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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 240-2.075
Diskette File Name 2.075 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 OTHER
☐ Private Entity Fiscal Note

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 240-2.075

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

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CONNIE MURRAY

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January 21, 2000

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Director, Utility Services

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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 240-2.075 Intervention 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 2326-2327). 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: One written comment was received regarding each of sections (2), (5) and (6). Two written comments were received regarding section (4).

COMMENT: A comment was received which proposed that a new subsection be added, or subsection (2) be amended to allow persons who request intervention immediate status as a party pending a ruling by the presiding officer. The commentor proposed the following new language:

Rights of persons with pending motions to intervene. Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

RESPONSE: The Commission finds that no changes are necessary as a result of the comment. Intervention is not always a matter of right and therefore, the potential intervenors should not be given rights and burdens should not be placed on the parties to the case, until a determination regarding the request for intervention has been made. There are also provisions within the Commission's procedural rules for requests for expedited treatment, if a potential intervenor seeks expedited consideration.

COMMENT: One commentor suggests that in section (4) the phrase "The commission *may* on application permit any person to intervene" be changed to "The commission *shall*. . ." The commentor argues that if the required showing is made under subsection (4), that the intervenor should be granted intervention as a matter of right.

RESPONSE: Intervention is not always a matter of right, but is sometimes a discretionary function of the Commission. Therefore, the Commission finds that no changes are necessary to this rule as a result of the comment.

COMMENT: One comment was received in opposition to section (4). The commentor disagrees with requiring the applicant to show at the very early stages of the case that it may be adversely affected by a final order. Sprint states that this may preclude the participation of many parties which have an interest or which will have an interest as the case progresses because it is often not known when notice is first provided of the case precisely what issues will be addressed.

RESPONSE: The rule as proposed does not require that a potential intervenor show that it *will* be adversely affected by the final order of the Commission. The proposed rule requires only a showing that the potential intervenor "may be adversely affected." Therefore, the Commission determines that no changes to this rule are needed as a result of this comment.

COMMENT: One commentor suggested that section (5) should be amended to provide criteria for determining when a late intervention should be granted. The following language was suggested:

(5) Late intervention.

(A) A motion to intervene that was not timely filed may be granted. In acting on the late filed motion to intervene, the presiding officer shall consider:

1. any objections that are filed;
2. whether the movant had good cause for failing to file the motion within the time prescribed;
3. whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;
4. whether any disruption of the proceeding might result from permitting late intervention.

RESPONSE: The Commission has considered the criteria for determining when a late intervention should be granted as suggested in the comment. However, the Commission finds that the standard of "good cause" is sufficient. Therefore the Commission finds that no changes are needed to this rule as a result of this comment.

COMMENT: One written comment suggested that "the Commission adopt a[n] amicus curiae procedure like in the Missouri Rules of Civil Procedure 84.05(f)(2). The rule should provide for an application for amicus curiae to set out the reasons why the PSC should grant the party relief to file a brief. The application should include the nature of the party's interest and the facts or questions of law the party proposes to address." The commentor also stated that it supports the replacement of the "participant without intervention" as provided in the current rule with an "amicus curiae" as provided in the proposed rule.

RESPONSE: In the Commission's experience, the numbers of persons making application to participate without intervention have been relatively few. The Commission anticipates that there will be relatively few parties asking to enter cases as an amicus curiae, as well. Therefore, the Commission finds that the procedure as proposed in section (6) will provide sufficient information and the more strict standards of Civil Rule 84.05(f)(2) are not necessary. No changes to this rule were made as a result of this comment.