

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

### Administrative Rules Stamp

Rule Number 4 CSR 240-2.116

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

FILED  
July 7, 2011  
Data Center  
Missouri Public  
Service Commission

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-4393 FAX \_\_\_\_\_

Email address Nancy.dippell@psc.mo.gov

Data Entry same Phone \_\_\_\_\_ FAX \_\_\_\_\_

Email address \_\_\_\_\_

Interagency mailing address Public Service Commission, 9<sup>th</sup> Fl, Gov.Ofc Bldg, JC, MO

### TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order \_\_\_\_\_

☒ Statutory 30 days OR Specific date \_\_\_\_\_

Does the Order of Rulemaking contain changes to the rule text? ☒ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON  
JUL 06 2011  
ADMINISTRATIVE RULES



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Chairman

**ROBERT M. CLAYTON III**

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***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**WESS A. HENDERSON**  
Executive Director

**VACANT**  
Director, Administration and  
Regulatory Policy

**ROBERT SCHALLENBERG**  
Director, Utility Services

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**STEVEN C. REED**  
Secretary/General Counsel

**KEVIN A. THOMPSON**  
Chief Staff Counsel

Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Dear Secretary Carnahan,

Re: 4 CSR 240-2.116 Dismissal

**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: section 386.410, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact me at the address and number below.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell, Deputy Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4393  
[Nancy.dippell@psc.mo.gov](mailto:Nancy.dippell@psc.mo.gov)

Enclosure

**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 2000, the commission amends a rule as follows:

**4 CSR 240-2.116 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendments was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1058). No changes have been made in the proposed amendment, so it is not reprinted here. These proposed amendments become effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on the proposed amendments was held May 19, 2011, and the public comment period ended May 16, 2011. One (1) written comment was received and two (2) people testified at the public hearing.

**COMMENT:** Rick Zucker, on behalf of Laclede Gas Company, and Wendy Tatro, on behalf of Union Electric Company, d/b/a Ameren Missouri, jointly filed written comments and Mr. Zucker testified at the hearing. Mr. Zucker and Ms. Tatro commented that section (1) should be amended to allow the applicant or complainant to voluntarily dismiss a case up to ten (10) days before the hearing is scheduled without the permission of the commission similar to the way the practice is done in the courts. In addition, only the consent of all parties who have filed written testimony should be required for voluntary dismissal.

Lewis Mills, on behalf of the Office of the Public Counsel, responded to the company comments at the hearing. Mr. Mills stated that there are distinctions between issues before the commission and issues before the courts. Thus, it may be that the rules for voluntary dismissal should remain different. Further, Mr. Mills stated that it is not burdensome to get the commission's permission for withdrawal.

**RESPONSE:** The commission's jurisdiction is different than that before a court because the commission must often determine what is in the public interest rather than the rights of the parties before it. Thus, the procedures the commission uses are often different than those used at the court. In a commission proceeding, by the time written testimony is filed considerable resources have been expended by the commission and its staff, the public counsel, and the other parties. The same is true even if those parties have not filed or presented testimony. In addition, there may be broader public interest issue that the commission will want to pursue even if the applicant or complainant does not. Further, the applicant or complainant may always ask for permission to dismiss the case and this is not a significant burden. Therefore, the commission disagrees with the suggestions of Ameren and Laclede and makes no changes as a result of these comments.

