); and bottom margin, one inch (1"). Printing on both sides of the page is encouraged. Schedules shall bear the word "schedule" and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule. All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No.: (To be marked by the hearing reporter)  
Issue: (If known at the time of filing)  
Witness: (Full name of witness)  
Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)

Sponsoring Party:  
Case No.:  
Date Testimony Prepared:

The prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath. Prepared testimony shall be filed on line-numbered pages. Testimony that addresses more than one (1) issue shall contain a table of contents. Electronically filed prepared testimony shall be formatted and labeled in the same manner as paper filings.

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

(8) No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of