



Robin Carnahan
Secretary of State

Administrative Rules Division
Rulemaking Transmittal Receipt

Rule ID: 7691
Date Printed: 11/15/2007
Rule Number: 4 CSR 240-3.050
Rulemaking Type: Proposed Rule
Date Submitted to Administrative Rules Division: 11/15/2007
Date Submitted to Joint Committee on Administrative Rules: 11/15/2007

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale	Phone: 573-751-4255	Email: cully.dale@psc.mo.gov	Fax:
RuleDataEntry: Cully Dale	Phone: 573-751-4255	Email: cully.dale@psc.mo.gov	Fax:

Included with Rulemaking:

Cover Letter	11/15/2007
Affidavit for public cost	11/15/2007

Print Close

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

RECEIVED

NOV 15 2007

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-3.050

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Comm'n, Governor Ofc Bldg, 9th floor

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

RECEIVED

NOV 15 2007

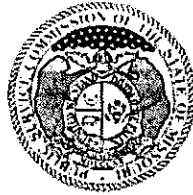
REGULATORY FAIRNESS
BOARD

JCAR Stamp

JOINT COMMITTEE ON

NOV 15 2007

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

November 15, 2007

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-3.050

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 15th day of November, 2007.

Statutory Authority: Sections 386.210.2 and 386.250 RSMo 2000.

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking 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. Adopting the proposed rulemaking does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

Section 536.300, RSMo Supp. 2006, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees" and elaborates

that a proposed rule "affects" a small business if it "impose[s] any potential or actual requirement" that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." Section 536.300.3, RSMo Supp. 2006, in part, provides: "If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . ."

Proposed rule 4 CSR 240-20.091 does not impose requirements that have an economic impact on small businesses, that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." The Commission certifies that it has determined that the proposed rule will not have an economic impact on small businesses.

If there are any questions, please contact: Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over the printed name.

Colleen M. Dale
Secretary

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

RECEIVED

NOV 15 2007

SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED RULE

4 CSR 240-3.050 Small Utility Rate Case Procedure

PURPOSE: This rule provides procedures whereby certain small utilities may request increases in their overall annual operating revenues, without complying with the rules pertaining to general rate cases set forth elsewhere in this chapter.

(1) Notwithstanding the provisions of any other commission rule to the contrary, a gas utility serving ten thousand (10,000) or fewer customers, a water or sewer utility serving eight thousand (8,000) or fewer customers, or a steam heat utility serving fewer than one hundred (100) customers shall be considered a small utility under this rule.

(2) A small utility may initiate a rate case by filing a letter requesting an increase in its overall annual operating revenues with the secretary of the commission. A utility filing such a request shall specify the amount of the revenue increase that it is seeking, but shall not submit any proposed tariff revisions with the request. A utility that provides service in multiple, non-interconnected service areas or that provides more than one kind of utility service may only submit a company-wide request applicable to all of its services in all of its service areas.

(3) When a small utility's letter is filed, the secretary will cause a rate case to be opened, but no specific actions shall be taken in that case, pending completion of the process set out in this rule, including the possible mediation or arbitration of issues among the parties. The regulatory law judge assigned to the case may be asked at any time to mediate disputes that may arise while the case is pending. If the commission staff ("staff") and the utility do not reach agreement on a full resolution of the utility's revenue increase request, they may elect to arbitrate unresolved issues. Such arbitration will allow the utility, the staff and the public counsel to present their positions on the unresolved issues to the regulatory law judge, who will establish, on a case-by-case basis, procedures for identification and submission of issues and the presentation of the parties' positions. Parties need not be represented by counsel during arbitration, and each issue will be determined using the "final offer" method, under which the position of one of the parties will be adopted based upon the evidence presented and commission precedent. The regulatory law judge will issue a written opinion resolving all issues presented for arbitration within 20 days of the close of the arbitration proceeding. The arbitration decision and any partial, unanimous or non-unanimous disposition agreement will be submitted to the commission for its consideration in issuing its decision regarding the resolution of the utility's revenue increase request.

(4) If it is found that a utility was not current on the payment of all of its commission assessments, the submission of its most recently required commission annual report or annual statement of operating revenue, or that it was not in good standing with the Missouri Secretary of State, if applicable, at the time it filed its request then the commission may dismiss the case. The commission may also dismiss the case at any time if the utility fails to be in current compliance

JOINT COMMITTEE ON

NOV 15 2007

ADMINISTRATIVE RULES

regarding commission assessments, annual reports or annual statements of operating revenue, fails to remain in good standing with the Missouri Secretary of State, if applicable, or fails to timely provide the staff or the public counsel with the information needed to investigate the utility's request.

(5) Within one week after a case is opened, the staff shall file a timeline under which the case will proceed, specifying, at a minimum, due dates for the activities required by sections (9), (10) and (11).

(6) After a case is opened, the staff shall, and the public counsel may, conduct an investigation of the utility's request. This investigation may include a review of any and all information and materials related to the utility's cost of providing service and its operating revenues, the design of the utility's rates, the utility's service charges or fees, all provisions of the utility's tariffs, and any operational or customer service issues that are discovered during the investigation. If the public counsel wishes to conduct an independent investigation of the request, it must do so in a time frame that will not result in a delay in the utility's and the staff's resolution of the utility's request.

(7) No later than 30 days after a case is opened, the utility shall mail written notice of the request to each of its customers. The notice, which must be approved by the staff and the public counsel prior to being mailed, shall invite the customers to submit comments about the utility's rates and quality of service within 30 days after the date shown on the notice, and shall include instructions as to how comments can be submitted electronically, by telephone or in writing. When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file. For small steam heating utility requests, the notice shall also be sent to each gas service and each electric service provider in the area affected by the request.

(8) For small steam heating utility requests, any customer, gas service provider or electric service provider that timely responds to the notice required by section (7) shall be entitled to copies of all filings subsequently made in the utility's case, except that information classified as highly confidential or proprietary will only be available under the terms of a commission issued protective order, and may participate in any conferences or hearings related to the case.

(9) No later than 90 days after a case is opened, the staff shall provide a preliminary report of its investigation and audit to the utility and the public counsel.

(10) No later than 120 days after a case is opened, the staff shall provide a settlement proposal to the utility and the public counsel. This proposal shall include the staff's recommended changes pertaining to the following: the utility's annual operating revenues; the utility's customer rates; the utility's service charges and fees; the utility's plant depreciation rates; the utility's tariff provisions; the operation of the utility's systems; and the management of the utility's operations. The staff shall also provide the following with its settlement proposal: draft revised tariff sheets reflecting the staff's recommendations; a draft disposition agreement reflecting the staff's recommendations; its audit workpapers; its rate design workpapers; and any other documents supporting its recommendations. A disposition agreement is a document that sets forth the

signatories' proposed resolution of some or all of the issues pertaining to the utility's revenue increase request.

(11) No later than 150 days after a case is opened, the staff shall file a disposition agreement between at least the staff and the utility providing for a full or partial resolution of the utility's revenue increase request. At any time prior to this, the assigned regulatory law judge may be called upon to meet with the participants and mediate discussions to assist them in reaching at least a partial agreement. If the disposition agreement filed by the staff provides for only partial resolution of the utility's request, it may contain provisions whereby the signatories request that the assigned regulatory law judge initiate an arbitration procedure.

(12) The staff and the small utility may agree that the deadlines set out in sections (9), (10) and (11) be extended for up to two months. If an extension is agreed upon, the staff shall file a written agreement regarding the extension and an updated timeline reflecting the extension in the case file.

(13) If the disposition agreement filed by the staff provides for a full resolution of the utility's request and is executed by the utility, the staff and the public counsel, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than 30 days after they are filed, to implement the agreement. In such a situation, a local public hearing will not be held unless ordered by the commission.

(14) If the disposition agreement filed by the staff provides for a full resolution of the utility's request but is executed by only the utility and the staff, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than 45 days after they are filed, to implement the agreement. No later than five working days after it makes its tariff filing, the utility shall mail written notice of the proposed tariff revisions, including a summary of the proposed rates and charges and the impact of the rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed, shall invite customers to submit comments on the proposed tariff changes within 20 days after the date of the notice, and shall include comment submission instructions as described in section (7). When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(15) No later than five working days after the end of the comment period for the notice referenced in section (14), the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, or requesting that the commission hold a local public hearing or an evidentiary hearing, and providing the reasons for its position or request.

(16) If the disposition agreement filed by the staff provides for only a partial resolution of the utility's request and for the use of an arbitration process to resolve specified issues, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than 45 days after they are filed, that reflect the terms of the agreement and its position on the issues to be arbitrated. No later than five working days after it makes its tariff filing, the utility shall mail written notice of the proposed tariff revisions, including a summary of the proposed rates and

charges and the impact of the rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed, shall invite customers to submit comments on the proposed tariff changes within 20 days after the date of the notice, and shall include comment submission instructions as described in section (7). When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(17) No later than five working days after the end of the comment period for the notice referenced in section (16), the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, and providing the reasons for its position, and stating whether it will participate in the proposed arbitration process. The public counsel's request for a local public hearing or an evidentiary hearing, and the reasons for its request, shall also be included in this pleading.

(18) If a local public hearing is set, the utility shall mail written notice of that hearing to its customers. The notice must be consistent with the order setting the hearing and must be approved by the staff and the public counsel before it is mailed. When the utility mails the approved notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(19) If a local public hearing is held, the staff shall file a pleading no later than five working days after the hearing indicating whether any material information not previously available was provided at the local public hearing and stating whether that information might result in changes to the utility/staff disposition agreement. No later than ten working days after the local public hearing, the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, or requesting that the commission hold an evidentiary hearing, and providing the reasons for its position or request.

(20) If the public counsel files a request for an evidentiary hearing, the request shall include a specified list of issues that the public counsel believes should be the subject of the hearing. The utility's pending tariff revisions shall then be suspended, and the utility's case shall be resolved through contested case procedures conducted in the time remaining in the rate case process, consistent with the requirements of section (25), the requirements of due process, and fairness to the participants in the matter and the utility's ratepayers.

(21) If at any time after a case is opened it becomes clear to the utility or the staff that agreements cannot be reached on even a portion of the issues related to the utility's request, even through the use of mediation or arbitration, either may file a motion asking that the utility's request be resolved through contested case procedures conducted in the time remaining in the rate case process, consistent with the requirements of section (25), the requirements of due process, and fairness to the participants in the matter and the utility's ratepayers.

(22) The commission may approve, reject or alter a disposition agreement, or an arbitration opinion and any related partial disposition agreement.

(23) If the commission approves tariff revisions resulting from a small utility rate case, the utility shall mail written notice of that approval, including a summary of the revised rates and charges

and the impact of the revised rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed and shall be mailed to the customers prior to or with the first billing issued under the revisions. When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(24) If at any time after a case is opened the utility and the staff agree that an increase in the utility's annual operating revenues is not necessary, or if the utility advises the staff that it no longer wishes to pursue an increase, the staff shall file a verified statement to that effect in the case file, whereupon the regulatory law judge shall issue a notice closing the case.

(25) The proposed full resolution of a small utility rate case must be finally presented to the commission no later than nine months after the case is opened, regardless of how it is presented, and the commission's decision and order regarding the case will be issued and effective no later than eleven months after the case was opened. The commission shall set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease.

AUTHORITY: sections 386.040, 386.250, 393.140 and 393.290, RSMo 2000, and 393.291, RSMo Supp. 2003.

PUBLIC COST: Adoption of this proposed rule will not cost affected state agencies or political subdivisions more than \$500 in the aggregate.

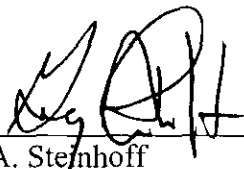
PRIVATE COST: Adoption of this proposed rule will not cost affected private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before January 16, 2008, and should include a reference to Commission Case No. AX-2005-0363. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed rule is scheduled for January 16, 2008 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

AFFIDAVIT
PUBLIC COST

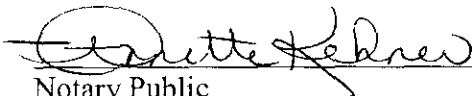
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Gregory A. Steinhoff, 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 240-3.050, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

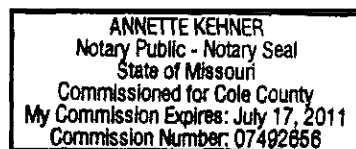


Gregory A. Steinhoff
Director
Department of Economic Development

Subscribed and sworn to before me this 31st day of Oct, 2007, I am commissioned as a notary public within the County of COLE, State of Missouri, and my commission expires on 17 JULY 2011.



Notary Public



Small Business Regulator Fairness Board

Small Business Impact Statement

Date: August 2, 2007

Rule Number: 4 CSR 240-3.050

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Dale W. Johansen

Phone Number: 573-751-7074 Email: dale.johansen@psc.mo.gov

Name of Person Approving Statement: Colleen M. Dale

Please describe the methods your agency considered or used to reduce the impact on small businesses *(examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique).*

This rule is replacing existing rules applicable to the way by which the affected entities will request increases in their annual operating revenues and their customer rates, but will not change the manner in which such requests are processed in a way that will result in additional costs to them. As a result, it was not necessary to consider or use any particular methods to reduce the impact on the affected entities.

Please explain how your agency has involved small businesses in the development of the proposed rule.

Several representatives of affected small businesses were offered the opportunity to review and comment on various drafts of the rule as it was being developed. Additionally, this rule will subject to additional comments as a part of the rulemaking process before it is finalized.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

The aggregate cost for the PSC and the Office of the Public Counsel, which is the only other affected agency, related to the implementation of this rule is expected to be less than \$500. There will be no monetary benefit to either agency. No additional fees will be collected.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

The businesses that will be affected by this rule are the small natural gas, sewer, steam heating and water utilities that the Commission regulates, as those entities are defined in the rule. This rule is replacing existing rules applicable to the way by which those entities request increases in their annual operating revenues and their customer rates, but will not change the manner in which such requests are processed in a way that will result in additional costs to them. As a result, no adverse impact is expected.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

This rule is replacing existing rules applicable to the way by which those entities request increases in their annual operating revenues and their customer rates, but will not change the manner in which such requests are processed in a way that will result in additional costs to them. As a result, the aggregate compliance cost for the affected entities is expected to be less than \$500.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Small Commission-regulated natural gas utilities, as defined in the rule
Small Commission-regulated sewer utilities, as defined in the rule
Small Commission-regulated steam heating utilities, as defined in the rule
Small Commission-regulated water utilities, as defined in the rule

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes ☐ No ☒

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.