

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

In the Matter of the Proposed Revisions to) **Case No. AX-2011-_____**
4 CSR 240-2.045 and 4 CSR 240-2.080)

MOTION FOR PROPOSED RULEMAKING

COME NOW the Office of the Public Counsel and for its Motion for Proposed Rulemaking, respectfully state as follows:

1. There are three broadly recognized problems with Chapter 2 of the Commission's rules. In descending order of seriousness, they are: A) The conflict between and confusion surrounding Commission rules 4 CSR-240-2.045(2) and 4 CSR 240-2.080(11), which on several occasions in recent years have caused much consternation among practitioners and in the courts; B) The inscrutable Commission rule 4 CSR 240-2.080(21), which ever since its adoption has been notable not for its efficacy, but because it is always either ignored or waived; and C) The conflict between 4 CSR 240-2.085 and the more recent 4 CSR 240-2.135. Public Counsel is aware that the Commission is considering other changes to Chapter 2. Public Counsel is also aware that such consideration has been going on for many years with no concrete results. The Commission should not delay fixing these clear and universally recognized problems because it is considering other changes.

2. Public Counsel proposes the attached modifications to the applicable sections of chapter 2 as solutions to the above identified problems. Attachment 1 hereto reflects the proposed changes by making deletions thusly and additions thusly.

3. Pursuant to 4 CSR 240-2.180(3)(A)4, Public Counsel states that the Commission has authority under Sections 386.250 and 386.410 RSMo 2000 to adopt the proposed amendments. Pursuant to 4 CSR 240-2.180(3)(A)5, Public Counsel states that there will be no fiscal impacts to any entities from the proposed amendments.

WHEREFORE, Public Counsel respectfully requests that the Commission institute a rulemaking for the purpose of making the modifications to Chapter 2 of the Commission's rules discussed herein.

Respectfully submitted,

/s/ Lewis R. Mills, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 7th day of July 2010:

Missouri Public Service Commission
General Counsel Office

P.O. Box 360
200 Madison Street, Suite 800
Jefferson City MO 65102

/s/ Lewis R. Mills, Jr.

4 CSR 240-2.045 Electronic Filing

PURPOSE: This rule prescribes the procedure for electronic filing before the commission.

- (1) Any item or document otherwise required or permitted to be filed with the commission may be filed electronically by accessing the commission's Internet web site and following the instructions for electronic filing found there.
- (2) ~~Any item or document filed electronically shall, if received during business hours of the commission's records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next following business day.~~
- (3) —The electronic filing of an item or document as described in this rule shall satisfy an obligation to file the same if accomplished no later than 11:59 p.m. on the date upon which such filing is required.

4 CSR 240-2.080 Pleadings, Filing, and Service

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

...

- (11) The date of filing if filing is made under 4 CSR 240-2.080(8)(A) shall be the date the pleading or brief is stamped filed by the secretary of the commission. ~~Pleadings or briefs received after 4:00 p.m. will be stamped filed the next day the commission is regularly open for business.~~

...

- (21) —~~Any list of issues ordered by the commission must contain one (1) or more questions presented for decision, stated in the following form per issue: in three (3) separate sentences, with factual and legal premises, followed by a short question; in no more than seventy five (75) words; and with enough facts woven in that the commission will understand how the question arises in the case.~~

—~~(A) The questions must be clear and brief, using the style of the following examples of issue statements, which illustrate the clarity and brevity that the parties should aim for:~~

—1. —~~Example A: The Administrative Procedures Act does not require the same administrative law judge to hear the case and write the final order. ABC Utility Company filed an appeal based on the fact that the administrative law judge who wrote the final order was not the administrative law judge who heard the case. Is it reversible error for one administrative law judge to hear the case and different administrative law judge to write the final opinion?~~

—2. —~~Example B: For purposes of establishing rates, ABC Utility Company is entitled to include in its costs expenses relating to items that are used or useful in providing services to its customers. ABC Utility Company has spent money to clean up environmental damages resulting from the operation of manufactured gas plants some 70 to 80 years ago. Should ABC Utility Company be allowed to include these expenses among its costs in establishing its future~~

natural gas rates?

4 CSR 240-2.085 Protective Orders

PURPOSE: This rule prescribes the procedures for obtaining a protective order.

~~(1) — Any party seeking a protective order in any case, shall request such by separate pleading denominated “Motion for Protective Order.” The pleading shall state with particularity why the moving party seeks protection, and what harm may occur if the information is made public. The pleading shall also include a statement that none of the information for which a claim of confidentiality is made can be found in any format in any other public document.~~

~~(2) — Pleadings, testimony, or briefs shall not contain highly confidential or proprietary information unless a protective order has been issued by the commission; except that if the pleading which initiates a case or testimony accompanying a pleading initiating a case contains highly confidential or proprietary information, then the party shall file one (1) original, and eight (8) copies of the public version; and one (1) original, and eight (8) copies of the complete version containing the information to be protected, together with a Motion for Protective Order. A highly confidential or proprietary copy of the pleadings shall be served on the attorneys of record, including general counsel and the public counsel.~~

~~(3) — Unless otherwise ordered, after the issuance of a protective order all pleadings or exhibits shall be filed in the form of one (1) original and eight (8) copies of the protected matter and one (1) original of the public version.~~

VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Being first duly sworn, Lewis R. Mills, Jr., Public Counsel, states as follows: that he has read the foregoing petition and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

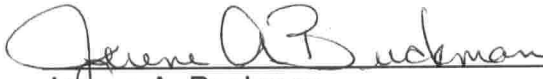


Lewis R. Mills, Jr.

Subscribed and sworn to me this 7th day of July 2010.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2013
Cole County
Commission #09754037



Jerene A. Buckman
Notary Public

My commission expires August 23, 2013.