

FILED  
March 4, 2011  
Data Center  
Missouri Public  
Service Commission



**Robin Carnahan**  
Secretary of State

**Administrative Rules Division  
Rulemaking Transmittal Receipt**

Rule ID: 12607  
Date Printed: 3/2/2011  
Rule Number: 4 CSR 240-2.110  
Rulemaking Type: Proposed Amendment  
Date Submitted to Administrative Rules Division: 3/2/2011  
Date Submitted to Joint Committee on Administrative Rules: 3/2/2011

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Name of Person to Contact with questions concerning this rule:

Content: Nancy Dippell

Phone: 1-4393

Email: Nancy.dippell@psc.mo.gov

Fax: na

RuleDataEntry:

Phone:

Email:

Fax:

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Included with Rulemaking:

Cover Letter

3/02/2011

Affidavit for public cost

3/02/2011

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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 240-2.110

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, 9<sup>th</sup> 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 (4), (5), (6), (7), and (8).

### Small Business Regulatory Fairness Board (DED) Stamp

SMALL BUSINESS  
REGULATORY FAIRNESS BOARD

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### JCAR Stamp

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)  
<http://www.psc.mo.gov>

**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 240-2.110 Hearings

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.

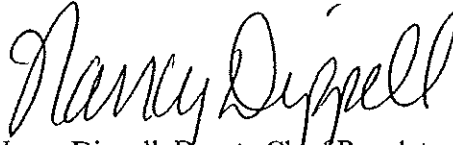
The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 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 that reads "Nancy Dippell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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

**AFFIDAVIT**

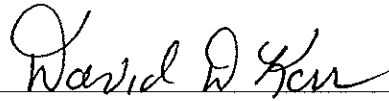
**PUBLIC COST**

STATE OF MISSOURI )

)

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 240-2.110, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

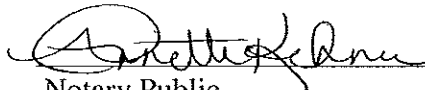


David Kerr

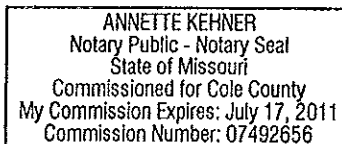
Director

Department of Economic Development

Subscribed and sworn to before me this 18<sup>th</sup> 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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PROPOSED AMENDMENT

SECRETARY OF STATE  
ADMINISTRATIVE RULES

**4 CSR 240-2.110 Hearings** The commission is amending sections (4), (5), (6), (7), and (8).

*PURPOSE: This rule is being amended give broader authority to the presiding officer in handling procedural matters, to reflect the current organizational structure of the commission, to specifically state that a court reporter may be used in proceedings other than a formal hearing, to simplify the procedure for correcting a transcript, and make other non-substantive clarifications and cosmetic changes to the rule.*

(4) *[The presiding officer may limit the number of witnesses, exhibits, or the time for testimony including limitations consistent with the application of the rules of evidence.]* **The presiding officer shall establish a procedural schedule through one or more procedural orders in which the hearing and conference dates are set, date for filing testimony and pleadings are set, and any other applicable parameters are established concerning the order of witnesses, exhibits, or the time for testimony.**

(5) The order of procedure in hearings shall be as follows, unless otherwise agreed to by the parties or ordered by the presiding officer:

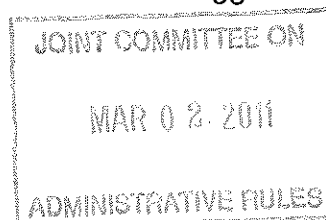
(A) In all cases except investigation cases, the applicant or complainant shall open and close, with intervenors following the general counsel, **or his designee**, and the public counsel in introducing evidence; **and**

(B) In investigation cases, the general counsel, or his designee, shall open and close; **and**

(C) *In rate cases, the general counsel shall be given the first opportunity to cross-examine].*

(6) A reporter appointed by the commission shall make a full and complete record of *[all cases and testimony in any formal hearing]* **the entire proceeding in any formal hearing or other hearing or proceeding at which the commission determines reporting is appropriate.**

(7) Suggested corrections to the transcript of record shall be offered within ten (10) days after the transcript is filed except for good cause shown. The suggestions shall be in writing and shall be *[served upon the presiding officer and each party]* **filed in the official commission file.** Objections to proposed corrections shall be made in writing within ten (10) days after the filing of the suggestions. The commission shall determine what changes, if any, shall be made in the record after a review of the suggested corrections and any objections.



(8) A party may request that the commission reopen ~~[a case]~~**the record** for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing ~~[with the secretary of the commission a petition]~~**a motion** to reopen the record for the taking of additional evidence~~[in accordance with these rules, and serving the petition on all other parties]~~. The ~~[petition]~~**motion** shall ~~[specify the facts which allegedly constitute grounds in]~~**assert the justification[,] for taking additional evidence** including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

*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 Sept. 6, 1985, effective Dec. 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed \_\_\_\_\_.*

*\*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 240-2.110 Hearings**

**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 make it more clear, to eliminate unnecessary service and copies, and to reflect the current organizational structure of the Commission. Each of these changes should make the rule less cumbersome and easier to understand by small businesses who participate in cases before the Commission.

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

The Commission relied on its experience with applying this rule in hearings before it and is making changes to clarify this rule based on that experience. 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.**

There are no monetary costs to any agency associated with this rule. There are no fees associated with this rule. Agencies that appear before the Commission (such as the Department of Natural Resources and the Office of the Attorney General on behalf of the State of Missouri) will benefit from the simpler and less cumbersome filing requirements for correcting a transcript.



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

Any small utility or other small business that appears before the Commission will need to comply with this procedural rule if they need to correct a transcript or request that a record be reopened.

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

There are no costs associated with this procedural rule amendment.

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

There are no costs associated with compliance with this amendment. Any small utility or other small business that appears before the Commission will need to comply with this procedure if they need to correct a transcript or request that a record be reopened, and they will benefit from the simpler procedure established in this rule.

**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.*