

**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)	Case No. AX-2011-0094
Procedure Requirements)	

INITIAL RESPONSE OF THE OFFICE OF THE PUBLIC COUNSEL

The Office of the Public Counsel supports the Commission’s effort to update and clarify its practice and procedure rules. The following are suggestions and observations that are intended to make that effort more successful. All references are to the proposed revisions to Chapter 2 as filed on October 13, 2010.

1. 2.015(2) and 2.080(9) refer to “regular business hours” and 2.030(1) refers to “reasonable business hours” but neither is defined. It is not clear whether the two phrases refer to different time periods. In any event, the Commission’s “business hours” – both regular and reasonable –should be defined in the rules if that phrase is used.

2. Several recent cases have presented questions concerning the ability of a natural person representing himself or herself to access Proprietary or Highly Confidential information. 2.040(5) should be clarified to provide that a non-attorney who is a party to a case has the same access to Proprietary and Highly Confidential information as do attorneys representing other parties.

3. 2.050(3)(B) is worded in such a way that it appears to imply that “excusable neglect” is a good cause for allowing an after-the-fact extension of time. The section should be re-worded to make that implication explicit or to remove it.

4. 2.065(5) states that tariff filings become cases only if: 1) tariff sheets are suspended on the Commission’s own motion; or 2) if Staff recommends establishing a case. In practice, tariff filings generally become cases if the Commission grants a motion to suspend filed by any entity and without a recommendation of the Staff to establish a case. The rule should be revised to reflect this general practice.

5. 2.070(2), in the second sentence, unnecessarily repeats the phrase “or small formal complaint.” One repetition should be deleted.

6. 2.070(15) implies that there are known conflicts between sections 2.070(1) through 2.070(14) and section 2.070(15). If there are such conflicts, they should be specifically addressed. If there are none, the second sentence in 2.070(15) is unnecessary.

7. The proposed new rule 2.075(3) deletes serving the public interest as a reason for granting intervention. Why?

8. In at least two recent cases, the Missouri Energy Development Association has filed (in cases in which it was not a party) pleadings and suggestions that were not the typical post-hearing brief that 2.075(11) appears to address. 2.075(11) should clarify that it applies only to post-hearing briefs. If the Commission intends to allow other types of filings by non-parties, it should add a section that specifically addresses the circumstances under which such filings are allowed.

9. 2.080(14) italicizes the language “(B) The harm that will be avoided, or the benefit that will accrue, incl...” but it appears to be simply a formatting mistake.

10. 2.080(16)(B) appears to not allow service on an unrepresented person by fax or email. Fax or email service on an unrepresented person should be allowed to the same extent that it is allowed on a party’s attorney.

11. 2.130(8) states that a report must be filed in compliance with the “filing requirements set forth above.” The specific sections and subsections should be referenced; “set forth above” is too vague.

12. 2.135(2) does not appear to add anything to the current 2.135. Under what circumstances would a protective order, which provides the same protection as the rule, be necessary?

13. 2.140(2) addresses initial briefs and 2.140(3) addresses reply briefs, but the word “initial” has been deleted from 2.140(2).

14. 2.180(2) uses the phrase “in writing” and could be read to preclude the electronic filing of rulemaking petitions. The rule should be clarified to specifically allow for electronic filing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/S/ LEWIS R. MILLS, JR.

BY: _____

Lewis R. Mills, Jr. (#35275)

Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-1304

(573) 751-5562 FAX

lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed this 29th day of November 2010 to all parties of record.

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

/s/ Lewis R. Mills, Jr.
