

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Linda McElwee,	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2022-0059</u>
	)	
Grain Belt Express LLC,	)	
	)	
Respondent	)	

ORDER GIVING NOTICE OF COMPLAINT AND DIRECTING RESPONSES

Issue Date: August 30, 2021

Effective Date: August 30, 2021

On August 27, 2021, Linda McElwee filed a complaint with the Missouri Public Service Commission against Grain Belt Express, LLC (Grain Belt). A copy of the complaint accompanies this notice. Ms. McElwee's complaint sets forth in writing Grain Belt's alleged violations sufficient to meet the minimal requirements of Section 386.390, RSMo. Ms. McElwee's complaint alleges that Grain Belt refuses to provide answers about when, whether, and how much payments would be for an easement on her property if the easement were acquired through condemnation. Her complaint also questions Grain Belt's legal authority to refuse to make payments if the matter goes to condemnation.

Commission Rule 20 CSR 4240-2.070(15) provides that any dispute involving less than \$3,000, is to proceed under the small formal complaint procedure. Since Ms. McElwee alleges an amount in dispute greater than \$3,000 this complaint shall be addressed using the formal complaint procedures in Commission Rule 20 CSR 4240-2.070(4) through (14).

As required by Section 536.067(2)(f), RSMo, the Commission informs the parties that the Commission's provisions governing procedures before the Commission are found at Commission Rule 20 CSR 4240-2. Specific provisions relating to discovery are found at Commission Rule 20 CSR 4240-2.090. Commission Rule 20 CSR 4240-2.070(8) provides Grain Belt 30 days to file a response to this complaint.

In the alternative, Grain Belt may file a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether Ms. McElwee is also willing to submit to voluntary mediation. If she agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed. If Ms. McElwee declines mediation, Grain Belt will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

The Commission will also direct the Staff of the Commission (Staff) to investigate this complaint and file a report pursuant to Commission Rule 20 CSR 4240-2.070(11). The Commission will direct Staff to file a pleading informing the Commission when it believes it can file a report on this complaint.

Ms. McElwee's complaint included a request for expedited treatment pursuant to Commission Rule 20 CSR 4240-2.080(14). The request states that because 30 days have passed since Grain Belt sent a 30-day notice letter to Ms. McElwee, Grain Belt could file

for condemnation of her property at any time. The Commission will direct Grain Belt to respond to Complainant's motion for expedited treatment.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall send, by certified mail, a copy of this notice and order and a copy of the complaint to Grain Belt at:

Grain Belt Express, LLC
Legal Department
1001 McKinney Street, Ste. 700
Houston TX 77002

2. Grain Belt shall file an answer to this complaint or request for mediation no later than September 29, 2021, and serve a copy upon the Complainant, Linda McElwee. All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

or filed using the Commission's electronic filing and information service.

3. Grain Belt shall file a response to Ms. McElwee's request for expedited treatment no later than September 29, 2021.

4. No later than October 6, 2021, Staff shall a pleading indicating how long it will take to investigate this complaint and file a report with the Commission.

5. This order is effective when issued.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

John T. Clark, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 30th day of August, 2021.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Linda McElwee,	)	
	)	
Complainant,	)	
	)	
V.	)	
	)	Case No. _____
Grain Belt Express LLC,	)	
	)	
Respondent	)	

FORMAL COMPLAINT AND
MOTION FOR EXPEDITED TREATMENT

Pursuant to Commission Rules 20 CSR 4240-2.070(4) and 20 CSR 4240-2.080(14), Mrs. Linda McElwee hereby files this Formal Complaint against Grain Belt Express LLC in two counts. Count 1 concerns Respondent's refusal to provide definitive answers to Complainant as to whether certain payments would or would not be made to her for an easement on her property if the easement is acquired through the condemnation process. Count 2 concerns Respondent's legal authority, or lack thereof, to refuse payment of the amounts in question if the matter goes to condemnation. In support of this filing, Complainant states as follows:

Count 1

1. In file number EA-2016-0358 (the "CCN case") the Commission granted Respondent a Certificate of Convenience and Necessity, authorizing Respondent (then named Grain Belt Express Clean Line LLC) to build the Missouri portion of an electric transmission line across eight counties in northern Missouri. Caldwell County was one of the counties to be traversed by the line. (Pages 51, 5 of the Report and Order on Remand in CCN case, issued March 20, 2019; the "CCN Order").

2. As the surviving spouse, Complainant is currently a beneficiary and trustee of a revocable trust which owns four parcels of real property in Caldwell County. The land was earlier held in the name of two trusts, one of which rolled into the other upon the death of Complainant's spouse. Complainant's address is 8475 Southeast Red Brick Road, Cowgill, MO 64637.

3. According to information provided to Complainant by Respondent, the four parcels of land in question would be crossed by the proposed transmission line.

4. And according to information provided to Complainant by Respondent, Respondent presently intends to construct a total of seven lattice support structures on the property in question.

5. As of the date of this filing, Complainant and Respondent have not agreed upon terms for a voluntary easement for the transmission line over any of the four parcels of land in question.

6. By letter dated July 20, 2021, counsel for Respondent sent letters addressed to the McElwee trusts which stated, among other things, that if the parties did not come to terms on a voluntary easement within the next 30 days, Respondent intended pursuant to Sec. 523.253 to file a condemnation action in court to secure an easement over the property in question ("30-day notice letter").

7. A copy of one of the letters referenced in the preceding paragraph is attached hereto as Exhibit 1.

8. The 30-day notice letters had been preceded by "60-day notice" letters sent pursuant to Sec. 523.250 from counsel for Respondent.

9. During the course of the CCN case, Respondent's predecessor Grain Belt Express Clean Line LLC submitted to the Commission a document titled Missouri Landowner Protocol ("Landowner Protocol"). That document was received in evidence as Schedule DKL-1 to Exhibit 113 (EFIS 372).

10. During the course of the CCN case, Respondent's predecessor also submitted a document generally referred to as its Code of Conduct. That document was received in evidence as Schedule DKL-2 to Exhibit 113.

11. In its final order in the CCN case, the Commission ordered that "Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct" (CCN Order, p. 52, par. 8).

12. Section 3 of the Landowner Protocol, which begins at page 4 of that document, is titled "Compensation". It states in part that Grain Belt will determine the amount it will pay for a transmission line easement by multiplying "the average per acre value of recent sales for similar land types in the county by 110%" (hereafter, a "10% adder").

13. Section 3 of the Landowner Protocol also states that for the lattice support structures being proposed for Complainant's property, Respondent will make a one-time payment of \$18,000 for each such structure. Alternatively, a landowner could elect to receive an annual payment of \$1,500 per structure, escalated at 2% per year for as long as the structure remains on the property.

14. Complainant has sought clarification from Respondent as to whether Respondent intends to pay the 10% adder and/or for the support structures if she does not voluntarily sign an easement for the proposed line. Without such clarification, Complainant cannot rationally compare the amount currently being offered by

Respondent for an easement, to the amount she might receive if Respondent files for condemnation. The difference in the treatment of the support structures alone amounts to at least \$126,000 (based on a lump sum of \$18,000 per structure for seven structures).

15. In an effort to clarify Respondent's position regarding the payment for support structures and the 10% adder, on August 20, 2021, counsel for Complainant sent counsel for Respondent the letter attached hereto as Exhibit 2. That letter asked for an answer to three questions:

(1) If the matter does go to condemnation, will Grain Belt pay Mrs. McElwee for support structures which are built on the right-of-way?

(2) If the answer to the first question is "yes", will the payment still be in the amount of \$18,000 per lattice structure?

(3) If the matter goes to condemnation, will Grain Belt still pay Mrs. McElwee 110% of the fee value of the property on the easement?

The letter also included the following request: "We ask that you provide a 'yes' or 'no' answer to these questions (or possibly a 'not applicable' answer to question number 2)".

16. Attached as Exhibit 3 is the letter of August 24, 2014 from Respondent's attorney in response to the letter described in the preceding paragraph.

17. The letter at Exhibit 3 did not provide the "yes" or "no" answers requested by Complainant. Instead, Respondent implicitly left open the possibility that it would pay Complainant for the structures and 10% adder in condemnation proceedings, even if Respondent felt it was not legally obligated to do so.

This matter could have easily been resolved if Respondent had simply answered “yes” or “no” to the questions asked of it. Instead, they deliberately chose to leave Mrs. McElwee in doubt.

18. Complainant contends that Respondent is obligated under the mandatory provisions of the Landowner Protocol and the Code of Conduct to provide definitive answers to the three questions posed in the letter of August 20, referenced in paragraph 15 above. That being the case, Respondent’s refusal to do so constitutes a violation of the Commission’s Order in the CCN case.

19. Specifically, Grain Belt’s Landowner Protocol and Code of conduct together set forth the following requirements:

- that all communications with property owners must be made in good faith;
- that Grain Belt’s agents not make any misleading statements;
- that if their representatives do not know the answer to a question, they are to provide one later;
- that all communications with landowners must reflect “fair dealing”;
- and that Grain Belt’s representatives must not engage in behavior which causes undue pressure for the landowner.

(Landowner Protocol sections 1 and 2; Code of Conduct sections I and II).

Complainant contends that the ambiguous answers provided thus far to her three simple and straight-forward questions do not comply with the spirit or the letter of these requirements.

20. Furthermore, in her direct testimony in the CCN case, Clean Line’s Vice President for Land assured the Commission that Grain Belt “will respond promptly and courteously to any landowner’s or tenant’s (or their designated representative or counsel)

inquiry, comments or questions.” (CCN case, Exh. 113, p. 14, l. 21-22; EFIS 372).

This commitment surely implies that those answers will definitively and unambiguously answer the landowner’s questions.

21. Section 1 of the Landowner Protocol provides that all Grain Belt employees, agents and representatives must adhere to the Code of Conduct. Attorneys for Grain Belt are certainly acting in this matter as “representatives” of Respondent.

22. There is no language in the Landowner Protocol, the Code of Conduct, or in the Commission Order in the CCN case, which states or implies that the obligations set forth in those documents terminate when Respondent begins the condemnation process by mailing the 60-day or 30-day statutory notices of possible condemnation. Those documents are simply open-ended in their applicability. Thus to argue that those obligations do so terminate would necessarily assume there is an implied condition which does not appear in those documents.

23. In fact, the Landowner Protocol, at page 4, specifically states that “Grain Belt Express’s approach to landowner negotiations will not change regardless of when these negotiations take place.”

24. If Respondent’s obligations under the Landowner Protocol and Code of Conduct are deemed to terminate for any particular landowner upon the filing of the 60-day or 30-day notices for condemnation, then Respondent could completely escape all obligations under those documents by simply sending the statutory notices to all landowners who have not signed a voluntary easement. And doing so would have no downside for Respondents, as the applicable statutes do not require that condemnation be filed within any particular time period, or even filed at all, after the 30 and 60-day notices are mailed. Allowing Respondent to in effect void its obligations to some

unknown number of landowners could not be what the Commission envisioned when it concluded that the Landowner Protocol will help to mitigate any negative impacts of the project on landowners. (CCN Order, p. 46)

25. Complainant was seeking definitive “yes” or “no” answers to the questions posed in the letter of August 20 in part because of the difficulty her attorney had in obtaining definitive answers to similar questions raised with Respondent on behalf of a different client, Mr. Loren Sprouse. In that regard, attached as exhibit 4 is a copy of a July 29, 2021 letter from Complainant’s attorney to counsel for Respondent. In it, Respondent was asked to answer three questions similar to those posed in Exhibit 2 on behalf of Complainant. Exhibit 5 is a copy of the August 5, 2021 response from Respondent’s attorney. Exhibit 6 consists of copies of an exchange of two follow-up emails, the one at the bottom being from Complainant’s attorney, and the one at the top being the response from Respondent’s attorney.

26. Even if Respondent hypothetically is not legally obligated to make the payments in question if the matter goes to condemnation (the issue addressed under Count 2 below) that fact would not preclude Respondent for whatever reason from voluntarily making those payments to landowners. But based on the material provided thus far by counsel for Respondent, whether or not they will do so is still unclear.

27. Thus regardless of Respondent’s position on its legal obligation to make the payments, Complainant has no way of knowing with any degree of certainty whether the two types of payments would be forthcoming if the matter does go to condemnation. Accordingly, she is still in the dark regarding a factor which is absolutely critical in making a rational decision about how to proceed in easement negotiations with Respondent.

28. Counsel for Complainant has advised counsel for Respondent that the latter's letter of August 24 did not resolve the questions raised in the letter referenced at paragraph 15 above, and that a Complaint with the Commission would therefore be forthcoming. Counsel also advised that the Complaint would address the subject matter of Count 2 below.

29. In an email of August 13, 2021, counsel for Complainant asked counsel for Respondent how many easements it will need to acquire for the Missouri portion of the proposed right-of-way, and how many have been acquired voluntarily to-date. No answer has yet been provided. Therefore, Complainant is unable to tell the Commission how many other landowners are faced with the same problem she is raising in this Count 1.

30. If the Commission rules in Complainant's favor on Count 2 of this Complaint, then this Count 1 is seemingly moot. However, if the Commission rules in Respondent's favor on Count 2, then a decision on Count 1 is still crucial to Complainant's efforts at making a rational decision about how to proceed in easement negotiations with Respondent.

WHEREFORE, for the reasons set forth above, Complainant respectfully contends that Respondent is in violation of the provision in the CCN Order making compliance with the Code of Conduct and the Landowner Protocol mandatory on the part of Respondent. Accordingly, Complainant respectfully asks under Count 1 that the Commission order Respondent to provide definitive answers to the three questions set forth in paragraph 15 above, as requested in the letter referenced therein.

Count 2

For Count 2 of this Complaint, Complainant respectfully states as follows:

31. Paragraphs 1-30 and Exhibits 1-6 hereto are incorporated by reference in Count 2 as if fully set forth.

32. Based upon the letters from Respondent's attorney shown at Exhibits 3 and 5, Respondent seems to contend that based upon the condemnation statutes, they will not pay for support structures and the 10% adder if an easement is taken by condemnation. Nevertheless, counsel for Complainant was informed that his assumption to that effect amounted to his own "personal speculation". (Exhibit 6). If it is speculative to assume that Respondent will not pay for the two items in question if the matter goes to condemnation, then by definition Respondent's answers to the three questions are ambiguous.

33. Under other circumstances, Respondent might be correct in arguing that these payments need not be made if the matter goes to condemnation. However, in this instance Respondent has waived any statutory right it may have to not make those payments.

34. Legally, a statutory right may be waived by the party which is the beneficiary of that right. *See Benedict v. Northern Pipeline Construction*, 44 S.W.3d 410, 416-17 (Mo. App. 2001); *Schuster v. State Div. of Employment*, 972 S.W.2d 377, 385 (Mo. App. 1998). Here, for a number of reasons Respondent has waived any right to not make the payments in question if the matter goes to condemnation.

35. First, in the CCN case Respondent voluntarily offered and explicitly agreed to the compensation provisions in the Landowner Protocol. And as argued above, the terms of that Protocol did not by some implicit provision suddenly terminate if a landowner was sent a notice of condemnation. Thus under the express compensation provisions of Respondent's own Protocol, it voluntarily waived any right it may

otherwise have had not to make those payments.

36. Also, in its CCN Order the Commission itself required without limitation or condition that Respondent abide by the terms of the Landowner Protocol, which included the terms applicable to compensation for easements. (See paragraph 11 above).

The Commission did not directly or by implication state in the CCN Order that the Landowner Protocol ceased to apply once a notice of condemnation was sent to a landowner. If Grain Belt had any objection to this open-ended adoption of the Landowner Protocol, it was obligated to say so in a Motion for Rehearing of the CCN Order. By electing not to do so, Respondent waived any argument about the binding nature of the Commission Order regarding the Landowner Protocol and the Code of Conduct. Any challenge to that provision of the Order at this point would constitute an impermissible collateral attack on the CCN Order. (*See State ex rel. Licata v. Public Serv. Comm'n*, 829 S.W.2d 515, 518- 19 (Mo. App. 1992).

37. Furthermore, Grain Belt committed to Staff in the CCN case that its “right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience or Necessity from the Commission.” (Item VII.7 of the conditions agreed to by Grain Belt and Staff, Exhibit 206, attached to CCN Order; emphasis added). Compliance with the agreements in Exhibit 206 was thereafter made mandatory by the Commission. (CCN Order, p. 51, par. 2). Respondent therefore waived any right to make such changes.

38. This quoted commitment was affirmed and clarified at the CCN hearings by Clean Line’s Vice President of Land, Ms. Deanne Lanz, who was responsible for coordinating, managing and providing strategic direction for the right-of-way acquisition for the project. (Exh. 113, p. 2, EFIS 372). The testimony in question concerned her response to data request DL-26. The question in the data request was as follows: “If

Grain Belt makes a specific dollar offer to a landowner for an easement for this project, has Grain Belt made any commitment not to reduce the amount of that offer if the matter later goes to arbitration or to court? (CCN case, Tr. Vol. XII, 416:23 – 417:8)

Her answer to the data request was “Grain Belt Express has not yet made this commitment.” (CCN case, Tr. Vol. XII, 416:23 – 417:12).

However, at the hearings the earlier answer to the data request was updated, and revised significantly. When asked at the hearings if Grain Belt would retract the offer of the 10% adder if the matter went to court or to arbitration, Ms. Lanz stated “No, I do not agree with that.” (Tr. Vol. XII, 417:13-17)

The basis for that position was then explained by her as follows:

We have agreed, I believe, with the Commission [Staff] to a list of conditions now that was recently agreed to, where we have agreed not to change the methodology based on whether or not we have a CCN.

Q. So you would not reduce the offer below what had been given to that landowner if they go to arbitration or to court?

A. We would not – what we’ve previously stated is that we would not change the methodology for determining it. I don’t know if the methodology would cause a reduction or not.

Q. Well, my question still is based on your answer to your data request, you have made no commitment not to reduce the dollar value of the offer?

A. I believe the spirit of our condition with the Staff was that we would not change our methodology for determining compensation. If the methodology would result in the same amount, then we would not reduce it.

Q. And yet your response to DL-26 says: Grain Belt Express has not made this commitment, right?

A. We had not made that commitment at that time. We have since made a commitment to do so with Staff. (Tr. Vol. XII, 417:20-418:21).

So whatever else Ms. Lanz had to say earlier on this issue (see e.g. Tr. 412), this testimony expressly committed Grain Belt not to reduce the dollar amounts paid for the easement, even if the matter went to arbitration or to the courts. The same rationale given by Ms. Lanz with respect to the 10% adder would logically apply as well to

payments for structures. The commitment was made voluntarily by Grain Belt in its agreement with Staff, and adopted by the Commission.

Finally, Ms. Lanz concluded her testimony by unequivocally agreeing that if the landowner took the matter to arbitration, then the compensation package already on the table would still be available to the landowner. (Tr. Vol. XII p. 446:11-16).

Any case going to arbitration or condemnation reaches that point only when the parties fail to reach agreement on the appropriate compensation. Therefore, if the compensation provision in the Landowner Protocol remains in effect for cases going to arbitration, the same must logically hold true for cases going to condemnation. This conclusion is totally consistent with the above-quoted testimony from Ms. Lanz regarding cases going either to arbitration or the courts.

39. Neither the Landowner Protocol nor the Code of Conduct includes definitions of their terms, such as “negotiate”, “negotiations”, “voluntary” and “sign easement agreements”. Accordingly, the interpretation of those documents must be based upon the language within the four corners of the document itself. The Landowner Protocol provides for a specific compensation package for landowners, and nowhere does it provide for discontinuing that compensation for any reason – including the initiation of condemnation proceedings. As to the matter of compensation, the Commission’s adoption of the Protocol in effect is a binding link between the Commission’s CCN case and any subsequent condemnation proceedings.

40. At page 33, paragraph 110 of its CCN Order, the Commission supported its grant of the CCN in part on the ground that Grain Belt’s easement compensation package, including the easement and structure payments, “is superior to that of most utility companies.” If Grain Belt prevails on the issue raised in Count 2, then of

course that conclusion would evaporate for some unknown number of Missouri landowners.

41. Nowhere in its CCN Order did the Commission limit its description of the compensation package to easements voluntarily signed by the landowner, as opposed to those obtained through the condemnation process.

42. What the Commission did state was that the Landowner Protocol and Grain Belt's "superior compensation package" would help to mitigate the negative impacts of the project on landowners. (CCN Order, p. 46). But the Commission's attempt to balance the interests of all parties would be greatly undermined if Respondent prevails on this issue.

43. Further supporting Complainant's position here, at page 4 of the Landowner Protocol Grain Belt made the following commitment, adopted by the Commission: that Grain Belt would utilize "the same methodology for determining compensation for all landowners in order to ensure that all landowners receive fair and consistent compensation, regardless of who they are or when they sign an easement agreement." But if Respondent prevails on this issue, Missouri landowners would be treated anything but consistently.

44. If the Commission does rule in Respondent's favor on Count 2, Missouri landowners could be subject to an additional detriment not yet mentioned here. Under the Landowner Protocol, Respondent is obligated to pay 110% of the fee value of the land on the easement. (Exh. 113, p. 6, lines 14-19; EFIS 372). However, as indicated in the letters at Exhibits 3 and 5 from Respondent's attorney, if the matter goes to condemnation Respondent is proposing to only pay for the value of the easement. And according to Grain Belt's witness Ms. Lanz, the value of an easement amounts to only

70-90% of the value of the land in fee. Thus according to Grain Belt's information, landowners who do not voluntarily sign an easement could actually be penalized for up to 40% of the value of the property taken by Respondent. (110% - 70%).

45. This Complaint is based in large part upon the Commission's Order of March 20, 2019 in the CCN case, as well as a number of other documents from that case cited herein. Accordingly, Complainant respectfully asks the Commission to take official notice of the case file in the CCN case, or to at least take notice of the CCN Order and the other documents from that case cited in this Complaint.¹

WHEREFORE, under Count 2 Complainant respectfully asks the Commission to rule that if the matter of her easement goes to condemnation, then Respondent is still obligated under the terms of the Commission Order in the CCN case, and the documents and testimony submitted there by Grain Belt, to make the payments for structures and the 10% adder in accordance with the terms of the Landowner Protocol.

Request for Expedited Treatment Pursuant to 20 CSR 4240-2.080(14): More than 30 days has passed since Respondent sent the 30-day notice letter to Mrs. McElwee. Therefore, Respondent could file for condemnation against her property at any time, despite the filing of this Complaint. According, if Complainant is to be afforded any meaningful relief from the Commission, it is important that the Commission dispose of this matter at its earliest convenience.

Expeditious treatment of this Complaint will have no negative effect on any parties' customers or on the general public.

This Complaint was filed as soon as was practicable, given Complainant's lack of

¹ The Commission is clearly authorized to do so. As stated in *Environmental Utilities v. Public Service Commission*, 219 S.W.3d 256, 265 (Mo. App. 2007), pursuant to Section 536.070 agencies shall take official notice of all matters of which courts take judicial notice. And courts may take judicial notice of other proceedings when the cases are interwoven or interdependent. *Id.* Such is clearly the case here.

familiarity with the condemnation process and the discussions of the general subject matters of the Complaint between counsels for Complainant and Respondent.

Respectfully submitted

/s/ Paul A. Agathen

Paul A. Agathen

Attorney for Complainant

Mo Bar No. 24756

485 Oak Field Ct.

Washington, MO 63090

636-980-6403

Paa0408@aol.com

Certificate of Service

I certify that a copy of the foregoing was served this 27th day of August, 2021 by email on counsel for Respondent, Mr. Seth Wright.

/s/ Paul A. Agathen

Paul A. Agathen

EXHIBIT 1



900 W. 48th Place, Suite 900, Kansas City, MO 64112

July 20, 2021

Seth C. Wright
(816) 572-4747
scwright@polsinelli.com

Ronald L. McElwee, Sr. Revocable Trust
dated the 7th day of December, 2000
8475 Southeast Red Brick Road
Cowgill, Missouri 64637-8797

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**Re: NOTICE OF INTENDED ACQUISITION AND WRITTEN OFFER
UNDER R.S. MO. § 523.253**

Ronald L. McElwee, Sr. Revocable Trust dated the 7th day of December, 2000:

I write on behalf of Grain Belt Express LLC ("Grain Belt"), a subsidiary of Invenenergy Transmission LLC. As explained in my previous letter dated June 8, 2021, Grain Belt is planning to construct, maintain, and operate an electric transmission line that is planned to ultimately span nearly 800 miles between Kansas and Indiana, and Grain Belt is seeking an easement to use a portion of the landowner's property necessary for placing and operating the transmission line.

Specifically, Grain Belt is seeking an easement located on property recorded in Caldwell County, Missouri contained in the following legal description:

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF CALDWELL,
STATE OF MISSOURI:

THE NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY (20), TOWNSHIP FIFTY-FIVE (55) NORTH, RANGE TWENTY-SEVEN (27), EXCEPT ONE (1) ACRE IN THE FORM OF A SQUARE OUT OF THE NORTHWEST CORNER THEREOF, AND ALSO EXCEPT THAT PART CONVEYED TO THE STATE OF MISSOURI FOR HIGHWAY PURPOSES.

The above legal description refers to the full parcel, however, the specific easement required is anticipated to be only approximately 10 acres. The following is an approximate description of the easement, which may be modified as the result of detailed survey work:

A 150 FOOT WIDE STRIP OF LAND FOR TRANSMISSION LINE EASEMENT PURPOSES ONLY. BEING THAT PART OF SECTION 20, TOWNSHIP 55 NORTH, RANGE 27 WEST, ALL IN CALDWELL COUNTY, MISSOURI, THE CENTERLINE OF SAID STRIP OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

polsinelli.com

Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California

78901742.1

July 20, 2021

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COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 20; THENCE SOUTH 01°10' WEST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1451 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89°43' EAST, A DISTANCE OF 1745 FEET;

THENCE NORTH 77°06' EAST, A DISTANCE OF 950 FEET TO THE POINT OF TERMINUS, SAID POINT BEING ON THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 187 AT PAGE 62.

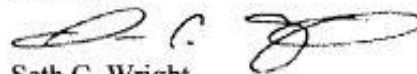
THE SIDELINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE ON THE WEST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 187 PAGE 62 AND THE EAST LINE OF SAID TRACT.

The landowner will continue to have the right to use the easement area for normal farming and grazing, hunting, recreation and other purposes that do not interfere with the electrical transmission line or Grain Belt's rights.

Grain Belt is prepared to offer you compensation in the amount of \$33,012 for the easement it seeks through the property described above. This amount is based on the attached appraisal. The attached appraisal was made by a state-licensed or state-certified appraiser using generally accepted appraisal practices.

Grain Belt's offer will be held open for 30 days following the date of this letter. After that 30-day period ends, Grain Belt may file a condemnation petition to obtain the easement it seeks through the courts in accordance with R.S. Mo. § 523.253. Please contact me at (816) 572-4747 at your earliest convenience to discuss options for moving forward without the need for a condemnation action. If we are not able to come to terms on an easement agreement within 30 days of this letter, Grain Belt intends to file a condemnation action regarding the referenced property.

Sincerely,



Seth C. Wright

SCW

Attachment

EXHIBIT 2

*Paul A. Agathen
Attorney-at-law
485 Oak Field Ct.
Washington, MO 63090
August 20, 2021*

Mr. Seth C. Wright, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
scwright@polsinelli.com

via electronic mail

Dear Mr. Wright:

I am writing to ask for clarification of Grain Belt's position on payments to my client Mrs. Linda McElwee if the matter of her easement for the transmission right-of-way goes to court in a condemnation proceeding.

As the surviving spouse, Mrs. McElwee has an ownership interest in several parcels of land on the proposed Grain Belt right-of-way in Caldwell County. The land is now titled in the name of one or more revocable trusts. As you recall, on July 20, 2021 you sent a "30-day notice" letter to the trusts for condemnation proceedings of this property under Section 523.253 RSMo.

Based on information from Grain Belt, Mrs. McElwee understands that seven lattice support structures will be built upon her property.

Your letter invited the recipient to contact you regarding options for moving forward without the need for condemnation. I am representing Mrs. McElwee in this matter in an effort to clarify Grain Belt's position on payments to her (or to the trusts) if the matter does go to condemnation.

Specifically, I am requesting that you provide an answer to the following three questions:

1. If the matter does go to condemnation, will Grain Belt pay Mrs. McElwee for support structures which are built on the right-of-way?

2. If the answer to the first question is “yes”, will the payment still be in the amount of \$18,000 per lattice structure?

3. If the matter goes to condemnation, will Grain Belt still pay Mrs. McElwee 110% of the fee value of the property on the easement?

We ask that you provide a “yes” or “no” answer to these questions (or possibly a “not applicable” answer to question number 2).

With the possibility for condemnation imminent, I would appreciate hearing from you as soon as possible with an answer to these three questions. It is obviously imperative that Mrs. McElwee have a definitive answer to these questions in order to make an informed decision about how to proceed with respect to the easement across her property.

Yours truly,

/s/Paul A. Agathen
636-980-6403

EXHIBIT 3



900 W. 48th Place, Suite 900, Kansas City, MO 64112 • (816) 753-1000

August 24, 2021

Seth C. Wright
(816) 572-4464 Direct
scwright@polsinelli.com

Paul A. Agathen, Attorney-at-Law
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

via electronic mail

Re: Linda McElwee

Dear Mr. Agathen,

I am writing on behalf of Grain Belt Express LLC (“Grain Belt”) in response to your letter dated August 20, 2021 regarding several parcels of land owned by your client, Linda McElwee. Grain Belt has previously contacted Ms. McElwee in an effort to acquire an easement across her property for the construction of a transmission line (the “Project”). You requested clarification regarding Grain Belt’s position if the matter goes to condemnation.

The compensation being offered by Grain Belt for voluntary easements is set forth in the Missouri Landowner Protocols (Protocols), which were referenced by the Missouri Public Service Commission (“MPSC”) in its Order granting Grain Belt’s certificate of convenience and necessity (“CCN”), and compliance with such Protocols in the context of voluntary easements was made a condition of the CCN.

Conversely, the involuntary condemnation process is under the jurisdiction of the Missouri district courts, not the MPSC. The district courts are directed to determine the “fair market value” of the property to be condemned pursuant to Section 523.001 *et seq.*

We discussed these matters at length in our phone conference on August 19 with representatives of MPSC Staff present. We provided detailed explanations on our position during the call. We also discussed the inappropriate nature of your questions, as the purpose of the questions is not in the spirit of good faith negotiations, but to set up a baseless complaint at the MPSC.

Ms. McElwee received a 30-day offer letter as required by Section 523.253 RSMo. As required by Missouri law, the letter contained a detailed appraisal, from a Missouri certified appraiser, along with a written offer. We have, and will continue to, comply with all applicable Missouri laws.

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Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California



If you have any questions or would like to discuss this matter further please do not hesitate to contact me.

Best Regards,

A handwritten signature in black ink, appearing to read "S.C. Wright", followed by a large, stylized flourish.

Seth C. Wright
Shareholder
Polsinelli PC

EXHIBIT 4

*Paul A. Agathen
Attorney-at-law
485 Oak Field Ct.
Washington, MO 63090
July 29, 2021*

Mr. Seth C. Wright, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112

Dear Mr. Wright:

Mr. Loren Sprouse has an ownership interest in three parcels of land on the proposed Grain Belt right-of-way. As you recall, on July 15, 2021 you sent Mr. Sprouse a “60-day notice” letter for condemnation proceedings under Section 523.250 RSMo for those three properties.

Your letters invited Mr. Sprouse to contact you regarding options for moving forward without the need for condemnation. I am representing Mr. Sprouse in this matter in an effort to clarify Grain Belt’s position if the matter does go to condemnation.

Specifically, we are requesting that you provide an answer to the following three questions:

1. If the matter does go to condemnation, will Grain Belt still pay for support structures which are built on the right-of-way?
2. If the answer to the first question is “yes”, will the payment still be in the amount of \$18,000 per lattice structure?
3. If the matter goes to condemnation, will Grain Belt still pay 110% of the fee value of the property on the easement?

I would appreciate hearing from you as soon as possible with an answer to these three issues.

Yours truly,

/s/Paul A. Agathen
636-980-6403

EXHIBIT 5



900 W. 48th Place, Suite 900, Kansas City, MO 64112 • (816) 753-1000

August 5, 2021

Seth C. Wright
(816) 572-4464 Direct
scwright@polsinelli.com

Paul A. Agathen, Attorney-at-law
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

via electronic mail

Re: Loren Sprouse Parcels

Dear Mr. Agathen,

I am writing on behalf of Grain Belt Express LLC (“Grain Belt”) in response to your letter dated July 29, 2021 regarding three parcels of land owned by your client, Loren Sprouse. Grain Belt has previously contacted Mr. Sprouse in an effort to acquire an easement across his property for the construction of a transmission line (the “Project”). You requested clarification regarding Grain Belt’s position if the matter goes to condemnation.

The compensation being offered by Grain Belt for voluntary easements is set forth in the Missouri Landowner Protocols (Protocols), which were referenced by the Missouri Public Service Commission (“MPSC”) in its Order granting Grain Belt’s certificate of convenience and necessity (“CCN”), and compliance with such Protocols in the context of voluntary easements was made a condition of the CCN.

Conversely, the involuntary condemnation process is under the jurisdiction of the Missouri district courts, not the MPSC. The district courts are directed to determine the “fair market value” of the property to be condemned pursuant to Section 523.001 *et seq.*

If you have any questions or would like to discuss this matter further please do not hesitate to contact me.

Best Regards,

Seth C. Wright
Shareholder
Polsinelli PC

polsinelli.com

Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California

79245986.2

EXHIBIT 6

8/11/2021

RE: Questions regarding condemnation

Subject: **RE: Questions regarding condemnation**
Date: 8/9/2021 12:45:51 PM Central Standard Time
From: SCWright@Polsinelli.com
To: paa0408@aol.com

Paul,

②

You are free to assume whatever you wish, and we are not in a position to confirm your personal speculation. We made our position clear in our letter to you.

Seth C. Wright | Shareholder | Polsinelli PC

D 816-572-4464 | C 816-390-4656 | scwright@polsinelli.com

From: paa0408@aol.com <paa0408@aol.com>
Sent: Friday, August 6, 2021 1:33 PM
To: Seth Wright <SCWright@Polsinelli.com>
Subject: Re: Questions regarding condemnation

EXTERNAL EMAIL paa0408@aol.com

Seth, your letter did not directly answer the questions posed in my letter to you of July 29. However, based upon what you stated, I will assume that the answer to my questions number 1 and 3 is "no", unless you tell me differently.

①

Paul

In a message dated 8/5/2021 2:49:51 PM Central Standard Time, SCWright@Polsinelli.com writes:

Paul,

Please see the attached correspondence.

Rules of Department of Commerce and Insurance

Division 4240—Public Service Commission Chapter 2—Practice and Procedure

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**Title 20—DEPARTMENT OF
COMMERCE AND INSURANCE
Division 4240—Public Service
Commission
Chapter 2—Practice and Procedure**

20 CSR 4240-2.010 Definitions

PURPOSE: This rule defines terms used in the rules comprising Chapter 2, Practice and Procedure, and supplements those definitions found in Chapter 386 of the Missouri Revised Statutes.

(1) Applicant means any person, as defined herein, or public utility on whose behalf an application is made.

(2) Certificate of service means a document or page of a document showing the caption of the case, attorney of record served or the name of the party served, the date and manner of service, and the signature of the serving party or attorney.

(3) Commission means the Missouri Public Service Commission as created by Chapter 386 of the Missouri Revised Statutes.

(4) Commissioner means one (1) of the members of the commission.

(5) Commission staff means all personnel employed by the commission whether on a permanent or contractual basis except commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission staff.

(6) Complainant means the commission, any person, corporation, municipality, political subdivision, the Office of the Public Counsel, the commission staff through the staff counsel's office, or public utility who files a complaint with the commission.

(7) Corporation includes a corporation, company, association, or joint stock company or association, or any other entity created by statute which is allowed to conduct business in the state of Missouri.

(8) General counsel means the attorney who serves as counsel to the commission and includes the general counsel and all other attorneys who serve in the office of the general counsel, but does not include attorneys employed in the staff counsel's office. The general counsel appears for the commission

and performs all duties and services as attorney and counsel to the commission which the commission may reasonably require.

(9) Oath means attestation by a person signifying that he or she is bound in conscience and by the laws regarding perjury, either by swearing or affirmation to tell the truth.

(10) Party includes any applicant, complainant, petitioner, respondent, intervenor, or public utility in proceedings before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.

(11) Person includes a natural person, corporation, municipality, political subdivision, state or federal agency, and a partnership.

(12) Pleading means any written document, including any exhibits or other attachments, filed with the commission that seeks a specific action or remedy, except that briefs and tariffs are not pleadings under this definition.

(13) Political subdivision means any township, city, town, village, and any school, road, drainage, sewer, and levee district, or any other public subdivision, public corporation, or public quasi-corporation having the power to tax.

(14) Presiding officer means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case or any portion of a case.

(15) Public counsel means the Office of the Public Counsel as created by the Omnibus State Reorganization Act of 1974 and includes the assistants who represent the public before the commission.

(16) Public utility includes every pipeline corporation, gas corporation, electrical corporation, telecommunications corporation, water corporation, heat or refrigeration corporation, sewer corporation, any joint municipal utility commission pursuant to section 386.020, RSMo, which is regulated by the commission, or any other entity described by statute as a public utility which is to be regulated by the commission.

(17) Respondent means any person as defined herein or public utility subject to regulation by the commission against whom any complaint is filed.

(18) Rule means all of these rules as a whole or the individual rule in which the word appears, whichever interpretation is consistent with the rational application of this chapter.

(19) Settlement officer means a presiding officer who has been delegated to facilitate the settlement of a case.

(20) Schedule means any attachment, table, supplement, list, output, or any other document affixed to an exhibit.

(21) Staff counsel means any attorney employed to represent the commission staff in proceedings before the commission.

*AUTHORITY: section 386.410, RSMo 2016. * This rule originally filed as 4 CSR 240-2.010. 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. Amended: Filed Aug. 17, 1998, effective March 30, 1999. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Amended: Filed Nov. 7, 2018, effective July 30, 2019. Moved to 20 CSR 4240-2.010, effective Aug. 28, 2019.*

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

20 CSR 4240-2.015 Waiver of Rules

PURPOSE: This rule defines when the rules in this chapter may be waived.

(1) A rule in this chapter may be waived by the commission for good cause.

*AUTHORITY: section 386.410, RSMo Supp. 1998. * This rule originally filed as 4 CR 240-2.015. Original rule filed Aug. 24, 1999, effective April 30, 2000. Moved to 20 CSR 4240-2.015, effective Aug. 28, 2019.*

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

20 CSR 4240-2.025 Commission Address and Business Hours

PURPOSE: This rule provides the physical and mailing address, as well as the hours of business for the Public Service Commission.



(1) The Public Service Commission's principal office is located in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

(2) The public may obtain information, make requests, or make submissions by mail addressed to the Secretary of the Commission, Missouri Public Service Commission, PO Box 360, Jefferson City, MO 65102, electronically at the commission's Internet website, or in person at the commission's principal office during regular business hours.

(3) The regular business hours of the Missouri Public Service Commission are Monday through Friday, 8:00 a.m. to 5:00 p.m., except on state holidays when the offices are closed.

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.025. Original rule filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.025, effective Aug. 28, 2019.*

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

20 CSR 4240-2.030 Records of the Commission

PURPOSE: This rule sets forth the record-keeping requirements of the commission and the availability of these records to the public. Charges for copies are subject to statutory limitations.

(1) The secretary of the commission shall keep a full and true record of all the proceedings of the commission, of all books, maps, documents, and papers ordered filed by the commission, of all orders made by each of the commissioners, and of all orders made by the commission or approved and confirmed by it and ordered filed. In addition, the secretary of the commission shall maintain a docket of all cases filed and cases set for hearing and shall assign each matter an appropriate case number. These records shall be available for public inspection in the office of the secretary of the commission, during regular business hours, Monday through Friday, except for legal holidays. The specific hours the records are available shall be posted at the principal office 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.

(3) The fees for copying public records shall not exceed ten cents (\$.10) per page for a paper copy not larger than nine inches by fourteen inches (9" × 14"), with the hourly fee for duplicating time not to exceed the average hourly rate of pay for the clerical staff of the commission fulfilling the request and the actual cost of research time. The commission shall utilize employees to make copies and conduct the research so that the lowest amount of charges are incurred based on the scope of the request.

(4) Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations, or similar audio or visual items or devices, and for paper copies larger than nine inches by fourteen inches (9" × 14") shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request from records or information, the fees for compliance may include the actual costs of such programming.

(5) Copies may be provided without charge or at a reduced charge to public officers for use in their official capacity, or in any other situation where the Public Service Commission determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Public Service Commission and is not primarily in the commercial interest of the requester.

AUTHORITY: sections 386.300 and 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.030. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.030, effective Aug. 28, 2019.*

**Original authority: 386.300, RSMo 1939, amended 1947, 1984, 1995 and 386.410, RSMo 1939, amended 1947, 1977, 1996.*

20 CSR 4240-2.040 Practice Before the Commission

PURPOSE: This rule sets forth who may practice as an attorney before the commission.

(1) The staff counsel represents the commission staff in investigations, contested cases, and other proceedings before the commission.

(2) The public counsel represents the interests of the public before the commission.

(3) Attorneys who wish to practice before the commission shall fully comply with its rules and also comply with one (1) of the following criteria:

(A) An attorney who is licensed to practice law in the state of Missouri, and in good standing, may practice before the commission;

(B) A nonresident attorney who is a member of the Missouri Bar in good standing, but who does not maintain an office for the practice of law within the state of Missouri, may appear as in the case of a resident attorney;

(C) Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record, may petition the commission for leave to be permitted to appear and participate in a particular case under all of the following conditions:

1. The visiting attorney shall file in a separate pleading a statement identifying each court of which that attorney is a member and certifying that neither the visiting attorney nor any member of the attorney's firm is disqualified to appear in any of these courts;

2. The statement shall designate some member in good standing of the Missouri Bar having an office within Missouri as associate counsel;

3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record; and

4. The visiting attorney shall provide a receipt or a statement showing that he or she has complied with the requirement of Missouri Supreme Court Rule 6.01(m).

(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.



(5) Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

(6) After an attorney has entered an appearance for any party, the attorney may withdraw only by leave of the commission.

AUTHORITY: section 386.410, RSMo 2000.* This rule originally filed as 4 CSR 240-2.040. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.040, effective Aug. 28, 2019.

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

Smith v. Public Service Commission, 336 S.W.2d 491 (Mo. 1960). *Commission Rule 12.07 allowing individual party before commission held not to authorize non-lawyer individual to act as attorney for twenty-five other individuals. See also Reed v. Labor and Industrial Relations*, 789 S.W.2d 19 (Mo. banc 1990) and *Clark v. Austin*, 340 Mo. 647, 101 S.W.2d 977 (Mo. 1937).

20 CSR 4240-2.050 Computation of Time

PURPOSE: This rule sets standards for computation of effective dates of any order or time prescribed by the commission when no specific date is set by commission order.

(1) In computing any period of time prescribed or allowed by the commission, the day of the act, event, or default shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. This rule does not apply when the commission establishes a specific date by which an action must occur, nor does it operate to extend effective dates which are established by statute.

(2) Except when the issuance and effective date are the same, in computing the effective date of any order of the commission, the day the order was issued shall not be included, and the order is considered effective at 12:00 a.m. on the effective date designated in the

order, whether or not the date is a Saturday, Sunday, or legal holiday. If the effective date and the issuance date are the same, the order shall be effective at the date and time the order is issued by the commission.

(3) When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission may—

(A) Order the period enlarged before the expiration of the period originally prescribed or as extended by a previous order; or

(B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect or for other good cause shown.

AUTHORITY: section 386.410, RSMo 2000.* This rule originally filed as 4 CSR 240-2.050. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.050, effective Aug. 28, 2019.

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

State ex rel. Alton R. Co. v. Public Service Commission, 536 S.W.2d 766 (Mo. 1941). *The effective date of an order is at the beginning of that date, rather than at its close.*

20 CSR 4240-2.060 Applications

PURPOSE: Applications to the commission requesting relief under statutory or other authority must meet the requirements set forth in this rule.

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(A) The legal name of each applicant, a brief description of the legal organization of each applicant, whether a Missouri corporation, foreign corporation, partnership, proprietorship, or other business organization, the street and mailing address of the principal office or place of business of each applicant and each applicant's electronic mail address, fax number and telephone number, if any;

(B) If any applicant is a Missouri corporation, a Certificate of Good Standing from the secretary of state;

(C) If any applicant is a foreign corporation, a certificate from the secretary of state

that it is authorized to do business in Missouri;

(D) If any applicant is a partnership, a copy of the partnership agreement;

(E) If any applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(F) If any applicant is a political subdivision, a specific reference to the statutory provision and a specific reference to any other authority, if any, under which it operates;

(G) If any applicant has submitted the applicable information as set forth in subsections (1)(B)–(F) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct;

(H) A brief statement of the character of business performed by each applicant;

(I) Name, title, address, and telephone number of the person to whom correspondence, communications, and orders and decision of the commission are to be sent, if other than to the applicant's legal counsel;

(J) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;

(K) A statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of the application;

(L) A statement that no annual report or assessment fees are overdue; and

(M) All applications shall be subscribed and verified by affidavit under oath by one (1) of the following methods: if an individual, by that individual; if a partnership, by an authorized member of the partnership; if a corporation, by an authorized officer of the corporation; if a municipality or political subdivision, by an authorized officer of the municipality or political subdivision; or by the attorney for the applicant if the application includes or is accompanied by a verified statement that the attorney is so authorized.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

(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.

(4) In addition to the requirements of section (1), applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived, shall contain information as follows:

(A) Specific indication of the statute, rule, or tariff from which the variance or waiver is sought;

(B) The reasons for the proposed variance or waiver and a complete justification setting out the good cause for granting the variance or waiver; and

(C) The name of any public utility affected by the variance or waiver.

(5) Except for telecommunications companies and providers of video services or interconnected voice over Internet protocol (VoIP) services, a name change may be accomplished by filing the items below with a cover letter requesting a change of name. Notwithstanding any other provision of these rules, the items required herein may be filed by a nonattorney. Applications for approval of a change of name shall include:

(A) A statement, clearly setting out both the old name and the new name;

(B) Evidence of registration of the name change with the Missouri secretary of state; and

(C) Either an adoption notice and revised tariff title sheet with an effective date which is not fewer than thirty (30) days after the filing date of the application, or revised tariff sheets with an effective date which is not fewer than thirty (30) days after the filing date of the application.

(6) In addition to the general requirements set forth above, the requirements found in Chapter 3 of the commission's rules pertaining to the filing of various types of applications must also be met.

AUTHORITY: sections 386.250 and 386.410, RSMo 2000.* This rule originally filed as 4 CSR 240-2.060. 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. Amended: Filed Feb. 3, 1987, effective May 1, 1987. Amended: Filed May 11, 1988, effective Aug. 11, 1988. Amended:

Filed Feb. 5, 1993, effective Oct. 10, 1993. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.060, effective Aug. 28, 2019.

*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 386.410, RSMo 1939, amended 1947, 1977, 1996.

State ex rel. Kansas City Transit, Inc. v. Public Service Commission, 406 S.W.2d 5 (Mo. banc 1966). Commission is an administrative body of powers limited to those expressly granted by statute or necessary or proper to effectuate statutory purpose. Commission's authority to regulate does not include right to dictate manner in which company conducts its business.

20 CSR 4240-2.065 Tariff Filings Which Create Cases

PURPOSE: This rule establishes when a case shall be opened for a tariff.

(1) A general rate increase request is one where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides, but shall not include requests for changes in rates made pursuant to an adjustment clause or other similar provisions contained in a utility's tariffs. When a public utility submits a tariff which constitutes a general rate increase request, the commission shall establish a case file for the tariff. The tariff and all pleadings, orders, briefs, and correspondence regarding the tariff shall be filed in the case file established for the tariff. The tariff submitted shall be in compliance with the provisions of the rules relating to the separate utilities. A tariff filed which proposes a general rate increase request shall also comply with the minimum filing requirements of these rules for general rate increase requests. Any public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.

(2) Except when the Commission orders the filing of a tariff, when a public utility submits a tariff for commission approval but requests the tariff become effective in fewer than thirty (30) days, the commission shall establish a case file for the tariff. In addition, the public

utility shall file a Motion for Expedited Treatment and comply with the expedited treatment portion of these rules. The tariff and all pleadings, orders, briefs, and correspondence shall be filed in the case file established for the tariff.

(3) When a pleading, which objects to a tariff or requests the suspension of a tariff, is filed, the commission shall establish a case file for the tariff and shall file the tariff and pleading in that case file. All subsequent pleadings, orders, briefs, and correspondence concerning the tariff shall be filed in the case file established for the tariff. Any pleading to suspend a tariff shall attach a copy of the tariff and include a certificate of service to confirm that the party who submitted the tariff has been served with the pleading.

(4) A case file shall be established for a tariff filing in which the commission is required by law or requested by the party filing the tariff to specifically approve the tariff.

(5) A case file will not be established to consider tariff sheets submitted by a regulated utility which do not meet the circumstances of sections (1)–(4) of this rule, except that a case file shall be established when tariff sheets are suspended by the commission on its own motion or when suspended upon the recommendation of staff.

(6) When a public utility extends the effective date of a tariff, it shall file a letter extending the tariff effective date in the official case file. Notwithstanding any other provision of these rules, this letter may be filed by a nonattorney.

AUTHORITY: section 386.410, RSMo 2000.* This rule originally filed as 4 CSR 240-2.065. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.065, effective Aug. 28, 2019.

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

20 CSR 4240-2.070 Complaints

PURPOSE: This rule establishes the procedures for filing formal and informal complaints with the commission.

(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.

(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 Relay Missouri at 711), or in person at the commission's offices—

(A) The name, street address, and telephone number of each complainant and, if one (1) person asserts authority to act on behalf of the others, the source of that authority;

(B) The address where the utility service was rendered;

(C) The name and address of the party against whom the complaint is filed;

(D) The nature of the complaint and the complainant's interest therein;

(E) The relief requested; and

(F) The measures taken by the complainant to resolve the complaint.

(4) Formal Complaints. A formal 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 email 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) 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.

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

(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.

(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. Additionally, the complainant may accomplish service of the complaint upon the respondent(s) by any method authorized by Supreme Court Rule 54, having first obtained authorization from the commission for use of a special process server. Any person eligible to serve process under Supreme Court Rule 54 may be nominated as a special process server. A return of service shall be promptly filed with the commission as in the circuit courts of this state.

(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.

(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.

(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 section 386.480, 392.210(2), or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

(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.



(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.

(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.

(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.

(A) When a complaint is filed that qualifies for handling as a small formal complaint, the assigned regulatory law judge shall direct the secretary of the commission to 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. At the same time, the regulatory law judge shall notify all parties that the complaint will proceed under the small formal complaint process. The person, corporation, or public utility against whom the complaint has been filed is allowed thirty (30) days after the date of notice to satisfy the complaint or file an answer. If the person, corporation, or public utility does not satisfy the complaint or file an answer within thirty (30) days, the regulatory law judge may issue an order granting default and deeming the allegations of the complaint to have been admitted by the respondent. A party in default has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default. The regulatory law judge may grant the motion to set aside the order of default and allow the respondent additional time to answer upon a showing of good cause.

(B) If any party believes that a complaint should or should not be handled as a small formal complaint, that party may file a motion with the commission requesting that the status of the complaint be changed. In response to such motion, or acting on its own motion, the commission shall, at its discretion, decide how the complaint shall be handled.

(C) Upon the filing of a complaint that

qualifies under this section, the chief regulatory law judge shall assign the case to a regulatory law judge. To process small complaint cases in the timeliest manner and in the most convenient location for the customers, the commission hereby delegates the commission's authority to hear the case, make rulings, and issue a recommended report and order or other appropriate order disposing of the case to such regulatory law judge.

(D) The commission's staff shall, within forty-five (45) days after the complaint is filed, investigate the complaint and file a report detailing staff's findings and recommendations. The regulatory law judge may allow staff additional time to complete its investigation for good cause shown. The member or members of the commission's staff who investigate the complaint shall be available as a witness at the hearing if the regulatory law judge or any party wishes to call them to testify.

(E) Any hearing, unless otherwise agreed to by the parties, shall be held in the county, or a city not within a county, where the subject utility service was rendered or within thirty (30) miles of where the service was rendered. The regulatory law judge may allow any party, witness, or attorney to participate in the hearing by telephone.

(F) Small formal complaint case hearings shall be conducted in an informal summary manner whenever possible, without affecting the rights of the parties—

1. The technical rules of evidence shall not apply;

2. The regulatory law judge shall have the authority to dispense with pre-filed written testimony; and

3. The regulatory law judge shall assume an affirmative duty to determine the merits of the claims and defenses of the parties and may question parties and witnesses.

(G) The regulatory law judge, after affording the parties reasonable opportunity for discovery and a fair hearing, shall issue a recommended report and order within one hundred (100) days following the filing of the complaint, unless the regulatory law judge finds good cause to extend that time or the extension is otherwise agreed to by the parties.

(H) Any party subject to a recommended order disposing of the case or a recommended report and order issued by a regulatory law judge under this section may file with the commission, within ten (10) days of the issuance of the recommended order, comments supporting or opposing the recommended order. Any comments opposing the

recommended order shall contain specific detailed grounds upon which it claims the order is unlawful, unjust, or unreasonable. The commission may approve or reject the recommended order based on the existing record without further hearing. If the commission rejects the recommended order, the commission shall issue its own order based on the evidence previously submitted, or upon such additional evidence, as the commission shall choose to receive.

AUTHORITY: section 386.410, RSMo 2016. This rule originally filed as 4 CSR 240-2.070. 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 March 24, 2010, effective Oct. 30, 2010. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Amended: Filed Nov. 7, 2018, effective July 30, 2019. Moved to 20 CSR 4240-2.070, effective Aug. 28, 2019.*

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

20 CSR 4240-2.075 Intervention

PURPOSE: This rule prescribes the procedures by which an individual or entity may intervene in a case and allows for the filing of briefs by amicus curiae.

(1) A motion to intervene or add new member(s) shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.

(2) A motion to intervene or add new member(s) shall include:

(A) The legal name of each association, person, or entity seeking intervention or to be added;

(B) The street and mailing address of the principal office or place of business of each association, person, or entity seeking intervention or to be added, or of their attorney;

(C) The email address, fax number, and telephone number, if any, of each association, person, or entity seeking intervention or to be added, or their attorney;

(D) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;



(E) A statement of the proposed intervenor's or new member's interest in the case and reasons for seeking intervention or to be added; and

(F) A statement as to whether the proposed intervenor or new member supports or opposes the relief sought or that the proposed intervenor or new member is unsure of the position it will take.

(3) The commission may grant a motion to intervene or add new member(s) if—

(A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

(4) If the commission grants intervention to an association, other than an incorporated association or other entity created by statute, the commission is not granting intervention to the "association," but is granting intervention to the individual members of the association.

(5) For purposes of 4 CSR 240-2.080(16), service upon counsel for an association satisfies the requirement for service upon the individual members of the association.

(6) If any member(s) of an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission withdraws from the association during the pendency of a case, the association must file a notice of the member's(s') withdrawal in the official case file within five (5) days of the member's(s') withdrawal.

(7) If an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission wants to add an additional member(s) during the pendency of that case, the association must file a motion to add new member(s).

(8) If the commission finds that the name of any association, other than an incorporated association or other entity created by statute, seeking intervention in a case before the commission could lead to confusion or misidentification of that association or its members, the commission may order that the association be identified by an alternate name in that case.

(9) The commission may limit an intervention to particular issues or interests in a case.

(10) Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause. Any motion so filed must include a definitive statement whether or not the entity seeking intervention or to be added as a new member accepts the record established in that case, including the requirements of any orders of the commission, as of the date the motion is filed.

(11) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than the initial briefs of the parties and comply with all applicable briefing requirements. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.075. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.075, effective Aug. 28, 2019.*

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

20 CSR 4240-2.080 Pleadings, Filing, and Service

PURPOSE: This rule prescribes the content and procedure for filing pleadings before the commission and for service thereof.

(1) Every pleading or brief shall be signed by an attorney of record with the attorney's individual name or, if a natural person is not represented by an attorney, shall be signed by the natural person.

(2) By signing a pleading, the signer represents that he or she is authorized to so act.

(3) Pleadings or briefs shall include the signer's address, state bar number(s), email address, fax number, and telephone number, if any.

(4) Each pleading shall include a clear and concise statement of the relief requested, a specific reference to the statutory provision or other authority under which relief is requested, and a concise statement of the facts entitling the party to relief.

(5) An unsigned pleading or brief may be rejected.

(6) By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that—

(A) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(C) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(D) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(7) Any person filing a pleading or a brief shall file with the secretary of the commission either—

(A) The original; or

(B) An electronic copy.

(8) Each pleading may be accompanied by a cover letter which states the subject matter. This cover letter shall contain no matter for commission decision.

(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.

(10) Pleadings and briefs in every instance shall display on the cover or first page the case number and the title of the case. In the event the title of a case contains more than one (1) name as applicants, complainants, or respondents, it shall be sufficient to show only the first of these names as it appears in the first document commencing the case, followed by an appropriate abbreviation (et al.) indicating the existence of other parties.

(11) Pleadings and briefs that are not electronically filed shall be bound at the top or at an edge, shall be typewritten or printed upon white, eight and one-half by eleven-inch (8 1/2" × 11") paper. Attachments to pleadings or briefs shall be annexed and folded to eight and one-half by eleven-inch (8 1/2" × 11") size whenever practicable. Printing on both sides of the page is encouraged. Lines shall be double-spaced, except that footnotes and quotations in excess of three (3) lines may be single-spaced. Reproduction of any of these documents may be by any process provided all copies are clear and permanently legible. Electronically filed pleadings or briefs shall be formatted in the same manner as paper filings.

(12) Pleadings and briefs which are not in substantial compliance with this rule, applicable statutes, or commission orders may not be accepted for filing. In addition, filings will be scanned for computer viruses before being uploaded into the commission's electronic system and may not be accepted if the filing is infected. The secretary of the commission may return these pleadings or briefs with a concise explanation of the deficiencies and the reasons for not accepting them for filing. Tendered filings which have been rejected may not be entered on the commission's docket. The mere fact of filing shall not constitute a waiver of any noncompliance with these rules, and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading.

(13) Parties shall be allowed ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

(14) Any request for expedited treatment shall include the words "Motion for Expedited Treatment" in the title of the pleading. The pleading shall also set out with particularity the following:

(A) The date by which the party desires the commission to act;

(B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and

(C) That the pleading was filed as soon as it could have been or an explanation why it was not.

(15) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the staff counsel and the public counsel, a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.

(16) Methods of Service.

(A) Any person entitled by law may serve a document on a represented party by—

1. Delivering it to the party's attorney;

2. Leaving it at the office of the party's attorney with a secretary, clerk, or attorney associated with or employed by the attorney served;

3. Mailing it to the last known address of the party's attorney;

4. Transmitting it by facsimile machine to the party's attorney; or

5. Transmitting it to the email address of the party's attorney.

(B) Any person entitled by law may serve a document on an unrepresented party by—

1. Delivering it to the party; or

2. Mailing it to the party's last known address.

(C) Completion of Service.

1. Service by mail is complete upon mailing.

2. Service by facsimile transmission is complete upon actual receipt.

3. Service by email is complete upon actual receipt.

(17) Every pleading or brief shall include a certificate of service. Such certificate of service shall be adequate proof of service.

(18) Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission. Parties shall be allowed ten (10) days from the date of filing in which to respond to an amended pleading unless otherwise ordered by the commission.

(19) Any list of issues ordered by the commission must set out each question presented for decision. Each question presented should be clear and concise.

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.080. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 15, 1980, effective Sept. 12, 1980. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002. Amended: Filed May 21, 2002, effective Dec. 30, 2002. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.080, effective Aug. 28, 2019.*

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

20 CSR 4240-2.090 Discovery and Prehearings

PURPOSE: This rule prescribes the procedures for depositions, written interrogatories, data requests, and prehearing conferences.

(1) Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.

(2) Parties may use data requests as a means for discovery.

(A) Data request means an informal written request for documents or information that may be transmitted directly between attorneys, agents, or employees of the commission, public counsel, or other parties.

(B) Answers to data requests need not be under oath or be in any particular format, but shall be signed by a person who is able to attest to the truthfulness and correctness of



the answers.

(C) The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed to by the parties to the data requests, or otherwise ordered by the commission.

(D) If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission.

(E) If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient shall include the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer.

(F) The responding party shall promptly notify the requesting party of any changes to the answers previously given to a data request.

(G) Upon agreement by the parties or as ordered by the commission for good cause shown, the time limits for serving or answering data requests may be modified.

(H) Any data request issued to or by the staff of the commission shall be submitted and responded to in the commission's Electronic Filing and Information System (EFIS). However, if the technical limitations of EFIS make such submission or response difficult, the parties to the data requests may agree upon an alternative method of submission and response, or an alternative method of submission and response may be ordered by the commission.

(I) Sanctions for failure to answer data requests may include any of those provided for abuse of the discovery process in section (1) of this rule.

(3) All prehearing conferences shall be held as directed by the commission or presiding officer, and reasonable notice of the prehearing conference time shall be given to the parties involved.

(4) Any party may petition the commission to hold a prehearing conference at any time prior to the hearing.

(5) Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

(6) Parties may consider procedural and substantive matters at the prehearing conference which may aid in the disposition of the issues.

Matters which require a decision may be presented to the presiding officer during the conference.

(7) Facts disclosed in the course of a prehearing conference and settlement offers are privileged and, except by agreement, shall not be used against participating parties unless fully substantiated by other evidence.

(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.090. 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 Jan. 22, 2014, effective Aug. 30, 2014. Moved to 20 CSR 4240-2.090, effective Aug. 28, 2019.*

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

20 CSR 4240-2.100 Subpoenas

PURPOSE: The commission may issue subpoenas for the production of witnesses and records. This rule prescribes the procedures for requesting and issuing subpoenas.

(1) A request for a subpoena or a subpoena *duces tecum* requiring a person to appear and testify at the taking of a deposition or at a hearing, or for production of documents or records shall be filed on the form provided by the commission and shall be directed to the secretary of the commission. A request for a subpoena *duces tecum* shall specify the par-

ticular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant.

(2) Except for a showing of good cause, a subpoena or subpoena *duces tecum* shall not be issued fewer than twenty (20) days before a hearing.

(3) Objections to a subpoena or subpoena *duces tecum* or motions to quash a subpoena or subpoena *duces tecum* shall be made within ten (10) days from the date the subpoena or subpoena *duces tecum* is served.

(4) Subpoenas or subpoenas *duces tecum* shall be signed and issued by the secretary of the commission, a commissioner or by a law judge pursuant to statutory delegation authority. The name and address of the witness shall be inserted in the original subpoena or subpoena *duces tecum* and a copy of the return shall be filed with the secretary of the commission. Subpoenas or subpoenas *duces tecum* shall show at whose instance the subpoena or subpoena *duces tecum* is issued. Blank subpoenas shall not be issued.

(5) If there is a failure to comply with a subpoena or a subpoena *duces tecum* after objections or a motion to quash have been determined by the commission, the commission by its counsel or the party seeking enforcement may apply to a judge of the circuit court of the county in which—the hearing has been held, is being held, or is scheduled to be held, or where the witness resides or may be found—for an order enforcing the subpoena or subpoena *duces tecum*.

AUTHORITY: section 386.410, RSMo Supp. 1998. This rule originally filed as 4 CSR 240-2.100. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Moved to 20 CSR 4240-2.100, effective Aug. 28, 2019.*

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

20 CSR 4240-2.110 Hearings

PURPOSE: This rule prescribes the procedures for the setting, notices, and conduct of hearings.

(1) The commission shall set the time and place for all hearings and serve notice as



required by law. Additional notice may be served when the commission deems it to be appropriate.

(2) The presiding officer may order continuance of a hearing date for good cause.

(A) When a continuance has been granted at the request of the applicant or complainant, the commission may dismiss the case for failure to prosecute if it has not received a request from the applicant or complainant that the matter be again continued or set for hearing within ninety (90) days from the date of the order granting the continuance.

(B) Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

(3) When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.

(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.

(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 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 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 a motion to reopen the record for the taking of additional evidence. The motion shall 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. This rule originally filed as 4 CSR 240-2.110. 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 March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.110, effective Aug. 28, 2019.*

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

20 CSR 4240-2.115 Stipulations and Agreements

PURPOSE: This rule prescribes the procedure when a nonunanimous stipulation and agreement is presented to the commission.

(1) Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation

and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

(E) A party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.115. Original rule filed June 9, 1987, effective Sept. 15, 1987. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002. Moved to 20 CSR 4240-2.115, effective Aug. 28, 2019.*

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

20 CSR 4240-2.116 Dismissal

PURPOSE: This rule prescribes the conditions under which the commission or an initiating party may dismiss a case or by which any party may be dismissed.

(1) An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered by filing a notice of dismissal with the commission. Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the commission, or by written consent of all the parties.

(2) Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time.

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.



(4) A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.

AUTHORITY: section 386.410, RSMo 2000.* *This rule originally filed as 4 CSR 240-2.116. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.116, effective Aug. 28, 2019.*

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

20 CSR 4240-2.117 Summary Disposition

PURPOSE: *This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.*

(1) Summary Determination.

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary

determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings—Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.

AUTHORITY: section 386.410, RSMo 2000.* *This rule originally filed as 4 CSR 240-2.117. Original rule filed March 26, 2002, effective Nov. 30, 2002. Moved to 20 CSR 4240-2.117, effective Aug. 28, 2019.*

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

20 CSR 4240-2.120 Presiding Officers

PURPOSE: *This rule states the duties of presiding officers and the procedure for disqualifying them.*

(1) A presiding officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary

delay in the disposition of cases, and to maintain order, and shall possess all powers necessary to that end, including, but not limited to, convening discovery conferences as needed and resolving discovery disputes. The presiding officer may take action as may be necessary and appropriate to the discharge of duties, consistent with the statutory authority or other authorities under which the commission functions, and with the rules and policies of the commission.

(2) Whenever any party shall deem the presiding officer for any reason to be disqualified to preside, or to continue to preside, in a particular case, the party may file with the secretary of the commission a motion to disqualify with affidavits setting forth the grounds alleged for disqualification. A copy of the motion shall be served by the commission on the presiding officer whose removal is sought and the presiding officer shall have seven (7) days from the date of service within which to reply.

AUTHORITY: section 386.410, RSMo 2016.* *This rule originally filed as 4 CSR 240-2.120. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Nov. 7, 2018, effective July 30, 2019. Moved to 20 CSR 4240-2.120, effective Aug. 28, 2019.*

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

Union Electric Co. v. PSC, 591 SW2d 134 (Mo. App. 1979). *Prohibition will be under common law rule to disqualify a PSC commissioner who was a party in a case now pending before her.*

20 CSR 4240-2.125 Procedures for Alternative Dispute Resolution

PURPOSE: *This rule establishes procedures which will allow parties to utilize alternative dispute resolution methods in order to resolve issues or the entire matter in dispute.*

(1) Settlement Negotiations.

(A) When the parties agree that the participation of a presiding officer in the settlement process would be beneficial, those parties shall file a motion for appointment of a settlement officer for that case. The motion shall contain—

1. A statement that all parties agree to the procedure;



2. A list of the issues to be addressed or matters the parties wish the presiding officer to aid them in resolving; and

3. A date by which a settlement will be reached or settlement negotiations under this procedure will end.

(B) If the commission grants the motion for a settlement officer, it shall issue an order scheduling a settlement conference and shall appoint a presiding officer to participate in settlement negotiations.

(C) The negotiations and statements of the parties or attorneys made at the settlement conference shall be off the record and shall not be made a part of the official case.

(D) If a settlement is not reached before the date specified by the parties in their motion, the procedure shall end unless the parties all agree to an extension and the procedure is extended by order of the commission.

(2) Mediation.

(A) The commission may order mediation before any further proceeding in a case.

(B) As the commission deems appropriate, or upon a request for mediation, the commission may appoint a presiding officer or other neutral third party other than the presiding officer assigned to the case to mediate the dispute.

(C) All other actions on the case shall cease and all time limitations shall be tolled pending the completion of mediation process, except as otherwise provided by law.

(D) The mediator shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the settlement or mediation discussions in the case to any commissioner or the presiding officer appointed to preside over the case.

(E) Failure to appear and participate in good faith in commission ordered mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.125. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.125, effective Aug. 28, 2019.*

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

20 CSR 4240-2.130 Evidence

PURPOSE: This rule prescribes the rules of evidence in any hearing before the commission.

(1) In any hearing, these rules supplement section 536.070, RSMo.

(2) If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document shall be specifically identified and are relevant and material. The information may be assigned an exhibit number for identification.

(3) The presiding officer shall rule on the admissibility of all evidence. Evidence to which an objection is sustained, at the request of the party seeking to introduce the same or at the instance of the commission, nevertheless may be heard and preserved in the record, together with any cross-examination with respect to the evidence and any rebuttal of the evidence, unless it is wholly irrelevant, repetitious, privileged or unduly long. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings shall be unnecessary and need not be taken.

(4) In extraordinary circumstances where prompt decision by the commission is necessary to promote substantial justice, the presiding officer may refer a matter to the commission for determination during the progress of the hearing.

(5) The rules of privilege are effective to the same extent that they are in civil actions.

(6) Format for Prepared Testimony.

(A) It shall be typed or printed, in black type on a white page that is eight and one-half inches by eleven inches (8 1/2" × 11").

(B) It shall be double-spaced and have pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1.

(C) If not filed electronically, it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form.

(D) It shall have at least a one-inch (1") margin on the top, bottom, and both sides.

(E) Schedules shall bear the word "schedule," and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule.

(F) All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No.: (To be marked by the hearing reporter)

Issue: (If known at the time of filing)

Witness: (Full name of witness)

Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)

Sponsoring Party:

Case No.:

Date Testimony Prepared:

(G) It shall be filed on line-numbered pages.

(H) Testimony that addresses more than one (1) issue shall contain a table of contents.

(I) Electronically filed prepared testimony shall be formatted and labeled in the same manner as paper filings.

(J) Printing on both sides of the page is encouraged.

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

(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).

(9) In any case, the commission or presiding officer may direct that testimony be taken live rather than prepared in advance.



(10) No party shall be permitted to supplement prefiled prepared direct, rebuttal, or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

(11) Any or all parties may file a stipulation as to the facts. This stipulation shall not preclude the offering of additional evidence by any party except as specified in the stipulation.

(12) Exhibits shall be legible and, unless otherwise authorized by the commission, shall be prepared on a standard eight and one-half by eleven inch (8 1/2" × 11")-size page. The pages of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

(13) Exhibits shall be tendered to the reporter at the time of hearing without being prenumbered by the offering party, unless otherwise ordered by the presiding officer.

(14) All exhibits shall be marked at the time of hearing, using a single series of numbers, unless otherwise ordered by the presiding officer.

(15) Unless the presiding officer directs otherwise, when exhibits that have not previously been filed are offered in evidence, the original shall be furnished to the reporter, and the party offering exhibits also shall be prepared to furnish a copy to each commissioner, the presiding officer, and each party.

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

(17) Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.

(18) Evidence for which a claim of confidentiality is made shall be provided in conformance with 4 CSR 240-2.135 or with any protective order specific to that information.

(19) All testimony shall be taken under oath.

AUTHORITY: section 386.410, RSMo 2000.* *This rule originally filed as 4 CSR 240-2.130. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.130, effective Aug. 28, 2019.*

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

State ex rel. Utility Consumers Council v. Public Service Commission, 562 S.W.2d 688 (Mo. App. 1978). *At a hearing on the issuance of a certificate of convenience and necessity, the commission denied appellant consumers council opportunity to cross-examine electric utility's witnesses on certain testimony regarding costs. The proprietary nature of the cost information involved does not protect it from cross-examination by consumers council, and denial of right to such cross-examination was improper.*

20 CSR 4240-2.135 Confidential Information

PURPOSE: *This rule prescribes the procedures for handling confidential information in cases before the commission.*

(1) All items filed in case proceedings before the commission shall be open to the public unless protected pursuant to this rule or otherwise protected by law.

(2) Confidential Designation.

(A) Any person may submit to the commission, without first obtaining a protective order, information designated as confidential if that information is—

1. Customer-specific information;
2. Employee-sensitive personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by inter-

nal or external auditors, consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney for services related to general rate proceedings shall always be public;

6. Strategies employed, to be employed, or under consideration in contract negotiations;

7. Relating to the security of a company's facilities; or

8. Concerning trade secrets, as defined in section 417.453, RSMo.

(B) Any information designated as confidential shall be submitted with a cover sheet or pleading describing how such information qualifies as confidential under subsection (2)(A) of this rule, including the specific subsection relied upon and an explanation of its applicability. Only the specific information that qualifies as confidential shall be designated as such. In addition, each document that contains confidential information shall bear the designation "Confidential" and the paragraph(s) of 4 CSR 240-2.135(2)(A) through which that information is protected.

(3) Protective Order.

(A) In addition to information that may be designated as confidential as set out in this rule, any person may seek a protective order from the commission designating specific information as confidential. If a protective order is granted, the protected information shall be considered confidential information. A request for a protective order shall be made as follows:

1. By filing a separate pleading denominated "Motion for Protective Order," which may initiate a new case if a related case is not already pending;

2. The pleading shall state with particularity why the moving party seeks protection and what harm may occur if the information is made public;

3. The pleading shall also state whether any of the information for which a claim of confidentiality is made can be found in any other public document;

(B) The information for which a claim of confidentiality is made may be designated as confidential while the motion is pending if only the specific information at issue is designated as such.

(4) The commission may order greater protection than that provided by a confidential designation upon a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed while protecting the interests of the



disclosing entity and the public.

(A) While such a motion is pending, the disclosing party requesting greater protection will be afforded the protection sought. However, in all circumstances, the disclosing party must, at a minimum, provide a detailed summary of the information at issue.

(B) Any document that contains such information shall bear the designation “Highly Confidential,” rather than “Confidential,” but shall otherwise follow the formatting delineated in section (10) of this rule.

(5) When a party seeks discovery of information that the party from whom discovery is sought believes to be confidential, the party from whom discovery is sought may designate the information confidential.

(A) No order from the commission is necessary before a party in any case pending before the commission may designate discovery responses confidential, and such information shall be protected as provided in this rule.

(B) The party that designates discovery information confidential shall inform, in writing, the party seeking discovery how that information qualifies as confidential under subsection (2)(A) of this rule at the same time it responds to the discovery request. If the party seeking discovery disagrees with the designation placed on the information, that party shall follow the informal discovery dispute resolution procedures set forth in 4 CSR 240-2.090(8). If the party seeking discovery exhausts these dispute resolution procedures, that party may file a motion challenging the designation.

(6) Confidential information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

(A) The party disclosing information designated as confidential shall serve the information on the attorney for the requesting party.

(B) If a party wants any employee or outside expert to review confidential information, the party shall identify that person to the disclosing party by name, title, and job classification before disclosure. The person to whom the information is to be disclosed shall comply with the certification requirements of section (7) of this rule.

(C) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as confidential.

(7) Any employee of a party or outside expert retained by a party that wishes to review confidential information shall first certify in writing that such expert or employee of a party will comply with the requirements of this rule.

(A) The certification shall include the signatory’s full name, permanent address, title or position, date signed, the case number of the case for which the signatory will view the information, and the identity of the party for whom the signatory is acting.

(B) The signed certificate shall be filed in the case.

(C) The party seeking disclosure of the confidential information shall provide a copy of the certificate to the disclosing party before disclosure is made.

(8) If information to be disclosed in response to a discovery request is information concerning another entity—whether or not a party to the case—that the other entity has indicated is confidential, the disclosing party shall notify the other entity of its intent to disclose the information. If the other entity informs the disclosing party that it wishes to protect the information, the disclosing party shall designate the information as confidential under the provisions of this rule.

(9) Any party may use confidential information in prefiled testimony, in a pleading, at hearing, or in a brief if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained. Before including nonpublic information that it has obtained outside this proceeding in its pleading or testimony, a party shall ascertain from the source of the information whether that information is claimed to be confidential.

(10) Any prefiled testimony that contains information designated as confidential shall be filed with both a public and a nonpublic version as follows:

(A) For the public version, the confidential portions shall be removed. The removal of confidential information shall be indicated by underlining and two (2) asterisks before and after the confidential information, e.g., **confidential information removed**. The designated information shall be removed in such a way that the lineation and pagination of the public version remains the same as the confidential version;

(B) For the nonpublic version of the prefiled testimony, the confidential information shall be indicated by underlining and by two (2) asterisks before and after the confidential information, e.g., **confidential information**;

(C) At the hearing, the party offering the prefiled testimony shall present a public version of the testimony in which the confidential portions are removed. The public version of the testimony will be marked as Exhibit _____. The offering party shall also present a separate copy of the prefiled testimony containing confidential information, sealed in an envelope. The version of the testimony containing confidential information will be marked as Exhibit _____. C.

(D) These delineation requirements shall also be used when designating confidential portions of pleadings and briefs.

(11) At any time after the filing of discovery, testimony, brief, or pleading that contains information designated as confidential, the commission may challenge the designation of the discovery, testimony, brief, or pleading. A party may also challenge such a designation at any time by filing an appropriate motion with the commission.

(12) All live testimony, including cross-examination and oral argument, which reveals information that is designated as confidential may be offered only after the hearing room is cleared of all persons except those persons to whom the confidential information is available under this rule. The transcript of such live testimony or oral argument shall be kept under seal and copies shall be provided only to the commission and attorneys of record. The contents of such transcripts shall not be disclosed to anyone other than those permitted access to the designated information under this rule.

(13) All persons who have access to information under this rule shall keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission’s staff or the Office of the Public Counsel from using confidential information obtained under this rule as the basis for additional investigations or complaints against any public utility.

(14) After receiving a notice of appeal, the commission will deliver confidential testimony constituting part of the record before the commission to the reviewing court under seal, unless otherwise directed by the court.

(15) Within ninety (90) days after the completion of a proceeding, including judicial review, all copies of all confidential information, testimony, exhibits, transcripts, or briefs in the possession of any party shall be



returned to the party claiming a confidential interest in such information if that party requests that the information be returned. Otherwise, the information shall be destroyed by the party possessing such information. Any notes pertaining to such information shall be destroyed.

(16) The provisions of sections (6), (7), and (15) of this rule do not apply to officers or employees of the commission or to the public counsel or employees of the Office of the Public Counsel. The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480, RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

(17) Outside experts of the staff of the commission or the Office of the Public Counsel who have been contracted to be witnesses in the proceeding shall have access to designated information and testimony on the same basis as the staff of the commission and the Office of the Public Counsel except that the outside expert shall comply with the provisions of sections (7) and (15). Outside experts of the staff of the commission and the Office of the Public Counsel who have not been contracted to be witnesses in the proceeding shall be subject to all provisions of this rule.

(18) A claim that information is confidential constitutes a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is confidential pursuant to the section of this rule cited as justification for the designation.

(19) The commission may waive or grant a variance from any provision of this rule for good cause shown.

(20) Any reference in any statute or other regulation of this commission that refers to proprietary or highly confidential information shall be interpreted to mean confidential information under this rule.

AUTHORITY: sections 386.040 and 386.410, RSMo 2016.* This rule originally filed as 4 CSR 240-2.135. Original rule filed May 25, 2006, effective Jan. 30, 2007. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

Amended: Filed Nov. 21, 2016, effective July 30, 2017. Moved to 20 CSR 4240-2.135, effective Aug. 28, 2019.

**Original authority: 386.040, RSMo 1939, amended 1943, 1965 and 386.410, RSMo 1939, amended 1947, 1977, 1996.*

20 CSR 4240-2.140 Briefs and Oral Arguments

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

(1) In any case, the commission or presiding officer shall determine whether the parties may file briefs or present oral argument, or both, and may establish time and page limits.

(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.

(3) Unless otherwise ordered by the commission or presiding officer, the parties shall have ten (10) days after the filing of the initial briefs to file their reply briefs.

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

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

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

(5) Unless otherwise ordered by the commission or presiding officer, the parties may file pre-hearing briefs, statements of position, and proposed findings of fact and conclusions of law.

AUTHORITY: section 386.410, RSMo 2000.* This rule originally filed as 4 CSR 240-2.140. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.140, effective Aug. 28, 2019.

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

20 CSR 4240-2.150 Decisions of the Commission

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

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

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

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

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

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

AUTHORITY: section 386.410, RSMo Supp. 1998.* This rule originally filed as 4 CSR 240-2.150. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Moved to 20 CSR 4240-2.150, effective Aug. 28, 2019.

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

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

20 CSR 4240-2.160 Rehearings and Reconsideration

PURPOSE: This rule prescribes the procedure for requesting a rehearing of a final



order or a reconsideration of a procedural or interlocutory order of the commission and the disposition of that request.

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

(2) Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable. At any time before a final order is issued, the commission may, on its own motion, reconsider, correct, or otherwise amend any order or notice issued in the case.

(3) The filing of a motion for reconsideration shall not excuse any party from complying with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, unless otherwise ordered by the commission.

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

AUTHORITY: section 386.410, RSMo 2000. This rule originally filed as 4 CSR 240-2.160. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.160, effective Aug. 28, 2019.*

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

20 CSR 4240-2.180 Rulemaking

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

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

(2) Petitions for promulgation, amendment, or rescission of rules shall be filed with the secretary of the commission in writing and shall include:

(A) The name, street address, and mailing address of the petitioner;

(B) One (1) of the following:

1. The full text of the rule sought to be promulgated;

2. The full text of any rule sought to be amended, including the suggested amendments clearly marked; or

3. The full number of any rule sought to be rescinded;

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

(D) Citations of legal authority which authorize, support, or require the rulemaking action requested by the petition;

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

(F) A verification of the petition by the petitioner by oath.

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

(4) The commission shall comply with the notice provisions of section 536.041, RSMo, upon the disposal of any rulemaking petition.

(5) When the commission decides to promulgate, amend, or rescind a rule, it shall comply with the requirements for rulemaking in Chapter 536, RSMo.

(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.

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

(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.

(9) In compliance with the requirements of Chapter 536, RSMo, the commission shall either—

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

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

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

(D) Withdraw the proposed rule.

AUTHORITY: sections 386.040, 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. This rule originally filed as 4 CSR 240-2.180. Original rule filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Moved to 20 CSR 4240-2.180, effective Aug. 28, 2019.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 386.310, RSMo 1939, amended 1979, 1989, 1996; 386.410, RSMo 1939, amended 1947, 1977, 1996; 392.200, RSMo 1939, amended 1987, 1988, 1996; 392.210, RSMo 1939, amended 1984, 1987, 2008; 392.220, RSMo 1939, amended 1987, 1988, 1991, 1993, 1996, 2008; 392.240, RSMo 1939, amended 1987; 392.280, RSMo 1939, amended 1987, 1993; 392.290, RSMo 1939, amended 1986, 1987; 392.330, RSMo 1939, amended 1980, 1987, 1995; 393.110, RSMo 1939, amended 1967, 2003; 393.140, RSMo 1939, amended 1949, 1967; 393.160, RSMo 1939, amended 1949, 1984; 393.220, RSMo 1939, amended 1967, 1980; 393.240, RSMo 1939, amended 1967; 393.290, RSMo 1939, amended 1967; 394.160, RSMo 1939, amended 1979.*

State ex rel. Southwestern Bell Telephone Co. v. PSC, 592 SW2d 184 (Mo. App. 1979). A declaratory judgment action under section 536.050, RSMo is not available to challenge



the validity of a rule of the Public Service Commission, since a specific, exclusive statutory scheme for review of commission actions is contained in section 386.510, RSMo.

Jefferson Lines, Inc. v. Missouri Public Service Commission, 581 SW2d 124 (Mo. App. 1979). In 4 CSR 240-2.180 the commission provided by rule a method for attack on any of its own rules. A record could be made and if the commission ruled adversely to the petition, an appeal would lie under section 386.510, RSMo. Also, under section 536.031.5, RSMo this court takes judicial notice of the rules printed in the **Code of State Regulations**.

20 CSR 4240-2.205 Variance or Waiver

PURPOSE: *This rule consolidates variance and waiver into one (1) rule.*

The commission may grant variance from or waive any rule or provision of a rule promulgated by the commission upon a finding of good cause.

AUTHORITY: *section 386.410, RSMo 2016.* This rule originally filed as 4 CSR 240-2.205. Original rule filed Nov. 7, 2018, effective July 30, 2019. Moved to 20 CSR 4240-2.205, effective Aug. 28, 2019.*

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

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 30th day of August, 2021.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 30, 2021

File/Case No. EC-2022-0059

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

Grain Belt Express, LLC

Legal Department
1001 McKinney Street, Ste. 700
Houston, TX 77002

Linda McElwee

Paul A Agathen
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.