

FILED²

MAR 26 2002

Administrative Rules Stamp

RECEIVED

MAR 26 2002

Missouri Public Service Commission

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-2.075
Diskette File Name 2.075 proposed amendment (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 (Amendment of Existing 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)

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.



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>

March 26, 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

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 Amendment 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 240-2.075 Intervention

Statutory authority: Section 386.410, RSMo 2000

Missouri Public Service Commission Case No.: AX-2002-157

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

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 Amendment to 4 CSR 240-2.075, Intervention*, 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 19th 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 COUNTY
MY COMMISSION EXP. SEPT 21, 2004

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

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PROPOSED AMENDMENT

4 CSR 240-2.075 Intervention

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to amici curiae and to impose on intervenors an obligation to file a responsive pleading.

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(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed August 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002.*

** Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

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*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-2002-157 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.



Missouri Public Service Commission

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Chair
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January 29, 2002

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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 Amendment to 4 CSR 240-2.075 Intervention

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 proposed amendments to this rule clarify the proceedings applicable to *amici curiae* and impose on intervenors an obligation to file a responsive pleading.

Amending 4 CSR 240-2.075 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,

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Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp



Missouri Public Service Commission

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Missouri Public Service Commission
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Jefferson City, Missouri 65102

RE: Proposed Amendment to 4 CSR 240-2.075 Intervention

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.

The purpose of amending 4 CSR 240-2.075 is to clarify the proceedings applicable to *amici curiae*, and to impose on intervenors an obligation to file a responsive pleading. The amendments are not estimated to have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

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Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp

MEMORANDUM

TO: Dale Hardy Roberts, Secretary


DATE: March 26, 2002

RE: Authorization to File Proposed Amendment With the Office of Secretary of State

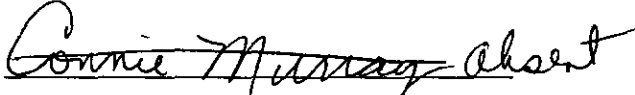
CASE NO: AX-2002-157

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

4 CSR 240-2.075 Intervention



Kelvin L. Simmons, Chair



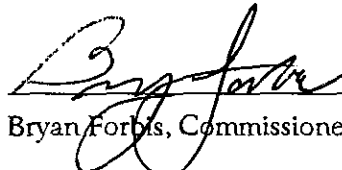
Connie Murray, Commissioner



Sheila Lumpe, Commissioner



Steve Gaw, Commissioner



Bryan Forbis, Commissioner

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

P:\KEVIN\CASES\AX\AX-2002-157\2.075 Intervention - proposed amendment.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**

PROPOSED AMENDMENT

4 CSR 240-2.075 Intervention

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RSE
cont.

R² *amicus*
extended?

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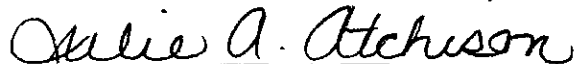
STATE OF MISSOURI)
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I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the ***Proposed Amendment to 4 CSR 240-2.075, Intervention***, is less than 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 19th 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 COUNTY
MY COMMISSION EXP. SEPT 21, 2004



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Amending 4 CSR 240-2.075 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,

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Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp



Missouri Public Service Commission

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Dear Mr. Roberts:

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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 Amendment to 4 CSR 240-2.075 Intervention
P.S.C. Case No. AX-2002-157

Dear Mr. Driskill:

As required by statute, attached for your signature is an affidavit for a Proposed Amendment to 4 CSR 240-2.075, Intervention, of the Public Service Commission rules. A copy of the Proposed Amendment 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.

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Kevin A. Thompson
Deputy Chief Regulatory Law Judge


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Enclosures: Affidavit for 4 CSR 240-2.075 Intervention
Proposed Amendment - 4 CSR 240-2.075 Intervention
Takings Analysis
Small Business Impact Analysis

AFFIDAVIT

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