

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: August 16, 1999

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

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

AGENDA DATE: August 17, 1999

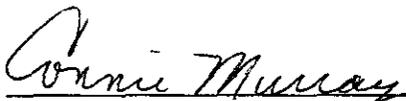
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file Proposed Rescissions with the Office of Secretary of State, as listed on the attached sheet.



 Sheila Lumpe, Chair



 Harold Crumpton, Commissioner



 Connie Murray, Commissioner



 Robert Schemenauer, Commissioner



 M. Dianne Drainer, Vice Chair

Proposed Rescissions:

- Rule: 4 CSR 240-2.010 – Definitions
- 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 Docketed Cases
- 4 CSR 240-2.070 – Complaints
- 4 CSR 240-2.075 – Intervention
- 4 CSR 240-2.080 – Pleadings
- 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 Use of a Presiding Officer
in Settlement Negotiations
- 4 CSR 240-2.130 – Evidence
- 4 CSR 240-2.140 – Briefs and Oral Arguments
- 4 CSR 240-2.150 – Orders of the Commission
- 4 CSR 240-2.160 – Rehearings or Reconsideration
- 4 CSR 240-2.170 – Forms
- 4 CSR 240-2.180 – Rulemaking
- 4 CSR 240-2.200 – Small Company Rate Increase Procedure

Administrative Rules Stamp

COPY

RECEIVED

AUG 24 1999

SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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

A. Rule Number 4 CSR 240-2.070
 Diskette File Name 2.070 proposed rescission
 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 1994

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

<input checked="" type="checkbox"/>	Cover Letter	_____
<input checked="" type="checkbox"/>	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 (Proposed Rescission)
- _____ 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 _____

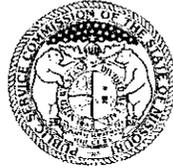
1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

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

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

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

**COPY
RECEIVED**

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 Rescissions 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 240-2.040 – 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 Docketed Cases
4 CSR 240-2.070 – Complaints
4 CSR 240-2.075 – Intervention
4 CSR 240-2.080 – Pleadings
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 Use of a Presiding Officer
in Settlement Negotiations
4 CSR 240-2.130 – Evidence
4 CSR 240-2.140 – Briefs and Oral Arguments
4 CSR 240-2.150 – Orders of the Commission
4 CSR 240-2.160 – Rehearings or Reconsideration
4 CSR 240-2.170 – Forms
4 CSR 240-2.180 – Rulemaking
4 CSR 240-2.200 – Small Company Rate Increase Procedure

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 22 Proposed Rescissions
+ Proposed Rescissions 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

COPY

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 Rescission of **4 CSR 240-2.070 Complaints** 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

RECEIVED
AUG 24 1999
SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

PROPOSED RESCISSION

4 CSR 240-2.070 Complaints. This rule established the procedures for filing formal and informal complaints with the commission.

PURPOSE: This rule is being rescinded and resubmitted to avoid confusion because of the many changes being proposed.

AUTHORITY: section 386.410, RSMo 1994. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded: Filed: August 24, 1999.*

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

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

PRIVATE ENTITY COST: This proposed rescission 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 rescission 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-2000-114 and be filed with an original and fourteen (14) copies. No public hearing is scheduled.



Missouri Public Service Commission

Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

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

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLLIS
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 240-2.070 and Adoption of Proposed New Rule 4 CSR 240-2.070

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 establishes the procedures for filing formal and informal complaints with the Commission.

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.

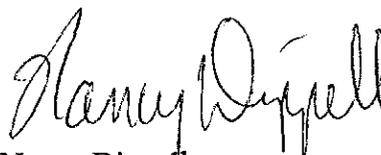
Mr. Dale Hardy Roberts

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".

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

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

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

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 240-2.070 and Adoption of Proposed New Rule 4 CSR 240-2.070

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