

FILED
March 4, 2011
Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 12619
Date Printed: 3/2/2011
Rule Number: 4 CSR 240-2.180
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:

RuleDataEntry:

Phone:

Email:

Fax:

Included with Rulemaking:

Cover Letter

3/02/2011

Affidavit for public cost

3/02/2011

[Print](#) [Close](#)

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

RECEIVED

MAR 02 2011

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.180

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 (3), (4), (5), (7), and (8); adding (4); renumbering (2) and (6); and
deleting (1).

Small Business Regulatory Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

MAR 02 2011

RECEIVED

JCAR Stamp

JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES



Commissioners

KEVIN GUNN
Chairman

ROBERT M. CLAYTON III

JEFF DAVIS

TERRY M. JARRETT

ROBERT S. KENNEY

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director

VACANT
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 240-2.180 Rulemaking

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.

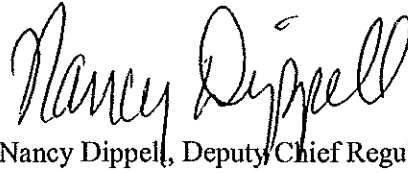
The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 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: sections 386.040, 392.210, 392.240, 386.250, 392.280, 392.290, 386.310, 392.330, 386.410, 393.140(3), (4), (6), (9), (11) and (12), 393.160, 393.220, 393.240, 393.290, and 394.160, RSMo 2000 and 392.200, 392.220, and 393.110, RSMo Supp. 2009

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 that reads "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

PUBLIC COST

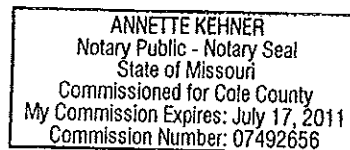
COUNTY OF COLE)

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 240-2.180, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

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 Cole, State of
Missouri, and my commission expires on 17 JULY 2011

Notary Public



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

PROPOSED AMENDMENT

RECEIVED

MAR 02 2011

SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-2.180 Rulemaking The commission is amending sections (3), (4), (5), (7), and (8), adding a new section (4), renumbering sections (2) and (6), and deleting section (1).

PURPOSE: This rule is being amended to reorganize and clarify it, to change "testimony" to "comments" to more accurately reflect the rulemaking process, and to replace statutory language with a reference to the statute which must be complied with.

(1) *[Promulgation, amendment, or rescission of rules adopted by the commission in Division 240 of Title 4 may be proposed, adopted, and published by approval of the commission as provided by law.]*

(2) *[Promulgation, amendment, or rescission of rules may be ~~instituted~~ initiated by the commission through an internally-generated rulemaking case, or pursuant to a rulemaking petition filed with the commission.]*

(3) [2] Petitions for promulgation, amendment or rescission of rules shall be [as follows:

(A) Each petition for promulgation, amendment, or rescission of rules made pursuant to Chapter 536, RSMo, shall be] filed with the secretary of the commission in writing and shall include:

[1.](A) The name, street address, and mailing address of the petitioner;

[2.](B) One (1) of the following:

[A]1. The full text of the rule sought to be promulgated[, if no rule on the subject currently exists];

[B]2. The full text of [the]any rule sought to be amended, including the suggested amendments[, if amendment of an existing rule is sought]clearly marked; or

[C. The full text of the existing rule and the full text of the rule proposed to replace the existing rule, if the proposed changes to the existing rule are so substantial as to make replacement of the existing rule more efficient than amendment thereof; or

D]3. The full [text]number of [the]any rule sought to be rescinded[, if rescission of an existing rule is sought];

[3.](C) A statement of petitioner's reasons in support of the promulgation, amendment, or rescission of the rule, including a statement of all facts pertinent to petitioner's interest in the matter;

[4.](D) Citations of legal authority which authorize, support, or require the rulemaking action requested by the petition;

[5.](E) An estimation of the effect of the rulemaking on private persons or entities with respect to required expenditures of money or reductions in income, sufficient to form the basis of a fiscal note as required under Chapter 536, RSMo; and

JOINT COMMITTEE ON
MAR 02 2011
ADMINISTRATIVE RULES

~~[6.]~~(F) A verification of the petition by the petitioner by oath; and

~~([B]3)~~ The commission shall either deny the petition in writing, stating the reasons for its decision, or shall initiate rulemaking in accordance with Chapter 536, RSMo.

(4) The commission shall comply with the notice provisions of section 536.041, RSMo, upon the disposal of any rulemaking petition.

~~([4]5)~~ When the commission decides to promulgate, amend, or rescind a rule, it shall *issue a notice of proposed rulemaking for the secretary of state to publish in the Missouri Register. The notice of proposed rulemaking shall contain the following:*

(A) Instructions for the submission of written comments by anyone wishing to file a statement in support of or in opposition to the proposed rulemaking, by a specific date which shall not be fewer than thirty (30) days after the publication date; or

*(B) Instructions and notice for both a written comment period and hearing]***comply with the requirements for rulemaking in Chapter 536, RSMo.**

~~([5]6)~~ Persons wishing to file **written** comments or ~~[testify]~~**comment** at the hearing need not be represented by counsel, but may be so represented if they choose.

~~([6]7)~~ Hearings on rulemakings may be for commissioner questions or for the taking of initial or reply comments.

~~([7]8)~~ Hearings for the taking of initial or reply comments on rulemakings shall proceed as follows:

(A) A commissioner or presiding officer shall conduct the hearing, which shall be transcribed by a reporter;

(B) [Persons wishing to testify shall be sworn by oath;

(C)]Persons [testifying]commenting at a hearing may give a statement in support of or in opposition to a proposed rulemaking. The commissioners or the presiding officer may question those persons [testifying]commenting;

([D]C) Statements shall first be taken from those supporting a proposed rule, followed by statements from those opposing the rule, unless otherwise directed by the presiding officer; [and]

([E]D) Persons [testifying]commenting may offer exhibits in support of their positions[.];

(E) The commission may, at the hearing, hold the hearing open for a specified period if it determines extension is reasonably necessary to elicit material information.

~~([8]9)~~ *[Within ninety (90) days after the end of a written comment period or the end of a hearing on a rulemaking, the commission shall issue an order of rulemaking which shall be published in the Missouri Register by the secretary of state. The order of rulemaking shall briefly summarize the general nature of the comments or statements made during the comment period or hearing, shall contain the findings required by]***In compliance with the requirements of Chapter 536, RSMo, the commission[and] shall either--**

AUTHORITY: sections 386.040, 392.210, 392.240, 386.250, 392.280, 392.290, 386.310, 392.330, 386.410, 393.140(3), (4), (6), (9), (11) and (12), 393.160, 393.220, 393.240, 393.290 and 394.160, RSMo 2000 and 392.200, 392.220 and 393.110, RSMo Supp. 2009.* 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. Amended: Filed _____.

*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, 2003, 2005, 2008; 392.210, RSMo 1939, amended 1984, 1987; 392.220, RSMo 1939, amended 1987, 1988, 1991, 1993, 1996, 2008; 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, 2003; 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.

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](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 240-2.180 Rulemaking

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: This is a procedural rule which is being amended to clarify it and to make the rule more accurately reflect the rulemaking process. The only impact on small businesses will be to make the rulemaking process before the Commission easier for them to understand and participate in.

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

This is a procedural rule which is being amended to clarify it and to make the rule more accurately reflect the rulemaking process. The only impact on small businesses will be to make the rulemaking process before the Commission easier to understand and participate in. The Commission relied on its past experience with rulemaking and comments from practitioners before it to develop this amendment. 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.

There are no monetary costs or benefits to any agency as a result of this amendment. No fees will be collected as a result of this rule.

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

No small businesses are "required" to comply with the rule and none will be adversely affected.

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

There are no costs associated with compliance with this rule.

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

Any person or business who desires to participate in any Commission rulemaking hearing will benefit from the rule being clarified.

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.