

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Rulemaking)	
to Amend 4 CSR 240-2 Practice and)	Case No. AX-2011-0094
Procedure Requirements)	

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

The Office of the Public Counsel offers the following comments on the Proposed Rules:

1. 4 CSR 240-2.010(21) provides that, for “administrative purposes only, the staff counsel’s office is considered part of the general counsel’s office and the chief staff counsel reports to the general counsel.” The commission’s administrative structure should provide for administration of staff counsel independent of general counsel in order to promote autonomy of staff counsel. Moreover, although 4 CSR 240-2.010(21) refers to the “advocacy functions” of the staff counsel’s office and the staff counsel’s office’s representation of “the staff,” neither “the staff” nor the purpose of the advocacy function are defined.

2. 4 CSR 240-2.030 deletes the phrase “official documents, pleadings, transcripts, briefs, and orders filed with the commission.” This phrase should be retained because it provides utility consumers with information about the types of information available from the commission.

3. 4 CSR 240-2.040(4) refers in the second sentence to “such application,” but there is no longer any antecedent for that reference.

4. 4 CSR 240-2.060(3) replaces the term “the purchaser” with “a necessary party.” Both should be included (“the purchaser and any other necessary party”) to avoid arguments that a purchaser is not a necessary party.

5. 4 CSR 240-2.070(1) should be changed to add “tariff” to the list of what a complaint can allege has been violated.

6. 4 CSR 240-2.070(2) should not allow a presiding office the discretion to force a complainant to go through the informal complaint process as a prerequisite to getting the formal complaint heard by the commission.

7. 4 CSR 240-2.070(4)(G) should not require a pro se complainant acting without counsel to provide “the jurisdiction of the commission over the subject matter of the complaint.”

8. 4 CSR 240-2.070(15) implies that there are known conflicts between sections 4 CSR 240-2.070(1) through 4 CSR 240-2.070(14) and section 4 CSR 240-2.070(15). If there are such conflicts, they should be specifically addressed. If there are none, the second sentence in 2.070(15) is unnecessary.

9. In at least two recent cases, the Missouri Energy Development Association has filed (in cases in which it was not a party) pleadings and suggestions that were not the typical post-hearing brief that 4 CSR 240-2.075(11) appears to address. 4 CSR 240-2.075(11) should clarify that it applies only to post-hearing or pre-hearing briefs. If the Commission intends to allow other types of filings by non-parties, it should add a section that specifically addresses the circumstances under which such filings are allowed.

10. 4 CSR 240-2.080(9) should read “Electronic Filing and Information System” rather than “Electronic Information and Filing System.”

11. 4 CSR 240-2.080(14) italicizes the language “(B) The harm that will be avoided, or the benefit that will accrue, incl...” If the italicization is intended to indicate that that portion of the rule will be deleted, then the resulting rule would make no sense.

12. 4 CSR 240-2.080(16) has no text except for the heading “Methods of Service.”

13. 4 CSR 240-2.110(4) appears to limit what “other applicable parameters” can be established in a procedural order to “order of witnesses, exhibits, or the time for testimony.” These other parameters should be expanded to include parameters regarding discovery, which is routinely included in procedural orders. It should also be expanded to include other parameters as determined necessary by the presiding officer or agreed to by the parties.

14. 4 CSR 240-2.110(5)(A) and (B) refer to “general counsel” but should refer to “staff counsel.”

15. 4 CSR 240.2.125 currently limits the purpose of mediation to “identifying the issues and attempting a resolution,” and the proposed rule would no longer include this as the purpose of mediation. The rule should maintain the purpose of mediation, or at a minimum, make it clear that mediation is a non-binding attempt to resolve the case.

16. 4 CSR 240-2.130(8) states that a report must be filed in compliance with the “filing requirements set forth above.” The specific sections and subsections should be referenced; “set forth above” is too vague. If it means the seven previous subsections in 4 CSR 240-2.130, it should simply say so.

17. 4 CSR 240-2.130(8) requires that any report be filed electronically. This requirement may be problematic for *pro se* complainants, and it may preclude the inclusion of documents that cannot easily be reproduced electronically. This requirement also appears

inconsistent with the requirement in 4 CSR 240-2.180(2) that rulemaking petitions must be filed in writing.

18. 4 CSR 240-2.135(2) does not appear to add anything to the current 4 CSR 240-2.135. Under what circumstances would a protective order, which provides the same protection as the rule, be necessary?

19. Several recent cases have presented questions concerning the ability of a natural person representing himself or herself to access Proprietary or Highly Confidential information. 4 CSR 240-2.135(4) and (5) should be clarified to provide that a non-attorney who is a party to a case has the same access to Proprietary and Highly Confidential information as do attorneys representing other parties.

20. 4 CSR 240-2.140(2) addresses initial briefs and 4 CSR 240-2.140(3) addresses reply briefs, but the word “initial” has been deleted from 4 CSR 240-2.140(2).

21. 4 CSR 240-2.180(2) uses the phrase “in writing” which apparently precludes the electronic filing of rulemaking petitions. The rule should be clarified to specifically allow for electronic filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 16th day of May 2011.

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