

MEMORANDUM

AX-2000-115

TO: Dale Hardy Roberts, Secretary

DATE: August 16, 1999

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

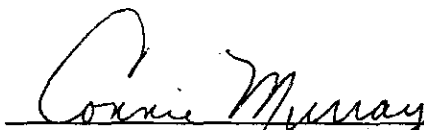
CASE NOS: AX-2000-108 through AX-2000-131

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

Administrative Rules Stamp

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AUG 24 1999

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

COPY

SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

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

A. Rule Number 4 CSR 240-2.075

Diskette File Name 2.075 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

☐ Private Entity Fiscal Note

OTHER Takings Analysis

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

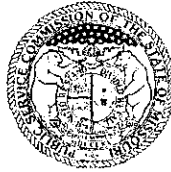
1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

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

RECEIVED

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 240-2.075 **Intervention** 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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**SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION**

4 CSR 240-2.075 Intervention

PURPOSE: This rule prescribes the procedures by which an individual or entity may intervene in a case and allows for the filing of briefs by amicus curiae.

- (1) An application to intervene shall comply with these rules and shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.
- (2) An application to intervene shall state the proposed intervenor's interest in the case and reasons for seeking intervention, and shall state whether the proposed intervenor supports or opposes the relief sought or that the proposed intervenor is unsure of the position it will take.
- (3) An association filing an application to intervene shall list all of its members.
- (4) The commission may on application permit any person to intervene on a showing that:
 - (A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
 - (B) Granting the proposed intervention would serve the public interest.
- (5) Applications to intervene filed after the intervention date may be granted upon a showing of good cause.
- (6) Any person not a party to a case may petition the commission for leave to file a brief as an amicus curiae.

*AUTHORITY: section 386.410, RSMo Supp. 1998. * Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed August 24, 1999.*

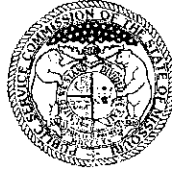
** Original authority 1939, amended 1947, 1977, 1996.*

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-2000-115 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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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 240-2.075 and Adoption of Proposed New Rule 4 CSR 240-2.075

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 by which an individual or entity may intervene in a case and allows for the filing of briefs by *amicus curiae*.

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.

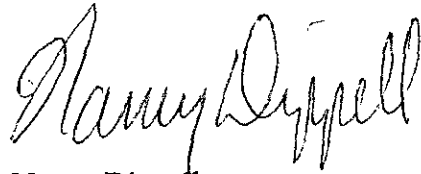
Mr. Dale Hardy Roberts

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August 18, 1999

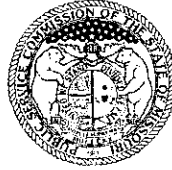
Please let me know if you have any questions on this issue.

Very truly yours,

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

Nancy Dippe
Senior Regulatory Law Judge

ND:jp



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

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Jefferson City, Missouri 65102

RE: Proposed Rescission of Existing Rule 4 CSR 240-2.075 and Adoption of Proposed New Rule 4 CSR 240-2.075

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