

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Rulemaking to)	
Amend 4 CSR 240-2 Practice and Procedure)	File No. AX-2011-0094
Requirements.)	

COMMENTS OF AMEREN MISSOURI AND LACLEDE GAS COMPANY

Pursuant to the Notice published in the April 15, 2011 Missouri Register, Vol. 36, No. 8, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”) and Laclede Gas Company (collectively, “the Utilities”) respectfully submit the following comments in response to the Missouri Public Service Commission’s (“Commission”) proposed changes to the Chapter 2 Practice and Procedure rules.

1. The Utilities appreciate the Commission’s efforts in revising the Chapter 2 rules. In general, these changes are improvements that make the rules more concise and understandable, and bring more efficiency to practice before the Commission. For example, the Utilities agree with the change to Rule 2.075, in that it is more appropriate for an intervention request to be made by motion rather than application.

2. The Utilities have very few comments to the proposed rules, which comments are set forth below:

A. **Proposed Rule 2.040(4).** In addressing the participation of law students, this section continues to refer to an “application” even though it eliminates the need to file one. To be consistent, the word “student” should be substituted for the word “application” in the second sentence of this paragraph.

B. **Proposed Rule 2.080(9).** Regarding the filing of pleadings by a due date, the current practice is that filings in EFIS are typically permitted until midnight of the day they are due. However, on occasion, the EFIS system will show a filing as received on a day subsequent

to the day that the filing is actually submitted in EFIS. The proposed rule appears to confirm that documents submitted electronically will be stamped filed on the date and time the document is actually received in EFIS up until midnight of the day it is due, as opposed to the date that EFIS deems the document to be received. To be clear, however, a sentence should be added that: “Unless otherwise ordered by the Commission, any documents filed in EFIS before midnight of the date it is due will be deemed filed on that date.”

C. **Proposed Rule 2.110(5).** This rule twice refers to the general counsel as a party in hearings. Pursuant to the distinction made between the general counsel and the staff counsel in proposed rule 2.010, it would appear that the proposed rule 2.110(5) should refer to staff counsel rather than general counsel.

D. **Proposed Rule 2.110(6).** This rule unintentionally appears to make the use of a court reporter optional. The Utilities suggest a minor wording change as provided in the following redlined sentence: A reporter appointed by the commission shall make a full and complete record of the entire proceeding in any formal hearing, or of any other hearing or proceeding at which the commission determines reporting is appropriate.

E. **Proposed Rule 2.116(1).** A change to this rule provides that once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the Commission or by written consent of all parties, as opposed to all adverse parties. This raises an issue as to who should be able to prevent an applicant or complainant from dismissing its case. Rule 67.02 of the Missouri Rules of Civil Procedure covers this topic in the context of civil actions. This rule permits plaintiffs to dismiss their actions without court order prior to the introduction of evidence at trial. In other words, a plaintiff may unilaterally

dismiss its suit even after the exchange of pleadings and completion of discovery. This comports with the judicial policy supporting peaceful solutions and discouraging discord and litigation.

The Supreme Court has also drawn a line in Rule 67.02 when a plaintiff dismisses an action within 10 days of the date set for trial. If the plaintiff later refiles the case, the court may order payment of witness fees and other expenses incurred in the second trial and caused by dismissal of the first trial.

In matters before the Commission, the voluntary dismissal rule is complicated by the fact that parties submit pre-filed written testimony, often well in advance of the hearing and significantly before the end of discovery. Allowing any party to block a dismissal simply because some prepared testimony has been filed conflicts with the law's anti-litigation policy. This is especially true because the proposed rule gives a party who may not have even filed written testimony the ability to block a dismissal. A better rule would be to allow an applicant or complainant to voluntarily dismiss its case at a later date, such as "not less than 10 days before the hearing scheduled in the case." Once the voluntary dismissal time has passed, consent should be required not from all parties, but from all parties who have filed written testimony.

F. Proposed Rule 2.130(8) This provisions states that in lieu of direct testimony, parties may file reports that summarize in narrative form their conclusions and recommendations together with the facts and information upon which they relied. While the Utilities do not necessarily have an objection to this form of presenting a party's position, it is vital that any report set out the party's reasoning and support for the position, together with supporting information, in sufficient detail that adverse parties are advised of the complete basis for the party's position. To that end, the Utilities recommend that in the words "and with complete and

comprehensive detail” be inserted in the second sentence of paragraph 8 between the words “narrative form” and “the analysis”.

G. Proposed Rule 2.180(6) and (8). Changes to these sections remove references to persons “testifying” at a rulemaking hearing and replaces them with references to a person only “commenting” at such a hearing. Certainly comments and opinion are usually appropriate for establishing rulemaking policy, and current law would appear to support the fact that a person is not required to testify or be subject to cross-examination at a rulemaking hearing. However, there can be times when it may be appropriate for a person to testify under oath as to the matters they seek to present to the Commission, and the rules should accordingly permit persons to provide either comment or testimony at rulemakings.

WHEREFORE, Ameren Missouri and Laclede Gas Company respectfully request that the Commission accept these comments to the proposed rulemaking in this docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing was served on the following parties via electronic mail (e-mail) on this 16th day of May, 2011.

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