

Missouri Public Service Commission  
**Title 4—DEPARTMENT OF ECONOMIC  
 DEVELOPMENT**

**Division 240—Public Service Commission  
 Chapter 2—Practice and Procedure**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission rescinds a rule as follows:

4 CSR 240-2.050 Computation of Effective Dates is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2320-2321). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This rescission was proposed in conjunction with a replacement proposed rule. Although most of the comments received were directed to the proposed rule, some comments are pertinent to the rescission and are noted here.

**COMMENT:** One comment notes that the former section (2) relating to the calculation of time if the allowed time is less than seven days should not be deleted. Deleting this provision would effectively reduce the time to respond by two or three days under the present rule practice. Clearly, four or five days is an unreasonable response time in many situations.

**COMMENT:** Another comment indicates that this proposed rule describes how periods of time prescribed by the Commission are to be computed. Section (2) of the current version of the rule provides an exception in such computations for periods of time less than seven days. In such cases, Saturdays, Sundays or legal holidays falling within the period are excluded from computation and the period is extended accordingly. The new rule eliminates this exception. Eliminating this exception will unduly shorten the time for a party to perform the required act (e.g., prepare and submit a responsive filing). As it is, parties routinely lose two to four days due to delay in mail delivery. In some cases, the delay has been five to seven days. Eliminating the current computational exception in section (2) could cause a party to lose most (and in some cases all) of its time to prepare and file a responsive pleading. The commenter requests that the Commission retain section (2) of the current rule 2.050.

**RESPONSE:** The Commission has reviewed these comments and finds that the deletion of former section (2) is appropriate. Section (12) of 4 CSR 240-2.080, Pleadings, specifically addresses the time allowed for responses to motions or other pleadings. However, the Commission has determined that 4 CSR 240-2.050 should be clarified by deleting the word "order" in the section (1). Section (2) shall be clarified by adding the phrase "the day the order was issued shall not be included, and" after the words "In computing the effective date of any order of the commission." In addition, the rule is more properly titled "Computation of Time" and not "Computation of Effective Dates," so the title has been revised. Therefore, the Commission has amended the rule but not in the manner requested by the comments.

**COMMENT:** One comment opposes the deletion of the phrase "except after the effective date of a tariff" in subsection (3)(B). Once a tariff is effective, it becomes law and cannot be modified without restarting the tariff process. The Public Service Commission cannot do by rule what the general law does not permit it to do.

**RESPONSE:** The Commission believes the deleted phrase is unnecessary. No changes were made to the rule as a result of this comment.

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By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-2.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2321). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Commission received several written comments on this rule.

**COMMENT:** One comment indicates that the former section (2) relating to the calculation of time if the allowed time is less than seven days should not be deleted. Deleting this provision would effectively reduce the time to respond by two or three days under the present rule practice. Clearly, four or five days is an unreasonable response time in many situations.

**COMMENT:** another comment notes that this proposed rule describes how periods of time prescribed by the Commission are to be computed. Section (2) of the current version of the rule provides an exception in such computations for periods of time less than seven days. In such cases, Saturdays, Sundays or legal holidays falling within the period are excluded from computation and the period is extended accordingly. The new rule eliminates this exception. Eliminating this exception will unduly shorten the time for a party to perform the required act (e.g., prepare and submit a responsive filing). As it is, parties routinely lose two to four days due to delay in mail delivery. In some cases, the delay has been five to seven days. Eliminating the current computational exception in section (2) could cause a party to lose most (and in some cases all) of its time to prepare and file a responsive pleading. The commenter requests that the Commission retain section (2) of the current rule 2.050.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has reviewed these comments and finds that the deletion of former section (2) is appropriate. Section (12) of 4 CSR 240-2.080, Pleadings, specifically addresses the time allowed for responses to motions or other pleadings. However, the Commission has determined that 4 CSR 240-2.050 should be clarified by deleting the word "order" in the section (1). Section (2) shall be clarified by adding the phrase "the day the order was issued shall not be included, and" after the words "In computing the effective date of any order of the commission." In addition, the rule is more properly titled "Computation of Time" and not "Computation of Effective Dates," so the title has been revised. Therefore, the Commission has amended the rule but not in the manner requested by the comments.

**COMMENT:** One commenter opposes the deletion of the phrase "except after the effective date of a tariff" in subsection (3)(B). Once a tariff is effective, it becomes law and cannot be modified without restarting the tariff process. The Public Service

Commission cannot do by rule what the general law does not permit it to do.

RESPONSE: The Commission believes the deleted phrase is unnecessary. No changes were made to the rule as a result of this comment.

COMMENT: One comment contends that the Commission should expand the grounds for permitting late action to include both excusable neglect and *force majeure* in subsection (3)(B). If uncontrollable events preclude action, the failure to meet the deadline really does not qualify as neglect.

RESPONSE: The Commission notes that both the proposed rule and the current rule refer to "excusable neglect." The Commission determines that "excusable neglect" is an appropriate standard and declines to make the suggested change.

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

(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.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission rescinds a rule as follows:

#### 4 CSR 240-2.060 Applications is rescinded.

A notice of the proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2321). No changes were made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This rescission was proposed in conjunction with a replacement proposed rule. The comments received were directed to the proposed rule and are summarized there.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission adopts a rule as follows:

#### 4 CSR 240-2.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2321-2324). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Written comments were received during the comment period.

COMMENT: One comment was received which stated that Section (1) required too much information and that the rule should only apply to Subsections (1)(A), (I), and (J).

RESPONSE: The Commission has considered this comment and has made no change in response thereto.

COMMENT: One comment suggested that the language in Subsection (1)(A) which requires a "statement of the nature of each applicant" was too vague and suggested using the phrase "a brief description of the legal organization of each applicant."

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and has made a change in response thereto.

COMMENT: One comment suggested that the Commission does not have the authority to require an applicant to have and to provide an electronic mail address. The comment also stated that "In the case of a corporate applicant, it may have thousands of electronic mail addresses, or it may have none."

RESPONSE: The Commission has considered this comment and has made no change in response thereto. The Commission adds that if an applicant has no electronic mail address, it is not required to obtain one. The Commission also adds that an applicant with many electronic mail addresses need only choose one, similar to choosing one street address for an applicant with offices located in many different locations.

COMMENT: One comment stated that Subsection (1)(F) requires a political subdivision to include a cite to or a copy of the statutory provision(s) or other authority(ies) under which it operates. The comment stated that this provision might cause applicants to file a lot of citations or a lot of pages of photocopied materials.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and has made a change in response thereto.

COMMENT: There were several comments on Subsection (1)(K). Most of the comments described the difficulty with which applicants would have in keeping track of judgments against such applicants. Several comments suggested deleting the subsection altogether or, if the subsection were not deleted, then restricting its application time-wise.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered these comments and has made a change in response thereto. The Commission also notes that the subsection merely calls for a statement concerning the existence of such a case or cases, not a list of the cases.

COMMENT: One comment on Subsection (1)(L) stated that the Commission should already know if any applicant has any overdue annual reports or assessment fees, thus this subsection is unnecessary.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and has made no change in response thereto. However, the Commission has removed the word "verified" from the subsection since the statement concerning reports or fees must be made in an application which is verified; the use of the word in the subsection is redundant.