

**T**his section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

**T**he agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

#### **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 Public Service Commission under section 386.410, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-2.090 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 3, 2014 (39 MoReg 630). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended April 2, 2014, and the commission held a public hearing on the proposed amendment on April 7, 2014. The commission received timely written comments from Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO). Additional written comments were received from Midwest Gas Users' Association (MGUA) and Midwest Energy Users' Association (MEUA). In addition, the following people offered comments at the hearing: James Fischer, representing KCP&L and GMO; Stuart W. Conrad, representing MGUA and MEUA; Sarah Giboney, representing Union Electric Company, d/b/a Ameren Missouri; Kevin Thompson, representing the staff of the Missouri Public Service Commission; and Kim Happy and John Hanauer on behalf of the staff of the Missouri Public Service Commission.

**COMMENT #1:** The written comment of MGUA and MEUA, which was reiterated by its attorney, Stuart Conrad, at the hearing, advises the commission to revise subsection (2)(C) of the rule to allow the commission the flexibility to order the modification of response times to data requests as necessary in particular cases by adding the phrase "or as otherwise ordered by the commission" to the end of the subsection.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with the comment and will modify the subsection in the manner suggested.

**COMMENT #2:** The written comment of MGUA and MEUA, which was reiterated by its attorney, Stuart Conrad, at the hearing, expresses concern about subsection (2)(H) of the rule. That subsection, which is a new provision in the rule, requires that data requests sent to or from the staff of the commission be submitted and responded to in the commission's electronic filing and information system (EFIS). MGUA, MEUA, and Mr. Conrad complain that requiring such data requests to be submitted and responded to in EFIS would place an unfair burden on non-utility intervening parties in cases before the commission and could provide an advantage to staff. In particular they assert that the use of EFIS is time consuming because the system works more slowly for users outside the commission's firewall than it does for users at the commission. They also express concern about the security of sending confidential documents via the internet. Finally, they claim that the delays associated with having to use EFIS would increase litigation costs for intervening parties. In particular, they are concerned that expert witnesses engaged by counsel might not be able to access EFIS to view confidential data request responses until those responses are filtered by legal counsel. To avoid these problems, MGUA, MEUA, and Mr. Conrad urge the commission to modify this subsection to make the use of EFIS optional for submitting and responding to data requests to and from staff.

**RESPONSE:** The commission thanks MGUA, MEUA, and Mr. Conrad for their comments. The commission is proposing to amend this subsection to centralize and standardize data request procedures for those data requests sent by or responded to by the commission's staff. The commission believes that goal can best be accomplished by routing such data requests through EFIS. Allowing some data requests to be routed in some other manner at the discretion of a party would defeat the purpose of the rule.

The concerns raised by MGUA, MEUA, and Mr. Conrad do not persuade the commission to modify the rule. The requirement that data requests sent to and by staff be submitted through EFIS does not provide any strategic advantage to staff. While EFIS does operate somewhat slower for users outside the system's firewall, such delays are minimal and can be measured in milliseconds. Submissions to EFIS are encrypted for transmission and, therefore, are more secure than an ordinary e-mail. Finally, the requirement that data requests to and from staff be routed through EFIS will not have a measurable fiscal impact on anyone. The commission will not make the change proposed by MGUA, MEUA, and Mr. Conrad.

**COMMENT #3:** KCP&L and GMO filed written comments that also recommend that the use of EFIS be made optional. However, their concern is narrower than that raised by MGUA, MEUA, and Mr. Conrad. At the hearing, counsel for KCP&L and GMO, James Fischer, explained that sometimes the amount of data exchanged in response to a data request is so voluminous that it is impractical to submit it electronically through EFIS. In those circumstances, the other parties may agree with staff to submit the data on a disk. For that reason, they propose the following clause be added to the end of subsection (2)(H): "unless otherwise agreed by the parties to the data requests or otherwise ordered by the commission." KCP&L and GMO believe that such language will provide needed flexibility when dealing with voluminous materials. Sarah Giboney, counsel for Ameren Missouri, supported the alternative language proposed by Mr. Fischer.



Kim Happy, manager of the commission's data center, agreed that size limitations can be a problem and said that the data center is willing to work with parties to help get such documents into EFIS. She suggested that Mr. Fischer's alternative language be limited to apply only when EFIS limitations would prevent such a filing.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees that some additional flexibility is needed to permit a reasonable response when the limitations of EFIS would make it difficult or impossible to submit voluminous documents. However, that exception should not be so broad as to defeat the purpose of the rule-making. The commission will adopt the language proposed by Mr. Fischer, but will add a limitation as suggested by Ms. Happy.

**COMMENT #4:** Sarah Giboney, counsel for Ameren Missouri, commented at the hearing that Ameren Missouri does not object to the proposed amendment. Further, as described in the previous comment, Ameren Missouri supports the revision proposed by Mr. Fischer.

**RESPONSE:** The commission thanks Ms. Giboney and Ameren Missouri for those comments.

**COMMENT #5:** Kim Happy, manager of the commission's data center, commented at the hearing to explain the purpose of the amendment and to explain how the data center handles data requests and responses.

**RESPONSE:** The commission thanks Ms. Happy for her comments.

**COMMENT #6:** John Hanauer, director of the commission's IT department, commented at the hearing to explain the technical aspects of EFIS and how the technical limitations of EFIS do and do not affect the users of that system.

**RESPONSE:** The commission thanks Mr. Hanauer for his comments.

**COMMENT #7:** Kevin Thompson, Chief Staff Counsel for the commission, commented at the hearing to explain why staff wants to use EFIS as its primary data request interface. He also explained that the use of EFIS as that interface does not offer staff any strategic advantage and would provide other parties easier access to staff data requests and responses.

**RESPONSE:** The commission thanks Mr. Thompson for his comments.

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

(2) Parties may use data requests as a means for discovery.

(C) The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed to by the parties to the data requests, or otherwise ordered by the commission.

(H) Any data request issued to or by the staff of the commission shall be submitted and responded to in the commission's Electronic Filing and Information System (EFIS). However, if the technical limitations of EFIS make such submission or response difficult, the parties to the data requests may agree upon an alternative method of submission and response, or an alternative method of submission and response may be ordered by the commission.

#### **Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission Chapter 12—Scenic Byways**

##### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130(2), 227.030, and 226.797–226.799, RSMo 2000, the commission amends a rule as follows:

**7 CSR 10-12.010 Scenic Byways is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 18, 2014 (39 MoReg 493). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** No comments were received.

#### **Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission Chapter 12—Scenic Byways**

##### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.150, 226.797, 226.798, and 226.799, RSMo 2000 and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, the commission amends a rule as follows:

**7 CSR 10-12.020 Application Procedures is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 18, 2014 (39 MoReg 493–494). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** No comments were received.

#### **Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission Chapter 12—Scenic Byways**

##### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.150, 226.797, 226.798, 226.799, and 226.801, RSMo 2000 and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, the commission amends a rule as follows:

**7 CSR 10-12.030 Nomination Review Process is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 18, 2014 (39 MoReg 494–495). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** No comments were received.

#### **Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN Division 10—Health Care Plan Chapter 2—State Membership**

##### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows: