

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

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FEB 24 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

- A. Rule Number 4 CSR 240-3.130
Diskette File Name Amended 3.130
Name of person to call with questions about this rule:
Content Warren Wood Phone 573-751-2978 FAX 573-526-0142
E-mail address warren.wood@psc.mo.gov
Data entry Rosemary Robinson Phone 573-751-4335 FAX 573-751-9285
E-mail address rosemary.robinson@psc.mo.gov
Interagency mailing address GOB, 200 Madison Street, 8th Floor, Jefferson City
Statutory Authority 386.250 Current RSMo date 2000
Date filed with the Joint Committee on Administrative Rules Exempt per Sections
536.024 and 536.037, RSMo 2000, & Executive Order No 97-97 (June 27, 1997)
- B. CHECKLIST guide for rule packets:
- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Forms, number of pages _____ |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority section with history of the rule |
| <input checked="" 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 _____

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.

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

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

February 24, 2005

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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FEB 24 2005

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

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

Dear Secretary Carnahan,

RE: 4 CSR 240-3.130 Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission on this 24th day of February 2005.

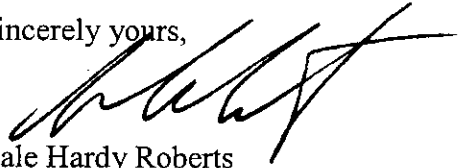
The Missouri Public Service Commission has determined and hereby certifies that this proposed rule will not have an economic impact on small business. The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000 and that this proposed rule does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: section 386.250, RSMo 2000

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

Dennis Frey
200 Madison
Jefferson City, MO 65102
Phone (573) 751-8700
Email: denny.frey@psc.mo.gov

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Dale Hardy Roberts', with a stylized flourish extending from the end.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission

AFFIDAVIT
(PUBLIC NO COST)

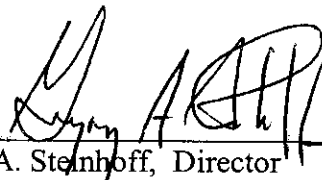
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

RECEIVED

FEB 24 2005

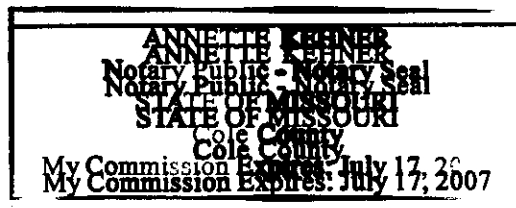
SECRETARY OF STATE
ADMINISTRATIVE RULES

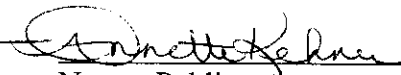
I, Gregory A. Steinhoff, Director of the Department of Economic Development, first being duly sworn on my oath, state that it is my opinion that the cost of **Proposed Amended Rule 4 CSR 240-3.130 – Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas** is less than five hundred dollars in the aggregate to this agency, and other agency of state government or any political subdivision thereof.



Gregory A. Steinhoff, Director
Department of Economic Development

Subscribed and sworn to before me this 24th day of February, 2005. I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2007.





Notary Public

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

FEB 24 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

4 CSR 240-3.130 Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

PURPOSE: The changes proposed in this rule update and clarify the reporting requirements for electric utilities that file territorial agreements. It combines the filing fee requirements currently found in 4 CSR 240-3.135. It also adds petitions for designation of electric service areas to the title to clarify that this rule also applies to these petitions.

PURPOSE: This rule establishes requirements and schedule of fees that applications to the commission for approval of territorial agreements between electric service providers and petitions for designation of electric service areas must meet. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1)[and 4 CSR 240-3.135].

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for commission approval of territorial agreements **and petitions for designation of electric service areas** [between electric service providers] shall include:

(A) [A copy of the territorial agreement and as] Specific designation of the boundary, **a map showing the boundary, and the** [including] legal description of the area that is the subject of the territorial agreement or petition for designation of electric service areas;

(B) **A list of other electric utilities that serve in the affected area(s), if any;**

(B/C) An illustrative tariff which reflects any changes in a regulated utility's operations or certification;

(C/D) An explanation as to why the territorial agreement or **proposed electric service area designation(s)** is in the public interest;

(E) **A comparison of electric rates if the territorial agreement or the proposed electric service area designation(s) includes an exchange of customers;**

(D/F) A list of all persons whose utility service would be changed by the [agreement] **application or petition;** and

[(E) A check for the initial filing fee set forth in 4 CSR 240-3.135.]

(G) **A statement of the impact, if any, that the territorial agreement or proposed electric service area designation(s) will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the utilities involved are located.**

(2) Applications for commission approval of territorial agreements shall also include a copy of the territorial agreement.

([2/3] If any of the [items] **information** required by subsections (1)(A)-([D]G) of this rule [are] is unavailable at the time the application is filed, [they] **the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished.** All required information shall be furnished prior to the granting of the authority sought.

(4) The application or petition shall be accompanied by an initial filing fee in the amount of five hundred dollars (\$500).

(A) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars (\$500). However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (5) of this rule.

(5) In addition to the filing fee, the fee for commission review is set at six hundred eighty-five dollars (\$685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars (\$685). There is an additional charge of three dollars and fifty cents (\$3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(6) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the electric territorial agreement or petition for designation of service areas. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(7) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time will be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

AUTHORITY: sections 386.250[, 386.800] and 394.312, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003.*

Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996.

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 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, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before May 9, 2005, and should

include a reference to Commission Case No. EX-2003-0371. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for May 18, 2005, at 10:00 a.m. in Room 310 of 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 or TDD Hotline 1-800-829-7541.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

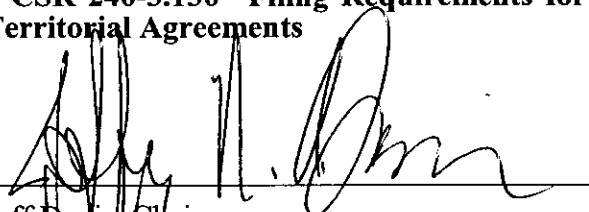
DATE: February 8, 2005

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

CASE NO: EX-2003-0371

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

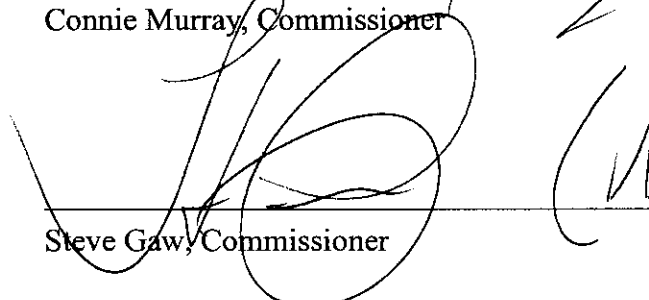
4 CSR 240-3.130 –Filing Requirements for Applications for Approval of Electric Service Territorial Agreements



Jeff Davis, Chairman




Connie Murray, Commissioner

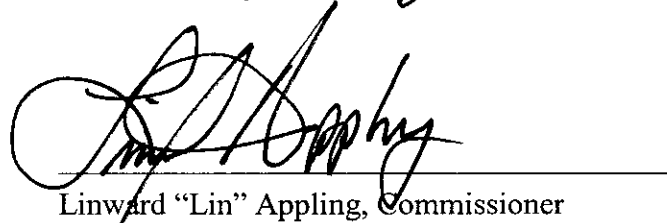


Steve Gaw, Commissioner

(No)



Robert M. Clayton III, Commissioner



Linward "Lin" Appling, Commissioner



Commissioners
KELVIN L. SIMMONS
 Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

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>

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

November 5, 2003

Mr. Dale Hardy Roberts
 Secretary/Chief Regulatory Law Judge
 Missouri Public Service Commission
 P. O. Box 360
 Jefferson City, MO 65102

Re: Proposed Amendment to Rule 4 CSR 240-3.130 – Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The current rule establishes the filing requirements for applications for approval of electric service territorial agreements. The proposed amendment would broaden the scope of the rule to include filing requirements for petitions for designation of electric service areas as well as the fees associated with such applications and petitions.

Replacing the existing rule with the proposed amended rule does not implicate the takings clause of the U.S. Constitution, because neither rule involves the taking of real property.

Please let me know if you have any questions on this issue.

Sincerely yours,

Dennis L. Frey
 Senior Counsel
 (573) 751-8700
 (573) 751-9285 (Fax)



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

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>

November 5, 2003

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

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Proposed Amendment to Rule 4 CSR 240-3.130 - Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rule-making will have direct economic impact on small businesses of five hundred dollars or more in the aggregate. A small business is defined in the Executive Order as an independently owned and operated business entity that employs fifty or fewer full time employees.

The proposed amendment to the rule, which broadens its scope to include filing requirements for petitions for designation of electric service areas as well as the fees associated with such petitions and with applications for approval of territorial agreements, will not have a direct economic impact on small businesses of at least five hundred dollars in the aggregate.

Please let me know if you have questions on this issue.

Sincerely yours,

Dennis L. Frey
Senior Counsel
(573) 751-8700
(573) 751-9285 (Fax)

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

PROPOSED AMENDMENT

4 CSR 240-3.130 Filing Requirements *and Schedule of Fees* for Applications for Approval of Electric Service Territorial Agreements *and Petitions for Designation of Electric Service Areas*

PURPOSE: The changes proposed in this rule update and clarify the reporting requirements for electric utilities that file territorial agreements. It combines the filing fee requirements currently found in 4 CSR 240-3.135. It also adds petitions for designation of electric service areas to the title to clarify that this rule also applies to these petitions.

*PURPOSE: This rule establishes requirements **and schedule of fees** that applications to the commission for approval of territorial agreements between electric service providers **and petitions for designation of electric service areas** must meet. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1)[and 4 CSR 240-3.135].*

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[D/F] A list of all persons whose utility service would be changed by the [agreement] **application or petition;** and

[E] *A check for the initial filing fee set forth in 4 CSR 240-3.135.]*

(G) **A statement of the impact, if any, that the territorial agreement or proposed electric service area designation(s) will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the utilities involved are located.**

(2) Applications for commission approval of territorial agreements shall also include a copy of the territorial agreement.

([2]3) If any of the *[items]* **information** required by subsections (1)(A)-([D]G) of this rule *[are]* is unavailable at the time the application is filed, *[they]* **the application must be accompanied by a statement of the reasons the information is currently unavailable and a date when it will be furnished.** All required information shall be furnished prior to the granting of the authority sought.

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AUTHORITY: sections 386.250[, 386.800] and 394.312, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003.*

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and should include a reference to Commission Case No. EX-2003-0366. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for MONTH DAY, 2003, at TIME in Room XXX of 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 or TDD Hotline 1-800-829-7541.

AFFIDAVIT


STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Anne Walker, Deputy Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the **Proposed Amended Rule -- 4 CSR 240-3.130 – Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas**, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Anne Walker
DEPUTY DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 5th day of February, 2004.
I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on April 29, 2006.



NOTARY PUBLIC

KIMBERLY BRANDT SPRENGER
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXPIRES APRIL 29, 2006