

FILED  
March 26, 2009  
Data Center  
Missouri Public  
Service Commission



**Robin Carnahan**  
Secretary of State

**Administrative Rules Division  
Rulemaking Transmittal Receipt**

Rule ID: 10074  
Date Printed: 3/26/2009  
Rule Number: 4 CSR 240-3.440  
Rulemaking Type: Proposed Rescission  
Date Submitted to Administrative Rules Division: 3/26/2009  
Date Submitted to Joint Committee on Administrative Rules: 3/25/2009

---

Name of Person to Contact with questions concerning this rule:

Content: Morris Woodruff	Phone: 751-2849	Email: morris.woodruff@psc.mo.gov	Fax: 526-6010
RuleDataEntry:	Phone:	Email:	Fax:

---

Included with Rulemaking:

Cover Letter	3/26/2009
Affidavit for public cost	3/26/2009

Print Close

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

# RECEIVED

MAR 26 2009

SECRETARY OF STATE  
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-3.440

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

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data Entry same

Phone

FAX

Email address

Interagency mailing address Public Service Commission, 9<sup>th</sup> Fl, Gov. Ofc Bldg, JC, 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  
Fairness Board (DED) Stamp

SMALL BUSINESS  
REGULATORY FAIRNESS BOARD

MAR 26 2009

# RECEIVED

JCAR Stamp

# JOINT COMMITTEE ON

MAR 25 2009

# ADMINISTRATIVE RULES



Commissioners  
ROBERT M. CLAYTON III

Chairman

CONNIE MURRAY

JEFF DAVIS

TERRY JARRETT

KEVIN D. GUNN

## 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

March 26, 2009

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

RECEIVED

MAR 26 2009

SECRETARY OF STATE  
ADMINISTRATIVE RULES

Dear Secretary Carnahan:

**Re: Proposed Rescission of 4 CSR 240-3.440**

### CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rescission lawfully submitted by the Missouri Public Service Commission for filing on this 26<sup>th</sup> day of March, 2008.

Statutory Authority: Sections 386.250, RSMo 2000.

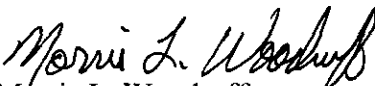
Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the 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. 2008, 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. 2008, 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 rescission of 4 CSR 240-3.440 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: Morris L. Woodruff, Deputy Chief Regulatory  
Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-2849  
morris.woodruff@psc.mo.gov

  
Morris L. Woodruff  
Deputy Chief Regulatory Law Judge

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

RECEIVED

MAR 26 2009

SECRETARY OF STATE  
ADMINISTRATIVE RULES

PROPOSED RESCISSION

**4 CSR 240-3.440 Steam Utility Small Company Rate Increase Procedure.** This rule provided procedures and filing requirements for small steam utilities seeking a rate increase.

*PURPOSE: This rule is being rescinded because it has been superseded by 4 CSR 240-3.050.*

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and 393.291, RSMo Supp. 2003. \* Original rule filed Sept. 22, 2003, effective April 30, 2004. \*Original authority: 386.250, RSMo 1934, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 393.140, RSMo 1939, amended 1949, 1967; and 393.291, RSMo 2003.*

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

*PRIVATE COST: This proposed rescission 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 rescission 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 June 2, 2009, 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://psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rescission is scheduled for June 2, 2009 at 2:00 p.m. in Room 305 of 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.*

JOINT COMMITTEE ON

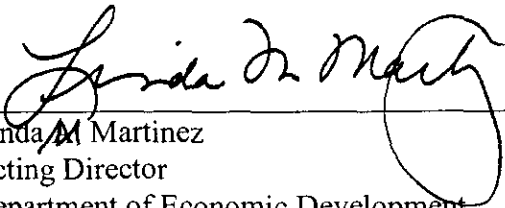
MAR 25 2009

ADMINISTRATIVE RULES

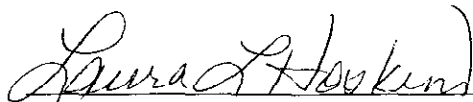
**AFFIDAVIT  
PUBLIC COST**

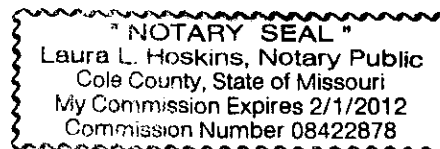
STATE OF MISSOURI )  
                                  )  
COUNTY OF COLE    )

I, Linda ~~M~~ Martinez, Acting 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 4 CSR 240-3.440, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

  
\_\_\_\_\_  
Linda ~~M~~ Martinez  
Acting Director  
Department of Economic Development

Subscribed and sworn to before me this 4<sup>th</sup> day of March, 2009, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 2-1-2012.

  
\_\_\_\_\_  
Notary Public



# Small Business Regulator Fairness Board

## Small Business Impact Statement

Date: January 23, 2009

Rule Number: 4 CSR 240-3.440

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427 Email: natelle.dietrich@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 was replaced by a new, not industry specific rule that made it simpler, less expensive and less time-consuming for small companies to seek a rate increase through the PSC. As a result, it was not necessary to consider or use any particular methods to reduce the impact on the affected entities. This rescission removes the old, less efficient, industry-specific rule.

**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 new rule as it was being developed. Additionally, that 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 rescission of these rules will have no monetary effect on any public or private entity, except that rescinding the rules no longer used will reduce confusion and any costs attendant thereto.

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

n/a

**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.**

Small Commission-regulated steam 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 XX

**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.*