

FILED  
March 4, 2011  
Data Center  
Missouri Public  
Service Commission



**Robin Carnahan**  
Secretary of State

**Administrative Rules Division  
Rulemaking Transmittal Receipt**

Rule ID: 12613  
Date Printed: 3/2/2011  
Rule Number: 4 CSR 240-2.130  
Rulemaking Type: Proposed Amendment  
Date Submitted to Administrative Rules Division: 3/2/2011  
Date Submitted to Joint Committee on Administrative Rules: 3/2/2011

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Name of Person to Contact with questions concerning this rule:

Content: Nancy Dippell	Phone: 1-4393	Email: Nancy.dippell@psc.mo.gov	Fax: na
RuleDataEntry:	Phone:	Email:	Fax:

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Included with Rulemaking:

Cover Letter	3/02/2011
Affidavit for public cost	3/02/2011

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**Robin Carnahan**  
Secretary of State  
Administrative Rules Division

**RULE TRANSMITTAL**

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.130

**COPY**

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

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:

Amending Sections (2), (6), (9), (10), (11), (12), and (15); adding (8), (9), and (17);  
renumbering (8), (13), (14), and (16); and deleting (17).

Small Business Regulatory  
Fairness Board (DED) Stamp

SMALL BUSINESS  
REGULATORY FAIRNESS BOARD

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JCAR Stamp

JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES



**Commissioners**

**KEVIN GUNN**  
Chairman

**ROBERT M. CLAYTON III**

**JEFF DAVIS**

**TERRY M. JARRETT**

**ROBERT S. KENNEY**

***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

**NATELLE DIETRICH**  
Director, Utility Operations

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

**KEVIN A. THOMPSON**  
Chief Staff Counsel

March 2, 2011

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

Re: 4 CSR 240-2.130 Evidence

Dear Secretary Carnahan,

**CERTIFICATION OF ADMINISTRATIVE RULE**

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

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: section 386.410, RSMo 2000

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

Sincerely,

A handwritten signature in black ink that reads "Nancy Dippell". The signature is fluid and cursive, with the first name "Nancy" being larger and more prominent than the last name "Dippell".

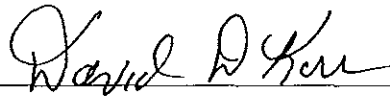
Nancy Dippell, Deputy Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4393  
Nancy.dippell@psc.mo.gov

Enclosure

**AFFIDAVIT  
PUBLIC COST**

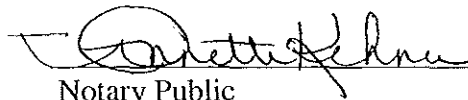
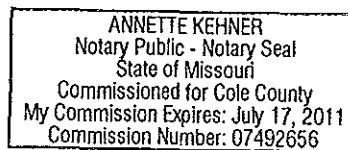
STATE OF MISSOURI )  
 )  
COUNTY OF COLE )

I, David Kerr, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-2.130, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



David Kerr  
Director  
Department of Economic Development

Subscribed and sworn to before me this 18<sup>th</sup> day of Feb., 2011, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2011.

  
Notary Public

Title 4--DEPARTMENT OF  
ECONOMIC DEVELOPMENT  
Division 240--Public Service Commission  
Chapter 2--Practice and Procedure

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

**4 CSR 240-2.130 Evidence** The commission is amending sections (2), (6), (9), (10), (11), (12), and (15), adding a new section (8), (9), and (17), renumbering sections (8), (13), (14), and (16), and deleting section (17).

*PURPOSE: Most of the edits to this rule are to reorganize it and to clarify the authority of the presiding officer in procedural matters, such as directing the pre-marking of exhibits. New section (8) allows the staff of the commission to file a single report rather than the traditional individually filed testimony for direct testimony. New section (9) specifically states that direct testimony may be live instead of written pre-filed testimony. Section (17) clarifies that there are ten (10) days to object to a late-filed exhibit. And, section (18) corrects a rule reference.*

(2) If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document shall be specifically identified and are relevant and material. **The information may be assigned an exhibit number for identification.**

(6) **Format for [P]prepared testimony.***[may be filed electronically. If prepared testimony is not filed electronically it]*

(A) **It shall be typed or printed, in black type on a white [paper]page that is eight and one-half inches by eleven inches (8 1/2" x 11")[:].**

(B) *[i]***It shall be double-spaced and have pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1[:].**

(C) **If not filed electronically,** it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form[: and it].

(D) **It shall have [the following margins: left-hand margin, one inch (1"); top margin, one inch (1"); right-hand margin, one inch (1"); and bottom margin, one inch (1"). Printing on both sides of the page is encouraged]at least a one inch (1") margin on the top, bottom, and both sides.**

(E) Schedules shall bear the word "schedule" and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule.

(F) All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

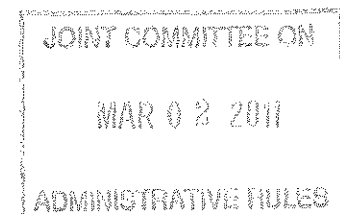


Exhibit No.: (To be marked by the hearing reporter)  
Issue: (If known at the time of filing)  
Witness: (Full name of witness)  
Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)  
Sponsoring Party:  
Case No.:  
Date Testimony Prepared:

*[The prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath.]*

**(G)** *[Prepared testimony]* It shall be filed on line-numbered pages.

**(H)** Testimony that addresses more than one (1) issue shall contain a table of contents.

**(I)** Electronically filed prepared testimony shall be formatted and labeled in the same manner as paper filings.

**(J)** Printing on both sides of the page is encouraged.

**(8)** Except as set out in this subsection, the prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath. In lieu of prepared direct testimony, any party may file a report that presents in narrative form the analysis and conclusions of one or more expert witnesses, and the facts and information on which they relied. In any report, the contributing expert witnesses shall be listed together with an indication of the portion or portions of the report to which each contributed. The qualifications of each contributing expert witness shall be attached to the report as a schedule. Any such report shall be filed electronically and shall comply with the commission's filing requirements set forth above.

**(9)** In any case, the commission or presiding officer may direct that testimony be taken live rather than prepared in advance.

**(10)** No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

**(11)** Any or all parties may file a stipulation as to the facts, *in which event the same shall be numbered as a joint exhibit*. This stipulation shall not preclude the offering of additional evidence by any party *[unless otherwise agreed]* **except as specified** in the stipulation.

(~~[10]~~12) Exhibits shall be legible and, unless otherwise authorized by the commission~~[or filed electronically]~~, shall be prepared on a standard eight and one-half by eleven inch (8 1/2" x 11")-~~[size paper]~~**size page**. The ~~[sheets]~~**pages** of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

(~~[11]~~13) Exhibits shall be tendered to the reporter at the time of hearing without being prenumbered by the offering party, unless otherwise ordered by the ~~[commission]~~**presiding officer**.

(~~[12]~~14) All exhibits shall be marked at the time of hearing, using a single series of numbers, unless otherwise ordered by the ~~[commission]~~**presiding officer**.

(~~[13]~~15) Unless the presiding officer directs otherwise, when exhibits that have not previously been filed are offered in evidence, the original shall be furnished to the reporter, and the party offering exhibits also shall be prepared to furnish a copy to each commissioner, the presiding officer and each party.

(~~[14]~~16) The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

**(17) Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.**

(~~[15]~~18) Evidence for which a claim of confidentiality is made shall be ~~[filed in conformance with a protective order approved by the commission. Parties shall obtain a protective order prior to filing of documentary evidence, except as permitted otherwise by these rules]~~**provided in conformance with 4 CSR 240-2.135 or with any protective order specific to that information.**

(~~[16]~~19) All testimony shall be taken under oath.

~~[(17) All post-hearing exhibits shall be filed with the secretary of the commission in compliance with 4 CSR 240-2.080. Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.]~~

*AUTHORITY: section 386.410, RSMo 2000.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002. Amended: Filed \_\_\_\_\_.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*



**State ex rel. Utility Consumers Council v. Public Service Commission**, 562 SW2d 688 (Mo. App. 1978). At a hearing on the issuance of a certificate of convenience and necessity, the commission denied appellant consumers council opportunity to cross-examine electric utility's witnesses on certain testimony regarding costs. The proprietary nature of the cost information involved does not protect it from cross-examination by consumers council, and denial of right to such cross-examination was improper.

**PUBLIC ENTITY COST:** This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

**PRIVATE ENTITY COST:** This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

**NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING:** Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

# **Small Business Regulatory Fairness Board**

## **Small Business Impact Statement**

Date: 1-27-11

Rule Number: 4 CSR 240-2.130 Evidence

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Nancy Dippell

Phone Number: 573-751-4393 Email: nancy.dippell@psc.mo.gov

Name of Person Approving Statement: Morris Woodruff, Chief Regulatory Law Judge, Public Service Commission

**Please describe the methods your agency considered or used to reduce the impact on small businesses:** This rule is being amended to reorganize and clarify it and to provide additional methods of providing and receiving testimony. The amendments should have little to no impact on small businesses.

**Please explain how your agency has involved small businesses in the development of the proposed rule.**

This rule is being amended to reorganize and clarify it and to provide additional methods of providing and receiving testimony. The amendments should have little to no impact on small businesses. The Commission held a roundtable discussion on November 30, 2010, and invited the public to comment informally on the draft of the proposed rules. The Commission subsequently incorporated some changes from that roundtable into the rules for clarity and ease of use.

**Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.**

This rule is being amended to reorganize and clarify it and to provide additional methods of providing and receiving testimony. There are no monetary costs or benefits associated with this amendment and no fees will be collected as a result of it.

**Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.**

No small businesses are "required" to comply with the rule, as the rule is procedural.

**Please list direct and indirect costs (in dollars amounts) associated with compliance.**

No small businesses are "required" to comply with the rule, as the rule is procedural.

**Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.**

All utilities, large and small, and all ratepayers, residential or commercial, will benefit from the rule being reorganized and clarified. Any party providing evidence to the Commission will benefit from having additional options for the provision of testimony.

**Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?**

Yes\_\_\_ No\_X\_\_

**If yes, please explain the reason for imposing a more stringent standard.**

*For further guidance in the completion of this statement, please see §536.300, RSMo.*