

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: August 16, 1999

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

CASE NOS: AX-2000-108 through AX-2000-131

AGENDA DATE: August 17, 1999

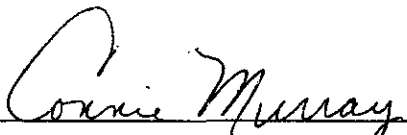
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file Proposed Rules with the Office of Secretary of State, as listed on the attached sheet.



Sheila Lumpe, Chair

ABSENT OR

Harold Crumpton, Commissioner



Connie Murray, Commissioner



Robert Schemenauer, Commissioner



M. Dianne Drainer, Vice Chair

2

Proposed Rules:

- Rule: 4 CSR 240-2.010 – Definitions
- 4 CSR 240-2.015 – Waiver of Rules
- 4 CSR 240-2.040 – Practice Before the Commission
- 4 CSR 240-2.050 – Computation of Effective Dates
- 4 CSR 240-2.060 – Applications
- 4 CSR 240-2.065 – Tariff Filings Which Create Cases
- 4 CSR 240-2.070 – Complaints
- 4 CSR 240-2.075 – Intervention
- 4 CSR 240-2.080 – Pleadings, Filing, and Service
- 4 CSR 240-2.085 – Protective Orders
- 4 CSR 240-2.090 – Discovery and Prehearings
- 4 CSR 240-2.100 – Subpoenas
- 4 CSR 240-2.110 – Hearings
- 4 CSR 240-2.115 – Nonunanimous Stipulations and Agreements
- 4 CSR 240-2.116 – Dismissal
- 4 CSR 240-2.120 – Presiding Officers
- 4 CSR 240-2.125 – Procedures for Alternative Dispute Resolution
- 4 CSR 240-2.130 – Evidence
- 4 CSR 240-2.140 – Briefs and Oral Argument
- 4 CSR 240-2.150 – Decisions of the Commission
- 4 CSR 240-2.160 – Rehearings or Reconsideration
- 4 CSR 240-2.180 – Rulemaking
- 4 CSR 240-2.200 – Small Company Rate Increase Procedure

COPY

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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

A. Rule Number 4 CSR 240-2.070
Diskette File Name 2.070 proposed rule
Name of Person to call with questions about this rule:
Context Nancy Dippell Phone 573-751-4393 FAX 573-751-1847
Data Entry Judy Pope Phone 573-751-6526 FAX 573-751-1847
Interagency Mailing Address Truman Bldg., 301 W. High St., Room 530, Jefferson City, MO

Statutory Provision for Rulemaking
Authority § 386.410 Provide Most Current RSMo Year 1998

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, 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.)

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 _____

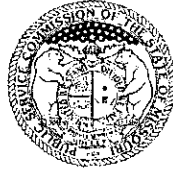
1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

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.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer language that appears at the bottom of this page.)

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

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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

August 24, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

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

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SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

Honorable Rebecca McDowell Cook
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 Rules lawfully submitted by the Missouri Public Service Commission for filing this 24th day of August, 1999, and that a takings analysis and small business impact analysis have occurred.

- Rule: 4 CSR 240-2.010 – Definitions
4 CSR 240-2.015 – Waiver of Rules
4 CSR 240-2.040 – Practice Before the Commission
4 CSR 240-2.050 – Computation of Effective Dates
4 CSR 240-2.060 – Applications
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Honorable Rebecca McDowell Cook
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August 24, 1999

Statutory authority: 386.410, RSMo Supp. 1998

Missouri Public Service Commission Case Nos.: AX-2000-108 through AX-2000-131

If there are any questions, please contact: *(These rules are assigned to several regulatory law judges. Please refer to the transmittal form for the name, phone number and fax number of the regulatory law judge assigned to a particular rule.)*

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:BH:jp

Enclosures: Packets for 23 Proposed Rules
+ Proposed Rules in Word 97 format on 3-1/2" diskette

AFFIDAVIT

STATE OF MISSOURI }

COUNTY OF COLE }

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AUG 24 1999

**SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION**

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 240-2.070 **Complaints** 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 23rd day of August,
19 99. I am commissioned as a notary public within the County of Cole,
State of Missouri, and my commission expires on April 26, 2003.



NOTARY PUBLIC

**LAURA L. HOSKINS
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXP. APR. 26, 2003**

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

PROPOSED RULE

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SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

4 CSR 240-2.070 Complaints

PURPOSE: This rule establishes the procedures for filing formal and informal complaints with the commission.

(1) The commission on its own motion, the commission staff through the general counsel, the office of the public counsel, or any person or public utility who feels aggrieved by a violation of any statute, rule, order or decision within the commission's jurisdiction may file a complaint. The aggrieved party, or complainant, has the option to file either an informal or a formal complaint.

(2) Informal Complaints. To file an informal complaint, the complainant shall state, either in writing, by telephone (consumer services hotline – 1-800-392-4211, or TDD hotline 1-800-829-7541), or in person at the commission's offices:

- (A) The name, street address and telephone number of each complainant and, if one (1) person asserts authority to act on behalf of the others, the source of that authority;
- (B) The address where the utility service was rendered;
- (C) The name and address of the party against whom the complaint is filed;
- (D) The nature of the complaint, and the complainant's interest therein;
- (E) The relief requested; and
- (F) The measures taken by the complainant to resolve the complaint;

(3) Formal Complaints. If a complainant is not satisfied with the outcome of the informal complaint, a formal complaint may be filed. Formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation or public utility, including any rule or charge established or fixed by or for any person, corporation or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. However, no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer or telephone service as provided by law. Any public utility has the right to file a formal complaint on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

(4) The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(5) The formal complaint shall contain the following information:

(A) The name, street address, signature, telephone number, facsimile number and electronic mail address, where applicable, of each complainant and, if different, the address where the subject utility service was rendered;

(B) The name and address of the person, corporation or public utility against whom the complaint is being filed;

(C) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(D) The relief requested;

(E) A statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made;

(F) The jurisdiction of the commission over the subject matter of the complaint; and

(G) If the complainant is an association, a list of all its members.

(6) The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted or failure to comply with any provision of these rules or an order of the commission, or may strike irrelevant allegations.

(7) Upon the filing of a complaint in compliance with these rules, the secretary of the commission shall serve by certified mail, postage prepaid, a copy of the complaint upon the person, corporation or public utility against whom the complaint has been filed, which shall be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice.

(8) The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground.

(9) If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause.

(10) The commission may order, at any time after the filing of a complaint, an investigation by its staff as to the cause of the complaint. The staff shall file a report of its findings with the commission and all parties to the complaint case. The investigative report shall not be made public unless released in accordance with section 386.480, 392.210(2) or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

(11) When the commission determines that a hearing should be held, the commission shall fix the time and place of the hearing. The commission shall serve notice upon the affected person, corporation or public utility not fewer than ten (10) days before the time set for the hearing, unless the commission finds the public necessity requires that the hearing be held at an earlier date.

(12) All matters upon which a complaint may be founded may be joined in one (1) hearing and no motion for dismissal shall be entertained against a complainant for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties.

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed August 24, 1999.*

** Original authority 1939, amended 1947, 1977, 1996.*

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 shall be filed on or before Nov. 1, 1999. Comments should refer to Case No. AX-2000-114 and be filed with an original and fourteen (14) copies. No public hearing is scheduled.



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

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Vice Chair

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August 18, 1999

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

RE: Proposed Rescission of Rule 4 CSR 240-2.070 and Adoption of Proposed New Rule 4 CSR 240-2.070

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 new rule establishes the procedures for filing formal and informal complaints with the Commission.

Replacing the existing rule with the proposed new rule does not implicate the takings clause of the U.S. Constitution, because the rule does not involve the taking of real property.

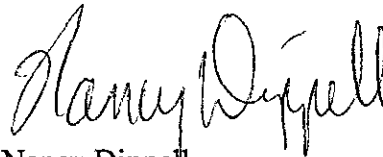
Mr. Dale Hardy Roberts

Page two

August 18, 1999

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

Very truly yours,

A handwritten signature in cursive script, reading "Nancy Dippell".

Nancy Dippell
Senior Regulatory Law Judge

ND:jp



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

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Vice Chair

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August 18, 1999

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

RE: Proposed Rescission of Existing Rule 4 CSR 240-2.070 and Adoption of Proposed New Rule 4 CSR 240-2.070

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.

Replacing the existing rule with the proposed new rule will not 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