

FILED³

DEC 10 2001

AX-2002-159

Administrative Rules Stamp

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DEC 07 2001

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 240-2.117
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)

- 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>

December 6, 2001

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 Rule lawfully submitted by the Missouri Public Service Commission for filing this 6th day of December, 2001, and that a takings analysis and small business impact analysis have occurred.

Rule: 4 CSR 240-2.117 Summary Determination

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

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 **Proposed Rule 4 CSR 240-2.117, Summary Determination**, is less than five hundred dollars 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 29th day of November,
2001. 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 RULE

SECRETARY OF STATE
ADMINISTRATIVE RULES

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 Dec. 6, 2001.

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: 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. No public hearing is scheduled.*



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

Missouri Public Service Commission

POST OFFICE BOX 360
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November 1, 2001

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLILIS
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 Determination

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
November 1, 2001

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', with a long horizontal flourish extending to the right.

Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp



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KELVIN L. SIMMONS
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DANA K. JOYCE
General Counsel

November 1, 2001

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 Determination

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 "KAT", with a long horizontal flourish extending to the right.

Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp

MEMORANDUM

FILED³

DEC 10 2001

Missouri Public Service Commission

TO: Dale Hardy Roberts, Secretary

DATE: December 6, 2001

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

Thompson/Pope

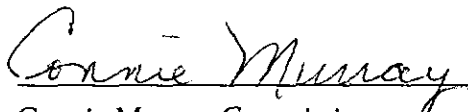
Case No.: AX-2002-159

AGENDA: 12/6/01

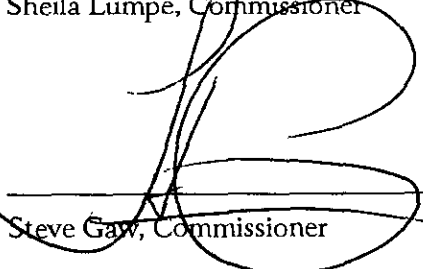
Action taken:

5-0 AS

Must vote not later than _____


 Connie Murray, Commissioner


 Sheila Lumpe, Commissioner


 Steve Gaw, Commissioner


 Bryan Forbis, Commissioner

4

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

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.

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(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.

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(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 Dec. 6, 2001.

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.

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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 **Proposed Rule 4 CSR 240-2.117, Summary Determination**, is less than five hundred dollars 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 29th day of November,
2001. 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



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

Missouri Public Service Commission

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JEFFERSON CITY, MISSOURI 65102
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DONNA M. KOLILIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

November 1, 2001

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 Determination

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.

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

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KAT:jp



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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
November 1, 2001

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

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Kevin A. Thompson
Deputy Chief Regulatory Law Judge

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Missouri Public
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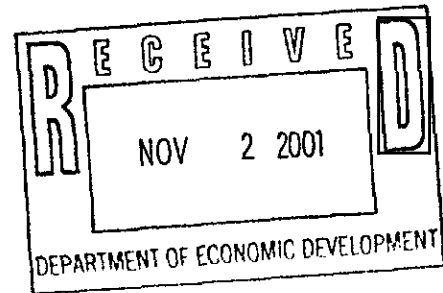
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DANA K. JOYCE
General Counsel

November 1, 2001

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 Determination
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,

A handwritten signature in black ink, appearing to read "KAT" followed by a flourish.

Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp

Enclosures: Affidavit for 4 CSR 240-2.117 Summary Determination
Proposed Rule - 4 CSR 240-2.117 Summary Determination
Takings Analysis
Small Business Impact Analysis

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

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AUTHORITY: Section 386.410, RSMo 2000. Original rule filed Nov. 14, 2001.

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