

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE  
STATE OF MISSOURI

FILED<sup>2</sup>

JAN 17 2007

Name: Gloria McCallum  
Complainant

Missouri Public  
Service Commission

vs.

Case No.

Company Name: Laclede Gas  
Respondent

COMPLAINT

Complainant resides at 3518 Humphreys St.  
(address of complainant)

St. Louis, Mo. (63118)

1. Respondent, Laclede Gas Company  
(company name)

of St. Louis, Mo. (63171)  
(location of company), is a public utility under the  
jurisdiction of the Public Service Commission of the State of Missouri.

2. As the basis of this complaint, Complainant states the following facts:

~~was sent~~  
My complaint is they tricked me  
into paying off A past due Bill by  
putting me on A Cold weather Rule,  
And when A mistake WAS made  
they added the past due ~~bill~~ amount to  
the entire bill And sent me A bill of  
\$ 2,000<sup>00</sup> in the summer time. I called  
Laclede GAS And ASKED them if I could  
pay on the current bill And send \$100<sup>00</sup>  
on the back bill And eventually the  
past due amount would go down- but  
they refused.  
I Am A Handicapped person on Social  
Security, And Am paying A Home

3. The Complainant has taken the following steps to present this complaint to  
the Respondent:

Mortgage every month And I couldn't  
Afford to pay, Lacked what they were  
Asking me to pay.

WHEREFORE, Complainant now requests the following relief:

The relief I need is for Lacked GAS  
to allow me to pay, as I have requested  
and this bill will be eliminated.  
I know I owe this bill but I need  
some consideration from them to pay  
what I can.

1-13-07  
Date

Glenn M. McCallum  
Signature of Complainant

Attach additional pages, as necessary.  
Attach copies of any supporting documentation.



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# Rules of Department of Economic Development

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# **Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**

## **Division 240—Public Service**

### **Commission**

#### **Chapter 2—Practice and Procedure**

#### **4 CSR 240-2.010 Definitions**

*PURPOSE: This rule defines terms used in the rules comprising Chapter 2, Practice and Procedure, and supplements those definitions found in Chapter 386 of the Missouri Revised Statutes.*

(1) Applicant means any person, as defined herein, or public utility on whose behalf an application is made.

(2) Certificate of service means a document or page of a document showing the caption of the case, attorney of record served or the name of the party served, the date and manner of service, and the signature of the serving party or attorney.

(3) Commission means the Missouri Public Service Commission as created by Chapter 386 of the Missouri Revised Statutes.

(4) Commissioner means one (1) of the members of the commission.

(5) Commission staff means all personnel employed by the commission whether on a permanent or contractual basis who are not attorneys in the general counsel's office, who are not members of the commission's research department, or who are not law judges.

(6) Complainant means the commission, any person, corporation, municipality, political subdivision, the Office of the Public Counsel, the commission staff through the general counsel, or public utility who files a complaint with the commission.

(7) Corporation includes a corporation, company, association, or joint stock company or association, or any other entity created by statute which is allowed to conduct business in the state of Missouri.

(8) General counsel means the attorney who serves as counsel to the commission and includes the general counsel and all other attorneys who serve in the office of the general counsel.

(9) Highly confidential information may include material or documents relating directly to specific customers; employee-sensitive information; marketing analyses or other

market-specific information relating to services offered in competition with others; reports, work papers or other documentation related to work produced by internal or external auditors or consultants; strategies employed, or to be employed, or under consideration in contract negotiations.

(10) Oath means attestation by a person signifying that he or she is bound in conscience and by the laws regarding perjury, either by swearing or affirmation to tell the truth.

(11) Party includes any applicant, complainant, petitioner, respondent, intervenor or public utility in proceedings before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.

(12) Person includes a natural person, corporation, municipality, political subdivision, state or federal agency, and a partnership.

(13) Pleading means any application, complaint, petition, answer, motion, staff recommendation, or other similar written document, which is not a tariff or correspondence, and which is filed in a case. A brief is not a pleading under this definition.

(14) Political subdivision means any township, city, town, village, and any school, road, drainage, sewer and levee district, or any other public subdivision, public corporation or public quasi-corporation having the power to tax.

(15) Presiding officer means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case.

(16) Public counsel means the Office of the Public Counsel as created by the Omnibus State Reorganization Act of 1974, and includes the assistants who represent the public before the commission.

(17) Proprietary information may include trade secrets, as well as confidential or private technical, financial and business information.

(18) Public utility includes every pipeline corporation, gas corporation, electrical corporation, telecommunications corporation, water corporation, heat or refrigeration corporation, sewer corporation, any joint municipal utility commission pursuant to section

386.020, RSMo which is regulated by the commission, or any other entity described by statute as a public utility which is to be regulated by the commission.

(19) Respondent means any person as defined herein or public utility subject to regulation by the commission against whom any complaint is filed.

(20) Rule means all of these rules as a whole or the individual rule in which the word appears, whichever interpretation is consistent with the rational application of this chapter.

(21) Settlement officer means a presiding officer who has been delegated to facilitate the settlement of a case.

(22) Schedule means any attachment, table, supplement, list, output, or any other document affixed to an exhibit.

*AUTHORITY: section 386.410, RSMo Supp. 1998. \* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed Aug. 17, 1998, effective March 30, 1999. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

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

#### **4 CSR 240-2.015 Waiver of Rules**

*PURPOSE: This rule defines when the rules in this chapter may be waived.*

(1) A rule in this chapter may be waived by the commission for good cause.

*AUTHORITY: section 386.410, RSMo Supp. 1998. \* Original rule filed Aug. 24, 1999, effective April 30, 2000.*

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

#### **4 CSR 240-2.020 Meetings and Hearings**

*PURPOSE: This rule announces the time and place of meetings and hearings of the Public Service Commission.*

(1) The principal office of the Public Service Commission is located in the Harry S Truman State Office Building, Floor 5A, 301 W.



#### 4 CSR 240-2.045 Electronic Filing

**PURPOSE:** *This rule prescribes the procedure for electronic filing before the commission.*

(1) Any item or document otherwise required or permitted to be filed with the commission may be filed electronically by accessing the commission's Internet web site and following the instructions for electronic filing found there.

(2) Any item or document filed electronically shall, if received during business hours of the commission's records room, be considered filed as of that day; otherwise, such item or document shall be considered filed as of the next following business day.

(3) The electronic filing of an item or document as described in this rule shall satisfy an obligation to file the same if accomplished no later than the date upon which such filing is required.

**AUTHORITY:** section 386.410, RSMo 2000.\* *Original rule filed Dec. 7, 2001, effective May 30, 2002.*

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

#### 4 CSR 240-2.050 Computation of Time

**PURPOSE:** *This rule sets standards for computation of effective dates of any order or time prescribed by the commission when no specific date is set by commission order.*

(1) In computing any period of time prescribed or allowed by the commission, the day of the act, event, or default shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. This rule does not apply when the commission establishes a specific date by which an action must occur, nor does it operate to extend effective dates which are established by statute.

(2) In computing the effective date of any order of the commission, the day the order was issued shall not be included, and the order is considered effective at 12:01 a.m. on the effective date designated in the order, whether or not the date is a Saturday, Sunday or legal holiday.

(3) When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission, at its discretion, may—

(A) Order the period enlarged before the expiration of the period originally prescribed or as extended by a previous order; or

(B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

**AUTHORITY:** section 386.410, RSMo Supp. 1998,\* *Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. 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.

**State ex rel. Alton R. Co. v. Public Service Commission**, 536 S.W.2d 766 (Mo. 1941). *The effective date of an order is at the beginning of that date, rather than at its close.*

#### 4 CSR 240-2.060 Applications

**PURPOSE:** *Applications to the commission requesting relief under statutory or other authority must meet the requirements set forth in this rule.*

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(A) The legal name of each applicant, a brief description of the legal organization of each applicant, whether a Missouri corporation, foreign corporation, partnership, proprietorship, or other business organization, the street and mailing address of the principal office or place of business of each applicant and each applicant's electronic mail address, fax number and telephone number, if any;

(B) If any applicant is a Missouri corporation, a Certificate of Good Standing from the secretary of state;

(C) If any applicant is a foreign corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(D) If any applicant is a partnership, a copy of the partnership agreement;

(E) If any applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(F) If any applicant is a political subdivision, a specific reference to the statutory provision

and a specific reference to any other authority, if any, under which it operates;

(G) If any applicant has submitted the applicable information as set forth in subsections (1)(B)–(F) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct;

(H) A brief statement of the character of business performed by each applicant;

(I) Name, title, address and telephone number of the person to whom correspondence, communications and orders and decision of the commission are to be sent, if other than to the applicant's legal counsel;

(J) If any applicant is an association, a list of all of its members;

(K) A statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the application;

(L) A statement that no annual report or assessment fees are overdue; and

(M) All applications shall be subscribed and verified by affidavit under oath by one (1) of the following methods: if an individual, by that individual; if a partnership, by an authorized member of the partnership; if a corporation, by an authorized officer of the corporation; if a municipality or political subdivision, by an authorized officer of the municipality or political subdivision; or by the attorney for the applicant if the application includes or is accompanied by a verified statement that the attorney is so authorized.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

(3) If the purchaser under the provisions of 4 CSR 240-3.110, 4 CSR 240-3.115, 4 CSR 240-3.210, 4 CSR 240-3.215, 4 CSR 240-3.310, 4 CSR 240-3.315, 4 CSR 240-3.405, 4 CSR 240-3.410, 4 CSR 240-3.520, 4 CSR 240-3.525, 4 CSR 240-3.605 or 4 CSR 240-3.610 is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the sale, the purchaser must comply with these rules.

(4) In addition to the requirements of section (1), applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which



System (EFIS) notification to all interexchange telecommunications carriers. All notifications shall include instructions on how to obtain a copy of the application.

(6) Any incumbent local exchange telecommunications company serving any exchange proposed to be affected by the application shall automatically be made a party to the case.

(7) Within sixty (60) days after the filing of the application, the commission shall convene a conference of the parties. The purpose of the conference is to discuss, at a minimum, the application and determine if any modifications should be made to the application.

(8) During the conference in section (7) above, the parties shall explore how the application's proposal could be technically implemented in the most efficient manner consistent with the community of interest. The parties shall also explore the appropriate intercarrier compensation arrangement. If the application proposes a mandatory toll-free plan or an expansion of the metropolitan calling area plan, the parties shall explore an intercarrier compensation arrangement that does not involve access charges.

(9) The applicant shall file with the commission either a statement that the application remains unchanged or alternatively identify specific modifications to the application as a result of the conference in section (7) above.

(10) Within ten (10) days after the applicant's filing in section (9) above, any party objecting to the application as proposed may file with the commission, a pleading explaining why the applicant's proposal is not acceptable.

(11) Within ninety (90) days after the commission issues an order ruling on objections to the technical sufficiency of the application or, if none, within ninety (90) days after the filing in section (9) above, any telecommunications carrier directly affected by the proposal shall file illustrative tariff sheets to implement the applicant's proposal.

(12) The illustrative tariff sheets shall identify all rate adjustment(s) necessary to implement the applicant's proposal. The company shall simultaneously file supporting documentation if it proposes to increase or establish new rates designed to maintain revenue neutrality, including the recovery of any new costs associated with implementing the proposal.

(13) The commission may hold public hearings and/or meetings in locations affected by the application.

(14) After receipt of the illustrative tariff sheets in section (12) above, the commission may hold a hearing or other appropriate proceeding. The parties will provide evidence to assist the commission in its findings.

(15) The commission, in its findings, will determine whether the proposed calling plan is just, reasonable, affordable, and in the public interest. In making these determinations, the commission will consider evidence on the competitive alternatives available, competitive implications, revenue impacts, and company and social costs of implementing the proposed expanded calling plans balanced against the objectives of the community of interest. The commission will also weigh any costs against benefits to the community of interest when making its determination.

(16) Based on the evidence in the record, the commission may modify the proposed rates, terms or conditions in its decision on the application.

*AUTHORITY: section 386.250, 392.240, 392.250 and 392.470, RSMo 2000 and 392.200, RSMo Supp. 2004.\* Original rule filed March 4, 2005, effective Oct. 30, 2005.*

*\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 392.200, RSMo 1939, amended 1987, 1988, 1996, 2003; 392.240, RSMo 1939, amended 1987; 392.250, RSMo 1939, amended 1987; and 392.470, RSMo 1987.*

#### 4 CSR 240-2.065 Tariff Filings Which Create Cases

*PURPOSE: This rule establishes when a case shall be opened for a tariff.*

(1) A general rate increase request is one where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides, but shall not include requests for changes in rates made pursuant to an adjustment clause or other similar provisions contained in a utility's tariffs. When a public utility submits a tariff which constitutes a general rate increase request, the commission shall establish a case file for the tariff. The tariff and all pleadings, orders, briefs, and correspondence regarding the tariff shall be filed in the case file established for the tariff. The tariff submitted shall be in compliance with the provisions of the rules relating to the

separate utilities. A tariff filed which proposes a general rate increase request shall also comply with the minimum filing requirements of these rules for general rate increase requests. Any public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.

(2) Except when the Commission orders the filing of a tariff, when a public utility submits a tariff for commission approval but requests the tariff become effective in fewer than thirty (30) days, the commission shall establish a case file for the tariff. In addition, the public utility shall file a Motion for Expedited Treatment and comply with the expedited treatment portion of these rules. The tariff and all pleadings, orders, briefs, and correspondence shall be filed in the case file established for the tariff.

(3) When a pleading, which objects to a tariff or requests the suspension of a tariff, is filed, the commission shall establish a case file for the tariff and shall file the tariff and pleading in that case file. All subsequent pleadings, orders, briefs, and correspondence concerning the tariff shall be filed in the case file established for the tariff. Any pleading to suspend a tariff shall attach a copy of the tariff and include a certificate of service to confirm that the party who submitted the tariff has been served with the pleading.

(4) A case will not be established to consider tariff sheets submitted by a regulated utility which do not meet the circumstances of sections (1)-(3) of this rule, except that a case shall be established when tariff sheets are suspended by the commission on its own motion or, when suspended, upon the recommendation of staff.

(5) When a public utility extends the effective date of a tariff, it shall file one (1) original, and eight (8) copies of a letter extending the tariff effective date in the official case file. Notwithstanding any other provision of these rules, this letter may be filed by a nonattorney.

*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.*



(1) An application to intervene 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 the proposed intervenor's interest in the case and reasons for seeking intervention, and shall state whether the proposed intervenor supports or opposes the relief sought or that the proposed intervenor is unsure of the position it will take.

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

(4) The commission may on application permit any person to intervene on a showing that—

(A) The proposed intervenor 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.

(5) Applications to intervene filed after the intervention date may be granted upon a showing of good cause.

(6) 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. 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.

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

#### 4 CSR 240-2.080 Pleadings, Filing, and Service

**PURPOSE:** This rule prescribes the content and procedure for filing pleadings before the commission and for service thereof.

(1) Every pleading or brief shall be signed by at least one (1) 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) Each pleading or brief shall state the signer's address, Missouri bar number, 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) Each pleading shall include a clear and concise statement of the relief requested and specific reference to the statutory provision or other authority under which relief is requested.

(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 be rejected.

(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) 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—

(A) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(C) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(D) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

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

(A) One (1) paper 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) 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.

(12) 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) 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" × 11") paper. Attachments to pleadings or briefs shall be annexed and folded to eight and one-half by eleven-inch (8 1/2" × 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.



#### 4 CSR 240-2.090 Discovery and Prehearings

*PURPOSE: This rule prescribes the procedures for depositions, written interrogatories, data requests and prehearing conferences.*

(1) Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.

(2) Parties may use data requests as a means for discovery. The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission. If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient shall include the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer. Upon agreement by the parties or for good cause shown, the time limits may be modified. As used in this rule, the term data request shall mean an informal written request for documents or information which may be transmitted directly between agents or employees of the commission, public counsel or other parties. Answers to data requests need not be under oath or be in any particular format, but shall be signed by a person who is able to attest to the truthfulness and correctness of the answers. Sanctions for failure to answer data requests may include any of those provided for abuse of the discovery process in section (1) of this rule. The responding party shall promptly notify the requesting party of any changes to the answers previously given to a data request.

(3) All prehearing conferences shall be held as directed by the commission or presiding officer, and reasonable notice of the prehearing conference time shall be given to the parties involved.

(4) Any party may petition the commission to hold a prehearing conference at any time prior to the hearing.

(5) Failure to appear at a prehearing conference without previously having secured a

continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

(6) Parties may consider procedural and substantive matters at the prehearing conference which may aid in the disposition of the issues. Matters which require a decision may be presented to the presiding officer during the conference.

(7) Facts disclosed in the course of a prehearing conference and settlement offers are privileged and, except by agreement, shall not be used against participating parties unless fully substantiated by other evidence.

(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

*AUTHORITY: section 386.410, RSMo Supp. 1998.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. 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.*

#### 4 CSR 240-2.100 Subpoenas

*PURPOSE: The commission may issue subpoenas for the production of witnesses and records. This rule prescribes the procedures for requesting and issuing subpoenas.*

(1) A request for a subpoena or a subpoena *duces tecum* requiring a person to appear and testify at the taking of a deposition or at a

hearing, or for production of documents or records shall be filed on the form provided by the commission and shall be directed to the secretary of the commission. A request for a subpoena *duces tecum* shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant.

(2) Except for a showing of good cause, a subpoena or subpoena *duces tecum* shall not be issued fewer than twenty (20) days before a hearing.

(3) Objections to a subpoena or subpoena *duces tecum* or motions to quash a subpoena or subpoena *duces tecum* shall be made within ten (10) days from the date the subpoena or subpoena *duces tecum* is served.

(4) Subpoenas or subpoenas *duces tecum* shall be signed and issued by the secretary of the commission, a commissioner or by a law judge pursuant to statutory delegation authority. The name and address of the witness shall be inserted in the original subpoena or subpoena *duces tecum* and a copy of the return shall be filed with the secretary of the commission. Subpoenas or subpoenas *duces tecum* shall show at whose instance the subpoena or subpoena *duces tecum* is issued. Blank subpoenas shall not be issued.

(5) If there is a failure to comply with a subpoena or a subpoena *duces tecum* after objections or a motion to quash have been determined by the commission, the commission by its counsel or the party seeking enforcement may apply to a judge of the circuit court of the county in which—the hearing has been held, is being held, or is scheduled to be held, or where the witness resides or may be found—for an order enforcing the subpoena or subpoena *duces tecum*.

*AUTHORITY: section 386.410, RSMo Supp. 1998.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. 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.*

#### 4 CSR 240-2.110 Hearings

*PURPOSE: This rule prescribes the procedures for the setting, notices, and conduct of hearings.*





(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



replacing projected financial information with actual results.

(9) Any or all parties may file a stipulation as to the facts, in which event the same shall be numbered as a joint exhibit. This stipulation shall not preclude the offering of additional evidence by any party unless otherwise agreed in the stipulation.

(10) Exhibits shall be legible and, unless otherwise authorized by the commission or filed electronically, shall be prepared on standard eight and one-half by eleven inch (8 1/2" × 11")-size paper. The sheets of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

(11) Exhibits shall be tendered to the reporter at the time of hearing without being prenumbered by the offering party, unless otherwise ordered by the commission.

(12) All exhibits shall be marked at the time of hearing, using a single series of numbers, unless otherwise ordered by the commission.

(13) Unless the presiding officer directs otherwise, when exhibits that have not previously been filed are offered in evidence, the original shall be furnished to the reporter, and the party offering exhibits also shall be prepared to furnish a copy to each commissioner, the presiding officer and each party.

(14) The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

(15) Evidence for which a claim of confidentiality is made shall be filed in conformance with a protective order approved by the commission. Parties shall obtain a protective order prior to filing of documentary evidence, except as permitted otherwise by these rules.

(16) All testimony shall be taken under oath.

(17) All post-hearing exhibits shall be filed with the secretary of the commission in compliance with 4 CSR 240-2.080. Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.

*AUTHORITY: section 386.410, RSMo 2000.\* Original rule filed Dec. 19, 1975, effective*

*Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. 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.*

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

*State ex rel. Utility Consumers Council v. Public Service Commission. 562 SW2d 688 (Mo. App. 1978). At a hearing on the issuance of a certificate of convenience and necessity, the commission denied appellant consumers council opportunity to cross-examine electric utility's witnesses on certain testimony regarding costs. The proprietary nature of the cost information involved does not protect it from cross-examination by consumers council, and denial of right to such cross-examination was improper.*

#### 4 CSR 240-2.140 Briefs and Oral Arguments

*PURPOSE: This rule sets forth the procedures for filing briefs and presenting oral arguments in any hearing.*

(1) The commission or presiding officer shall determine whether the parties may file briefs or present oral argument, or both, in any case.

(2) Unless otherwise ordered by the commission or presiding officer, when briefs are to be filed in any case, the parties shall have twenty (20) days after the date on which the complete transcript of the hearing is filed to file their initial briefs. Unless otherwise ordered by the commission or presiding officer, the parties shall have ten (10) days after the filing of the initial briefs to file their reply briefs. When a reply brief is due ten (10) days after filing of initial briefs, the initial briefs shall be sent to all parties by overnight mail or hand-delivered on the day of filing or the next day.

(3) Unless otherwise ordered by the commission or presiding officer, the time allowed for oral argument shall be—

(A) For an applicant or complainant, thirty (30) minutes, which may be divided between the initial argument and reply argument, but no more than one-third (1/3) of the

time shall be consumed by the reply argument; and

(B) For all other parties, a total of fifteen (15) minutes each.

(4) The commission may at its discretion order the parties to file suggested findings of fact, conclusions of law, and ordered paragraphs.

*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.*

#### 4 CSR 240-2.150 Decisions of the Commission

*PURPOSE: This rule prescribes the method of issuing commission orders and the effective date of such orders.*

(1) The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.

(2) The commission's orders shall be in writing and shall be issued as soon as practicable after the record has been submitted for consideration.

(3) Every order of the commission shall be served by mailing a certified copy, with postage prepaid, to all parties of record.

(4) The commission may, at its discretion, issue a preliminary order and allow parties to provide responses to the preliminary order. The commission may then issue its order after reviewing the responses of the parties.

(5) As technology permits, and where the parties have provided their electronic mail address, the commission will attempt to issue an electronic copy of each order.

*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.*



(B) Adopt the proposed rule or proposed amendment with further changes;

(C) Adopt the proposed rescission of the existing rule; or

(D) Withdraw the proposed rule.

**AUTHORITY:** sections 386.040, 392.210, 392.240, 392.280, 392.290, 393.110, 393.140(3), (4), (6), (9), (11) and (12), 393.160, 393.220, 393.240, 393.290 and 394.160, RSMo 1994 and 386.250, 386.310, 386.410, 392.200, 392.220 and 392.330, RSMo Supp. 1998.\* Original rule filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.

\*Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 386.310, RSMo 1939, amended 1979, 1989, 1996; 386.410, RSMo 1939, amended 1947, 1977, 1996; 392.200, RSMo 1939, amended 1987, 1988, 1996; 392.210, RSMo 1939, amended 1984, 1987; 392.220, RSMo 1939, amended 1987, 1988, 1991, 1993, 1996; 392.240, RSMo 1939, amended 1987; 392.280, RSMo 1939, amended 1987, 1993; 392.290, RSMo 1939, amended 1986, 1987; 392.330, RSMo 1939, amended 1980, 1987, 1995; 393.110, RSMo 1939, amended 1967; 393.140, RSMo 1939, amended 1949, 1967; 393.160, RSMo 1939, amended 1949, 1984; 393.220, RSMo 1939, amended 1967, 1980; 393.240, RSMo 1939, amended 1967; 393.290, RSMo 1939, amended 1967; 394.160, RSMo 1939, amended 1979.

*State ex rel. Southwestern Bell Telephone Co. v. PSC*, 592 SW2d 184 (Mo. App. 1979). A declaratory judgment action under section 536.050, RSMo is not available to challenge the validity of a rule of the Public Service Commission, since a specific, exclusive statutory scheme for review of commission actions is contained in section 386.510, RSMo.

*Jefferson Lines, Inc. v. Missouri Public Service Commission*, 581 SW2d 124 (Mo. App. 1979). In 4 CSR 240-2.180 the commission provided by rule a method for attack on any of its own rules. A record could be made and if the commission ruled adversely to the petition, an appeal would lie under section 386.510, RSMo. Also, under section 536.031.5, RSMo this court takes judicial notice of the rules printed in the Code of State Regulations.

#### 4 CSR 240-2.190 Hearings Under Rule-making

(Rescinded November 30, 1995)

**AUTHORITY:** section 386.410, RSMo 1986. Original rule filed Nov. 7, 1984, effective

June 15, 1985. Rescinded: Filed March 10, 1995, effective Nov. 30, 1995.

#### 4 CSR 240-2.200 Small Company Rate Increase Procedure

(Rescinded April 30, 2003)

**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. Rescinded: Filed Aug. 16, 2002, effective April 30, 2003.