

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.

77 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#### 4 CSR 240-2.060 Applications is rescinded.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 judgements 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.

COMMENT: One comment suggested that the requirement in Subsection (8)(E) for an applicant to include a list of all documents generated relative to the analysis of a merger and acquisition should be deleted since it could result in very large applications.

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 distinction between "variance" and "waiver" should be made in Subsection (14). Another comment stated that the Commission had no authority to waive any statutory provisions.

RESPONSE: The Commission has considered these comments and has made no change in response thereto.

COMMENT: One comment suggested that in Subsection (15)(A), the phrase "description of the structure" should be changed to "brief description of the type of structure." The comment also suggested that the phrase "if any" should be added following the phrase "the street address of the structure."

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

COMMENT: Two comments suggested that Subsection (16) should be expanded to show that the Commission can only recognize name changes, not approve them.

RESPONSE: The Commission has considered these comments and has made no change in response thereto.

NOTE AND EXPLANATION OF OTHER CHANGES: A typographical error has been corrected in sections (3) and (4).

#### 4 CSR 240-2.060 Applications

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(A) The legal name of each applicant, a brief description of the legal organization of each applicant, whether a Missouri corporation, foreign corporation, partnership, proprietorship, or other business organization, the street and mailing address of the principal office or place of business of each applicant and each applicant's electronic mail address, fax number and telephone number, if any;

(B) If any applicant is a Missouri corporation, a Certificate of Good Standing from the secretary of state;

(C) If any applicant is a foreign corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(D) If any applicant is a partnership, a copy of the partnership agreement;

(E) If any applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(F) If any applicant is a political subdivision, a specific reference to the statutory provision and a specific reference to any other authority, if any, under which it operates;

(G) If any applicant has submitted the applicable information as set forth in subsections (1)(B)-(F) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct;

(H) A brief statement of the character of business performed by each applicant;

(I) Name, title, address and telephone number of the person to whom correspondence, communications and orders and decision of the commission are to be sent, if other than to the applicant's legal counsel;

(J) If any applicant is an association, a list of all of its members;

(K) A statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the application;

(L) A statement that no annual report or assessment fees are overdue; and

(M) All applications shall be subscribed and verified by affidavit under oath by one (1) of the following methods: if an individual, by that individual; if a partnership, by an authorized member of the partnership; if a corporation, by an authorized officer of the corporation; if a municipality or political subdivision, by an authorized officer of the municipality or political subdivision; or by the attorney for the applicant if the application includes or is accompanied by a verified statement that the attorney is so authorized.

(3) Competitive telecommunications companies are exempt from subsections (7)(A)-(E), (8)(A)-(E), and (11)(C)-(G) of this rule; however, they must file a pleading indicating which company will be holding the certificate of service authority and providing service to Missouri customers, and the tariff under which service will be provided.

(4) In addition to the requirements of section (1), applications for a certificate of convenience and necessity by a gas, electric, water, sewer or heating company shall include the following information:

(8) In addition to the requirements of section (1), applications for authority to merge or consolidate shall include:

(A) A copy of the proposed plan and agreement of corporate merger and consolidation, including organizational charts depicting the relationship of the merging entities before and after the transaction;

(B) A certified copy of the resolution of the board of directors of each applicant authorizing the proposed merger and consolidation;

(C) The balance sheets and income statements of each applicant and a balance sheet and income statement of the surviving corporation;

(D) The reasons the proposed merger is not detrimental to the public interest;

(E) An estimate of the impact of the merger on the company's Missouri jurisdictional operations relative to the merger and acquisition in question; and

(F) For gas, electrical, water, sewer and telecommunications companies, a statement of the impact, if any, the merger or consolidation will have on the tax revenues of the political subdivision in which any structures, facilities or equipment of the companies involved are located.

(15) In addition to the requirements of section (1), applications for commission authority for a change of electrical suppliers shall include:

(A) A description of the type of structure where the change of supplier is sought, and the street address, if any, of the structure;

(B) The name and address of the electrical supplier currently providing service to the structure;

(C) The name and address of the electrical supplier to which the applicant wishes to change;

(D) The applicant's reasons for seeking a change of supplier;

(E) If the applicant's reasons involve service problems, a description of the problems and dates of occurrence, if known;

(F) If the applicant's reasons involve service problems, a description of the contacts which applicant has had with the current supplier regarding the problems, if any, and what efforts the current supplier has made to solve the problems, if any;

(G) The reasons a change of electrical suppliers is in the public interest;

(H) If the current electrical supplier and the requested electrical supplier agree to the requested change, a verified statement for each supplier with the application, indicating agreement; and

(I) If the applicant is an electrical supplier, a list of the names and addresses of all customers whose electrical supplier is proposed to be changed.

#### 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 240-2.065 Tariff Filings Which Create Cases is rescinded.

A notice of the proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2324). 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. 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 240-2.065 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 2324-2325). 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:** There were several comments on Subsection (1). One comment stated that the proposed rule would add a burden to a company, i.e., making the same people who are involved in the preparation of the filing also responsible for the filing of the direct testimony. Other comments stated that the term "general rate increase" needs to be defined. Some comments stated that if the Commission wants an accelerated process in general rate increase cases that it should benefit all parties, e.g., by not suspending the tariffs for the full statutory period.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission has considered all these comments. One change was made in response thereto.

**COMMENT:** One comment on Subsection (2) stated that the phrase, "Except when the Commission orders the filing of a tariff . . ." should be added at the beginning of that Subsection to make it clearer that it does not apply to compliance tariff filing.

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

**COMMENT:** One comment on Subsection (2) opposed deleting the "good cause" part of the expedited portion of the former rule.

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

**COMMENT:** One comment on Subsection (3) stated that the requirement of attaching a copy of the subject tariff could be burdensome and unnecessary.

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

**COMMENT:** One comment on Subsection (5) stated that the rule should provide that the copy should be served upon the Office of the Public Counsel pursuant to Section 386.710.2 RSMo.

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

##### 4 CSR 240-2.065 Tariff Filings Which Create Cases

(1) A general rate increase request is one where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides, but shall not include requests for changes in rates made pursuant to an adjustment clause or other similar provisions contained in a utility's tariffs. When a public utility submits a tariff which constitutes a general rate increase request, the commission shall establish a case file for the tariff. The tariff and all pleadings, orders, briefs, and correspondence regarding the tariff shall be filed in the case file established for the tariff. The tariff submitted shall be in compliance with the provisions of the rules relating to the separate utilities. A tariff filed which proposes a general rate increase request shall also comply with the minimum filing requirements of these rules for general rate increase requests. Any public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.

(2) Except when the Commission orders the filing of a tariff, when a public utility submits a tariff for commission approval but requests the tariff become effective in fewer than thirty (30) days, the commission shall establish a case file for the tariff. In addition, the public utility shall file a Motion for Expedited Treatment and comply with the expedited treatment portion of these rules. The tariff and all pleadings, orders, briefs, and correspondence shall be filed in the case file established for the tariff.

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#### 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: