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**COPY** SEP 11 2001

**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 240-2.130  
 Diskette File Name 2.130 proposed amendment (Word 97 format)  
 Name of Person to call with questions about this rule:  
 Context Nancy Dippell Phone 573-751-4393 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 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:)

E. ORDER OF RULEMAKING: Rule Number N/A

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

## 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>

September 11, 2001

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

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 11th day of September, 2001, and that a takings analysis and small business impact analysis have occurred.

Rule: 4 CSR 240-2.130 Evidence

Statutory authority: 386.410, RSMo 2000

Missouri Public Service Commission Case No.: AX-2002-67

If there are any questions, please contact: Nancy Dippell, Senior Regulatory Law Judge  
Missouri Public Service Commission  
Governor Office Building, 9th Floor  
200 Madison Street  
Post Office Box 360  
Jefferson City, Missouri 65102  
Phone: (573) 751-4393  
E-mail: [ndippell@mail.state.mo.us](mailto:ndippell@mail.state.mo.us)

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts", is written over a horizontal line.

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge


DHR:ND:jpb

Enclosures: Transmittal, Affidavit, 4 CSR 240-2.1300 Proposed Amendment (hard copy + copy on 3-1/2" diskette), takings analysis, 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 240-2.130, Evidence*, 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 21<sup>st</sup> day of August, 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

PROPOSED AMENDMENT

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SEP 11 2001

SECRETARY OF STATE  
ADMINISTRATIVE RULES

**4 CSR 240-2.130 Evidence**

*PURPOSE: These amendments allow parties before the Missouri Public Service Commission to make filings in an electronic format. The amendments also eliminate some paper copies where they are no longer necessary. The amendment to section (13) clarifies how an exhibit filed after a hearing should be submitted. Sections (1), (5), (6), and (13) have been amended for clarity and for grammatical purposes.*

(1) In any hearing, **these rules supplement** section 536.070, RSMo[ shall apply, as supplemented by these rules].

(5) The rules of privilege [shall be] **are** effective to the same extent that they are [now or may hereafter be] in civil actions.

(6) Prepared testimony **may be filed electronically. If prepared testimony is not filed electronically** it shall be typed or printed, in black type on white paper eight and one-half inches by eleven inches (8 1/2" x 11"); it shall be double-spaced and pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1; it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form; and it shall [be filed in sufficient number of copies as required by order of the commission, observing] **have** the following margins: left-hand margin, one inch (1"); top margin, one inch (1"); right-hand margin, one inch (1"); and bottom margin, one inch (1"). Printing on both sides of the page is encouraged. Schedules shall bear the word "schedule" and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule. All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No.: (To be marked by the hearing reporter)

Issue: (If known at the time of filing)

Witness: (Full name of witness)

Type of Exhibit: (Specify whether direct, rebuttal, or  
other type of exhibit)

Sponsoring Party:

Case No.:

Date Testimony Prepared:

The prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath. Prepared testimony shall be filed on line-numbered pages. Testimony [which] **that** addresses more than one (1) issue shall contain a table of contents.

**Electronically filed prepared testimony shall be formatted and labeled in the same manner as paper filings.**

(10) Exhibits shall be legible and, unless otherwise authorized by the commission **or filed electronically**, shall be prepared on standard eight and one-half by eleven inch (8 1/2" × 11")-size paper. The sheets of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

(13) **Unless the presiding officer directs otherwise**, [W]hen exhibits **that have not previously been filed** are offered in evidence, the original [and two (2) copies] shall be furnished to the reporter, and the party offering exhibits also shall be prepared to furnish a copy to each commissioner[ and], **the presiding officer and each party**[, unless the copies have previously been furnished or the presiding officer directs otherwise].

(17) All [late-filed] **post-hearing** exhibits shall be [submitted by simultaneously providing a copy to all parties, and by submitting an original and eight (8) copies to the presiding officer] **filed with the secretary of the commission in compliance with 4 CSR 240-2.080**. Unless otherwise ordered, any objection to the admission of a [late-filed] **post-hearing** exhibit must be filed within ten (10) days of the date the exhibit was [tendered] **filed**.

*AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001.*

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

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

*PRIVATE ENTITY COST: This proposed amendment 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 amendment 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 days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-67 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

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DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

August 22, 2001

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 Rule 4 CSR 240-2.130 Evidence

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 allow parties before the Missouri Public Service Commission to make filings in an electronic format, and eliminate some paper copies where they are no longer necessary. One amendment clarifies how an exhibit filed after a hearing should be submitted. Several amendments for clarity and for grammatical purposes are also being made.

Amending rule 4 CSR 240-2.130 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  
August 22, 2001

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

Very truly yours,

A handwritten signature in cursive script that reads "Nancy Dippell". The signature is written in dark ink and is positioned above the printed name and title.

Nancy Dippell  
Senior Regulatory Law Judge

ND:jp





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

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General Counsel

August 22, 2001

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Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

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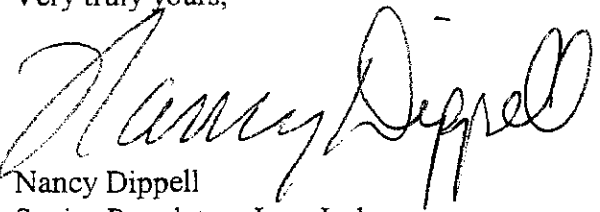
Dear Mr. Roberts:

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 amendments to rule 4 CSR 240-130 will allow parties before the Missouri Public Service Commission to make filings in an electronic format, will eliminate some paper copies where they are no longer necessary, and will clarify how an exhibit filed after a hearing should be submitted. Several amendments for clarity and for grammatical purposes are also being made. The amendments are 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,

  
Nancy Dippell  
Senior Regulatory Law Judge

ND:jp

# MEMORANDUM

**TO:** Dale Hardy Roberts, Secretary


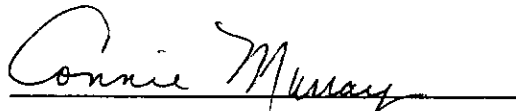
**DATE:** September 11, 2001

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

**CASE NO:** AX-2002-67

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 240-2.130 Evidence

  
Kelynn L. Simmons, Chair  
Connie Murray, Commissioner  
Sheila Lumpe, Commissioner  
Steve Gay, Commissioner

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

**PROPOSED AMENDMENT**

**4 CSR 240-2.130 Evidence**

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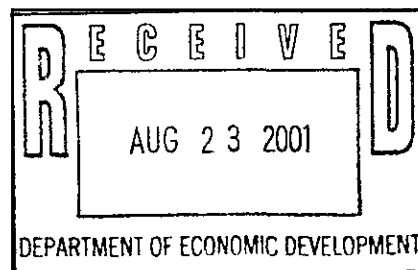
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Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

August 23, 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 Amendment to 4 CSR 240-2.130 Evidence

Dear Mr. Driskill:

As required by statute, enclosed for your signature is an affidavit for a Proposed Amendment to 4 CSR 240-130 of the Public Service Commission rules. A copy 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) 751-4256.

Very truly yours,

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

DHR:jp

Enclosures: Affidavit for 4 CSR 240-2.130 Evidence  
Proposed Amendment - 4 CSR 240-2.130 Evidence  
Takings Analysis  
Small Business Impact Analysis