

4 CSR 240-2.070 Complaints is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2325). 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.

**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 240-2.070 Complaints 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 2325-2326). No changes were made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Commission received two written comments to section (1) and one written comment each to sections (3), (5), (6) and (9). In addition, the Commission received one written comment not related to a particular section of the rule.

COMMENT: One comment in opposition of part of section (1) was received. The commenter stated that the Commission's proposal to allow the Commission Staff through its general counsel to file a complaint with the Commission would be an attempt to extend or modify a statute by rule which is specifically prohibited in the case of *Missourians for Honest Elections v. Missouri Elections Commission*, 536 SW2d 766, 772 (Mo.App.E.D. 1976). The commenter states that the parties who are authorized to file a complaint before the Commission are listed in section 386.390, RSMo 1994, which does not include the Commission Staff. One comment in support of this part of section (1) was also received.

RESPONSE: The Commission disagrees with the commenter's interpretation and applicability of *Missourians for Honest Elections v. Missouri Elections Commission*, 536 SW2d 766, 772 (Mo.App.E.D. 1976). The Commission has authority under section 386.390, RSMo, to make a complaint and the authority under section 386.240, RSMo, to delegate that authority to the Commission Staff. The Commission finds that the rule is appropriate as proposed and no changes are necessary.

COMMENT: One comment was received which suggested that the first sentence of Section 2.070(3) should read as follows: If a complainant does not choose to pursue the informal complaint process, or if the complainant is not satisfied with the outcome of the informal complaint process, a formal complaint may be filed.

RESPONSE: Section (1) of the proposed rule clearly states that the complainant "has the option to file either an informal or a formal complaint." Therefore, the Commission finds that no changes are needed to this rule as a result of this comment.

COMMENT: One commenter proposed the following additional language be added to section (5): "The Commission secretary shall make available complaint forms and distribute the forms upon request to assist and simplify the filing of complaints."

RESPONSE: The Commission makes its complaint forms available to the general public upon request. The Commission will be revising its procedures in the near future to allow for electronic filing of some documents. Electronic filing may require that the Commission's forms be updated into a format which is compatible with its new system. Therefore, the Commission did not include these forms in this rule as they would have been cumbersome and would not easily have been revised or updated. No changes were made to this rule as a result of this comment.

COMMENT: One commenter filed a comment in support of the language of section (6) which requires notice before dismissing a complaint. The commenter supports this notice requirement because this allows the complainant an opportunity to present arguments as to why the complaint should not be dismissed.

RESPONSE: The Commission finds that no changes to this rule are necessary as a result of this comment.

COMMENT: One comment expressed support of section (9) which provides procedures for default and for setting aside the default. The commenter's remarks indicated that this would allow a complaint to proceed in a timely fashion even if a utility chooses to ignore the complaint or otherwise fails to respond.

RESPONSE: The Commission finds that no changes to this rule are necessary as a result of this comment.

COMMENT: One comment was received which recommended that the Commission adopt additional rules to provide for an expedited complaint resolution.

RESPONSE: The Commission has procedural rules that provide for motions for expedited treatment. Furthermore, the Commission finds that these suggested changes are very extensive and would amount to an entire new rule being promulgated without the benefit of public notice and comment. The Commission has procedures set out under 4 CSR 240-2.180(3) for parties to submit a petition for the promulgation of a new rule. Therefore, the Commission has determined that no changes will be made as a result of this comment.

**Title 4—DEPARTMENT OF ECONOMIC
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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:

4 CSR 240-2.075 Intervention is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2326). 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.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
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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 adopts a rule as follows:

4 CSR 240-2.075 Intervention 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 2326-2327). No changes were made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: One written comment was received regarding each of sections (2), (5) and (6). Two written comments were received regarding section (4).

COMMENT: A comment was received which proposed that a new subsection be added, or subsection (2) be amended to allow persons who request intervention immediate status as a party pending a ruling by the presiding officer. The commenter proposed the following new language: Rights of persons with pending motions to intervene. Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

RESPONSE: The Commission finds that no changes are necessary as a result of the comment. Intervention is not always a matter of right and therefore, the potential intervenors should not be given rights and burdens should not be placed on the parties to the case, until a determination regarding the request for intervention has been made. There are also provisions within the Commission's procedural rules for requests for expedited treatment, if a potential intervenor seeks expedited consideration.

COMMENT: One commenter suggests that in section (4) the phrase "The commission may on application permit any person to intervene" be changed to "The commission shall. . ." The commenter argues that if the required showing is made under subsection (4), that the intervenor should be granted intervention as a matter of right.

RESPONSE: Intervention is not always a matter of right, but is sometimes a discretionary function of the Commission. Therefore, the Commission finds that no changes are necessary to this rule as a result of the comment.

COMMENT: One comment was received in opposition to section (4). The commenter disagrees with requiring the applicant to show at the very early stages of the case that it may be adversely affected by a final order. Sprint states that this may preclude the participation of many parties which have an interest or which will have an interest as the case progresses because it is often not known when notice is first provided of the case precisely what issues will be addressed.

RESPONSE: The rule as proposed does not require that a potential intervenor show that it will be adversely affected by the final order of the Commission. The proposed rule requires only a showing that the potential intervenor "may be adversely affected." Therefore, the Commission determines that no changes to this rule are needed as a result of this comment.

COMMENT: One commenter suggested that section (5) should be amended to provide criteria for determining when a late intervention should be granted.

RESPONSE: The Commission has considered the criteria for determining when a late intervention should be granted as suggested in the comment. However, the Commission finds that the standard of "good cause" is sufficient. Therefore the Commission finds that no changes are needed to this rule as a result of this comment.

COMMENT: One written comment suggested that "the Commission adopt a[n] *amicus curiae* procedure like in the Missouri Rules of Civil Procedure 84.05(f)(2). The rule should provide for an application for *amicus curiae* to set out the reasons why the PSC should grant the party relief to file a brief. The application should include the nature of the party's interest and the facts or questions of law the party proposes to address." The commenter also stated that it supports the replacement of the "participant without intervention" as provided in the current rule with an "*amicus curiae*" as provided in the proposed rule.

RESPONSE: In the Commission's experience, the numbers of persons making application to participate without intervention have been relatively few. The Commission anticipates that there will be relatively few parties asking to enter cases as an *amicus curiae*, as well. Therefore, the Commission finds that the procedure as proposed in section (6) will provide sufficient information and the more strict standards of Civil Rule 84.05(f)(2) are not necessary. No changes to this rule were made as a result of this comment.

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DEVELOPMENT
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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:

4 CSR 240-2.080 Pleadings is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2327). 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.

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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 adopts a rule as follows:

4 CSR 240-2.080 is adopted.