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JAN 21 2000

SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-2.070

Diskette File Name 2.070 rule (Word 97 format)

Name of Person to call with questions about this rule:

Context Nancy Dippell Phone 573-751-4393 FAX 573-751-1847

Data Entry Judy Pope Phone 573-751-6526 FAX 573-751-1847

Interagency Mailing Address Truman Bldg., 301 W. High St., Room 530, Jefferson City, MO

Statutory Provision for Rulemaking

Authority § 386.410

Provide Most Current RSMo Year 1998

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

FORMS, List by Mo-Form Number, # of Pages

☒

Cover Letter

☐ Affidavit

☐ Cost Statements

☐ Public Entity Fiscal Note

☐ Private Entity Fiscal Note

OTHER ☐

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency Rulemaking, Must Specify Effective Date

☐ Proposed Rulemaking

☒

Order of Rulemaking (MUST complete page 2 of this transmittal)

☐ Withdrawal (Rule, Amendment, Rescission or Emergency)

☐ Rule Action Notice

☐ In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc:)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-2.070

1a. Effective Date for the Order

Statutory 30 days ☒ or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

YES _____ NO ☒

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

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January 21, 2000

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Acting Executive Director
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ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Honorable Rebecca McDowell Cook
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Orders of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 21st day of January, 2000.

Rules: 4 CSR 240-2.010 – Definitions
4 CSR 240-2.015 – Waiver of Rules
4 CSR 240-2.040 – Practice Before the Commission
4 CSR 240-2.050 – Computation of Time
4 CSR 240-2.060 – Applications
4 CSR 240-2.065 – Tariff Filings Which Create Cases
4 CSR 240-2.070 – Complaints
4 CSR 240-2.075 – Intervention
4 CSR 240-2.080 – Pleadings, Filing, and Service
4 CSR 240-2.085 – Protective Orders
4 CSR 240-2.090 – Discovery and Prehearings
4 CSR 240-2.100 – Subpoenas
4 CSR 240-2.110 – Hearings
4 CSR 240-2.115 – Nonunanimous Stipulations and Agreements
4 CSR 240-2.116 – Dismissal
4 CSR 240-2.120 – Presiding Officers
4 CSR 240-2.125 – Procedures for Alternative Dispute Resolution
4 CSR 240-2.130 – Evidence
4 CSR 240-2.140 – Briefs and Oral Argument
4 CSR 240-2.150 – Decisions of the Commission
4 CSR 240-2.160 – Rehearings or Reconsideration
4 CSR 240-2.180 – Rulemaking
4 CSR 240-2.200 – Small Company Rate Increase Procedure

Honorable Rebecca McDowell Cook

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January 21, 2000

Statutory authority: Section 386.410, RSMo Supp. 1998

Effective date of the rules: thirty days after publication in the *Code of State Regulations*

Missouri Public Service Commission Case Nos.: AX-2000-108 through AX-2000-128, and
AX-2000-130 through AX-2000-131

If there are any questions, please contact: *(These rules are assigned to several regulatory law judges. Please refer to the transmittal form for the name, phone number and fax number of the regulatory law judge assigned to a particular rule.)*

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:jp

Enclosures: Packets for 23 Orders of Rulemaking
Orders of Rulemaking in Word 97 format on 3-1/2" diskette

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 240—Public Service Commission
Chapter 2—Practice and Procedure**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1998, the commission adopts a rule as follows:

4 CSR 240-2.070 Complaints is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on Oct. 1, 1999 (24 MoReg 2325-2326). No changes were 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 COMMENTS: The Commission received two written comments to section (1) and one written comment each to sections (3), (5), (6) and (9). In addition, the Commission received one written comment not related to a particular section of the rule.

COMMENT: One comment in opposition of part of section (1) was received. The commentor stated that the Commission's proposal to allow the Commission Staff through its general counsel to file a complaint with the Commission would be an attempt to extend or modify a statute by rule which is specifically prohibited in the case of *Missourians for Honest Elections v. Missouri Elections Commission*, 536 SW 2d 766, 772 (Mo.App.E.D. 1976). The commentor states that the parties who are authorized to file a complaint before the Commission are listed in section 386.390, RSMo 1994, which does not include the Commission Staff. One comment in support of this part of section (1) was also received.

RESPONSE: The Commission disagrees with the commentor's interpretation and applicability of *Missourians for Honest Elections v. Missouri Elections Commission*, 536 SW 2d 766, 772 (Mo.App.E.D. 1976). The Commission has authority under section 386.390, RSMo, to make a complaint and the authority under section 386.240, RSMo, to delegate that authority to the Commission Staff. The Commission finds that the rule is appropriate as proposed and no changes are necessary.

COMMENT: One comment was received which suggested that the first sentence of Section 2.070(3) should read as follows:

If a complainant does not choose to pursue the informal complaint process, or if the complainant is not satisfied with the outcome of the informal complaint process, a formal complaint may be filed.

RESPONSE: Section (1) of the proposed rule clearly states that the complainant "has the option to file either an informal or a formal complaint." Therefore, the Commission finds that no changes are needed to this rule as a result of this comment.

COMMENT: One commentor proposed the following additional language be added to section (5): "The Commission secretary shall make available complaint forms and distribute the forms upon request to assist and simplify the filing of complaints."

RESPONSE: The Commission makes its complaint forms available to the general public upon request. The Commission will be revising its procedures in the near future to allow for electronic filing of some documents. Electronic filing may require that the Commission's forms be updated into a format which is compatible with its new system. Therefore, the Commission did not include these forms in this rule as they would have been cumbersome and would not easily have been revised or updated. No changes were made to this rule as a result of this comment.

COMMENT: One commentor filed a comment in support of the language of section (6) which requires notice before dismissing a complaint. The commentor supports this notice requirement because this allows the complainant an opportunity to present arguments as to why the complaint should not be dismissed.

RESPONSE: The Commission finds that no changes to this rule are necessary as a result of this comment.

COMMENT: One comment expressed support of section (9) which provides procedures for default and for setting aside the default. The commentor's remarks indicated that this would allow a complaint to proceed in a timely fashion even if a utility chooses to ignore the complaint or otherwise fails to respond.

RESPONSE: The Commission finds that no changes to this rule are necessary as a result of this comment.

COMMENT: One comment was received which recommended that the Commission adopt additional rules to provide for an expedited complaint resolution.

RESPONSE: The Commission has procedural rules that provide for motions for expedited treatment. Furthermore, the Commission finds that these suggested changes are very extensive and would amount to an entire new rule being promulgated without the benefit of public notice and comment. The Commission has procedures set out under 4 CSR 240-2.180(3) for parties to submit a petition for the promulgation of a new rule. Therefore, the Commission has determined that no changes will be made as a result of this comment.