

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 DR

 Harold Crumpton, Commissioner



 Connie Murray, Commissioner



 Robert Schemenauer, Commissioner



 M. Dianne Drainer, Vice Chair

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 240-2.085
Diskette File Name 2.085 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.



Missouri Public Service Commission

Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

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
- 4 CSR 240-2.065 – Tariff Filings Which Create Cases
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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



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

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STATE OF MISSOURI }
COUNTY OF COLE }

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 240-2.085 **Protective Orders** 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,
1999. 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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4 CSR 240-2.085 Protective Orders

AUG 24 1999

SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

PURPOSE: This rule prescribes the procedures for obtaining a protective order.

(1) Any party seeking a protective order in any case, shall request such by separate pleading denominated "Motion for Protective Order." The pleading shall state with particularity why the moving party seeks protection, and what harm may occur if the information is made public. The pleading shall also include a statement that none of the information for which a claim of confidentiality is made can be found in any format in any other public document.

(2) Pleadings, testimony, or briefs shall not contain highly confidential or proprietary information unless a protective order has been issued by the commission; except that if the pleading which initiates a case contains highly confidential or proprietary information, then the party shall file one (1) original, and eight (8) copies of the public version; and one (1) original, and eight (8) copies of the complete version containing the information to be protected, together with a Motion for Protective Order. A highly confidential or proprietary copy of the pleadings shall be served on the parties, including general counsel and the public counsel.

(3) Unless otherwise ordered, after the issuance of a protective order all pleadings or exhibits shall be filed in the form of one (1) original and eight (8) copies of the protected matter and one (1) original of the public version.

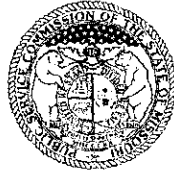
*AUTHORITY: section 386.410, RSMo Supp. 1998. * Original rule filed August 24, 1999.*

** 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-2000-117 and be filed with an original and fourteen (14) copies. No public hearing is scheduled.



Missouri Public Service Commission

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SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

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 240-2.085

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.

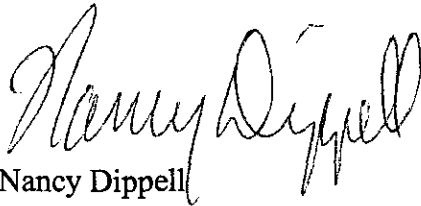
The proposed new rule prescribes the procedures for obtaining a protective order.

The proposed new rule 4 CSR 240-2.085 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
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August 18, 1999

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Nancy Dippell".

Nancy Dippell
Senior Regulatory Law Judge

ND:jp



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Vice Chair

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 240-2.085

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 proposed new rule 4 CSR 240-2.085 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
Regulatory Law Judge

ND:jp

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