

AX-2002-157

FILED<sup>3</sup>

DEC 10 2001

Administrative Rules Stamp

MATT BLUNT  
Secretary of State  
Administrative Rules Division  
RULE TRANSMITTAL

Missouri Public  
Service Commission

RECEIVED

DEC 9 2001

SECRETARY OF STATE  
ADMINISTRATIVE RULES

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 amendment (Word 2000 format)  
Name of Person to call with questions about this rule:  
Context Kevin A. Thompson Phone 573-751-6514 FAX 573-526-6010  
Data Entry Judy Pope Phone 573-751-6526 FAX 573-526-6010  
Interagency Mailing Address Governor Office Building, 200 Madison St., Suite 900, Jefferson City, MO

Statutory Provision for Rulemaking  
Authority Section 386.410 Provide Most Current RSMo Year 2000

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, 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 (Amendment of Existing 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:)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

95

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.

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**  
**KELVIN L. SIMMONS**  
Chair  
**CONNIE MURRAY**  
**SHEILA LUMPE**  
**STEVE GAW**  
**BRYAN FORBIS**

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

December 6, 2001

**ROBERT J. QUINN, JR.**  
Executive Director  
**WESS A. HENDERSON**  
Director, Utility Operations  
**ROBERT SCHALLENBERG**  
Director, Utility Services  
**DONNA M. PRENGER**  
Director, Administration  
**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge  
**DANA K. JOYCE**  
General Counsel

Honorable Matt Blunt  
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 Amendment lawfully submitted by the Missouri Public Service Commission for filing this 6th day of December, 2001, and that a takings analysis and small business impact analysis have occurred.

Rule: 4 CSR 240-2.075 Intervention

Statutory authority: Section 386.410, RSMo 2000

Missouri Public Service Commission Case No.: AX-2002-157

If there are any questions, please contact: Kevin A. Thompson  
Deputy Chief Regulatory Law Judge  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 900  
Post Office Box 360  
Jefferson City, Missouri 65102  
(573) 751-6514

BY THE COMMISSION

  
**Dale Hardy Roberts**  
Secretary/Chief Regulatory Law Judge

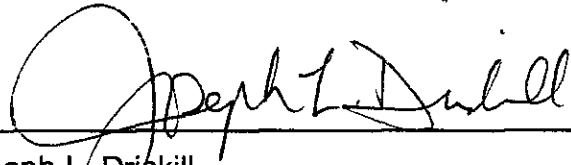
DHR:KAT:jp

Enclosures: Proposed Amendment (hard copy plus electronic copy in Word 2000 format on 3-1/2" disk), transmittal form, affidavit, takings analysis, and small business impact analysis

**AFFIDAVIT**


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 the **Proposed Amendment to 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 29<sup>th</sup> day of November,  
2001. I am commissioned as a notary public within the County of  
Callaway, State of Missouri, and my commission expires on  
September 21, 2004.



NOTARY PUBLIC

JULIE A ATCHISON  
NOTARY PUBLIC STATE OF MISSOURI  
CALLAWAY COUNTY  
MY COMMISSION EXP. SEPT 21, 2004

Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 2—Practice and Procedure

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SERIES AND STATE  
ADMINISTRATIVE SERVICES

**PROPOSED AMENDMENT**

**4 CSR 240-2.075 Intervention**

*PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to amici curiae and to impose on intervenors an obligation to file a responsive pleading.*

(6) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. **The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition for leave. Except by leave of the commission, the brief must be filed no later than seven (7) days after the parties have filed their initial briefs. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.**

(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.

*AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000.\* Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed August 24, 1999, effective April 30, 2000. Amended: Filed Dec. 6, 2001.*

*\* Original authority: 386.410, RSMo 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 must be received within thirty (30) days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-157 and be filed with an original and six (6) copies. No public hearing is scheduled.*



## Missouri Public Service Commission

Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
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ROBERT J. QUINN, JR.  
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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

November 1, 2001

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

RE: Proposed Amendment to 4 CSR 240-2.075 Intervention

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.

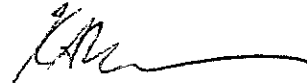
The proposed amendments to this rule clarify the proceedings applicable to *amici curiae* and impose on intervenors an obligation to file a responsive pleading.

Amending 4 CSR 240-2.075 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  
November 1, 2001

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'KAT', with a long horizontal flourish extending to the right.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



Commissioners  
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Chair  
CONNIE MURRAY  
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STEVE GAW

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General Counsel

November 1, 2001

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

RE: Proposed Amendment to 4 CSR 240-2.075 Intervention

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 purpose of amending 4 CSR 240-2.075 is to clarify the proceedings applicable to *amici curiae*, and to impose on intervenors an obligation to file a responsive pleading. The amendments are not estimated to 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 black ink, appearing to read "KAT", followed by a long horizontal line.

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



## Missouri Public Service Commission

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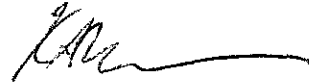
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Mr. Dale Hardy Roberts  
Page two  
November 1, 2001

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Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp

MEMORANDUM

FILED<sup>3</sup>

DEC 10 2001

Missouri Public  
Service Commission

TO: Dale Hardy Roberts, Secretary


DATE: December 6, 2001

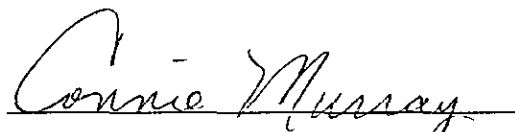
RE: Authorization to File Proposed Amendment With the Office of Secretary of State

CASE NO: AX-2002-157

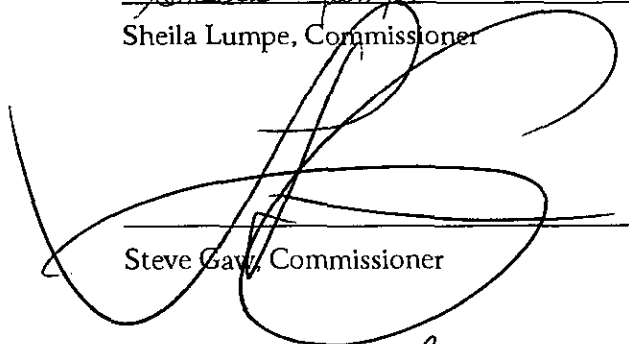
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file a Proposed Amendment with the Office of Secretary of State, to wit:


4 CSR 240-2.075 Intervention

  
Kelyin L. Simmons, Chair

  
Connie Murray, Commissioner

  
Sheila Lumpe, Commissioner

  
Steve Gay, Commissioner

  
Bryan Forbis, Commissioner

Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 2—Practice and Procedure

**PROPOSED AMENDMENT**

**4 CSR 240-2.075 Intervention**

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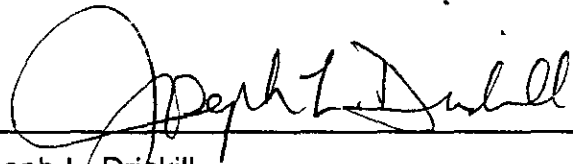
**AFFIDAVIT**

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 the **Proposed Amendment to 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 29<sup>th</sup> day of November,  
2001. I am commissioned as a notary public within the County of  
Callaway, State of Missouri, and my commission expires on  
September 21, 2004.



NOTARY PUBLIC

JULIE A ATCHISON  
NOTARY PUBLIC STATE OF MISSOURI  
CALLAWAY COUNTY  
MY COMMISSION EXP. SEPT 21, 2004



Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW

## Missouri Public Service Commission

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November 1, 2001

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

Very truly yours,

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Kevin A. Thompson  
Deputy Chief Regulatory Law Judge

KAT:jp



Missouri Public Service Commission

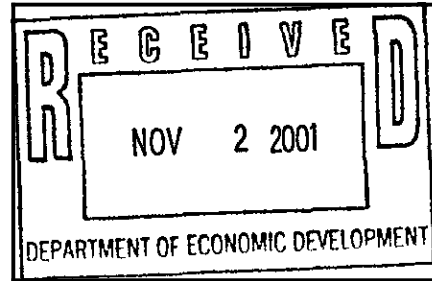
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DANA K. JOYCE
General Counsel

November 1, 2001

Mr. Joseph L. Driskill, Director
Department of Economic Development
Harry S Truman State Office Building
301 West High Street
Jefferson City, Missouri 65109



RE: Affidavit for Proposed Amendment to 4 CSR 240-2.075 Intervention
P.S.C. Case No. AX-2002-157

Dear Mr. Driskill:

As required by statute, attached for your signature is an affidavit for a Proposed Amendment to 4 CSR 240-2.075, Intervention, of the Public Service Commission rules. A copy of the Proposed Amendment is also enclosed, as well as copies of the takings and small business impact analyses.

If you have any questions, please feel free to contact me at 573-751-6514.

Very truly yours,

FILED 3

DEC 1 0 2001

Missouri Public Service Commission

[Handwritten signature of Kevin A. Thompson]

Kevin A. Thompson
Deputy Chief Regulatory Law Judge

KAT:jp

Enclosures: Affidavit for 4 CSR 240-2.075 Intervention
Proposed Amendment - 4 CSR 240-2. 075 Intervention
Takings Analysis
Small Business Impact Analysis

Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 2—Practice and Procedure

**PROPOSED AMENDMENT**

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