

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

## Administrative Rules Stamp

Rule Number 4 CSR 240-13.035

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

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data

Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address christine.koenigsfeld@psc.mo.gov

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:

Section (1)

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

DEC 04 2013

ADMINISTRATIVE RULES



**Commissioners**

**ROBERT S. KENNEY**  
Chairman

**STEPHEN M. STOLL**

**WILLIAM P. 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>

**JOSHUA HARDEN**  
General Counsel

**MORRIS WOODRUFF**  
Secretary

**WESS A. HENDERSON**  
Director of Administration  
and Regulatory Policy

**CHERLYN D. VOSS**  
Director of Regulatory Review

**KEVIN A. THOMPSON**  
Chief Staff Counsel

Jason Kander  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Re: 4 CSR 240-13.035 Denial of Service

Dear Secretary Kander,

**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.

Statutory Authority: sections 386.250 and 393.140, RSMo 2000

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

Morris L. Woodruff, Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-2849  
[morris.woodruff@psc.mo.gov](mailto:morris.woodruff@psc.mo.gov)

Morris L. Woodruff  
Chief Regulatory Law Judge

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

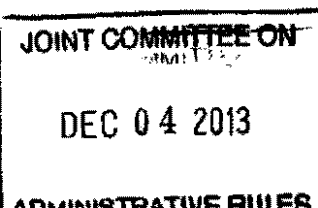
**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under section 386.250(6) RSMo 2000, and section 393.140(11) RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-13.035 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 3, 2013 (38 MoReg 1368). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended October 7, 2013, and the commission held a public hearing on the proposed amendment on October 10, 2013. The commission received timely written comments from Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Laclede Gas Company, Ameren Missouri, and The Empire District Electric Company (collectively the Missouri Utilities); the Office of the Public Counsel; Jacqueline Hutchinson, Vice President of Operations for People's Community Action Corporation in St. Louis Missouri; AARP, the Consumers Council of Missouri, and Legal Services of Eastern Missouri, Inc. (collectively the AARP group); Missouri-American Water Company; and the Staff of the Missouri Public Service Commission. In addition, the following people offered comments at the hearing: Rick Zucker, representing Laclede Gas Company and Missouri Gas Energy; Jim Fischer, representing Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Allison Erickson on behalf of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCP&L and GMO); Russ Mitten, representing The Empire District Electric Company; Sarah Giboney, representing Ameren Missouri; Kathy Hart on behalf of Ameren Missouri; Tim Luft, on behalf of Missouri-American Water Company; Marc Poston, representing the Office of the Public Counsel; John Coffman, representing AARP and Consumers Council of Missouri; Jacqueline Hutchinson on behalf of Community Action Corporation in St. Louis Missouri; Jackie Lingum, representing Legal Services of Eastern Missouri, Inc.; Akayla Jones, representing the Staff of the Missouri Public Service Commission; and



Gay Fred and Lisa Kremer on behalf of the Staff of the Missouri Public Service Commission.

The commission considered this particular rule in conjunction with eleven other rules within Chapter 13. Not all persons offering comments addressed this particular rule.

**COMMENT:** The commission's staff offered a written comment indicating that it continues to support the amendment as proposed.

**RESPONSE:** The commission thanks staff for its comment.

**COMMENT:** The revised version of section (1) as published in the Missouri Register would add a requirement that when a utility refuses to provide service to an applicant it must inform the applicant of that decision "verbally, if recorded and retained, or written upon applicant request, unless otherwise specified." The AARP group urges the commission to require that all refusals to provide service be in writing. They believe that the existence of a written refusal will better inform applicants of their rights under these regulations. KCP&L and GMO, as well as Missouri-American Water Company, believe that requiring verbal denials to be recorded and retained would be unduly expensive and ask the commission to eliminate that requirement from the rule. Ameren Missouri also objects to requiring a written refusal, even when requested by the applicant, arguing such a requirement would be costly.

**RESPONSE:** The commission agrees with the AARP group, a denial of utility service is an important decision that can have dire consequences for an applicant. The applicant should be informed of such an important decision in writing so they can be better informed about their rights. The commission will adopt a slightly modified version of the language proposed by the AARP group to replace the language published in the Missouri Register.

**COMMENT:** The commission proposes to modify subsection (1)(A) to provide that a utility can refuse service to an applicant for failure to pay a delinquent utility charge for services provided by that utility or its affiliate that is not subject to dispute under 4 CSR 240-13.045, the commission regulation that governs disputes. The AARP group would eliminate the requirement that the disputed charge be the subject of a formal dispute under the Commission's rules. According to the AARP group a simple statement by the applicant that they dispute the charge should be sufficient to prevent the utility from using that charge as a basis to deny service.

The Missouri Utilities contend the proposed regulation's simple reference to a dispute under the commission's rule on disputes is insufficient and would add specific references to the provisions of that rule on disputes to make it clear that the utility can still deny services based on its assertion that a dispute about a bill is frivolous.

**RESPONSE AND EXPLANATION OF CHANGE:** The AARP group's proposal would essentially allow an applicant to declare a delinquent utility charge to be subject to dispute simply by declaring it to be so. The utility could then not use that "disputed" charge as the basis for a denial of future service and the applicant would never have to establish the basis for their dispute. Obviously such a rule would be unfair to the utility and to those utility ratepayers who would have to pay those unpaid charges.

On the other hand, the Missouri Utilities' proposal would require the applicant to register its dispute 24 hours before it makes a service request. Since this area of disagreement frequently arises when the utility attempts to deny service to an applicant for an unpaid charge incurred at some other location, and perhaps by another person, the Missouri Utilities proposal could require the applicant to register its dispute before he or she is even aware that the utility is claiming they owe a past due charge. Obviously, that is not reasonable.

Missouri Utilities also proposes that outside the Cold Weather Rule period, if a utility asserts a dispute is frivolous, it should be able to defer commencing service until a decision is rendered under rule 13.045(4). That is a procedure in the existing dispute rule that allows for an expedited review of the allegedly frivolous dispute by the commission's consumer services department. It is reasonable to allow the application of the same provision if the dispute rule is to be applied to the denial of service. The commission will add that provision to the amended rule as published in the Missouri Register.

**COMMENT:** Missouri-American Water Company expresses concern that the notice requirement in (1) differs from the notice requirement in (1)(C)1.

**RESPONSE:** The notice requirements are different because they serve different purposes. The general notice requirement in (1) applies when the utility denies service to an applicant for any reason. The more specific notice requirement in (1)(C)1 only applies when the utility has denied service because the applicant has failed to provide access to allow the utility to inspect, maintain, or replace utility equipment. The notice requirements are not inconsistent and the commission will not change the rule in response to Missouri-American's comment.

#### **4 CSR 240-13.035 Denial of Service**

(1) When the utility refuses to provide service to an applicant, it shall inform the applicant in writing, and shall maintain a record of the written notice. A utility may refuse to commence service to an applicant for any of the following reasons:

(A) Failure to pay a delinquent utility charge for services provided by that utility or by its regulated affiliate that is not subject to dispute under applicable dispute review provisions of 4 CSR 240-13.045. Outside of the Cold Weather Rule period, if the utility asserts that a dispute is frivolous, it may defer commencing service until a decision is rendered under 4 CSR 240-13.045(4).