

FILED
March 4, 2011
Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 12616
Date Printed: 3/2/2011
Rule Number: 4 CSR 240-2.070
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 3/2/2011
Date Submitted to Joint Committee on Administrative Rules: 3/2/2011

Name of Person to Contact with questions concerning this rule:

Content: Nancy Dippell

Phone: 1-4393

Email: nancy.dippell@psc.mo.gov

Fax:

RuleDataEntry:

Phone:

Email:

Fax:

Included with Rulemaking:

Cover Letter

3/02/2011

Affidavit for public cost

3/02/2011

Print

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Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.070

COPY

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-4393 FAX

Email address Nancy.dippell@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Commission, 9th Fl, Gov.Ofc Bldg, JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Amending Sections (1), (2), (3), and (14); adding (2); renumbering section (4), (6), (7), (8), (9), (10), (11), (12), and (13); and deleting (5).

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES



Commissioners

KEVIN GUNN
Chairman

ROBERT M. CLAYTON III

JEFF DAVIS

TERRY M. JARRETT

ROBERT S. KENNEY

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
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WESS A. HENDERSON
Executive Director

VACANT
Director, Administration and
Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

STEVEN C. REED
Secretary/General Counsel

KEVIN A. THOMPSON
Chief Staff Counsel

March 2, 2011

Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-2.070 Complaints

Dear Secretary Carnahan,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: section 386.410, RSMo 2000

If there are any questions regarding the content of this proposed rulemaking, please contact me at the address and number below.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Dippell". The signature is fluid and cursive, with the first name "Nancy" being more prominent than the last name "Dippell".

Nancy Dippell, Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4393
Nancy.dippell@psc.mo.gov

Enclosure

PUBLIC COST

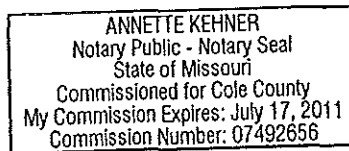
COUNTY OF COLE)

I, David Kerr, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-2.070, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

Department of Economic Development

Subscribed and sworn to before me this 18th day of Feb., 2011, I am
commissioned as a notary public within the County of Cole, State of
Missouri, and my commission expires on 17 July 2011

Notary Public



Title 4--DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240--Public Service Commission
Chapter 2--Practice and Procedure

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

4 CSR 240-2.070 Complaints The commission is amending sections (1), (2), (3), and (14), adding a new section (2), renumbering sections (4), (6), (7), (8), (9), (10), (11), (12), and (13), and deleting section (5).

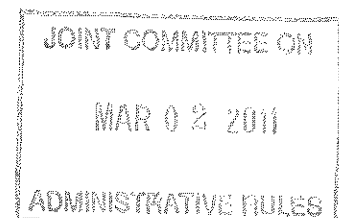
PURPOSE: Section (1) is being amended to reflect the current organizational structure of the commission and to clarify the language. Section (2) is being amended to clarify that an informal complaint does not have to be filed before a formal complaint may be filed but that the presiding officer may require it, to point complainants to other relevant sections of the rules, and to remove an incorrect phone number for the hearing impaired. The remaining changes to the rule are to reorganize its provisions for clarity.

(1) *[The commission on its own motion, the commission staff through the general counsel, the office of the public counsel, or a]*Any person or public utility who feels aggrieved by an **alleged** violation of any statute, rule, order or decision within the commission's jurisdiction may file a complaint. *[The aggrieved party, or complainant, has the option to file either an informal or a formal complaint.]* **A complaint may also be filed by the commission on its own motion, the commission staff through the staff counsel, or the office of the public counsel.**

(2) A person who feels aggrieved by an alleged violation of any statute, rule, order, or decision within the commission's jurisdiction may file an informal complaint with the commission's consumer services department, or file either a formal complaint or small formal complaint with the commission. Filing an informal complaint is not a prerequisite to filing a formal or small formal complaint; however, the presiding officer may direct that a pro se complainant be required to go through the informal complaint procedure before the formal complaint will be heard by the commission. If an allegedly aggrieved person initially files an informal complaint and is not satisfied with the outcome, such person may also file a formal or small formal complaint.

([2]3) Informal Complaints. **The protections and processes of an informal complaint regarding service or billing practices are set out in 4 CSR 240-13.** To file an informal complaint, the complainant shall state, either in writing, by telephone (consumer services hotline 1-800-392-4211, or *[TDD hotline 1-800-829-7541]* **Relay Missouri at 711**), or in person at the commission's offices--

([3]4) Formal Complaints. *[If a complainant is not satisfied with the outcome of the informal complaint, a formal complaint may be filed.]***A [F]ormal complaint may be made**



by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation or public utility, including any rule or charge established or fixed by or for any person, corporation or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. **The formal complaint shall contain the following information:**

(A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;

(B) The signature, telephone number, facsimile number and electronic mail address, of each complainant or their legal representative, where applicable;

(C) The name and address of the person, corporation or public utility against whom the complaint is being filed;

(D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(E) The relief requested;

(F) A statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made;

(G) The jurisdiction of the commission over the subject matter of the complaint; and

(H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

(5) [However, n]No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer or telephone service as provided by law. Any public utility has the right to file a formal complaint on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

[(4)6] The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

[(5) The formal complaint shall contain the following information:

(A) The name, street address, signature, telephone number, facsimile number and electronic mail address, where applicable, of each complainant and, if different, the address where the subject utility service was rendered;

(B) The name and address of the person, corporation or public utility against whom the complaint is being filed;

(C) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(D) The relief requested;

(E) A statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made;

- (F) The jurisdiction of the commission over the subject matter of the complaint; and*
(G) If the complainant is an association, a list of all its members.]

([6]7) The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted or failure to comply with any provision of these rules or an order of the commission, or may strike irrelevant allegations.

([7]8) Upon the filing of a complaint in compliance with these rules, the secretary of the commission shall serve by certified mail, postage prepaid, a copy of the complaint upon the person, corporation or public utility against whom the complaint has been filed, which shall be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice.

([8]9) The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground.

([9]10) If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause.

([10]11) The commission may order, at any time after the filing of a complaint, an investigation by its staff as to the cause of the complaint. The staff shall file a report of its findings with the commission and all parties to the complaint case. The investigative report shall not be made public unless released in accordance with sections 386.480, 392.210(2) or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

([11]12) When the commission determines that a hearing should be held, the commission shall fix the time and place of the hearing. The commission shall serve notice upon the affected person, corporation or public utility not fewer than ten (10) days before the time set for the hearing, unless the commission finds the public necessity requires that the hearing be held at an earlier date.

([12]13) All matters upon which a complaint may be founded may be joined in one (1) hearing and no motion for dismissal shall be entertained against a complainant for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties.

(~~13~~14) When an order is rendered disposing of a case, the regulatory law judge shall cause the parties to be notified that the order will be final unless an application for rehearing is filed within the allotted number of days and provide information regarding the rehearing and appeal process.

(~~14~~15) Small Formal Complaint Case. If[, *after complying with the informal complaint process established by section (2) of this rule,*] a customer of a utility files a formal complaint regarding any dispute involving less than three thousand dollars (\$3,000), the process set forth in this section shall be followed for such complaints. The provisions of sections (1)-(~~13~~4) of this rule shall also apply to such complaints unless they directly conflict with the provisions of this section, in which case the provisions of this section shall apply.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. 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. Amended: Filed _____ effective ____.*

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

PUBLIC ENTITY COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Small Business Regulatory Fairness Board

Small Business Impact Statement

Date: 1-27-11

Rule Number: 4 CSR 240-2.070 Complaints

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Nancy Dippell

Phone Number: 573-751-4393 Email: nancy.dippell@psc.mo.gov

Name of Person Approving Statement: Morris Woodruff, Chief Regulatory Law Judge, Public Service Commission

Please describe the methods your agency considered or used to reduce the impact on small businesses: This rule is being amended to reflect the new organizational structure of the Commission's General Counsel's Office, to clarify that a formal complaint may be filed even if no informal complaint was filed, and to reorganize the rule for greater clarity. These changes should make it easier for individuals and small businesses to understand the complaint process at the Commission.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The Commission made these changes based on its experience with and comments from the current complaint process and how individuals and businesses are able to utilize the process. The Commission held a roundtable discussion on November 30, 2010, and invited the public to comment informally on the draft of the proposed rules. The Commission subsequently incorporated some changes from that roundtable into the rules for clarity and ease of use.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

No fees will be imposed or collected as a result of these amendments.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

This is a procedural rule which explains the complaint process at the Commission. No requirements are placed on small businesses through this rule,

but the amendments will make it easier for small businesses to understand and utilize the complaint process at the Commission.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

There are no costs created by these amendments.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

The amendments will make it easier for individual and businesses to understand and utilize the complaint process at the Commission.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No_X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.