

FILED
May 2, 2008
Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 8678
Date Printed: 5/2/2008
Rule Number: 4 CSR 240-18.010
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 5/2/2008
Date Submitted to Joint Committee on Administrative Rules: 5/2/2008

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale

Phone: 751-4255

Email: cully.dale@pcs.mo.gov

Fax:

RuleDataEntry:

Phone:

Email:

Fax:

Included with Rulemaking:

Cover Letter

5/02/2008

Affidavit for public cost

5/02/2008

Print Close

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-18.010

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

Name of person to call with questions about this rule:

Content Cully Dale Phone 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 Office Bldg, Jeff City, MO

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
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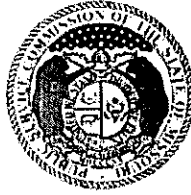
**REGULATORY FAIRNESS
BOARD**

JCAR Stamp

JOINT COMMITTEE ON

MAY 02 2008

ADMINISTRATIVE RULES



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Missouri Public Service Commission

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Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

May 2, 2008

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

Dear Secretary Carnahan:

Re: Proposed Amendment to 4 CSR 240-18.010

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission for filing on this 2nd day of May, 2008.

Statutory Authority: Sections 386.040, 386.250, 392.185(9) and 392.470 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. 2007, 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. 2007, 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 amendment 4 CSR 240-18.010 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 a horizontal line.

Colleen M. Dale
Secretary

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Title 4. DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240. Public Service Commission
Chapter 18. Safety Standards

MAY 02 2008

SECRETARY OF STATE
ADMINISTRATIVE RULES

Proposed Amendment

4 CSR 240-18.010 Safety Standards for ~~[Electric Utilities]~~ Electrical Corporations, Telecommunications Companies and Rural Electric Cooperatives

PURPOSE: This rule prescribes minimum safety standards relating to the operation of electric utilities, telecommunications companies and rural electric cooperatives. Adoption of this rule will not only inform the [regulated] utilities ~~[, to which it applies,]~~ of the minimum safety standards required by the commission [but] and will ~~[also]~~ be of assistance to the commission staff in carrying out its assigned duties. This amendment changes the edition of the National Electrical Safety Code that the commission adopts for the minimum safety standards applicable to electrical corporations, telecommunications companies and rural electric cooperatives, and clarifies that the new standards apply only to new installations and extensions.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material that is incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the material so incorporated is on file with the adopting agency. Any interested person may view this material at the agency's headquarters pursuant to section 536.031.4, RSMo Cum. Supp. 2007. Such material will be provided at the cost established by state law. The entire text of the rule is printed here. This note refers only to the material incorporated by reference.

(1) The minimum safety standards relating to the operation of electrical corporations, telecommunications companies and rural electric cooperatives are ~~[The commission adopts as its rule and incorporates by reference,]~~ Parts 1, 2 and 3 and Sections 1, 2 and 9 of the ~~[American National Standard,]~~ National Electrical Safety Code (NESC); ~~[2002]~~ 2007 Edition as approved by the American National Standards Institute on June ~~[14, 2001]~~ 16, 2006, as modified by Errata thereto issued on October 5, 2006 and May 14, 2007, and published by the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997. ~~[The NESC is published by the Institute of Electrical and Electronics Engineers, Inc., as the minimum safety standards relating to the operation of electric utilities and telecommunications companies and rural electric cooperatives.]~~ The NESC is composed of four (4) different parts and four (4) sections, each of which pertain to different aspects of the electric and telecommunications industries. Part 1 specifies rules for the installation and maintenance of equipment normally found in electric generating plants and substations. Part 2 pertains to safety rules for overhead electric and communication lines. Part 3 contains safety rules for underground electric and

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ADMINISTRATIVE RULES

communication lines. Section 1 is an introduction to the NESC, Section 2 defines special terms and Section 9 requires certain grounding methods for electric and communications facilities. **The full text of this rule is available at the Energy Department of the Public Service Commission Suite 700, 200 Madison, Jefferson City, Missouri. This rule does not incorporate any subsequent amendments or additions.**

((2) [~~All-electric utilities~~] **Electrical corporations, [and] telecommunications companies and rural electric cooperatives** subject to regulation by this commission pursuant to Chapters 386, 392-394, RSMo **2000** shall [~~be required to adhere to~~] **comply with** the safety standards established by this rule **for new installations and extensions as described in the NESC.**

(3) Incident reporting requirements for [~~electric utilities~~] **electrical corporations** and rural electric cooperatives are found in 4 CSR 240-3.190(4).

(4) Those who excavate near underground facilities or conduct activities within ten feet of overhead power lines are required to notify area utilities prior to engaging in such action, pursuant to the Underground Facility Safety and Damage Prevention Act, §319.010 et seq., RSMo 2000, and the Overhead Power Line Safety Act, §319.075 et seq., RSMo 2000.

AUTHORITY: sections 386.310 RSMo 2007 [Supp. 1998] and 394.160, RSMo 2007. Original rule filed March 15, 1978, effective Oct. 2, 1978. Amended: Filed April 8, 1981, effective Oct. 15, 1981. Amended: Filed Feb. 9, 1984, effective June 15, 1984. Amended: Filed June 12, 1987, effective Sept. 15, 1987. Amended: Filed Jan. 5, 1990, effective April 13, 1990. Amended: Filed March 23, 1993, effective Oct. 10, 1993. Amended: Filed Aug. 27, 1999, effective Feb. 29, 2000. Amended: Filed ***, 2008, effective ****, 2008.*

**Original authority: 386.310, RSMo 1939, amended 1979, 1989, 1996 and 394.160, RSMo 1939, amended 1979.*

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

PRIVATE COST: This proposed rule will not cost 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, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before July 16, 2008, and should include a reference to Commission Case No. EX-2008-0226. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at

<<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for July 16, 2008, at 10:00 am in Room 310 of 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 or TDD Hotline 1-800-829-7541.

PUBLIC COST

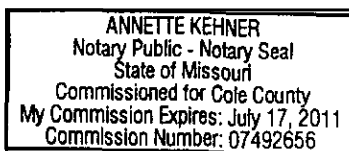
COUNTY OF COLE)

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 amendment to rule, 4 CSR 240-18.010, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

Department of Economic Development

Subscribed and sworn to before me this 17th day of April, 2008, 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: February 26, 2008

Rule Number: 4 CSR 240-18.010

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: James Ketter

Phone Number: 573-751-0354

Email: jim.ketter@psc.mo.gov

Name of Person Approving Statement: Cully 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 amendment changes the edition of the National Electrical Safety Code that the commission adopts for the minimum safety standards applicable to electrical corporations, telecommunication companies and rural electric cooperatives. No impact on small businesses.

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

N/A – Only directly impacts utility companies and cooperatives in the state.

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.

None

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

None

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

N/A

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

Electrical corporations, telecommunication companies and rural electric cooperatives

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

Yes___ No_X__

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.