

FILED<sup>2</sup>

AY-2002-158

Administrative Rules Stamp

MAR 26 2002

RECEIVED

Missouri Public Service Commission

MAR 26 2002

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 240-2.115  
Diskette File Name 2.115 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)**

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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.



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SECRETARY OF STATE  
ADMINISTRATIVE RULES

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

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

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 240-2.115 Nonunanimous Stipulations and Agreements

Statutory authority: Section 386.410, RSMo 2000

Missouri Public Service Commission Case No.: AX-2002-158

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



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

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MAR 26 2002

SECRETARY OF STATE  
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

**4 CSR 240-2.115 [Nonunanimous] Stipulations and Agreements**

*PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to, and the effects of, stipulations and agreements in Commission practice.*

(1) [A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.] **Stipulations and Agreements.**

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. Any such stipulation and agreement must contain stipulated facts sufficient to support the resolution proposed by the parties. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) [If a hearing is requested, the commission shall grant the request.] **Nonunanimous Stipulations and Agreements.**

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing. A conditional assent to a nonunanimous stipulation and agreement shall be regarded as a non-conditional assent and not as an objection.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

**(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position.**

**(E) If a nonunanimous stipulation and agreement resolves only issues as to which a party has stated no position and filed no testimony, such party need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.**

[(3) A nonunanimous stipulation and agreement shall be filed as a pleading. Each party shall have seven (7) days from the filing of the nonunanimous stipulation and agreement to file a request for a hearing. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.]

*AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000.\* Original rule filed June 9, 1987, effective Sept 15, 1987. 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.*

*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 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-2002-158 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

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 Amendment to 4 CSR 240-2.115 Nonunanimous Stipulations and Agreements

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, and the effects of, stipulations and agreements in Public Service Commission practice.

Amending 4 CSR 240-2.115 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 long horizontal flourish.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



## Missouri Public Service Commission

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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 Amendment to 4 CSR 240-2.115 Nonunanimous Stipulations and Agreements

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 240-2.115 is to clarify the proceedings applicable to, and the effects of, stipulations and agreements in Public Service Commission practice. 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.

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Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

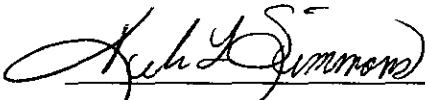
DATE: March 26, 2002


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

CASE NO: AX-2002-158

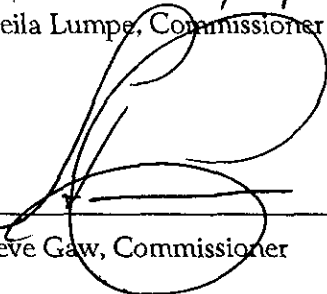
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file a Proposed Amendment with the Office of Secretary of State, to wit:

4 CSR 240-2.115 Stipulations and Agreements

  
\_\_\_\_\_  
Kelyn L. Simmons, Chair

  
\_\_\_\_\_  
Connie Murray, Commissioner

  
\_\_\_\_\_  
Sheila Lumpe, Commissioner

  
\_\_\_\_\_  
Steve Gaw, Commissioner

  
\_\_\_\_\_  
Bryan Forbis, Commissioner

**AGENDA - 3/26/02**

**Thompson/Pope**

P:\KEVIN\CASES\IAX\AX-2002-158\2.115 Stipulations & Agreements - 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**

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

**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 240-2.115, Stipulations and Agreements*, 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 COUNTY  
MY COMMISSION EXP. SEPT 21, 2004



Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
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January 29, 2002

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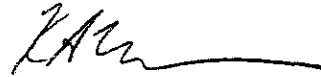
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Mr. Dale Hardy Roberts  
Page two  
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Very truly yours,

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Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



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Secretary/Chief Regulatory Law Judge  
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 Amendment to 4 CSR 240-2.115 – Nonunanimous  
Stipulations and Agreements  
P.S.C. Case No. AX-2002-158

Dear Mr. Driskill:

As required by statute, attached for your signature is an affidavit for a Proposed Amendment to 4 CSR 240-2.115, Stipulations and Agreements, 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.

Very truly yours,

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

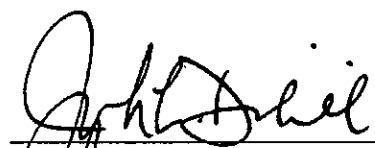
KAT:jp

Enclosures: Affidavit for 4 CSR 240-2.115      Stipulations and Agreements  
Proposed Amendment - 4 CSR 240-2. 115      Stipulations and Agreements  
Takings Analysis  
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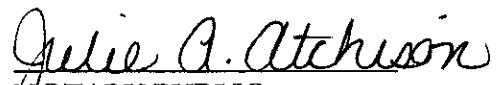
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                                  )  
COUNTY OF COLE     )

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 240-2.115, Stipulations and Agreements*, 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 COUNTY  
MY COMMISSION EXP. SEPT 21, 2004

Title 4—DEPARTMENT OF ECONOMIC  
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Chapter 2—Practice and Procedure

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**(E) If a nonunanimous stipulation and agreement resolves only issues as to which a party has stated no position and filed no testimony, such party need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.**

[(3) A nonunanimous stipulation and agreement shall be filed as a pleading. Each party shall have seven (7) days from the filing of the nonunanimous stipulation and agreement to file a request for a hearing. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.]

*AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000.\* Original rule filed June 9, 1987, effective Sept 15, 1987. Rescinded and readopted: Filed August 24, 1999, effective April 30, 2000. Amended: Filed Feb. 1, 2002.*

*\* 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 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-2002-158 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.



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

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 Amendment to 4 CSR 240-2.115 Nonunanimous Stipulations and Agreements

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, and the effects of, stipulations and agreements in Public Service Commission practice.

Amending 4 CSR 240-2.115 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 long horizontal flourish.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



## Missouri Public Service Commission

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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 240-2.115 Nonunanimous Stipulations and Agreements

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 240-2.115 is to clarify the proceedings applicable to, and the effects of, stipulations and agreements in Public Service Commission practice. 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,

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