

FILED<sup>2</sup>

MAR 26 2002

Administrative Rules Stamp

RECEIVED

MAR 26 2002

MATT BLUNT  
Secretary of State  
Administrative Rules Division  
RULE TRANSMITTAL

Missouri Public  
Service Commission

SECRETARY OF STATE  
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-2.117  
Diskette File Name 2.117 proposed rule (Word 2000 format)  
Name of Person to call with questions about this rule:  
Context Kevin A. Thompson Phone 573-751-6514 FAX 573-526-6010  
Data Entry Judy Pope Phone 573-751-6526 FAX 573-526-6010  
Interagency Mailing Address Governor Office Building, 200 Madison St., Suite 900, Jefferson City, MO

Statutory Provision for Rulemaking  
Authority Section 386.410 Provide Most Current RSMo Year 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: FORMS, List by Mo-Form Number, # of Pages  
 Cover Letter \_\_\_\_\_  
 Affidavit \_\_\_\_\_  
\_\_\_\_\_ Cost Statements \_\_\_\_\_  
\_\_\_\_\_ Public Entity Fiscal Note OTHER Takings Analysis  
\_\_\_\_\_ Private Entity Fiscal Note Small Business Impact Analysis

C. RULEMAKING ACTION TO BE TAKEN  
\_\_\_\_\_ Emergency Rulemaking, Must Specify Effective Date  
 Proposed Rulemaking (New Rule)  
\_\_\_\_\_ Order of Rulemaking (MUST complete page 2 of this transmittal)  
\_\_\_\_\_ Withdrawal (Rule, Amendment, Rescission or Emergency)  
\_\_\_\_\_ Rule Action Notice  
\_\_\_\_\_ In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RULE TRANSMITTAL (PAGE 2)**

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E. ORDER OF RULEMAKING: Rule Number (not applicable)

1a. Effective Date for the Order  
Statutory 30 days \_\_\_\_\_ or later 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 or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

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.



## Missouri Public Service Commission

**Commissioners**  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW  
BRYAN FORBIS

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

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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

March 26, 2002

Honorable Matt Blunt  
Secretary of State  
600 West Main Street  
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Proposed Rule lawfully submitted by the Missouri Public Service Commission for filing this 26th day of March, 2002, and that a takings analysis and small business impact analysis have occurred.

Rule: 4 CSR 240-2.117 Summary Disposition of Contested Cases

Statutory authority: Section 386.410, RSMo 2000

Missouri Public Service Commission Case No.: AX-2002-159

If there are any questions, please contact: Kevin A. Thompson  
Deputy Chief Regulatory Law Judge  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 900  
Post Office Box 360  
Jefferson City, Missouri 65102  
(573) 751-6514

BY THE COMMISSION

  
Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

DHR:KAT:jp

Enclosures: Proposed Rule (hard copy plus electronic copy in Word 2000 format on 3-1/2" disk), transmittal form, affidavit, takings analysis, and small business impact analysis



**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 2—Practice and Procedure**

**RECEIVED**

**MAR 26 2002**

**SECRETARY OF STATE  
ADMINISTRATIVE RULES**

**PROPOSED RULE**

**4 CSR 240-2.117 Summary Disposition of Contested Cases**

*PURPOSE: This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.*

**(1) Summary Determination.**

(A) Any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a contested case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than twenty (20) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than ten (10) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to

conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission shall grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact and that any party is entitled to relief as a matter of law as to all or any part of the contested case. The commission may order summary determination against the moving party. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire contested case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings--On its own motion or on the motion of any party, the commission may dispose of all or any part of a contested case on the pleadings whenever such disposition is not otherwise contrary to law.

*AUTHORITY: Section 386.410, RSMo 2000. Original rule filed March 26, 2002.*

*PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-159 and be filed with an original and six (6) copies. A public hearing is scheduled for Monday, June 10, 2002, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, for interested persons to appear and respond to commission questions.*

*SPECIAL NEEDS: This hearing will be held in a building which meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this public hearing, please call*

*the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the hearing.*



Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW  
BRYAN FORBIS

## Missouri Public Service Commission

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

January 29, 2002

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WESS A. HENDERSON  
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ROBERT SCHALLENBERG  
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Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

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

RE: Proposed Rule 4 CSR 240-2.117 Summary Disposition of Contested Cases

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.

This proposed rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.

Proposed rule 4 CSR 240-2.117 does not implicate the takings clause of the U.S. Constitution, because the rule does not involve the taking of real property.

Mr. Dale Hardy Roberts  
Page two  
January 29, 2002

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'KAT', followed by a horizontal line extending to the right.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



## Missouri Public Service Commission

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General Counsel

January 29, 2002

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

RE: Proposed Rule 4 CSR 240-2.117 Summary Disposition of Contested Cases

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rulemaking 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.

This proposed rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings; it is not estimated to have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

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

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Deputy Chief Regulatory Law Judge

KAT:jp

MEMORANDUM

TO: Dale Hardy Roberts, Secretary  
DATE: March 26, 2002  
RE: Authorization to File Proposed Rule With the Office of Secretary of State  
CASE NO: AX-2002-159

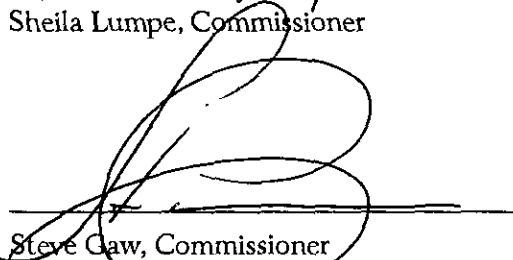
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file a Proposed Rule with the Office of Secretary of State, to wit:

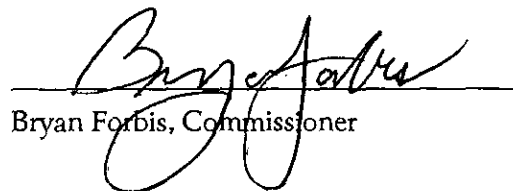
4 CSR 240-2.117 Summary Determination

  
Kelvin L. Simmons, Chair

  
Connie Murray, Commissioner

  
Sheila Lumpe, Commissioner

  
Steve Gaw, Commissioner

  
Bryan Forbis, Commissioner

**AGENDA - 3/26/02  
Thompson/Pope**

P:\KEVIN\CASES\AX\AX-2002-159\2.117 Summary determination.doc  
Draft circulated: 3/21/02, 9:30 a.m.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 2—Practice and Procedure**

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January 29, 2002

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RE: Proposed Rule 4 CSR 240-2.117 Summary Disposition of Contested Cases

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Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



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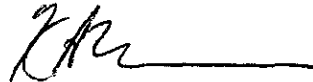
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Mr. Dale Hardy Roberts  
Page two  
January 29, 2002

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DANA K. JOYCE  
General Counsel

Mr. Joseph L. Driskill, Director  
Department of Economic Development  
Harry S Truman State Office Building  
301 West High Street  
Jefferson City, Missouri 65109

RE: Affidavit for Proposed Rule 4 CSR 240-2.117 Summary Disposition of  
Contested Cases  
P.S.C. Case No. AX-2002-159

Dear Mr. Driskill:

As required by statute, attached for your signature is an affidavit for Proposed Rule 4 CSR 240-2.117, Summary Determination, of the Public Service Commission rules. A copy of the Proposed Rule is also enclosed, as well as copies of the takings and small business impact analyses.

If you have any questions, please feel free to contact me at 573-751-6514.

Very truly yours,

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Deputy Chief Regulatory Law Judge

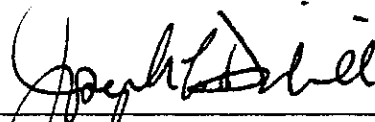
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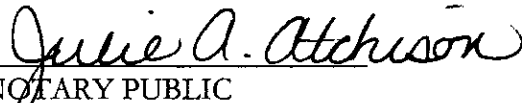
AFFIDAVIT

STATE OF MISSOURI )  
 )  
COUNTY OF COLE )

I, Joseph L. Driskill, 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 Rule 4 CSR 240-2.117, Summary Disposition of Contested Cases*, is less than five hundred dollars (\$500) in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

  
\_\_\_\_\_  
Joseph L. Driskill  
Director  
Department of Economic Development

Subscribed and sworn to before me this 19<sup>th</sup> day of March, 2002. I am commissioned as a notary public within the County of Callaway, State of Missouri, and my commission expires on September 21, 2004

  
\_\_\_\_\_  
NOTARY PUBLIC  
JULIE A. ATCHISON  
NOTARY PUBLIC STATE OF MISSOURI  
CALLAWAY, COLEMAN  
MY COMMISSION EXP. SEPT 21, 2004

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 2—Practice and Procedure**

**PROPOSED RULE**

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*PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-159 and be filed with an original and six (6) copies. A public hearing is scheduled for Monday, April 22, 2002, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, for interested persons to appear and respond to commission questions.*

*SPECIAL NEEDS: This hearing will be held in a building which meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this public hearing, please call*

*the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the hearing.*



## Missouri Public Service Commission

Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW  
BRYAN FORBIS

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

January 29, 2002

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  
Post Office Box 360  
Jefferson City, Missouri 65102

RE: Proposed Rule 4 CSR 240-2.117 Summary Disposition of Contested Cases

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.

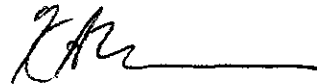
This proposed rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.

Proposed rule 4 CSR 240-2.117 does not implicate the takings clause of the U.S. Constitution, because the rule does not involve the taking of real property.

Mr. Dale Hardy Roberts  
Page two  
January 29, 2002

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'KAT', followed by a horizontal line extending to the right.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



## Missouri Public Service Commission

Commissioners  
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January 29, 2002

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

RE: Proposed Rule 4 CSR 240-2.117 Summary Disposition of Contested Cases

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rulemaking 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.

This proposed rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings; it is not estimated to have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Thompson", written over a horizontal line.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp