

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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JAN 29 2004

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-3.190
Diskette File Name Final Rule 3.190 Word 2000
Name of Person to call with questions about this rule:
Content Warren Wood Phone 573-751-2978 FAX 573-751-9285
Data Entry Susan Sundermeyer Phone 573-751-4335 FAX Same as above
Email Address warren.wood@psc.mo.gov
Interagency Mailing Address Governor Office Building, 200 Madison St., 7th Floor, Jefferson City, MO
Statutory Authority 386.250, 394.160 Current RSMo date 2000
Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency Rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
- ☐ Proposed Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission
- ☒ Order of Rulemaking (check one) ☐ rule ☒ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
- ☐ Rule action notice
- ☐ In addition
- ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

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RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number _____

1a. Effective Date for the Order

☒ Statutory 30 days

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 of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

(Start text here. If text continues to a third page, insert a continuous section break and, in **section 3**, delete the footer text. DO NOT delete the header, however.)

Subsection (1)(C) was revised to clarify that the provision applies only to carbon-based fuel generating units.

Section (4) was revised to clarify that these are electrical contacts and to eliminate the reporting requirement for property damage.

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

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
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573-751-3234
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ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

January 29, 2004

Hon. Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

Re: 4 CSR 240-3.190 – Reporting Requirements for Electric Utilities and Rural Electric Cooperatives

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 on this 27th day of January 2004.

Statutory Authority: sections 386.250 and 394.160

If there are any questions regarding the content of this order of rulemaking, please contact:
Dennis Frey, P.O. Box 360, Jefferson City, MO 65102, 573-751-8700,
denny.frey@psc.mo.gov.

Sincerely,

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

COPY
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JAN 29 2004

ORDER OF RULEMAKING

SECRETARY OF STATE
ADMINISTRATIVE RULES

By the authority vested in the Public Service Commission (Commission or PSC) under sections 386.250 and 394.160, RSMo 2000, the Commission adopts an amended rule as follows:

4 CSR 240-3.190 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 17, 2003 (*Missouri Register*, Vol. 28, No. 22). Those sections with changes are reprinted here. This proposed amended rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held on December 30, 2003, and the public comment period ended December 17, 2003. At the public hearing, Warren Wood, Manager of the Energy Department of the Commission, explained the development of the proposed amendments and presented the Staff's responses to all written comments that were provided to the Commission regarding the proposed rule through an exhibit that was marked Exhibit No. 1 and entered into the record. John Coffman, Office of the Public Counsel (OPC), stated that OPC supported the amended rule as presented at the public hearing. At the public hearing Michael F. Barnes, Attorney for Union Electric Company, presented the comments of Union Electric Company that were also provided as written comments. Most of the comments received during the comment period and in the public hearing related to the accident reporting requirements in the proposed amendment. The Commission has made several changes to the proposed amended rule as a result of these comments.

COMMENT: Earle W. Shively, General Manager/CEO, Barry Electric Cooperative, 4015 Main Street, P. O. Box 307, Cassville, MO 65625, (417) 847-2131;
Thomas J. Steska, General Manager/CEO, Black River Electric Cooperative, P.O. Box 31, 2600 Highway 67, Fredericktown, Missouri, (573) 783-3381;
Don Ernst, General Manager/CEO, Co-Mo Electric Cooperative, Inc., 29868 Highway 5, P.O. Box 220, Tipton, MO 65081, (660) 433-5521;
Dan Bryan, Executive Vice President/CEO, Farmers' Electric Cooperative, Inc., Bus. Hwy 36 East, P.O. Box 680, Chillicothe, MO 64601, (660) 646-4281;
Dan Singletary, General Manager, Howell-Oregon Electric Coop., Inc., P.O. Box 649, West Plains, MO 65775, (417) 256-2131;

Kenneth L. Miller, General Manager, Laclede Electric Cooperative, P.O. Box M, Lebanon, MO 65536, (417) 532-3164;

Mark W. Stuart, Facility Coordinator/Safety Director, New-Mac Electric Cooperative, Inc., 12105 Highway 86 East, P.O. Box 310, Neosho, MO 64850, (417) 451-1515;

Charles J. Crawford, General Manager, Pemiscot-Dunklin Electric Cooperative, Inc., P.O. Box 657, Hayti, MO 63851, (573) 757-6641;

Lee M. Binley, General Manager, SeMaNo Electric Cooperative, Mansfield, MO 65704, (417) 924-3243;

Wright L. Bogart, Safety Director, SeMaNo Electric Cooperative, Mansfield, MO 65704, (417) 924-3243;

Mark J. Newbold, Manager of Administrative Services, Central Electric Power Cooperative, 2106 Jefferson St., P.O. Box 269, Jefferson City, MO 65102, (573) 634-2454;

Philip M. Ragsdale, Webster Electric Cooperative, 1240 Spur Drive, P.O. Box 87, Marshfield, MO 65706, (417) 859-2216;

Gene Dorrel, General Manager, United Electric Cooperative, Maryville, MO, (816) 324-3155;

Walter R. Ryan, General Manager, Three Rivers Electric Cooperative, 1324 East Main St., P.O. Box 918, Linn, MO 65051, (573) 897-2251; and

Vernon W. Strickland, General Manager, Intercounty Electric Cooperative Association, 102 Maple Avenue, P.O. Box 209, Licking, MO 65542, (573) 674-2211, commented that the notice of the rule contains a fiscal note indicating the cost to state agencies or political subdivisions will be less than five hundred dollars (\$500) in the aggregate and the cost to private entities will be less than five hundred (\$500) in the aggregate. This is incorrect in that the private entity reporting requirements and PSC handling and investigation costs will exceed \$500. The cooperatives believe that this amount is incorrect and that the Commission needs to further review the proposal.

RESPONSE: As noted in the comments from parties below, the Commission is asking for information that is already documented by electric service providers in the state. The Commission believes that any prudent electric service provider would be tracking accidents that would result in the damages or injuries the Commission is asking for information on. The proposed amended rule simply asks for a "brief description of an accident", it is not prescriptive in terms of a form and the Commission is not mandating that an investigation be performed in this rule. The Commission does not anticipate that additional personnel or resources will be required of the electric service providers in the state to notify the Commission of the reportable accidents that occur. The rule does not assign the PSC with incident handling or investigation responsibilities that do not already exist in statutes so the Commission has not assessed the PSC any cost for these efforts. The rule also does not create investigation coordination responsibilities by electric service providers that do not already exist in statutes so the Commission has assessed no additional costs for these efforts.

COMMENT: Earle W. Shively, General Manager/CEO, Barry Electric Cooperative, 4015 Main Street, P. O. Box 307, Cassville, MO 65625, (417) 847-2131;

Thomas J. Steska, General Manager/CEO, Black River Electric Cooperative, P.O. Box 31, 2600 Highway 67, Fredericktown, Missouri, (573) 783-3381;

Ron Hunter, Manager, Atchison-Holt Electric Cooperative, 18585 Industrial Road, P.O. Box 160, Rock Port, MO 64482, (660) 744-5344;

Don Ernst, General Manager/CEO, Co-Mo Electric Cooperative, Inc., 29868 Highway 5, P.O. Box 220, Tipton, MO 65081, (660) 433-5521;

John W. Greenlee, General Manager, Gascosage Electric Cooperative, P.O. Drawer G, Dixon, MO 65459, (573) 759-7146;

Dan Singletary, General Manager, Howell-Oregon Electric Coop., Inc., P.O. Box 649, West Plains, MO 65775, (417) 256-2131;

Mark W. Stuart, Facility Coordinator/Safety Director, New-Mac Electric Cooperative, Inc., 12105 Highway 86 East, P.O. Box 310, Neosho, MO 64850, (417) 451-1515;

Charles J. Crawford, General Manager, Pemiscot-Dunklin Electric Cooperative, Inc., P.O. Box 657, Hayti, MO 63851, (573) 757-6641;

Mark J. Newbold, Manager of Administrative Services, Central Electric Power Cooperative, 2106 Jefferson St., P.O. Box 269, Jefferson City, MO 65102, (573) 634-2454;

Thomas W. Howard, CEO/General Manager, Callaway Electric Cooperative, 503 Truman Rd., P.O. Box 250, Fulton, MO 65251, (573) 642-3326;

Jerry Hartman, Directory of Communications and Safety, Sho-Me Power Electric Cooperative, 301 West Jackson, P.O. Drawer D, Marshfield, MO 65706, (417) 468-2615;

Philip M. Ragsdale, Webster Electric Cooperative, 1240 Spur Drive, P.O. Box 87, Marshfield, MO 65706, (417) 859-2216;

Gene Dorrel, General Manager, United Electric Cooperative, Maryville, MO, (816) 324-3155;

Walter R. Ryan, General Manager, Three Rivers Electric Cooperative, 1324 East Main St., P.O. Box 918, Linn, MO 65051, (573) 897-2251;

Ben Harper, General Manager, Sac Osage Electric Cooperative, Inc., 4815 E. Hwy 54, P.O. Box 111, El Dorado Springs, MO 64744, 417-876-2721; and

Vernon W. Strickland, General Manager, Intercounty Electric Cooperative Association, 102 Maple Avenue, P.O. Box 209, Licking, MO 65542, (573) 674-2211, commented that the proposed amendment contains requirements that are duplicative with activities already being conducted by either the PSC, Missouri electric cooperatives or both. The cooperative further believes that additional reporting, without benefit to the electrical industry is clerical redundancy. The information required to be reported duplicates mandates already established by OSHA, the USDA Rural Utilities Service, worker's compensation providers, MECIP, insurance carriers, Federated Rural Electric Insurance Exchange, the Association of Missouri Electric Cooperative, Inc. and state and local agencies.

RESPONSE: The Commission does not believe that this rule is redundant beyond any possible redundancies that may already exist in federal or state statutes. The Commission also does not believe that this rule is redundant to any degree with activities already being conducted by the PSC. The PSC has been given specific statutory obligations regarding safety and currently does not have any assurances that accidents related to its jurisdiction are being reported to the PSC. In fact, the Commission currently receives accident reports from one of the utilities that this proposed change would apply to. This rule seeks to address the deficiency that currently exists between our statutory obligations and the information we have available to fulfill that obligation. As noted in the Commission response above, the fact that this information is being tracked and provided to multiple organizations makes it clear that simply providing the PSC with a brief description of the incident and following up with the information that is already being provided to other organizations does not create an unreasonable effort on the behalf of the electric service providers.

COMMENT: Earle W. Shively, General Manager/CEO, Barry Electric Cooperative, 4015 Main Street, P. O. Box 307, Cassville, MO 65625, (417) 847-2131;

Thomas J. Steska, General Manager/CEO, Black River Electric Cooperative, P.O. Box 31, 2600 Highway 67, Fredericktown, Missouri, (573) 783-3381;

Ron Hunter, Manager, Atchison-Holt Electric Cooperative, 18585 Industrial Road, P.O. Box 160, Rock Port, MO 64482, (660) 744-5344;

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Dan Bryan, Executive Vice President/CEO, Farmers' Electric Cooperative, Inc., Bus. Hwy 36 East, P.O. Box 680, Chillicothe, MO 64601, (660) 646-4281;

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Mark W. Stuart, Facility Coordinator/Safety Director, New-Mac Electric Cooperative, Inc., 12105 Highway 86 East, P.O. Box 310, Neosho, MO 64850, (417) 451-1515;

Lee M. Binley, General Manager, SeMaNo Electric Cooperative, Mansfield, MO 65704, (417) 924-3243;

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Walter R. Ryan, General Manager, Three Rivers Electric Cooperative, 1324 East Main St., P.O. Box 918, Linn, MO 65051, (573) 897-2251; and
Vernon W. Strickland, General Manager, Intercounty Electric Cooperative Association, 102 Maple Avenue, P.O. Box 209, Licking, MO 65542, (573) 674-2211, commented that the incident reporting requirements proposed in section (4) of the proposed amendment will not improve safety. They commented that the National Electric Code has already been adopted by the PSC and Missouri law. Missouri electric cooperatives are required to have their systems inspected by a licensed engineer for safety issues and compliance with code. In addition, the cooperatives are regulated by RUS and are required by insurers to meet safety requirements. Additionally, many of the state cooperatives participate in NRECA's safety accreditation program and all participate in the Missouri Electric Cooperative Insurance plan safety audits. The information requested to be reported will not be used to improve any of these safety programs.

RESPONSE: These comments seem to indicate that since the parties' facilities already comply with NESC, are inspected by licensed engineers and the parties are regulated by RUS and required to participate in a number of accreditation programs, they should not be required to report accidents to the PSC. State statutes do not provide for this exception. It is expected that the critical energy delivery systems in our state be well designed, operate safely and meet all appropriate code requirements. The proposed amended rule has been developed to provide for notification of significant accidents so that the circumstances surrounding those accidents can be investigated if conditions warrant.

COMMENT: Earle W. Shively, General Manager/CEO, Barry Electric Cooperative, 4015 Main Street, P. O. Box 307, Cassville, MO 65625, (417) 847-2131;
Thomas J. Steska, General Manager/CEO, Black River Electric Cooperative, P.O. Box 31, 2600 Highway 67, Fredericktown, Missouri, (573) 783-3381;
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Charles J. Crawford, General Manager, Pemiscot-Dunklin Electric Cooperative, Inc., P.O. Box 657, Hayti, MO 63851, (573) 757-6641;

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Ben Harper, General Manager, Sac Osage Electric Cooperation, Inc., 4815 E. Hwy 54, P.O. Box 111, El Dorado Springs, MO 64744, 417-876-2721; and

Vernon W. Strickland, General Manager, Intercounty Electric Cooperative Association, 102 Maple Avenue, P.O. Box 209, Licking, MO 65542, (573) 674-2211, commented that the time requirements in section (4) of the proposed amendment are unrealistic and will cause limited cooperative resources to be drawn away from repair and remedy and instead be devoted to reporting. The reporting time requirement set forth in the proposed document is unrealistic. Investigations and the production of accurate reports will be not only time consuming, but costly for members and customers. Due to the immediate nature of the reporting requirements, personnel typically devoted to restoring the system would be pressed to conduct an instantaneous investigation and file the resulting paperwork. The cooperatives stated that this is contradictory to their policy of limiting the duration and frequency of outages.

RESPONSE: These comments seem to indicate that the parties believe that the Commission anticipates that an investigation and report are required before Staff can receive its notification. No such requirements are contained in the rule and the Commission specifically avoided writing the rule to be burdensome in this manner. The Commission is simply requesting a "brief description of an accident" by telephone or EFIS by the end of the first business day following the discovery of the accident. The Commission is requesting an update on any additional details that are determined within five business days following discovery of the accident. No investigation results or formal reporting requirements have been prescribed in the rule to keep the efforts associated with notification of Staff to an absolute minimum. The Commission would note that Kansas City Power and Light Company is currently reporting accidents to the PSC and the Commission does not believe that this has represented a significant effort. The Commission would also note that in the region surrounding Missouri, four states (Iowa, Illinois, Kentucky and Kansas) currently have accident reporting requirements that are similar to those proposed in this amended rule.

COMMENT: Earle W. Shively, General Manager/CEO, Barry Electric Cooperative, 4015 Main Street, P. O. Box 307, Cassville, MO 65625, (417) 847-2131;

Thomas J. Steska, General Manager/CEO, Black River Electric Cooperative, P.O. Box 31, 2600 Highway 67, Fredericktown, Missouri, (573) 783-3381;

Ron Hunter, Manager, Atchison-Holt Electric Cooperative, 18585 Industrial Road, P.O. Box 160, Rock Port, MO 64482, (660) 744-5344;

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Ben Harper, General Manager, Sac Osage Electric Cooperation, Inc., 4815 E. Hwy 54, P.O. Box 111, El Dorado Springs, MO 64744, 417-876-2721; and

Vernon W. Strickland, General Manager, Intercounty Electric Cooperative Association, 102 Maple Avenue, P.O. Box 209, Licking, MO 65542, (573) 674-2211, commented that the information reported, pursuant to the amended section (4), to the PSC would become public record and could be used in litigation against cooperatives to enhance damage claims.

RESPONSE: As noted in the comments above, the information the Commission is requesting is already being tracked and provided to other entities. Providing Staff with this information does not create new litigation risk beyond those associated with notifying Staff of reportable accidents and the possibility that Staff may decide to investigate an accident and find negligence. Any Staff investigation results that show possible negligence on the behalf of the electric service provider could increase litigation risk but Staff's ability to perform investigations already exists in statutes. The change in circumstances that this proposed amended rule creates is that Staff would actually be made aware of the accident. Regarding the comment on information becoming public, the Commission notes that it is held to the statutory requirements of section 386.480, RSMo when it receives the information associated with this rule. This section provides

that the information received by the Commission shall only be divulged to the public under certain limited circumstances and the violation of this statute is a misdemeanor.

COMMENT: Vernon W. Strickland, General Manager, Intercounty Electric Cooperative Association, 102 Maple Avenue, P.O. Box 209, Licking, MO 65542, (573) 674-2211, commented that the phrase "contact with its energized electrical supply facilities", in section (4) of the proposed amendment, could be "legally" interpreted to cover most of the facilities operated or controlled by the cooperative.

RESPONSE AND EXPLANATION OF CHANGE: It was the Commission's intent in its draft language that this proposed amendment apply to electrical contact with energized facilities. The Commission has amended the rule to include the words "electrical" before the word "contact" in "contact with its energized electrical supply facilities" and "resulting from electrical contact" before "considered significant by the utility" in section (4). This should help to clarify the intent of the proposed amendment. The Commission notes that the rule language noted in this comment was taken directly from the notice requirement rule in Iowa.

COMMENT: Michael F. Barnes, Attorney for Union Electric Company, 1901 Chouteau M/C 1310, St. Louis, MO 63103, (314) 5543-2552, commented that Ameren has no objection to those rule changes that change terminology to be consistent with the definitions in 4 CSR 240-3.010 or the express implementation of reporting through the Commission's Electronic Filing and Information System (EFIS).

RESPONSE: The Commission agrees with this comment.

COMMENT: Michael F. Barnes, Attorney for Union Electric Company, 1901 Chouteau M/C 1310, St. Louis, MO 63103, (314) 5543-2552, commented that Ameren questions the need for additional monthly reporting requirements in section (1), and Ameren also questions the use the Missouri Public Service Commission Staff ("Staff") makes of the information submitted. Ameren notes that during a rate case the Staff asks for some of the same information that is reported on a monthly basis. Ameren further notes that during the most recent Ameren rate case, some Staff did not know that the Commission had been receiving this data for years.

RESPONSE: The commenting party questions the need for additional monthly reporting requirements. The Commission's Staff uses the monthly reporting requirement information submitted by the electric utilities to estimate fuel and purchase power expenses for rate cases and Staff investigations. The original purpose of the monthly reporting requirements was to enable Staff to do such work. The changes to these reporting requirements result from the Staff's experience using the data. The change to the previous section (D) is to clarify the information

needed. Most of the utilities currently supply the net system input that was added as a requirement. Previously, Staff could add up the hourly generation and purchase power reports to obtain net system input for the utility. However, when a utility begins joint dispatching with other affiliates or divisions, the hourly reports cannot be aggregated to obtain the net system inputs because the generation and purchase power reported is what is necessary to meet the joint load. So to make sure that Staff receives net system input for the utility, this requirement was added. The only monthly information requirement that was added was for as-burned fuel reports. Over time, Staff has found that these reports were needed to accurately estimate fuel expenses.

Staff routinely asks for the same information in every rate case because, in the past when Staff used the information submitted monthly, the utility would rebut the Staff's use of the data saying that the data used was incorrect as was done in the most recent Ameren rate case. Asking for the information again in a rate or complaint case gives the utility the opportunity to supplement, clarify or correct any data that it might have submitted on a monthly basis. If the data that was sent on a monthly basis is accurate, the utility only has to reply to the Staff's request that the Staff should use the information submitted pursuant to the rule.

There are Staff who are not aware of the requirements of this rule just as there are utility employees that are not aware that the utility supplies this data to the Staff. If someone from Staff requests data that is submitted to the Energy Department on a monthly basis, the utility only needs to reply that the data has already been supplied to the Energy Department. The Staff's Energy Department is more than willing to provide the data to anyone on Staff that needs the information.

COMMENT: Michael F. Barnes, Attorney for Union Electric Company, 1901 Chouteau M/C 1310, St. Louis, MO 63103, (314) 5543-2552, commented that Ameren is unsure how some information requirements will be gathered. The fuel blending requirements in subsection (1)(C) may have to be based on an estimate.

RESPONSE: If the utility is blending two types of coal in order to get a mix of the best characteristics of both coals, then there should be a target for the amount of each type of coal in the blend.

Typically the operational constraints based on the boiler design will determine the optimum blend of two types of coals. A blend percentage is selected based on certain boiler operational constraints and that blend becomes the target for the fuel handling crews to meet. If this is the process, then an average blend percentage for a month should be known.

However, if two or more coals are burned as a mix but not necessarily in any fixed percentage of each, and the coals are mixed on the coal pile as they are received, then the Commission would accept an estimated blend percentage.

COMMENT: Michael F. Barnes, Attorney for Union Electric Company, 1901 Chouteau M/C 1310, St. Louis, MO 63103, (314) 5543-2552, commented that Ameren requests that the language in subsection (1)(C) be amended to exclude nuclear plants from these particular reporting requirements. Also, Ameren requests flexibility so that the fuel reports can be either for each "unit" or for each plant.

RESPONSE AND EXPLANATION OF CHANGE: Language has been added to the amendment that exempts non-carbon based plants, which would exclude nuclear and renewable plants from reporting fuel Btu consumption. The intent is to be able to monitor each unit not each plant.

Unless the plant does not have separate gas/oil meters, or separate coal bunkers/silos, or individual measuring devices (such as coal feeder belt scales or gas/oil flow metering devices for each boiler), the amount of fuel burned by each boiler should be known.

If the boilers have a common bunker/silo and/or no separate fuel measuring devices, then the utility can report the fuel burned in total for those boilers, and an estimate of the fuel for each unit (boiler-turbine generator).

If more than one boiler provides steam to a turbine generator, then the utility can report fuel burned for the boilers and the estimated percentage of fuel burned for each turbine generator.

COMMENT: Michael F. Barnes, Attorney for Union Electric Company, 1901 Chouteau M/C 1310, St. Louis, MO 63103, (314) 5543-2552, commented that subsections (1)(K) and (3)(A) propose to raise the reporting threshold for accidents at a generation plant from \$50,000 to \$100,000. Ameren supports this change.

RESPONSE: The Commission agrees with this comment.

COMMENT: Michael F. Barnes, Attorney for Union Electric Company, 1901 Chouteau M/C 1310, St. Louis, MO 63103, (314) 5543-2552, commented that Ameren opposes the addition of section (4), which deals with reporting of certain accidents for several reasons. First, the reporting will add greatly to the administrative burdens of the electric utilities and cooperatives. The initial reporting, and even more so the follow-up reporting, will require a significant amount

of time and effort, which will come at a time when utility personnel are probably already devoting substantial time and effort to the accident investigation and follow-up.

Second, Ameren questions the Commission's need for this reporting. Ameren recognizes that the Commission has the right to investigate whether the utilities are rendering safe and adequate utility service, in accordance with the National Electrical Safety Code. Ameren believes that the impetus for this proposed change is related to an incident that occurred when a member of the public was seriously injured when they contacted an electrical line. The Commission was contacted by news media for information, which they were not immediately able to give. This solitary incident is not sufficient to impose a stringent regulatory reporting burden on electric utilities and cooperatives. Staff, if contacted by the media, can continue to contact the utility for information, as Staff has in the past.

If the Commission is not willing to eliminate section (4) in its entirety, then Ameren urges the Commission to substantially revise it, in order to make it more reasonable and relevant. Ameren suggests the following changes.

The rule requires reporting of "any accident resulting from contact with its energized supply facilities." Ameren suggests inserting "electrical" before "contact." Ameren believes the Commission is interested in instances where a person or object actually contacts an energized source. The change would eliminate instances, for example, where a vehicle collides with a distribution pole, something that probably happens almost every day in Ameren's service territory. Ameren also interprets the regulation to not require reporting of contacts that may take place with customer-owned electrical equipment, such as in residence and other structures.

Ameren suggests that the Commission not require a follow-up report on each and every incident. As noted above, the mandatory follow-up report will entail significant costs and attention. Instead, Ameren suggests that the rule be changed so that the utility will send a follow-up report when so requested by the Staff. This would give the Staff some discretion as to which reported incidents to pursue and which can be closed. The last sentence should be changed to read: "If requested by the manager of the Energy Department of the Commission or his/her designee, the electric utility or rural electric cooperative shall submit, either by mail or through EFIS within five (5) business days after such request, an update of the incident and any details not available at the time of the initial report."

The proposed rule requires reporting of electric contact accidents that result in "ten thousand dollars (\$10,000) in damages to the property of the utility or others." Ameren suggests that this language be deleted from the proposed rule. First, Ameren suggests the Commission is much more interested in electrical contacts that result in deaths or hospital admissions rather than

property damage. Second, it could be very difficult, if not impossible, for a utility to calculate or even estimate property damage by the end of the first business day following discovery of the electrical contact.

If the Commission is unwilling to delete this property damage provision, then Ameren suggests that the \$10,000 reporting limit be raised to a dollar figure that would justify both investigation and reporting burdens on the utility and the Staff's efforts if Staff decides to investigate the accident. Ameren suggests \$50,000 as the property damage minimum.

RESPONSE AND EXPLANATION OF CHANGE: The commenting party's opposition to the administrative burdens required in the addition of section (4) is similar to that of the cooperatives. The Commission response to this opposition has already been set forth in response to previous comments.

The commenting party does not believe that the accident reporting requirements of section (4) of the amended rule are necessary as current reporting requirements and other changes to the rule adequately ensure the safety of the public and utility employees. The Commission would note that current reporting requirements do nothing to address accidents outside of power plants. It is expected that the critical energy delivery systems in our state be well designed, operate safely and meet all appropriate code requirements. The amended rule has been developed to provide for notification of significant accidents so that the circumstances surrounding those accidents can be investigated if conditions warrant. The PSC has been given specific statutory obligations regarding safety and currently does not have any assurances that accidents related to its jurisdiction are being reported to the PSC. This rule seeks to address the deficiency that currently exists between our statutory obligations and the information we have available to fulfill that obligation.

The commenting party believes that the Commission is primarily interested in instances where a person or object actually contacts an energized source. The Commission agrees with this comment. The Commission agrees with the suggestion of putting the word "electrical" before the word "contact" so that the rule would require the reporting of "any accident resulting from electrical contact with its energized facilities." The Commission has further clarified the rule by adding "resulting from electrical contact" before "considered significant by the utility" in section (4).

The commenting party also states that it interprets the rule to not require reporting of contacts that may take place with customer-owned electrical equipment, such as in residences and other structures. The Commission agrees with this interpretation and believes that the amended rule language is sufficiently clear.

As other commenting parties did, the commenting party believes that the mandatory follow-up report will entail significant costs and attention. It proposes, as an alternative, follow up reports would be made as requested by the Commission. It is the Commission's intent to keep the efforts associated with notification of the Commission to an absolute minimum. The Commission believes that any prudent electrical provider would be tracking accidents that the Commission is asking for information on and that a brief report sent to Staff within five working days should not entail significant costs and attention.

The commenting party suggests that the requirement to report accidents that result in \$10,000 of damage be removed from the rule. The Commission agrees with this comment and has revised the amended rule to require reporting of accidents that result in hospitalizations or fatalities.

The commenting party requested that if the property damage provision was not eliminated that the property damage minimum be raised to \$50,000. The Commission has removed this requirement from the amended rule as a result of prior comments.

COMMENT: Dean L. Cooper, Brydon, Swearingen & England P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, MO 65102, (573) 635-7166; and Jerry Divin, President of the Board, Association of Missouri Electric Cooperatives, 2722 East McCarty Street, PO Box 1645, Jefferson City, MO 65102, (573) 635-6857, commented that The Empire District Electric Company (Empire) and The Association of Missouri Electric Cooperatives (AMEC) oppose the addition of section (4) as proposed in 4 CSR 240-3.190. Empire believes that the addition of this section is unnecessary and that the current reporting system, coupled with the other suggested changes to this rule, adequately ensure safety of the public and utility employees.

RESPONSE: The commenting parties do not believe that the accident reporting requirements of section (4) of the amended rule are necessary as current reporting requirements and other changes to the rule adequately ensure the safety of the public and utility employees. The Commission would note that current PSC reporting requirements do nothing to address accidents of regulated electric utilities outside of power plants or any accidents involving cooperatives. Further, the fact that NESC was updated in the amended rule does nothing to address accidents, and potential investigation of those accidents, related to energized electrical supply facilities. The comments of Empire seem to indicate that since the utility already complies with NESC they should not be required to report accidents to the PSC. State statutes do not provide for this exception. It is expected that the critical energy delivery systems in our state be well designed, operate safely and meet all appropriate code requirements. The amended rule has been developed to provide for notification of significant accidents so that the circumstances

surrounding those accidents can be investigated if conditions warrant. The PSC has been given specific statutory obligations regarding safety and currently does not have any assurances that accidents related to its jurisdiction are being reported to the PSC. This rule seeks to address the deficiency that currently exists between our statutory obligations and the information we have available to fulfill that obligation.

COMMENT: Dean L. Cooper, Brydon, Swearingen & England P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, MO 65102, (573) 635-7166 commented that Empire is opposed to the \$10,000 threshold for reporting of incidents involving property damage, proposed in section (4). Empire believes that this limit is too low and should be stricken from the rule amendment. Alternatively, Empire would suggest that a \$100,000 damage threshold be set, to be consistent with proposed section (3)(A).

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with this comment and has revised the amended rule to limit reporting requirements to accidents that result in hospitalizations or fatalities or other accidents considered significant by the utility.

4 CSR 240-3.190 Reporting Requirements for Electric Utilities and Rural Electric Cooperatives.

(1) Commencing on September 1, 1991, every electric utility shall accumulate the following information and transmit it to the manager of the Energy Department of the commission, or his/her designee, no later than the last business day of the month following the month to be reported and after that on a monthly basis:

(C) Monthly as-burned fuel report for each carbon-based fuel generating unit, including the amount of each type of fuel consumed, the British thermal unit (Btu) value of each fuel consumed, and the blending percentages (if applicable);

(4) Every electric utility and rural electric cooperative shall report to the manager of the Energy Department of the commission or his/her designee, by telephone or through EFIS, a brief description of an accident by the end of the first business day following the discovery of any accident resulting from electrical contact with its energized electrical supply facilities which results in admission to a hospital or the fatality of an employee or other person or any other accident resulting from electrical contact considered significant by the utility. The electric utility or rural electric cooperative shall submit, either by mail or through EFIS within five (5) business days following the discovery, an update of the incident and any details not available at the time of the initial report.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

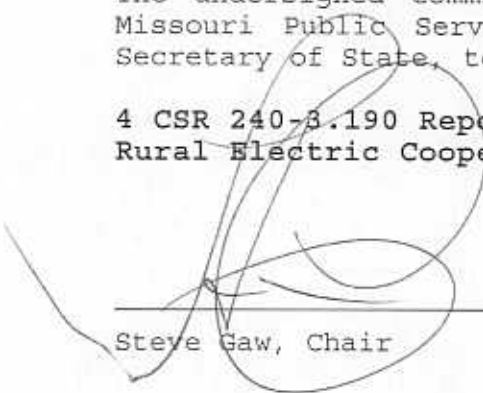
DATE: January 22, 2004

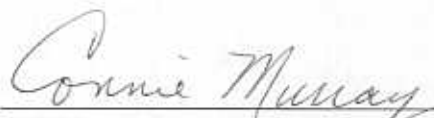
RE: Authorization to File Final Order of Rulemaking for
4 CSR 240-3.190 with the Office of the Secretary of State

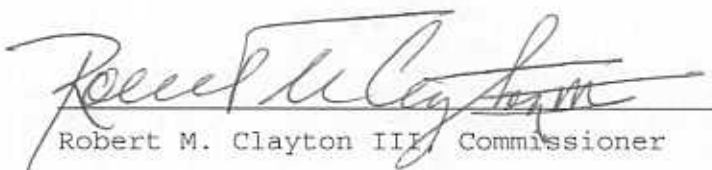
CASE NO: EX-2003-0489

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file with the Office of the Secretary of State, to wit:

4 CSR 240-3.190 Reporting Requirements for Electric Utilities and Rural Electric Cooperatives



Steve Gaw, Chair

Connie Murray, Commissioner

Robert M. Clayton III, Commissioner