**Title 7—DEPARTMENT OF TRANSPORTATION**

12/02/19

**Chief Counsel’s Office**

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**Division 10—Missouri Highways and Transportation Commission**

**Chapter 3—Utility and Private Line Location and Relocation**

**PROPOSED AMENDMENT**

7 CSR 10-3.020 Utility Relocation Hearings and Variance Request Hearings. The Missouri Highways and Transportation Commission is amending section (1) and adding new subsections (1)(A) and (1)(B).

*PURPOSE: This amendment promulgates rules for Variance Request Informal Hearings.*

*PURPOSE: This rule provides a uniform procedure for administrative hearings concerning* ***variance requests and*** *location and relocation of utility improvements and facilities within the rights-of-way highways.*

(1) Hearing Authorized.

**(A) Utility Relocation Hearings.** The commission has authority to order the location and relocation of utility improvements and facilities within the right-of-way of any state highway to prevent interference with the construction, maintenance, and public use of state highways. Before exercising its authority to order the relocation of utility facilities within the right-of-way, the commission shall provide the opportunity for an administrative hearing under section 227.240, RSMo to any entity, person, or corporation authorized under section 227.240, RSMo to own or maintain utility lines, poles, wires, conduits, pipelines, and tramways (utility facility) within state highway right-of-way regarding the commission’s proposed plan of utility facility location or relocation and other incidental matters. Such entity, person, or corporation may waive, at any time, the right to an administrative hearing under section 227.240, RSMo, which is to be provided to the district engineer or his/her designee or the hearing examiner.

**(B) Variance Request Informal Hearings.**

**1. Request for Informal Hearing. If denied a utilities variance, the applicant will have twenty (20) working days to request an informal hearing for the purpose of appealing the denial. The applicant will submit its request for an informal hearing to the State Design Engineer, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102.**

**2. Procedure. If the applicant requests an informal hearing, the department’s authorized representative will advise the applicant of the time, date, and place. This is not a contested case under Chapter 536, RSMo. The rules of evidence will not apply at the hearing.**

(2) Notice of Hearing. Upon request by the district engineer, the commission’s hearing examiner shall prepare a written notice of hearing that includes a plan or drawing indicating the locations within the right-of-way in which utilities may be located and maintained, state when the commission or its contractor is scheduled to begin work on the right-of-way, state the date by which work shall be completed on utilities within the right-of-way, fix the time and place of the administrative hearing, and advise that the purpose of the hearing is to consider the commission’s proposed plan of utility location and other incidental matters. The notice of hearing may be served upon each entity, person, or corporation, authorized under section 227.240, RSMo to own or maintain a utility facility within the right-of-way by certified mail, with return receipt requested, at least fifteen (15) days before the date of the hearing.

(3) Hearing Officer. The commission’s hearing examiner presides at and conducts the hearing as provided in Chapter 536, RSMo and this rule, including, but not limited to, ruling on all discovery matters, objections, and motions, and having the hearing record transcribed.

(4) Discovery. The parties to the hearing may conduct any method of discovery authorized in Chapter 536, RSMo.

(5) Subpoenas. Witnesses may be summoned to appear and give testimony or to give testimony and produce documents by a subpoena or *subpoena duces tecum* issued by the hearing examiner at the request of any party as authorized under section 536.077, RSMo.

(6) Evidence, Arguments, and Briefs. The commission shall first present its evidence at the hearing. Then any party may present evidence in opposition. The parties may offer closing arguments before conclusion of the hearing. The hearing examiner may require written briefs to be filed within the time set by the hearing examiner for the use of the commission in reaching a final decision.

(7) Transcript. Any party may obtain a copy of the transcript of the hearing at that party’s expense.

(8) Report and Order. As soon as practical after receipt of the transcripts and briefs of the parties, if any, the hearing examiner shall submit to each member of the commission a full copy of the transcript of the proceedings along with a proposed report and order for consideration by the commission.

(9) Final Decision. As soon as practical after receipt of the transcript and proposed report and order, the commission members shall render a final decision in writing.

*AUTHORITY: section 227.240, RSMo 2016.\* Original rule filed May 12, 1978, effective Aug. 11, 1978. Amended: Filed Nov. 14, 2017, effective June 30, 2018. Amended: Filed \_\_\_\_\_, 2020.*

*\*Original authority: 227.240, RSMo 1939, amended 2005, 2006.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission. Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102 or* *Pamela.Harlan@modot.mo.gov**. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*