

(14) The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

(15) Evidence for which a claim of confidentiality is made shall be filed in conformance with a protective order approved by the commission. Parties shall obtain a protective order prior to filing of documentary evidence, except as permitted otherwise by these rules.

(16) All testimony shall be taken under oath.

(17) All post-hearing exhibits shall be filed with the secretary of the commission in compliance with 4 CSR 240-2.080. Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.

AUTHORITY: section 386.410, RSMo 2000.* *Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002.*

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

State ex rel. Utility Consumers Council v. Public Service Commission, 562 SW2d 688 (Mo. App. 1978). *At a hearing on the issuance of a certificate of convenience and necessity, the commission denied appellant consumers council opportunity to cross-examine electric utility's witnesses on certain testimony regarding costs. The proprietary nature of the cost information involved does not protect it from cross-examination by consumers council, and denial of right to such cross-examination was improper.*

4 CSR 240-2.140 Briefs and Oral Arguments

PURPOSE: This rule sets forth the procedures for filing briefs and presenting oral arguments in any hearing.

(1) The commission or presiding officer shall determine whether the parties may file briefs or present oral argument, or both, in any case.

(2) Unless otherwise ordered by the commission or presiding officer, when briefs are to be filed in any case, the parties shall have twenty (20) days after the date on which the complete transcript of the hearing is filed to file their initial briefs. Unless otherwise ordered by the commission or presiding officer, the parties shall have ten (10) days after the filing of the initial briefs to file their reply briefs. When a reply brief is due ten (10) days after filing of initial briefs, the initial briefs shall be sent to all parties by overnight mail or hand-delivered on the day of filing or the next day.

(3) Unless otherwise ordered by the commission or presiding officer, the time allowed for oral argument shall be—

(A) For an applicant or complainant, thirty (30) minutes, which may be divided between the initial argument and reply argument, but no more than one-third (1/3) of the time shall be consumed by the reply argument; and

(B) For all other parties, a total of fifteen (15) minutes each.

(4) The commission may at its discretion order the parties to file suggested findings of fact, conclusions of law, and ordered paragraphs.

AUTHORITY: section 386.410, RSMo Supp. 1998.* *Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.150 Decisions of the Commission

PURPOSE: This rule prescribes the method of issuing commission orders and the effective date of such orders.

(1) The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.

(2) The commission's orders shall be in writing and shall be issued as soon as practicable after the record has been submitted for consideration.

(3) Every order of the commission shall be served by mailing a certified copy, with postage prepaid, to all parties of record.

(4) The commission may, at its discretion, issue a preliminary order and allow parties to provide responses to the preliminary order. The commission may then issue its order after reviewing the responses of the parties.

(5) As technology permits, and where the parties have provided their electronic mail address, the commission will attempt to issue an electronic copy of each order.

AUTHORITY: section 386.410, RSMo Supp. 1998.* *Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.*

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

Am. Petrol. Exchange v. Public Service Commission, 172 SW2d 952, transferred 238 Mo. App. 92, 176 SW2d 533 (Mo. 1943). *Commission has no power to declare or enforce any principle of law or equity. Commission cannot determine damages, award pecuniary relief or abate a nuisance.*

4 CSR 240-2.160 Rehearings and Reconsideration

PURPOSE: This rule prescribes the procedure for requesting a rehearing of a final order or a reconsideration of a procedural or interlocutory order of the commission and the disposition of that request.

(1) Applications for rehearing may be filed pursuant to statute.

(2) Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.

(3) The filing of a motion for reconsideration shall not excuse any party from complying

with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, unless otherwise ordered by the commission.

(4) The commission may correct its own orders *nunc pro tunc*.

AUTHORITY: section 386.410, RSMo Supp. 1998.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.170 Forms

(Rescinded April 30, 2000)

AUTHORITY: section 386.410, RSMo 1994. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded: Filed Aug. 24, 1999, effective April 30, 2000.

4 CSR 240-2.180 Rulemaking

PURPOSE: This rule provides a procedure for rulemaking, and petitioning for rulemaking, pursuant to Chapter 536, RSMo.

(1) Promulgation, amendment, or rescission of rules adopted by the commission in Division 240 of Title 4 may be proposed, adopted, and published by approval of the commission as provided by law.

(2) Promulgation, amendment, or rescission of rules may be instituted by the commission through an internally-generated rulemaking case, or pursuant to a rulemaking petition filed with the commission.

(3) Petitions for promulgation, amendment or rescission of rules shall be as follows:

(A) Each petition for promulgation, amendment, or rescission of rules made pursuant to Chapter 536, RSMo, shall be filed with the secretary of the commission in writing and shall include:

1. The name, street address, and mailing address of the petitioner;

2. One (1) of the following:

A. The full text of the rule sought to be promulgated, if no rule on the subject currently exists;

B. The full text of the rule sought to be amended, including the suggested amendments, if amendment of an existing rule is sought;

C. The full text of the existing rule and the full text of the rule proposed to replace the existing rule, if the proposed changes to the existing rule are so substantial as to make replacement of the existing rule more efficient than amendment thereof; or

D. The full text of the rule sought to be rescinded, if rescission of an existing rule is sought;

3. A statement of petitioner's reasons in support of the promulgation, amendment, or rescission of the rule, including a statement of all facts pertinent to petitioner's interest in the matter;

4. Citations of legal authority which authorize, support, or require the rulemaking action requested by the petition;

5. An estimation of the effect of the rulemaking on private persons or entities with respect to required expenditures of money or reductions in income, sufficient to form the basis of a fiscal note as required under Chapter 536, RSMo; and

6. A verification of the petition by the petitioner by oath; and

(B) The commission shall either deny the petition in writing, stating the reasons for its decision, or shall initiate rulemaking in accordance with Chapter 536, RSMo.

(4) When the commission decides to promulgate, amend, or rescind a rule, it shall issue a notice of proposed rulemaking for the secretary of state to publish in the *Missouri Register*. The notice of proposed rulemaking shall contain the following:

(A) Instructions for the submission of written comments by anyone wishing to file a statement in support of or in opposition to the proposed rulemaking, by a specific date which shall not be fewer than thirty (30) days after the publication date; or

(B) Instructions and notice for both a written comment period and hearing.

(5) Persons wishing to file comments or testify at the hearing need not be represented by counsel, but may be so represented if they choose.

(6) Hearings on rulemakings may be for commissioner questions or for the taking of initial or reply comments.

(7) Hearings for the taking of initial or reply comments on rulemakings shall proceed as follows:

(A) A commissioner or presiding officer shall conduct the hearing, which shall be transcribed by a reporter;

(B) Persons wishing to testify shall be sworn by oath;

(C) Persons testifying may give a statement in support of or in opposition to a proposed rulemaking. The commissioners or the presiding officer may question those persons testifying;

(D) Statements shall first be taken from those supporting a proposed rule, followed by statements from those opposing the rule, unless otherwise directed by the presiding officer; and

(E) Persons testifying may offer exhibits in support of their positions.

(8) Within ninety (90) days after the end of a written comment period or the end of a hearing on a rulemaking, the commission shall issue an order of rulemaking which shall be published in the *Missouri Register* by the secretary of state. The order of rulemaking shall briefly summarize the general nature of the comments or statements made during the comment period or hearing, shall contain the findings required by Chapter 536, RSMo and shall either—

(A) Adopt the proposed rule or proposed amendment as set forth in the notice of proposed rulemaking without further change;

(B) Adopt the proposed rule or proposed amendment with further changes;

(C) Adopt the proposed rescission of the existing rule; or

(D) Withdraw the proposed rule.

AUTHORITY: sections 386.040, 392.210, 392.240, 392.280, 392.290, 393.110, 393.140(3), (4), (6), (9), (11) and (12), 393.160, 393.220, 393.240, 393.290 and 394.160, RSMo 1994 and 386.250, 386.310, 386.410, 392.200, 392.220 and 392.330, RSMo Supp. 1998.* Original rule filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.

*Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 386.310, RSMo 1939, amended 1979, 1989, 1996; 386.410, RSMo 1939, amended 1947, 1977, 1996; 392.200, RSMo 1939, amended 1987, 1988, 1996; 392.210, RSMo 1939, amended 1984, 1987; 392.220, RSMo 1939, amended 1987, 1988, 1991, 1993, 1996; 392.240, RSMo 1939, amended 1987; 392.280, RSMo 1939, amended 1987, 1993; 392.290, RSMo 1939, amended 1986, 1987; 392.330, RSMo 1939, amended 1980, 1987, 1995; 393.110, RSMo 1939, amended 1967; 393.140, RSMo 1939, amended 1949, 1967; 393.160, RSMo 1939, amended 1949, 1984; 393.220,