

**T**his section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

**T**he agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing 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 2000, the commission amends a rule as follows:

4 CSR 240-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1039-1040). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. One (1) written comment was received and no one testified with regard to this rule at the hearing.

**COMMENT:** Lewis Mills, on behalf of the Office of the Public Counsel, commented that the commission's administrative structure should provide for administration of staff counsel independent of the general counsel. He also stated that although section (21) refers to the "advocacy functions" of the staff counsel's office and the representation of "the staff," the rule does not define "staff" nor does it define the purpose of the advocacy function.

**RESPONSE AND EXPLANATION OF CHANGE:** In order to sep-

arate the attorneys representing the commission staff from the commission for purposes of avoiding *ex parte* contacts on substantive matters before the commission, the office of the staff counsel was created by the commission. In addition, the commission amended this rule to provide that separation formally. The commission determined in that reorganization that its general counsel should be responsible for the administrative functions of the staff counsel's office. Because this was an administrative function of the commission, the organizational structure and job duties of the commission staff do not need to be set out as a rule, and the commission declines to do so any further than is needed for informational purposes. Further, "commission staff" is defined in section (5) and the "advocacy functions" mentioned in section (21) are generally defined as the representation of staff in proceedings before the commission. For consistency, however, the commission will change "staff of the commission" to "commission staff" in section (21).

### 4 CSR 240-2.010 Definitions

(21) Staff counsel means any attorney employed to represent the commission staff in proceedings before the commission. 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. However, the staff counsel's office performs its advocacy functions independently, under the direction of the chief staff counsel in consultation with the executive director and the directors of the operations and utility services divisions.

## 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 2000, the commission adopts a rule as follows:

### 4 CSR 240-2.025 Commission Address and Business Hours is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1041). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended May 16, 2011, and a public hearing was held on May 19, 2011. No comments were received.

## 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 sections 386.300 and 386.410, RSMo 2000, the commission amends a rule as follows:



4 CSR 240-2.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1041-1043). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. The commission received one (1) written comment on the rule.

**COMMENT:** Lewis Mills with the Office of the Public Counsel commented that the types of documents that may be requested should remain in the rule for informational purposes.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees that a list of some of the documents that can be requested may be helpful to the general public. The commission adds that information back into section (2).

#### 4 CSR 240-2.030 Records of the Commission

(2) Copies of public records (for example, official documents, pleadings, transcripts, briefs, and orders) may be requested from the secretary of the commission. Any such request shall be made in writing.

### 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 2000, the commission amends a rule as follows:

4 CSR 240-2.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1044). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments about the rule were received.

**COMMENTS:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments. Lewis Mills, on behalf of the Office of the Public Counsel, also filed written comments. The commenters pointed out an error in the second sentence of section (4). That sentence still refers to "such application" even though the commission removed the requirement for an application.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission will correct the error in section (4).

#### 4 CSR 240-2.040 Practice Before the Commission

(4) An eligible law student certified under Missouri Supreme Court Rule 13 may appear before the commission as an attorney. The student must comply with any applicable rules or statutes.

### 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 2000, the commission rescinds a rule as follows:

4 CSR 240-2.045 Electronic Filing is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1044). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended May 16, 2011, and a public hearing was held on May 19, 2011. No comments were received.

### 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 2000, the commission amends a rule as follows:

4 CSR 240-2.050 Computation of Time is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1045). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended May 16, 2011, and a public hearing was held on May 19, 2011. No comments were received.

### 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 sections 386.250 and 386.410, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-2.060 is amended.



A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1045-1046). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. One (1) written comment was received.

**COMMENT:** Lewis Mills, on behalf of the Office of the Public Counsel, commented that the term "purchaser" should be kept in the rule in order to avoid any arguments that a purchaser is not a necessary party.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission will add the term "purchaser" back in to section (3) to avoid any misinterpretations.

#### 4 CSR 240-2.060 Applications

(3) If the purchaser or any other necessary party to a transaction for which approval is sought under the provisions of 4 CSR 240-3.110, 4 CSR 240-3.115, 4 CSR 240-3.210, 4 CSR 240-3.215, 4 CSR 240-3.310, 4 CSR 240-3.315, 4 CSR 240-3.405, 4 CSR 240-3.410, 4 CSR 240-3.520, 4 CSR 240-3.525, 4 CSR 240-3.605, or 4 CSR 240-3.610 is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the transaction, the purchaser or other necessary party must comply with these rules.

### 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 sections 386.250 and 386.410, RSMo 2000, and section 392.420, RSMo Supp. 2010, the commission adopts a rule as follows:

4 CSR 240-2.062 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1046-1050). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed rule was held May 19, 2011, and the public comment period ended May 16, 2011. One (1) written comment was received.

**COMMENT:** The staff of the commission submitted a comment with suggestions for amending this rule. Staff suggested that section (1) and section (2) should be amended to give telecommunications companies specific instructions for how to make their filings under this rule. In addition, staff recommended adding a statement to sections (1), (2), and (3) which would require an affirmative statement that the companies had reviewed their contact information on file with the commission. Staff also recommended that section (2) be amended to reflect that for certain types of companies no notice is required and a clarification to section (3) regarding when notice is required. Staff suggested that subsection (3)(B) should be deleted as that form is not used for name changes. And finally, staff recommended that section (4) be deleted because it is confusing. Staff attached a draft of the

rule with its suggested changes including changes to the title of the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with most of staff's suggestions and will make changes to the title of the rule, section (1), subsection (1)(C), section (2) and section (3). The commission will also add subsection (1)(E), create a new section (3), and renumber section (4) to reflect these changes. The commission disagrees with staff's changes to the rule which would require name changes to only be filed in the electronic filing and information system (EFIS). First, the commission will leave the ability to file by submitting the required information in paper at the commission's offices. Second, because technology changes rapidly and internal procedures utilizing that technology may also change it is not the best practice to require a specific method of electronic filing for a name change. The most important goal of this rule is for the commission to get notice that the companies have changed their name. Thus, the commission declines to make those specific changes. Finally, the commission will not delete section (4) as many filings at the commission specifically require an attorney under the rules. Therefore, it is less confusing to state that it is the commission's interpretation that an attorney is not required to submit these notices.

#### 4 CSR 240-2.062 Required and Permitted Notices for Telecommunications Companies and VoIP or Video Service Providers that Reorganize or Change Names

(1) A telecommunications company that changes its name shall notify the commission of its name change. The notice shall include:

(C) A copy of the notice sent to customers to inform them of the name change before or with the next bill after any name change;

(D) An adoption notice and revised tariff title sheet reflecting the new name, to be effective ten (10) days after the filing thereof. The adoption notice shall be substantially as follows: "The (name of telecommunications company) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed by it, all tariffs filed with the Public Service Commission, State of Missouri, by the (name of telecommunications company) prior to (date)."; and

(E) A statement that the company has reviewed its contacts in the electronic filing and information system (EFIS) and that they have been updated to reflect the reorganization.

(2) A telecommunications company that reorganizes in such a way that its name, certificate(s), and tariff(s) remain unchanged is under no obligation to notify the commission of the reorganization. A telecommunications company that reorganizes through a merger, asset sale, etc. may notify the commission of the mechanics of the reorganization by submitting a written notice either in paper form or as a non-case related filing in EFIS and indicating that the matter is a merger or reorganization.

(3) Notwithstanding section (2) above, notification is mandatory in the following instances:

(A) If the company changes its name or adopts a fictitious name, it shall provide all of the information required in section (1) above;

(B) If the reorganized company will no longer need any certificates or tariffs, it shall request that the commission cancel them; and

(C) If notice is required under subsections (3)(A) or (3)(B), it shall be accompanied by a statement that the company has reviewed its contacts in EFIS and that they have been updated to reflect the reorganization.

(4) A provider of video service or interconnected voice over Internet protocol (VoIP) service that changes its name shall notify the commission of that change. Notice may be made by one (1) of the following methods:

(A) Notify the commission as set forth in section (1) above; or

(B) Submit a revised application form and a statement that the



company has reviewed its contacts in EFIS and that they have been updated to reflect the reorganization.

(5) Notwithstanding any other provision of Chapter 2 and Chapter 3 of these rules, items required by this rule may be submitted by a nonattorney.

#### **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 2000, the commission amends a rule as follows:

#### **4 CSR 240-2.065 Tariff Filings Which Create Cases is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1051). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended May 16, 2011, and a public hearing was held on May 19, 2011. No comments were received.

#### **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 2000, the commission amends a rule as follows:

#### **4 CSR 240-2.070 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1051-1053). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and two (2) people gave testimony at the public hearing.

COMMENT #1: Colleen Dale, on behalf of the staff of the commission, made a general comment that there should be a cross-reference to the regulations in 4 CSR 240-4 which require a notice to be filed at least sixty (60) days before a contested case is filed. Brian McCartney, on behalf of the law firm of Brydon Swearingen & England, P.C., responded at the hearing that his firm does not believe that the sixty (60)-day notice applies to complaints.

RESPONSE: Complainants, like any other party appearing before the commission, are required to comply with the commission's rules and the commission cannot include a cross-reference that will

accommodate every possible situation. The complainants may read 4 CSR 240-4 and determine if those regulations apply. Therefore, the commission makes no change as a result of this comment.

COMMENT #2: Lewis Mills, on behalf of the Office of the Public Counsel, commented that tariffs should be added to the list of what a complaint may allege has been violated.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees and will include tariffs in sections (1) and (2).

COMMENT #3: Lewis Mills, on behalf of the Office of the Public Counsel, commented that the presiding officer should not have the discretion to compel a complainant to go through the informal complaint process. Rick Zucker, on behalf of Laclede Gas Company, disagreed with Mr. Mills at the hearing and indicated this provision in the rule should stay. Mr. Zucker commented that allowing the presiding officer to have this additional discretion does not keep the complaint from going through the formal process. The discretion may, however, allow for a more efficient use of resources for the parties and the commission.

RESPONSE: The commission agrees with Mr. Zucker. No change was made as a result of this comment.

COMMENT #4: Lewis Mills, on behalf of the Office of the Public Counsel, commented that in his opinion a *pro se* complainant should not have to provide a jurisdictional statement as required in subsection (4)(G).

RESPONSE: This requirement has been a part of the regulation for many years. The commission is not aware of any problems that have arisen with regard to a *pro se* complainant being able to meet this requirement or having a complaint dismissed for failure to meet this requirement. Thus, the commission finds no reason to change the rule at this time and makes no change as a result of this comment.

COMMENT #5: Lewis Mills, on behalf of the Office of the Public Counsel, commented that newly numbered section (15) should specifically refer to any conflicts in other portions of the rule or should be deleted as being unnecessary.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Mr. Mills. That provision of the rule was originally included as a catch-all when the rule had significant changes. The other provisions of the rule, however, do not appear to result in a conflict. Therefore, the commission will amend section (15).

#### **4 CSR 240-2.070 Complaints**

(1) Any person or public utility who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction may file a 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 tariff, 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.

(15) Small Formal Complaint Case. If 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)–(14) of this rule shall also apply to small formal complaints.

**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 2000, the commission amends a rule as follows:

**4 CSR 240-2.075 Intervention is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1053–1054). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and two (2) commenters testified at the public hearing.

**COMMENT #1:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments. They commented that they were in favor of the changes to this rule requiring an intervention request being made as a motion rather than an application. **RESPONSE:** No change was made as a result of this comment.

**COMMENT #2:** Lewis Mills, on behalf of the Office of the Public Counsel, commented in writing and again at the hearing that section (11) should be clarified to state that it applies to only post-hearing or pre-hearing briefs and not to other types of filings. Mr. Mills also stated it should be the exception to the rule for non-parties to make filings in a case.

Rick Zucker, on behalf of Laclede Gas Company, responded at the hearing that there are situations other than post-hearing briefs where non-parties may want to make a filing and where the commission may be interested in what a non-party has to say about the particular situation (for example, jurisdictional questions, motions for summary determination, and motions to dismiss). Mr. Zucker stated that the commission should not limit *amicus* briefs to the time surrounding the hearing. Mr. Zucker also stated that the rule currently does not allow for the filing of other pleadings and that it should not be changed.

**RESPONSE:** The commission agrees with Mr. Mills that a non-party filing a pleading should not be a regular occurrence, but rather an unusual event. That is precisely why the rule contains a requirement that such a non-party seek permission to file a “brief.” The rule, however, does not need clarification. It clearly states that a non-party may request permission to file a brief. That brief may be filed, with permission of the commission, at any time prior to the filing of “initial briefs.” Thus, there is no reason that a non-party cannot request permission to file an *amicus curiae* brief to express its opinion regarding a motion to dismiss, a motion for summary determination, or other jurisdictional or legal question. If the non-party has an interest in the matter, then it may be appropriate for the non-party to seek intervention under the other sections of the rule in order to file pleadings in the matter. The commission makes no changes as a result of these comments.

**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 2000, the commission amends a rule as follows:

**4 CSR 240-2.080 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1054–1056). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and one (1) comment was made at the public hearing.

**COMMENT #1:** Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment pointing out an error in section (9), italic font in subsection (14)(B) that appeared to be in error, and missing text under the heading “Methods of Service” in section (16). **RESPONSE AND EXPLANATION OF CHANGE:** With regard to subsection (14)(B), that error was corrected before publication by the editors in the administrative rules division of the secretary of state’s office. Likewise the text that was not included in the version sent for publication was added by the editors prior to publication. No changes to the rule text were made except to change the words “electronic mail” to “email.” Thus, the commission makes no change to section (9) or subsection (14)(B) as a result of this comment. The commission will correct the error in section (9) so that it refers to the “electronic filing and information system.”

**COMMENT #2:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, filed joint written comments and Mr. Zucker commented at the hearing. The commenters requested that section (9) be further clarified so that documents filed electronically will be deemed filed on the date received in the electronic filing and information system (EFIS) so long as the filing is made prior to midnight. **RESPONSE AND EXPLANATION OF CHANGE:** Mr. Zucker and Ms. Tatro’s interpretation of the date of filing is correct, and the commission will further clarify section (9).

**4 CSR 240-2.080 Pleadings, Filing, and Service**

(9) Any document’s filing date shall be the date and time the document is physically or electronically stamped as filed by the secretary of the commission. Documents physically received in the commission’s data center during regular business hours shall be stamped on the date received. Documents physically received in the commission’s data center after regular business hours shall be stamped the next day that the commission has regular business hours. Documents submitted electronically to the commission’s electronic filing and information system (EFIS) will be stamped filed on the date and time the document is received in EFIS and will be deemed filed on that date and time.

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**ORDER OF RULEMAKING**



By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo 2000, the commission rescinds a rule as follows:

**4 CSR 240-2.085 Protective Orders is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1056-1057). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended May 16, 2011, and a public hearing was held on May 19, 2011. No comments were received.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-2.110 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1057-1058). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and no one testified at the hearing regarding this rule.

**COMMENT #1:** Lewis Mills, on behalf of the Office of the Public Counsel, commented that section (4) should be expanded to include other discovery parameters that are commonly included in procedural orders. Mr. Mills also commented that section (5) should refer to staff counsel instead of the general counsel.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with Mr. Mills's comments and will amend section (4) and section (5).

**COMMENT #2:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, commented that section (5) should refer to staff counsel instead of the general counsel. Mr. Zucker and Ms. Tatro also commented that section (6) appears to make the use of a court reporter optional, and they made a suggestion for clarifying that provision.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with the proposed changes suggested and will make those amendments to the rule.

**4 CSR 240-2.110 Hearings**

(4) The presiding officer shall establish a procedural schedule through one (1) 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 procedural parameters are established as determined necessary by the presiding officer or agreed to by the parties.

(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 staff counsel, or his designee, and the public counsel in introducing evidence; and

(B) In investigation cases, the staff counsel, or his designee, shall open and close.

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

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-2.116 Dismissal is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1058). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. One (1) written comment was received and two (2) people testified at the public hearing.

**COMMENT:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments and Mr. Zucker testified at the hearing. Mr. Zucker and Ms. Tatro commented that section (1) should be amended to allow the applicant or complainant to voluntarily dismiss a case up to ten (10) days before the hearing is scheduled without the permission of the commission similar to the way the practice is done in the courts. In addition, only the consent of all parties who have filed written testimony should be required for voluntary dismissal.

Lewis Mills, on behalf of the Office of the Public Counsel, responded to the company comments at the hearing. Mr. Mills stated that there are distinctions between issues before the commission and issues before the courts. Thus, it may be that the rules for voluntary dismissal should remain different. Further, Mr. Mills stated that it is not burdensome to get the commission's permission for withdrawal.

**RESPONSE:** The commission's jurisdiction is different than that before a court because the commission must often determine what is in the public interest rather than the rights of the parties before it. Thus, the procedures the commission uses are often different than those used at the court. In a commission proceeding, by the time written testimony is filed considerable resources have been expended



by the commission and its staff, the public counsel, and the other parties. The same is true even if those parties have not filed or presented testimony. In addition, there may be broader public interest issues that the commission will want to pursue even if the applicant or complainant does not. Further, the applicant or complainant may always ask for permission to dismiss the case, and this is not a significant burden. Therefore, the commission disagrees with the suggestions of Ameren and Laclede and makes no changes as a result of these comments.

**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 2000, the commission amends a rule as follows:

**4 CSR 240-2.125 Procedures for Alternative Dispute Resolution  
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1058-1059). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. One (1) written comment was received.

**COMMENT:** Lewis Mills, on behalf of the Office of the Public Counsel, commented that the rule should maintain the purpose of the mediation or at least "make it clear that mediation is a non-binding attempt to resolve the case."

**RESPONSE:** The language stating a specific purpose of the mediation was removed so as not to limit the scope of the mediation. In order to have a successful mediation, the mediator may need to have a broader purpose than that set out in the rule. In addition, the purpose of the mediation may be different than simply resolving the case (for example, agreeing to certain facts to resolve only one (1) issue of a case) and may end up in a binding agreement. Thus, the definition suggested by public counsel is not completely accurate. Further, the mediation process is not necessarily standardized so that it can be defined by rule. The commission attempts to educate the parties to a case about the mediation process before and during that process. The commission determines that it is not necessary to further clarify this rule. No changes were made as a result of this comment.

**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 2000, the commission amends a rule as follows:

**4 CSR 240-2.130 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1059-1060). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and one (1) person testified at the hearing.

**COMMENT #1:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments, and Bryan McCartney, on behalf of Ameren Missouri, testified at the hearing. The companies recommend adding "and with complete and comprehensive detail" to section (8).

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with the companies and will make the suggested change.

**COMMENT #2:** Lewis Mills, on behalf of the Office of the Public Counsel, filed written comments suggesting that the reference in section (8) to "filing requirements" be made more specific. Mr. Mills also suggested that the requirement in section (8) to file a report electronically may be difficult for *pro se* parties and may be difficult for some items which are not easily produced electronically.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with Mr. Mills's suggestions and will make changes to section (8) to specify the filing requirements and allow reports to be filed in paper form.

**4 CSR 240-2.130 Evidence**

(8) Except as set out in this section, the prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness's oath. In lieu of prepared direct testimony, any party may file a report that presents in narrative form, and with complete and comprehensive detail, the analysis and conclusions of one (1) or more expert witness(es) and the facts and information on which they relied. In any report, the contributing expert witnesses shall be listed together with an indication of the portion or portions of the report to which each contributed. The qualifications of each contributing expert witness shall be attached to the report as a schedule. Any such report shall comply with the commission's requirements in sections (6) and (7).

**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 sections 386.040 and 386.410, RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-2.135 Confidential Information is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1060-1062). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.



**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and two (2) people testified at the public hearing.

**COMMENT #1:** Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment questioning why section (2) is needed in the rule.

**RESPONSE:** The commission has received several requests for a protective order under the current protective order rule which is being rescinded. The provisions of the rescinded rule are being placed into this rule so that it is easier to locate. The current rule, 4 CSR 240-2.135, only provides protection during the discovery process and not for less formal information gathering which the commission regularly conducts. Thus, it is important to have the option to protect sensitive information available for anyone not a party to a contested case or other formal proceeding. The commission makes no change as the result of this comment.

**COMMENT #2:** Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment and testified at the hearing. In his opinion sections (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 an attorney representing other parties. Mr. Mills testified that he believes there are certain instances when such a party should not be allowed access to the information, but that should be the exception to the rule. Mr. Mills stated that if the commission were to rely on information that a party cannot access, then there could be a due process violation.

Rick Zucker, on behalf of Laclede Gas Company, testified in response to Mr. Mills's comment that the rule specifically should not allow *pro se* parties to access this type of information. Mr. Zucker testified that allowing an unrepresented party to have access to highly confidential information while not allowing the officers and employees of a corporation to have access could undercut the entire rule. Mr. Zucker also commented that the commission should not make a major change in this rule without further study.

**RESPONSE:** The commission agrees with Mr. Zucker that it is not appropriate to rewrite this rule without additional study and a chance for further comment and publication of any changes. The commission will open a new Chapter 2 rulemaking file to examine this issue and any additional revisions proposed by the relevant stakeholders. No changes were made as a result of these comments.

**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 2000, the commission amends a rule as follows:

4 CSR 240-2.140 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1062-1063). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period

ended May 16, 2011. One (1) written comment was received and no one testified at the public hearing.

**COMMENT:** Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment that the word "initial" had been inadvertently deleted from section (2).

**RESPONSE AND EXPLANATION OF CHANGE:** The commission will correct the error.

**4 CSR 240-2.140 Briefs and Oral Arguments**

(2) Unless otherwise ordered by the commission or presiding officer, initial post-hearing briefs shall be filed no later than twenty (20) days after the date on which the complete transcript of the hearing is filed.

**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 2000, the commission amends a rule as follows:

4 CSR 240-2.160 Rehearings and Reconsideration is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1063). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. No comments were received.

**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 sections 386.040, 386.250, 386.310, 386.410, 392.210, 392.240, 392.280, 392.290, 392.330, 393.140(3), (4), (6), (9), (11), and (12), 393.160, 393.220, 393.240, 393.290, and 394.160, RSMo 2000 and sections 392.200, 392.220, and 393.110, RSMo Supp. 2010, the commission amends a rule as follows:

4 CSR 240-2.180 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1064-1065). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendment was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and one (1) person testified at the public hearing.



COMMENT #1: Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment suggesting that the phrase "in writing" be clarified to specifically allow for electronic filing.

RESPONSE: The commission has consistently used the phrase "in writing" in this chapter to mean both paper and electronic filing. Thus, the commission does not find a need to clarify this rule. No change was made as a result of this comment.

COMMENT #2: Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments and Mr. Zucker also testified at the public hearing that the commission should leave sworn testimony as an option for rulemaking comments.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Ameren Missouri's comments and will leave sworn testimony as an option in section (6) and subsections (8)(B), (8)(C), and (8)(E), and will reletter the subsections in section (8) as needed.

#### 4 CSR 240-2.180 Rulemaking

(6) Persons filing written comments or testifying or commenting at the hearing need not be represented by counsel, but may be represented if they choose.

(8) 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) Neither written nor oral comments need to be sworn, but testimony shall be taken under oath or affirmation;

(C) Persons testifying or commenting at a hearing 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 or commenting;

(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;

(E) Persons testifying or commenting may offer exhibits in support of their positions; and

(F) The commission may, at the hearing, hold the hearing open for a specified period if it determines extension is reasonably necessary to elicit material information.

### Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES Division 30—Division of Regulation and Licensure Chapter 61—Licensing Rules for Family Day Care Homes

#### ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.221, RSMo 2000, the department adopts a rule as follows:

#### 19 CSR 30-61.090 Disaster and Emergency Preparedness is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2011 (36 MoReg 1469-1470). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

### Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES Division 30—Division of Regulation and Licensure Chapter 61—Licensing Rules for Family Day Care Homes

#### ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.221, RSMo 2000, the department amends a rule as follows:

#### 19 CSR 30-61.125 Medical Examination Reports is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2011 (36 MoReg 1470-1473). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

### Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES Division 30—Division of Regulation and Licensure Chapter 62—Licensing Rules for Group Child Care Homes and Child Care Centers

#### ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.221, RSMo 2000, the department adopts a rule as follows:

#### 19 CSR 30-62.090 Disaster and Emergency Preparedness is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2011 (36 MoReg 1473-1474). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Section for Child Care Regulation, Department of Health and Senior Services, received one (1) comment on the proposed rule.

COMMENT #1: Julie Schmitz from Show-Me Child Care suggests that a copy of the facility's disaster emergency plan be available in the office area only, not in each room used for care of children as stated in subsection (2)(A).

RESPONSE: In an emergency event, the office area could become inaccessible, thus making the disaster emergency plan inaccessible. Staff would not have it to refer to, and this could compromise the safety of the children and adults in the facility. No changes have been made to the rule as a result of this comment.

### Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES Division 30—Division of Regulation and Licensure Chapter 62—Licensing Rules for Group Child Care Homes and Child Care Centers

#### ORDER OF RULEMAKING