

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
August, 2006.

In the Matter of Proposed Amendments to)
Commission Rule 4 CSR 240-13.055) **Case No. GX-2006-0434**

FINAL ORDER OF RULEMAKING

Issue Date: August 11, 2006


Effective Date: August 21, 2006

On May 12, 2006, the Commission opened a new proceeding to consider proposed amendments to the Commission Rule 4 CSR 240-13.055. On May 15, 2006, the Staff of the Missouri Public Service Commission filed a proposed Amendment to the Cold Weather Rule with the Missouri Secretary of State's Office.

On August 11, 2006, the Commission adopted the Final Order of Rulemaking, which is fully set forth as Attachment A.

IT IS ORDERED THAT:

1. 4 CSR 240-13.055 is amended.
2. This order shall become effective August 21, 2006.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Dale, Chief Regulatory Law Judge

MEMORANDUM

TO: Colleen M. Dale, Secretary

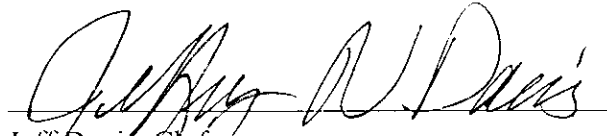
DATE: August 11, 2006

RE: Authorization to File Final Order of Rulemaking with the Office of Secretary of State


CASE NO: GX-2006-0434

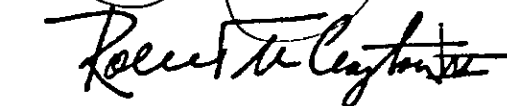
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of the Secretary of State, to wit:

Amendment to 4 CSR 240-13.055 – Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather

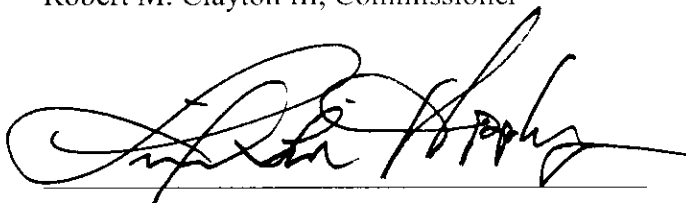

Jeff Davis, Chairman


Connie Murray, Commissioner


Steve Gaw, Commissioner



Robert M. Clayton III, Commissioner


Linward "Lin" Appling, Commissioner

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service commission
Chapter 13 – Service and Billing Practices for Residential
Customers of Electric, Gas and Water Utilities**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250(6), RSMo 2000, the commission amends a rule as follows:

4 CSR 240-13.055 is amended.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2006 (31 MoReg 902). Those sections with changes are reprinted here. This proposed 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 July 19, 2006, and the public comment period ended July 27, 2006, the record having been held open for additional information discussed at the public hearing. Five sets of written comments were received and an additional person commented at the hearing. Written comments were received from AARP; Laclede Gas Company, Missouri Gas Energy, and Atmos Energy Corporation, who collectively filed as the "Missouri Utilities"; the Office of the Public Counsel; Mid America Assistance Coalition (MAAC); and Jackie Hutchinson on behalf of the Human Development Corporation and other social welfare groups. Each of those persons or groups commented at the hearing, in addition to which three witnesses testified on behalf of the Staff of the Missouri Public Service Commission. The commenters suggested changes to sections (14)(A), (14)(F) and (14)(G).

COMMENT: All commenters suggested that the dates of applicability of the amendment be changed from December 1 to November 1 to make the amendment consistent with the other sections of the Cold Weather Rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule shall be changed so that it applies on November 1 of each year, consistent with the other sections of the Cold Weather Rule, as more fully set out below.

COMMENT: The Public Counsel seeks to limit the 50% arrearage repayment requirement for reinstatement of service to 50% or \$250, whichever is less. This limit is supported by other commenters, including generally by MAAC, although it points out that lowering the arrearage repayment for restoration allows households to acquire a debt burden from which there is no hope of repaying; MAAC supports a limit at \$500 or 50%; Ms. Hutchinson would go as low as 25% with a \$250 limit, although only for families at or below 185% of the federal poverty guideline. The Missouri Utilities oppose a dollar limit on arrearage repayment.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule shall be changed so that it limits the amount a customer must pay to be reconnected to \$500 or 50%, whichever is less, as more fully set out below.

COMMENT: The commenters differed over the following language in (14)(A): "However, a gas utility shall not be required to offer reconnection or retention of service under this subsection (14)(A) more than once for any customer." The utility commenters initially sought clarification that the obligations under (14) applied only once in a customer's lifetime, but later revised its position that the obligations should be applied once every five years. Other commenters asserted that every two or three years would be sufficient, while other commenters asserted that the obligation should apply once every year.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule shall be changed so that it clarifies that the protections of section (14) shall be available to customers once every two years, but that a customer who has failed to adhere to payment plans under the rule three times is not eligible for another such payment plan, as more fully set out below.

COMMENT: The commenters differed over how long the payment plans should last. Certain commenters believed it was appropriate for the payment plans to be extended for two or three years, as customers in unusual circumstances sections, such as those with large medical bills, might need a longer period to pay all arrearages. In addition, there were comments that LIHEAP-eligible customers should be given longer repayment periods. Other commenters believe that payment plans longer than twelve months cause customers in financial difficulty to become further indebted to the extent that they may never be able to eliminate their arrearages.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that both sides of the argument have merit, and that the rule shall be clarified that payment plans are to be for twelve months unless the customer seeks a shorter period or the utility agrees to a longer period for customers in unusual circumstances, as more fully set out below.

COMMENT: The Missouri Utilities sought the inclusion of the following language at the end of (14)(A): "For purposes of this paragraph any offer made by the gas utility as a result of the emergency amendment adopted by the commission effective January 1, 2006 or by the gas utility at any time subsequent to the effective date of this amendment shall be deemed to satisfy its obligations under this subsection (14)(A)."

RESPONSE: The inclusion of this language was not discussed at the hearing, nor was the need for such language addressed in Missouri Utilities' written comments. The Emergency Rule was substantively identical to the proposed rule; the commission does not believe the inclusion of this language is warranted. Therefore, no change in the language of the rule will be made.

COMMENT: The Missouri Utilities sought the inclusion of the following language in its new subsection (F): "A gas utility shall be permitted to apply any income eligibility requirements approved by the Commission pursuant to section (13) of this rule to customers seeking to take advantage of the payment terms set forth in this section, provided that on and after the effective date of this amendment the minimum [sic] household income percentage for determining eligibility shall be increased to 185% of the federal poverty level."

RESPONSE: The application of an income threshold for eligibility for the protections of this section were discussed at length in the hearing and in written comments. Other commenters noted that the potential harm of disconnection and the need for a repayment plan are not necessarily limited to those households that have income of less than 150% of the federal poverty guideline. Although Missouri Utilities have proposed a higher maximum household

income, the commission does not believe the inclusion of this language is warranted. Therefore, no change in the language of the rule will be made.

COMMENT: The MAAC supports inclusion in the rule of some sort of weatherization plan or incentives to assist low-income customers in reducing their energy usage and bills.

RESPONSE: While the commission believes that weatherization and usage-reduction incentives are a good idea, the commission has chosen to pursue those plans in other dockets, in other ways. Therefore, no change in the language of the rule will be made.

COMMENT: Both Ms. Hutchinson and MAAC request that some sort of arrearage forgiveness program would provide incentive for customers to make realistic payment plans and then adhere to them.

RESPONSE: While such an arrearage forgiveness program could provide such an incentive and reduce the overall uncollectibles facing Missouri Utilities, such a program is beyond the scope of this rule at this time. Therefore, no change in the language of the rule will be made. However, the commission encourages companies to work with the other commenters in this matter to determine whether an experimental program along these lines is feasible.

COMMENT: The most contentious issue among the commenters was the cost recovery mechanism. The Public Counsel opposes the inclusion of the accounting authority order ("AAO") while the Missouri Utilities do not believe that the AAO provides sufficient protection. The Missouri Utilities propose deletion of (14)(F), which sets out limits on the recovery of costs associated with the amendment to those costs actually caused by the amendment, and propose a new (14)(G) that would establish an "Uncollectibles Tracker" mechanism to recover costs. Staff and Public Counsel oppose the tracker mechanism due to their belief that, especially in light of the Missouri Utilities' removal of (14)(F) recovery limitations, the tracking mechanism would recover costs not associated with compliance with this amendment.

RESPONSE AND EXPLANATION OF CHANGE: The proposal by the Missouri Utilities is too broad. On its face, the proposal allows the recovery of costs not associated with compliance with this amendment. Although the Commission has lawfully used such mechanisms in the past, it does not appear to be an appropriate resolution of this matter. However, the Missouri Utilities do raise a valid point concerning the ability to recover all of the costs associated with compliance with this rule, because in a full rate case all of the costs of doing business as a utility are reviewed and certain costs could be disallowed in that overall review. Therefore the commission will adopt a more detailed AAO in which the amount to be recovered will be determined in a separate proceeding concerning only the costs of complying with this amendment, as more fully set out below in (14)(F) and (G).

PROPOSED AMENDMENT

4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Heat-Related Utility Service During Cold Weather

(14) This section only applies to providers of natural gas services to residential customers. Other providers of heat-related utility services will continue to provide such service under the terms of

sections (1) through (13) of this rule. The provisions of sections (1) through (13) of this rule continue to apply to providers of natural gas service except where inconsistent with the terms of this section.

(A) From November 1 through March 31, notwithstanding paragraph (10)(C)2. of this rule to the contrary, a gas utility shall restore service upon initial payment of the lesser of fifty percent (50%) or \$500 of the preexisting arrears, with the deferred balance to be paid as provided in subsection (10)(B). Any reconnection fee, trip fee, collection fee or other fee related to reconnection, disconnection or collection shall also be deferred. Between November 1 and March 31, any customer threatened with disconnection may retain service by entering into a payment plan as described in this section. Any payment plan entered into under this section shall remain in effect (as long as its terms are adhered to) for the term of the payment plan, which shall be twelve months' duration, unless the customer requests a shorter period or the utility agrees to a longer period. However, a gas utility shall not be required to offer reconnection or retention of service under this subsection (14)(A) more than once every two years for any customer or to any customer who has defaulted on a payment plan under this section three or more times.

[No changes in (B) through (E)]

(F) A gas utility shall be permitted to recover the costs of complying with this section as follows:

1. The cost of compliance with this section shall include any reasonable costs incurred to comply with the requirements of this section;
2. No gas utility shall be permitted to recover costs under this section that would have been incurred in the absence of this section, provided that the costs calculated in accordance with section (14)(F)1. shall be considered costs of complying with this section;
3. Any net cost resulting from this section as of June 30 each year shall accumulate interest at the utility's annual short-term borrowing rate until such times as it is recovered in rates; and
4. No bad debts accrued prior to the effective date of this section may be included in the costs to be recovered under this section, provided that a gas utility may continue to calculate and defer for recovery through a separate Accounting Authority Order the costs of complying with the Commission's January 1, 2006 emergency amendment to this rule upon the same terms as set forth herein. The costs eligible for recovery shall be the unpaid charges for new service received by the customer subsequent to the time the customer is retained or reconnected by virtue of this section plus the unpaid portion of the difference between the initial payment paid under this section and the initial payment that could have been required from the customer under the previously enacted payment provisions of section (10) of this rule, as measured at the time of a subsequent disconnection for non-payment or expiration of the customer's payment plan.

(G) A gas utility shall be permitted to defer and recover the costs of complying with this rule through a one-term Accounting Authority Order until such time as the compliance

costs are included in rates as part of the next general rate proceeding or for a period of two years following the effective date of this amendment:

1. The commission shall grant an Accounting Authority Order, as defined below, upon application of a gas utility, and the gas utility may book to Account 186 for review, audit and recovery all incremental expenses incurred and incremental revenues that are caused by this section. Any such Accounting Authority Order shall be effective until September 30, of each year for the preceding winter;
2. Between September 30 and October 31 each year, if a utility intends to seek recovery of any of the cost of compliance with this section, the utility shall file a request for determination of the cost of compliance with this section for the preceding winter season. The request by the utility shall include all supporting information. All parties to this filing will have no longer than 120 days from the date of such a filing to submit to the Commission their position regarding the company's request with all supporting evidence. The Commission shall hold a proceeding where the utility shall present all of its evidence concerning the cost of compliance and other parties, including Commission Staff, shall present any evidence that the costs asserted by the utility should be disallowed in whole or part. Such a proceeding may be waived by the unanimous request of the parties or by a non-unanimous request without objection. The Commission shall establish the amount of costs it determines have been reasonably incurred in complying with this section within 180 days of the utility's request and such amount will be carried forward into the utility's next rate case without reduction or alteration. Such costs shall be amortized in rates over a period of no greater than five years and shall be recovered in a manner that does not impair the utility's ability to recover other costs of providing utility service. If the Commission fails to establish the amount of costs within 180 days, then the amount requested by the utility shall be deemed reasonably incurred.
3. The commission has adopted the Uniform System of Accounts in 4 CSR 240-4.040. Accounting Authority Orders are commission orders that allow a utility to defer certain expenses to Account 186 under the Uniform System of Accounts for later recovery as determined by the commission in a subsequent general rate case; and
4. Although the Accounting Authority Order allows the gas utility to recover the reasonably incurred expenses only within the context of a general rate case, all such reasonably incurred expenses shall be recovered by the gas utility, together with interest thereon, as set forth above.

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

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

- A. Rule Number 4 CSR 240-13.044
Diskette File Name Cold Weather Rule
Name of person to call with questions about this rule:
Content Cully Dale Phone 751-4255 FAX 526-6010
E-mail address cully.dale@psc.mo.gov
Data entry same Phone _____ FAX _____
E-mail address _____
Interagency mailing address Public Service Commission, 9th Floor, GOB
Statutory Authority 386.250(6) Current RSMo date 2000
Date filed with the Joint Committee on Administrative Rules August 11, 2006
- B. CHECKLIST guide for rule packets:
- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Forms, number of pages _____ |
| <input type="checkbox"/> Cover letter | <input type="checkbox"/> Authority section with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost statement |
| <input type="checkbox"/> Small business impact statement | <input type="checkbox"/> Private cost statement |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing date |
- C. RULEMAKING ACTION TO BE TAKEN
- ☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination
- MUST** include effective date _____
- ☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission
- ☒ Order of Rulemaking (choose one) ☐ rule, ☒ amendment, ☐ rescission, or ☐ termination
- MUST** complete page 2 of this transmittal
- ☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency)
- ☐ Rule action notice ☐ In addition ☐ Rule under consideration
- D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-13.044

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. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

Changes are found in (14)(A) insertions in seven places throughout the subsection; (14)(F) one deletion in paragraph 1, addition in one place in paragraph 2, addition in one place in paragraph 3 and addition in one place in paragraph 4; and (14)(G) addition in one place in the introductory paragraph, addition of new paragraph 2, renumbering remaining paragraphs and deletion of the last sentence in newly-numbered paragraph 4.

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

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

August 11, 2006

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

Dear Secretary Carnahan:

Re: 4 CSR 240-13.055, Service and Billing Practices for Residential Customers of Electric,
Gas and Water Utilities

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 for filing on this 11th day of August, 2006.

Statutory Authority: Sections 386.250(6) RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Colleen M. Dale", is written over a horizontal line.

Colleen M. Dale
Secretary
Missouri Public Service Commission