



Filed
August 08, 2011
Data Center
Missouri Public
Service Commission

Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 13063
Date Printed: 8/8/2011
Rule Number: 4 CSR 240-2.070
Rulemaking Type: Final Order Amendment
Date Submitted to Administrative Rules Division: 8/8/2011
Date Submitted to Joint Committee on Administrative Rules: 7/6/2011

Name of Person to Contact with questions concerning this rule:

Content: Morris Woodruff

Phone: 1-2849

Email: morris.woodruff@psc.mo.gov

Fax:

RuleDataEntry:

Phone:

Email:

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Included with Rulemaking:

Cover Letter

8/08/2011

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.070

COPY

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

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-4393 FAX

Email address Nancy.dippell@psc.mo.gov

Data Entry same Phone FAX

Email address

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

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

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

☒ Order of Rulemaking

Effective Date for the Order

☒ Statutory 30 days OR Specific date

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

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

Changes were made to sections (1), (2), and (15).

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

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ADMINISTRATIVE RULES



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

Dear Secretary Carnahan,

Re: 4 CSR 240-2.070 Complaints

CERTIFICATION OF ADMINISTRATIVE RULE

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

Statutory Authority: section 386.410, RSMo 2000

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

Sincerely,

A handwritten signature in cursive script that reads "Nancy Dippell".

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

Enclosure

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Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240 – Public Service Commission AUG 0 8 2011

Chapter 2 – Practice and Procedure

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

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

4 CSR 240-2.070 is amended.

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

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

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

RESPONSE: Complainants, like any other party appearing before the commission, are required to comply with the commission's rules and the commission cannot include a cross-reference that will accommodate every possible situation. The complainants may read 4 CSR 240-4 and determine if those regulations apply. Therefore, the commission makes no change as a result of this comment.

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

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

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

JOINT COMMITTEE ON

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

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

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

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

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

4 CSR 240-2.070 Complaints.

(1) Any person or public utility who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction may file a complaint. A complaint may also be filed by the commission on its own motion, the commission staff through the staff counsel, or the office of the public counsel.

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

(15) Small Formal Complaint Case. If a customer of a utility files a formal complaint regarding any dispute involving less than three thousand dollars (\$3,000), the process set forth in this section shall be followed for such complaints. The provisions of sections (1)-(14) of this rule shall also apply to small formal complaints.