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Secretary of State

Orders of Rulemaking

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

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Order of Rulemaking Text Reminder:
Boldface text indicates matter added since the Notice of Proposed Rulemaking
[Bracketed text indicates matter deleted since the Notice of Proposed Rulemaking]

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 30—Missouri Board for Architects, Professional Engineers and Land Surveyors Chapter 4—Applications

ORDER OF RULEMAKING

By the authority vested in the Missouri Board for Architects, Professional Engineers and Land Surveyors under section 327.041, RSMo (Cum. Supp. 1993), the board rescinds a rule as follows:

4 CSR 30-4.040 Reconsideration of Denied Applications is rescinded.

A Notice of Proposed Rulemaking containing the text of the Proposed Rescission was published in the *Missouri Register* on June 3, 1996, (21 MoReg 1331). No changes have been made to the text of the Proposed Rescission, so it is not reprinted here. This Proposed Rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 210—State Board of Optometry Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Optometry under section 336.160.2., RSMo (1994), the board hereby amends a rule as follows:

4 CSR 210-2.011 License by Reciprocity is amended

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the *Missouri Register* on June 3, 1996 (21 MoReg 1337-1340). No changes have been made in the text of the Proposed Amendment, so it is not reprinted here. This Proposed Amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 10—Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 392.210 and 393.140, RSMo (1994), the commission adopts a rule as follows:

4 CSR 240-10.080 is adopted.

A Notice of Proposed Rulemaking containing the text of the Proposed Rule was published in the *Missouri Register* on May 1, 1996 (21 MoReg 1115, 1116). Changes made in the text of the Proposed Rule are reprinted here. This Proposed Rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: All written comments filed on or before June 5, 1996, and all reply comments filed on or before June 20, 1996, have been considered by the commission in promulgating this rule. Written initial comments were filed by St. Louis County Water Company (SLCWC); Associated National Gas Company, The Empire District Electric Company, Missouri Gas Energy, Missouri Public Service, St. Joseph Light & Power Company, United Cities Gas Company and West Hill Power Corporation (Associated et al.); GTE Midwest Incorporated (GTE); and the Public Service Commission staff (Staff). Written reply comments were filed by Staff and Associated et al.

COMMENTS ON 4 CSR 240-10.080(1)-(6): Associated et al. stated that they generally support the concept of consolidating filing requirements for annual reports in one rule. These companies, though, suggest that since the rule requires each utility to file its annual report on a form to be provided by the commission, the form itself must be made a part of the rule. Associated et al. suggest further that the commission could list the information required and not require a particular form. This, Associated et al. suggest, would allow companies to use computer-generated forms.

Commission Staff suggested the commission clarify the term "annual report" in this rule to include fiscal year reports. Staff indicates that it does not oppose filing of fiscal year reports as annual reports, but it would like the commission to specifically approve the practice. Staff suggests that utilities be given the option of filing their annual reports on computer-generated replicas of forms provided by the commission.

SLCWC states that it uses a computer-generated copy of the commission's annual report forms, which reduces its administrative costs of filing the report. SLCWC suggests adding language to the Proposed Rule which would allow it to continue this practice.

Reply comments were filed by Laclede which indicate that it supports Staff's suggestion to allow fiscal year information to be filed. Laclede states that it files its annual reports with information based upon its fiscal year reporting.

RESPONSE: The commission finds that republishing this rule with forms required by the commission, while perhaps having some surface appeal, would not reflect the reality of the frequent changes made to annual report forms which are sent to the companies, and would reduce any flexibility the commission might have to vary those forms to meet technological efficiencies. First, regulated companies are required by statute to file their annual reports on forms prescribed by the commission. The statute requires that the commission prescribe the character of the information to be provided in the annual report, section 392.210, RSMo (1994); or the companies are required to provide specific information concerning the utility's operations as prescribed, section 392.140, RSMo (1994). The commission's current rules require the various utilities regulated by the commission to file their annual reports, although the current language does not reflect the statutory language requiring the reports to be filed in a form prescribed by the commission.

This Proposed Rule brings the annual report filing requirements in line with the statutory mandate. The commission does not believe more specificity is required or warranted. Under current procedures, companies may file their annual reports in a computer facsimile of the report prescribed by the commission. Publishing the form of the rule would prevent any changes the companies could make to this computer facsimile, and would prevent the commission from making even minor text changes without going through the laborious process of promulgating a new rule. In addition, for gas and electric utilities, the commission accepts the annual report forms filed by the utilities with the Federal Energy Regulatory Commission (FERC). These forms change from year to year, and promulgating the current one would create inconsistency problems when those forms changed and the commission rules didn't. For telecommunications companies, section 392.210, RSMo requires the commission form to follow, as nearly as possible, the form of the Federal Communications Commission (FCC). These forms also change and any rule promulgated by the commission would probably be out of date before it became effective. For these reasons the commission finds that the forms or the rule should not be promulgated. Also, if any company has problems with a specific form, those accommodations can currently be made, where they could not if the form were prescribed by rule.

Another example of the flexibility that the current system allows is where a company is filing fiscal year data. This procedure is supported by Staff and the commission finds it is reasonable to allow companies to file fiscal year information in their annual reports. This might not be possible if the commission required, by rule, calendar year data in completing the form. The commission will modify its Proposed Rule to clarify that fiscal year information may be filed and that a computer facsimile of the form provided by the commission may be filed. This language will be added to sections (2) through (6).

COMMENTS ON 4 CSR 240-10.080(7) and (8): Staff proposed that companies be required to file for an extension of the filing date

for annual reports two weeks prior to the filing date and show good cause for the extension. Staff proposes that the commission add the requirement of good cause to support a utility's filing of a portion of its annual report under seal.

GTE expressed concern over section (7) in the Proposed Rule. GTE suggests that a utility need only make a written request to the executive secretary to file a part of its annual report under seal, and no decision is made concerning the request for confidentiality until some other person seeks the information. GTE suggests that in the more competitive environment, especially in telecommunications, competitors should not be given easy access to competitively sensitive information. GTE proposed modified language to implement its suggestions.

Laclede, in its reply comments, opposes Staff's suggestion that utilities be required to file requests for an extension two weeks early. Laclede suggests that a utility may not know until very close to the filing date that it will need an extension and Staff's proposal would preclude meeting this contingency. Associated et al., in their reply comments, also oppose Staff's suggestion that requests for an extension be filed two weeks before April 15.

Associated et al., suggest that the commission promulgate its standard protective order (or something similar) as a rule for filing confidential information in annual reports. Associated et al. also propose the commission adopt a protective order for contested cases to remove the need for a party to request a protective order in each case.

RESPONSE: With regard to section (8), the commission does not believe a two-week cutoff date for requests for extension is necessary. Companies may only discover at the last minute that they will be unable to meet the April 15 filing deadline.

The commission finds that the procedures proposed for handling requests for confidentiality in section (7) are reasonable and reflect the requirement that commission records be open to the public unless there is some reason for maintaining the information under seal. The commission finds that this decision should be made initially since annual reports are maintained for all regulated companies and for the public. Although GTE's proposal would reserve the commission decision concerning confidentiality until someone sought the information, the commission believes it is obligated to make an initial decision to ensure that the public has access to all information which need not be protected, rather than information a company would like to protect. To accomplish the commission's goal, it will adopt Staff's suggestion that a utility be required to specify the good cause for keeping the information under seal at the time of the request.

The commission does not believe it can, at this time, add a protective order for the filing of confidential information to this proposed rulemaking. There would be no chance for public comment as to its terms and conditions. The commission finds that its standard protective order is not designed for noncontested case filings of confidential information, such as annual reports. The commission will consider Associated et al.'s suggestion for a future rulemaking.

4 CSR 240-10.080 Annual Report Filing Requirements

(2) Electric utilities shall file their annual reports on either a form provided by the commission or on a computer-generated replica which is acceptable to the commission. All requested information shall be included in the annual report where applicable.

(3) Gas utilities shall file their annual reports on either a form provided by the commission or on a computer-generated replica which is acceptable to the commission. All requested information shall be included in the annual report where applicable.

(4) Telecommunications utilities shall file their annual reports on either a form provided by the commission or on a computer-

generated replica which is acceptable to the commission. All requested information shall be included in the annual report where applicable.

(5) Water utilities shall file their annual reports on either a form provided by the commission or on a computer-generated replica which is acceptable to the commission. All requested information shall be included in the annual report where applicable.

(6) Sewer utilities shall file their annual reports on either a form provided by the commission or on a computer-generated replica which is acceptable to the commission. All requested information shall be included in the annual report where applicable.

(7) Where a utility subject to this rule considers the information requested on the annual report form to be confidential, it must make a written request to the executive secretary to file that information under seal and state good cause for maintaining the information under seal. The executive secretary shall then, through the general counsel, present that request to the commission for approval. The executive secretary shall inform the utility within three (3) days of the commission decision whether the request has been granted.

(8) A utility which is unable to meet the filing date established in section (1) of this rule shall make a written request to extend the filing date for its annual report to the executive secretary and state the reason for the extension request. The executive secretary, through the chief administrative law judge, shall present the report to the commission for approval. The executive secretary shall inform the utility in writing within three (3) days of the decision of the commission.

REVISED PUBLIC AND PRIVATE ENTITY COSTS: Since the changes made in the Proposed Rule do not alter the cost estimates by more than ten percent, revised cost estimates are not necessary.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

**Division 240—Public Service Commission
Chapter 20—Electric Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.140, RSMo (1994), the commission amends a rule as follows:

4 CSR 240-20.030 Uniform System of Accounts—Electrical Corporations is amended.

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the *Missouri Register* on May 1, 1996 (21 MoReg 1116, 1117). Initial comments were due June 5, 1996, and reply comments were due June 20, 1996. No comments were received. Since no changes have been made in the text of the Proposed Amendment, it is not reprinted here. This Proposed Amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

**Division 240—Public Service Commission
Chapter 30—Telephone Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 392.210, RSMo (1994), the commission amends a rule as follows:

4 CSR 240-30.040 Uniform System of Accounts—Class A and Class B Telecommunications Companies is amended.

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the *Missouri Register* on May 1, 1996 (21 MoReg 1117). Initial comments were due June 5, 1996, and reply comments were due June 20, 1996. No comments were received. Since no changes have been made in the text of the Proposed Amendment, it is not reprinted here. This Proposed Amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

**Division 240—Public Service Commission
Chapter 40—Gas Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.140, RSMo (1994), the commission amends a rule as follows:

4 CSR 240-40.040 Uniform System of Accounts—Gas Corporations is amended.

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the *Missouri Register* on May 1, 1996 (21 MoReg 1117, 1118). Initial comments were due June 5, 1996, and reply comments were due June 20, 1996. No comments were received. Since no changes have been made in the text of the Proposed Amendment, it is not reprinted here. This Proposed Amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

**Division 240—Public Service Commission
Chapter 50—Water Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.140, RSMo (1994), the commission amends a rule as follows:

4 CSR 240-50.030 Uniform System of Accounts—Water Companies is amended.

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the *Missouri Register* on May 1, 1996 (21 MoReg 1118). Initial comments were due June 5, 1996, and reply comments were due June 20, 1996. No comments were received. Since no changes have been made in the text of the

Proposed Amendment, it is not reprinted here. This Proposed Amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 61—Records and Accounts
of Sewer Companies**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.140, RSMo (1994), the commission amends a rule as follows:

4 CSR 240-61.020 Uniform Systems of Accounts—Sewer Companies is amended.

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the *Missouri Register* on May 1, 1996 (21 MoReg 1118, 1119). Initial comments were due June 5, 1996, and reply comments were due June 20, 1996. No comments were received. Since no changes have been made in the text of the Proposed Amendment, it is not reprinted here. This Proposed Amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 12—Scenic Byways**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.150 and 226.797, RSMo (1994), sections 226.798 and 226.799, RSMo (Supp. 1995) and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, the commission hereby adopts a rule as follows:

7 CSR 10-12.020 is adopted.

A Notice of Proposed Rulemaking containing the text of the Proposed Rule was published in the *Missouri Register* on May 15, 1996 (21 MoReg 1233, 1234). All comments received during the comment period were considered. Changes have been made to the Proposed Rule based on the comments received and are printed following the Summary of Comment. This Proposed Rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: The commission received two letters of comment to the Proposed Rule.

COMMENT: Both commenters had concerns regarding a conflict between the language in proposed 7 CSR 10-12.020(2)(G) and section 226.801.1, of the *Missouri Revised Statutes* regarding areas zoned commercial or industrial.

RESPONSE: Following review, it was decided to delete the conflicting language within the Proposed Rule.

7 CSR 10-12.020 Application Procedures

(2) Application. One (1) original and eight (8) copies of the application package for nominating a road or highway for official scenic byway designation should be sent to the Missouri Highways and Transportation Department, Transportation Planning and Policy Development Section, Attention: Scenic Byways Advisory Committee, P.O. Box 270, Jefferson City, MO 65102. This package should be in a typed eight and one-half inches by eleven inches (8 1/2" x 11") paper format and include the following in the order presented:

(G) Indicate how areas adjacent to the proposed byway are zoned including all commercial and industrial areas.

[1. If an area is zoned commercial or industrial, yet is determined by the Missouri Highways and Transportation Commission to have certain scenic qualities as described in 7 CSR 12.030(4), such area shall not be segmented and shall be considered part of the proposed scenic byway; however,

2. If an area is zoned commercial or industrial and does not possess any scenic qualities as presented in 7 CSR 12.030(4), such area shall be considered nonscenic and shall be segmented from the proposed scenic byway;]

REVISED PUBLIC AND PRIVATE ENTITY COSTS: Since changes made to the Proposed Rule do not alter the cost estimates by more than ten percent, revised cost statements are not necessary.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 12—Scenic Byways**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.150 and 226.797, RSMo (1994), sections 226.798, 226.799 and 226.801, RSMo (Supp. 1995) and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, the commission hereby adopts a rule as follows:

7 CSR 10-12.030 Nomination Review Process is adopted.

A Notice of Proposed Rulemaking containing the text of the Proposed Rule was published in the *Missouri Register* on May 15, 1996 (21 MoReg 1235—1237). All comments received during the comment period were considered. No changes have been made in the text of the Proposed Rule, so it is not reprinted here. This Proposed Rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: The commission received two letters of comments to the Proposed Rule.

COMMENTS: Both commenters expressed concern over the composition of the Scenic Byways Advisory Committee (SBAC). One commenter stated that the committee is governmentally-heavy. One commenter claimed that many of its members favor total elimination of outdoor advertising.

RESPONSE: The commission disagrees. The members of the SBAC and the agencies they represent have interests in ensuring a quality scenic byways program. The committee's role is to review