

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

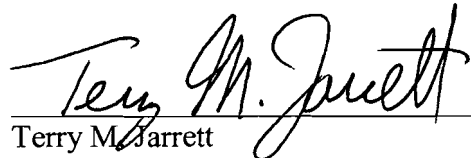
In the Matter of Application of RDG Development, LLC     )  
For Authority to Sell Assets to Greenwood Hills             )  
Homeowners Association and, in Connection Therewith,     )  
Certain Other Related Transactions.                             )

**File No. SO-2011-0012**

**CONCURRING OPINION OF  
COMMISSIONER TERRY M. JARRETT**

I concur with the majority in the result but disagree with any reliance for that result on past practice of the Commission noted as “policy” in the Order. The “Rocky Ridge Criteria” at best is guidance to the Commission and is not in any way mandatory in its application. To the extent that the “Rocky Ridge Criteria” has been adopted as “policy” of this Commission that criteria in essence is one of general applicability and is therefore being administered by this Commission as a rule, one that has not been properly promulgated through the rulemaking process.<sup>1,2</sup>

Commission policy is set in its rules, not by issuing Orders. Therefore I concur in the decision.

  
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Terry M. Jarrett

Submitted this 21<sup>st</sup> day of October, 2010.

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<sup>1</sup> “Not every generally applicable statement or “announcement” of intent by a state agency is a rule. Implicit in the concept of the word “rule” is that the agency declaration has a potential, however, slight, of impacting the substantive or procedural rights of some member of the public.” *Baugus v. Director of Revenue*, 878 S.W.2d 39, 42 (Mo. banc 1994).

<sup>2</sup> See also, *NME Hospitals, Inc. v. Department of Social Services, Div. of Medical Services*, 850 S.W.2d 71, 74 (Mo. 1993) (“Changes in statewide policy are rules. Failure to comply with rulemaking procedures renders the purported rule void.”).