RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the provision proposed in subsection (1)(G) of staff's Appendix A filed with its comments, and will not require that this information be provided in the filing requirements of 4 CSR 240-3.130. Staff and other parties can request this information through data requests if necessary. The commission believes that proposed amendment to 4 CSR 240-3.130, as revised by staff's Appendix A, provides for sufficient initial discovery without this provision.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and at the hearing on May 18, 2005, commented that "formal legal descriptions are unnecessary and onerous." In its written comments KCPL stated: "Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges and Sections by county." KCPL further stated: "KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest." In the public hearing, staff was questioned regarding the meaning of a "legal description." In response to these questions, staff noted that the term "legal description" was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, staff further responded: "The point is we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line." During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term "legal description" and stated: "we are aware and understand that Staff and the Commission needs the necessary information to draw reliable lines on the map. . . .'' KCPL further stated that it would be happy to submit draft alternative language regarding the term "legal description."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the use of the term "*legal description*" in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries, and will adopt the following change to the language proposed in subsection (1)(A) of staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary including the legal description of the area that is the subject of the application or petition;"

**4 CSR 240-3.130 Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas**

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for commission approval of territorial agreements and petitions for designation of electric service areas shall include:

(A) A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area that is the subject of the application or petition;

(B) A list of other electric utilities that serve in the affected area(s), if any;

(C) An illustrative tariff which reflects any changes in a regulated utility's operations or certification;

(D) An explanation as to why the territorial agreement is not detrimental to the public interest or the proposed electric service area designation(s) is in the public interest; and

(E) A list of all persons and structures whose utility service would be changed by the proposed agreement at the time of filing.

(2) If any of the information required by subsections (1)(A)–(E) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The application or petition shall be accompanied by an initial filing fee in the amount of five hundred dollars ($500).

(4) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars ($500). However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (5) of this rule.

(5) In addition to the filing fee, the fee for commission review is set at six hundred eighty-five dollars ($685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars ($685). There is an additional charge of three dollars and fifty cents ($3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(6) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the electric territorial agreement or petition for designation of service areas. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(7) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 240—Public Service Commission
## Chapter 3—Filing and Reporting Requirements

### ORDER OF RULEMAKING

By the authority vested in the Public Service Commission (commission or PSC) under sections 386.250 and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.135 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2005 (30 MoReg 628–629). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held on May 18, 2005, following a public comment period which ended on May 9, 2005. At the hearing, Lisa Chase appeared on behalf of the Association of Missouri Electric Cooperatives (AMEC), Curtis Blanc appeared on behalf of Kansas City Power & Light (KCPL), and Dennis Frey and Warren Wood appeared on behalf of the staff of the Missouri Public Service Commission (staff). During the hearing, Mr. Wood, Manager of the staff's Energy Department, explained the current scope of rule 4 CSR 240-3.135, the nature and purpose of changes staff proposed to the 4 CSR 240-3.135 version published in the *Missouri Register*, the purpose of the collaborative meeting held with interested parties on April 18, 2005, and the changes agreed to among the parties in the collaborative meeting. Mr. Wood also explained that during the collaborative meeting, the staff did not agree with removing the requirements in the rule regarding the reporting of tax impacts in proposed subsection (3)(E). It is staff's impression that the commission has requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENT: In its comments filed on May 6, 2005, staff filed its recommended changes to the version of 4 CSR 240-3.135 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the collaborative meeting held on April 18, 2005. Staff proposed that the final rule approved by the commission include the changes proposed in the version of the rule published in the *Missouri Register* on April 1, 2005, as additionally modified by the changes attached to staff's written comments as Appendix A in order to improve the clarity of the rule. Staff noted in its written comments that the only objection raised by parties at the collaborative meeting was in regard to new subsection (3)(E), as provided in staff's Appendix A in its May 6, 2005 comments, which requires reporting of tax revenue impact. KCPL participated in the collaborative meeting held on April 18, 2005 and supported the proposed modifications subsequently set out in staff's May 6, 2005 written comments, with the exception of the provisions in sections (1) and (3) and subsections (1)(B), (1)(D) and (3)(C). AMEC also noted that it generally supports the proposed changes to 4 CSR 240-3.135 proposed by staff and subsequently included in its Appendix A, with exception to staff's proposed language in subsection (3)(E).

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the staff's proposed additional changes to the version of 4 CSR 240-3.135 published in the *Missouri Register,* and with exception of sections (1) and (3) and subsections (1)(B), (1)(D), (3)(C), and (3)(E), will adopt those additional changes proposed by staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding sections (1) and (3) and subsections (1)(B), (1)(D), (3)(C), and (3)(E) are addressed by the commission in the responses provided below.

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended 4 CSR 240-3.135 subsection (1). KCPL's written comments state: "As one reads the Post-Annexation Rule, it becomes apparent that the applications being discussed in Section (1) of the rule are those to be submitted by municipal electric utilities. Nonetheless, KCPL believes that the rule would be clearer if the rule stated this fact expressly in the first sentence of the Section, as the rule does with respect to Section (3), which applies to electric suppliers. KCPL therefore respectfully requests that the MPSC revise Section (1) of the Post-Annexation Rule to clarify expressly that the section applies to municipal electric utilities."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed subsection (1) of staff's Appendix A and finds that revising the text of section (1) to clarify that this section applies to municipally owned electric utility applications is appropriate and will make this change to the proposed amendment.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented that "formal legal descriptions are unnecessary and onerous." In its written comments KCPL stated: "Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges, and Sections by county." KCPL further stated: "KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest." In the public hearing, staff was questioned regarding the meaning of a "legal description." In response to these questions, staff noted that the term "legal description" was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, staff further responded, "The point is, we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line." During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term "legal description." KCPL stated: "We are aware and understand the Staff and the Commission needs the necessary information to draw reliable lines on the map...." KCPL further stated that it would be happy to submit draft alternative language regarding the term "legal description."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the use of the term "legal description" in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries and will adopt the following change to the language proposed in subsection (1)(B) of staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary and a schedule of the applicable Townships, Ranges, and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary, including the legal description of the area."

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended 4 CSR 240-3.135 subsections (1)(D) and (3)(C). KCPL's written comments state: "Section (3)(C) of the Post-Annexation Rule provides that an affected electric supplier must provide its 'estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation.'" KCPL is concerned that this language, as well as the corresponding provision contained in subsection (1)(D) of proposed amended 4 CSR 240-3.135 is unclear and potentially confusing. KCPL therefore requests that the MPSC revise subsection (3)(C) of the proposed amended rule to clarify the information that the MPSC intends to require. KCPL further requests that the MPSC make comparable changes to subsection (1)(D).

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed subsection (1)(D) and (3)(C) of staff's Appendix A and believes this concern has been addressed in staff's testimony at the hearing. At the May 18, 2005 hearing, staff stated that: ". . . this section reasonably points to the provisions of Revised Statutes of Missouri 386.800, Section 5, which authorizes the request for this information." The commission believes the language addresses statutory requirements, is consistent with these requirements, and should remain in these subsections in the form proposed by staff.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented on the

proposed amended 4 CSR 240-3.135 section (3). KCPL's written comments state: "Section (3) of the proposed Post-Annexation Rule provides that the electric suppliers must submit certain information to the MPSC within ten (10) days of receiving notice from the MPSC of a municipality's application for an exclusive service territory and a determination of compensation. KCPL is concerned that ten (10) days is not a sufficient amount of time for electric suppliers to provide the required information." KCPL additionally stated that it "respectfully requests that the MPSC grant electric suppliers twenty business days to provide the information required by Section (3) of the proposed Post-Annexation Rule."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed section (3) of staff's Appendix A and believes this is a valid concern that has been agreed upon by all parties based on testimony at the May 18, 2005 hearing. At the hearing, staff witness Wood indicated that staff had no objections to the revision, but noted a one hundred twenty (120)-day statutory limit regarding these provisions and that this additional time further reduces the time for other parties to do their work, as well as the time for the commission to formulate an Order. The commission believes that changing this language from ten (10) days to twenty (20) days will not greatly affect the timeline for processing cases under this rule; thus, the rule will be changed to incorporate the twenty (20)-day deadline.

COMMENT: AMEC, at the public hearing on May 18, 2005, objected to proposed amended 4 CSR 240-3.135 subsection (3)(E). At the hearing, AMEC representative Lisa Chase indicated that, notwithstanding its omission of the case number for 4 CSR 240-3.135 when it filed its comments, AMEC was equally concerned with subsection (3)(E), as it was with subsection 4 CSR 240-3.130(1)(G) in Case No. EX-2003-0371. Ms. Chase addressed AMEC's concerns over the statement of tax impact in this section by stating: "The Commission lacks jurisdiction to require rural electric cooperatives to provide tax impact information as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the provision proposed in subsection (3)(E) of staff's Appendix A and will not require that this information be provided in the filing requirements of 4 CSR 240-3.135. Staff and other parties can request this information through data requests if necessary. The commission believes that the commission's proposed amendment to 4 CSR 240-3.135, as revised by staff's Appendix A, provides for sufficient initial discovery without this provision. The subsections will be renumbered as a result of this change.

**4 CSR 240-3.135 Filing Requirements and Schedule of Fees Applicable to Applications for Post-Annexation Assignment of Exclusive Service Territories and Determination of Compensation**

*PURPOSE: This rule establishes the requirements that must be met and a schedule of fees for applications to the commission for post-annexation assignment of exclusive service territories and determination of compensation. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).*

(1) In addition to the requirements of 4 CSR 240-2.060(1), municipally owned electric utility applications for post-annexation assignment of exclusive service territories and determination or compensation shall include:

(A) An explanation as to why the requested relief is in the public interest;

(B) A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary and a schedule of the applicable Townships, Ranges, and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area;

(C) The electric rates that will be charged if the proposed change of supplier is allowed;

(D) The municipal electric utility's estimate of the fair and reasonable compensation to be paid to the affected electric supplier for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(E) Any effect on the municipal electric utility's system operation, including, but not limited to, how the increased load will be served;

(F) Any power contracts that the municipality has agreed to with the affected electric supplier to serve the annexed area;

(G) Any issues on which the municipally owned electric utility and the affected electric supplier agree;

(H) A copy of the newspaper notification, as well as notifications sent to any affected supplier; and

(I) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(2) If any of the information required by subsections (1)(A)–(I) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The commission shall notify the affected electric suppliers within ten (10) days of receipt of an application from a municipally owned electric utility and, that the affected electric suppliers are made parties to the proceeding and shall file with the commission within twenty (20) days of the notice the following information:

(A) A response to the applicant's requested relief;

(B) The current electric rates that are charged in the proposed exclusive electric service territory;

(C) The electric supplier's estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(D) Any effect on the electric supplier's system operation, including, but not limited to, loss of load and loss of revenue; and

(E) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(4) If any of the information required by subsections (3)(A)–(E) of this rule is unavailable within twenty (20) days of the notice, the responsive pleading must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished.

(5) The application shall be accompanied by an initial filing fee in the amount of five hundred dollars ($500).

(6) In addition to the filing fee, the fee for commission review of the application is set at six hundred eighty-five dollars ($685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars ($685). There is an additional charge of three dollars and fifty cents ($3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(7) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the application. The executive director shall send an itemized billing statement to the applicants on or after the effective date

of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(8) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 240—Public Service Commission
## Chapter 33—Service and Billing Practices for Telecommunications Companies

### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, 386.250, 392.240, 392.451 and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the commission adopts a rule as follows:

4 CSR 240-33.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2005 (30 MoReg 513–515). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A hearing was held on May 11, 2005 in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Oral testimony and written comments were received during the comment period regarding proposed rule 4 CSR 240-33.045. Written comments were filed on behalf of the commission's staff; the Office of the Public Counsel ("OPC"); Sprint Missouri, Inc. and Sprint Communications Company, L.P. (collectively "Sprint"); the Missouri Telecommunications Industry Association ("MTIA"); MCI; Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri ("SBC"); and AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc. (collectively "AT&T"). Oral testimony was received during the hearing on behalf of the commission's staff, OPC, SBC, Sprint, CenturyTel of Missouri, L.L.C. and Spectra Communications Group, L.L.C. The comments and testimony included support for the rule in whole and in part, and opposition to the rule in whole and in part. The comments and testimony in opposition to the rule, or suggesting modifications to the proposed rule, are responded to below.

COMMENT: SBC commented that it objects to proposed section 4 CSR 240-33.045(1) because it would be unreasonable for a company to keep a customer on the line to discuss all non-recurring monthly charges that may appear on a bill. SBC further commented that proposed section 4 CSR 240-33.045(1) could be interpreted to require disclosure of all possible plans and rates with the customer or to require disclosure of taxes or other non-regulated fees. The commission's staff proposed new language to 4 CSR 240-33.045(1) to address some of SBC's concerns.
RESPONSE AND EXPLANATION OF CHANGE: The purpose of the proposed section 4 CSR 240-33.045(1) is to provide clear, full and meaningful disclosure of all charges and rates applicable to the services a customer is ordering or is considering ordering. The commission finds that the proposed rule cannot reasonably be interpreted to require a company to disclose charges that do not apply to the service or services the customer is ordering or considering ordering. For items with a fixed rate, the company should be able to disclose an exact amount without difficulty. For rates that are variable, the company should be able to make the customer aware that there will be charges on the bill such as taxes and federal surcharges. However, the commission finds that the intent of the rule would be clarified by accepting some of the staff's proposed changes with modifications. Specifically, the commission finds that language should be added to clarify that only charges applicable to the services the customer has ordered or is considering ordering need to be disclosed prior to an agreement for service. The commission further finds that 4 CSR 240-33.045(1) should be modified to reflect that variable charges can be identified without specifying the specific dollar amount.

COMMENT: The commission's staff commented that the word "may" in 4 CSR 240-33.045(2) could be interpreted to allow telecommunications companies to misrepresent fees or charges as governmentally mandated or authorized. The staff suggested changing "may" to "shall."
RESPONSE AND EXPLANATION OF CHANGE: The commission finds the word "may" in 4 CSR 240-33.045(2) should be replaced with the word "shall" to reinforce the commission's intent to prohibit fees and charges that are misrepresented as being governmentally mandated or authorized.

COMMENT: SBC commented that it objects to the phrase "disguising it" from proposed section 4 CSR 240-33.045(2), and proposes replacing the word "disguising" with the word "misrepresenting." OPC commented that it opposed the change.
RESPONSE: The commission finds that preventing charges or fees that are disguised or otherwise misrepresented as governmentally mandated or authorized is in the public interest. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that 4 CSR 240-33.045(2) should be modified by adding "telecommunications" before "companies" at the beginning of the section.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that this change is appropriate.

COMMENT: OPC commented that it would like to ban single line-item surcharges that are not based on governmentally mandated charges, rather than allowing both mandated charges and discretionary charges specifically authorized by government.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that both mandated government charges and non-mandated but specifically authorized discretionary charges should be allowed. The commission will clarify this intention by inserting the word "specifically" before the word "authorized" throughout the rule. The commission will also clarify this intention by deleting the words "order, decision, ruling or mandate" from proposed section (3). For consistency, the commission will also use the term "charges" throughout the rule in place of the word "fees."

COMMENT: The commission's staff commented that a new section should be added to provide guidance on the placement of the Relay Missouri surcharge on a customer's bill, as provided by section 209.255, RSMo.
RESPONSE: The commission finds that the proposed new section is not consistent with the purposes of the proposed rulemaking and will not be added.

COMMENT: AT&T, MCI, MTIA and SBC commented that proposed section 4 CSR 240-33.045(4) is unlawful and should be deleted. Sprint commented that proposed section 4 CSR 240-33.045(4) is not needed to address upfront disclosures and billing practices, and should be eliminated.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the last sentence in proposed section (4) is unnecessary and will delete that sentence from the rule.