

AX-2000-116

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: August 16, 1999

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

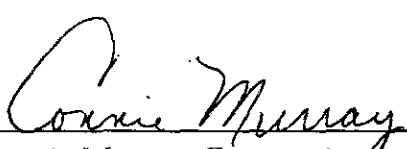
CASE NOS: AX-2000-108 through AX-2000-131


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

7

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

REBECCA MCDOWELL COOK  
Secretary of State  
Administrative Rules Division  
RULE TRANSMITTAL

COPY

RECEIVED  
AUG 24 1999  
SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION

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

A. Rule Number 4 CSR 240-2.080  
Diskette File Name 2.080 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 \_\_\_\_\_

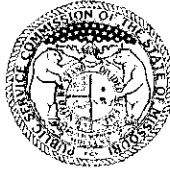
1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

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

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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**AUG 24 1999**

**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
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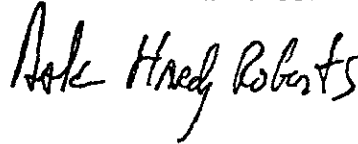
Honorable Rebecca McDowell Cook  
Page two  
August 24, 1999

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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AUG 24 1999

SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION

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 240-2.080 **Pleadings, Filing, and Service** 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**

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**AUG 24 1999**

**SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION**

**PROPOSED RULE**

**4 CSR 240-2.080 Pleadings, Filing, and Service**

*PURPOSE: This rule prescribes the content and procedure for filing pleadings before the commission and for service thereof.*

- (1) Every pleading or brief shall be signed by at least one (1) attorney of record with the attorney's individual name or, if a natural person is not represented by an attorney, shall be signed by the natural person.
- (2) Each pleading or brief shall state the signer's address, Missouri bar number, electronic mail address, fax number and telephone number, if any. If the attorney is not licensed in Missouri the signature shall be followed by the name of the state in which the attorney is licensed and any identifying number or nomenclature similarly used by the licensing state.
- (3) Each pleading shall include a clear and concise statement of the relief requested and specific reference to the statutory provision or other authority under which relief is requested.
- (4) Except when provided by rule or statute, pleadings or briefs need not be verified or accompanied by affidavit.
- (5) An unsigned pleading or brief shall be stricken.
- (6) The signer represents that he or she is authorized to so act, and that the signer is a licensed attorney-at-law in good standing in Missouri or has complied with the rules below concerning any attorney who is not a Missouri attorney or is appearing on his or her own behalf.
- (7) By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:
  - (A) the claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
  - (B) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
  - (C) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(D) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(8) Any person filing a pleading or a brief shall file with the secretary of the commission one (1) original and eight (8) copies of the pleading or brief.

(9) Each pleading may be accompanied by a cover letter which states the subject matter. This cover letter shall contain no matter for commission decision.

(10) Any person filing a pleading which initiates a formal complaint at the commission or filing a pleading in a formal complaint case shall file one (1) original or duplicate original and eight (8) copies of the pleading with the secretary of the commission unless otherwise ordered by the commission.

(11) The party filing a pleading or brief shall serve each other party a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.

(12) The date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission.

(13) Pleadings and briefs in every instance shall display on the cover or first page the case number and the title of the case. In the event the title of a case contains more than one (1) name as applicants, complainants or respondents, it shall be sufficient to show only the first of these names as it appears in the first document commencing the case, followed by an appropriate abbreviation (et al.) indicating the existence of other parties. Unless a case is consolidated, pleadings or briefs shall be filed with only one (1) case number and title thereon.

(14) Pleadings and briefs shall be bound at the top or at an edge, shall be typewritten or printed upon white, eight and one-half inch by eleven inch (8 1/2" x 11") paper. Attachments to pleadings or briefs shall be annexed and folded to eight and one-half inch by eleven inch (8 1/2" x 11") size whenever practicable. Printing on both sides of the page is encouraged. Lines shall be double-spaced, except that footnotes and quotations in excess of three (3) lines may be single-spaced. Reproduction of any of these documents may be by any process provided all copies are clear and permanently legible.

(15) Pleadings and briefs which are not in substantial compliance with this rule, applicable statutes or commission orders shall not be accepted for filing. The secretary of the commission may return these pleadings or briefs with a concise explanation of the deficiencies and the reasons for not accepting them for filing. Tendered filings which have been rejected shall not be entered on the commission's docket. The mere fact of filing shall not constitute a waiver of any noncompliance with these rules and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading.

(16) Parties shall be allowed seven (7) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

(17) Any party seeking expedited treatment in any case shall include in the title of the pleading the words "Motion for Expedited Treatment." The pleading shall also set out with particularity the following:

(A) The date by which the party desires the commission to act;

(B) The harm that will be avoided, or the benefit that will accrue, if the commission acts by the date desired by the party; and

(C) An attestation by the moving party that the pleading was filed as soon as it could have been or an explanation why it was not.

(18) Methods of Service:

(A) Any person entitled by law may serve a document on a represented party by:

1. Delivering it to the party's attorney;

2. Leaving it at the office of the party's attorney with a secretary, clerk or attorney associated with or employed by the attorney served; or

3. Mailing it to the last known address of the party's attorney.

(B) Any person entitled by law may serve a document on an unrepresented party by:

1. Delivering it to the party; or

2. Mailing it to the party's last known address.

(C) Service by mail is complete upon mailing.

(19) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the general counsel and the public counsel, a copy of the pleading or brief and cover letter.

(20) Every pleading or brief shall include a certificate of service. Such certificate of service shall be adequate proof of service.

*AUTHORITY: section 386.410, RSMo Supp. 1998.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 15, 1980, effective Sept. 12, 1980. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed August 24, 1999.*

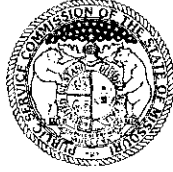
*\* Original authority 1939, amended 1947, 1977, 1996.*

*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-2000-116 and be filed with an original and fourteen (14) copies. No public hearing is scheduled.*



**Commissioners**

**SHEILA LUMPE**  
Chair

**HAROLD CRUMPTON**

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**M. DIANNE DRAINER**  
Vice Chair

## Missouri Public Service Commission

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Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

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 240-2.080 and Adoption of Proposed New Rule 4 CSR 240-2.080

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.

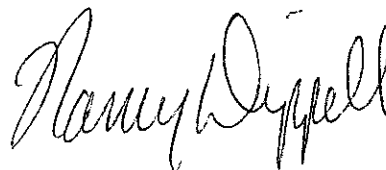
The proposed new rule prescribes the content and procedure for filing pleadings before the Commission and for service thereof.

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 that reads "Nancy Dippell". The signature is written in black ink and is positioned above the printed name and title.

Nancy Dippell  
Senior Regulatory Law Judge

ND:jp



## Missouri Public Service Commission

*Commissioners*  
SHEILA LUMPE  
Chair  
HAROLD CRUMPTON  
CONNIE MURRAY  
ROBERT G. SCHEMENAUER  
M. DIANNE DRAINER  
Vice Chair

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DANA K. JOYCE  
General Counsel

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 240-2.080 and Adoption of Proposed New Rule 4 CSR 240-2.080

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,

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell  
Senior Regulatory Law Judge

ND:jp