

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-13.020

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

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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:

Section (1)

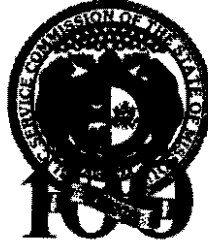
Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
ADMINISTRATIVE RULES

DEC 04 2013

ADMINISTRATIVE RULES



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Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-13.020 Billing and Payment Standards

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.250 and 393.140, RSMo 2000

If there are any questions regarding the content of this proposed rulemaking, please contact:

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**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 13 – Service and Billing Practices for Residential Customers of
Electric, Gas, Sewer and Water Utilities**

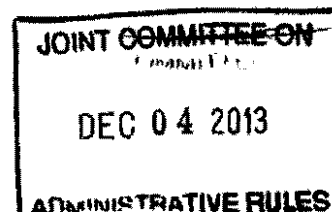
ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250(6) RSMo 2000, and section 393.140(11) RSMo 2000, the commission amends a rule as follows:

4 CSR 240-13.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 3, 2013 (38 MoReg 1365). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended October 7, 2013, and the commission held a public hearing on the proposed amendment on October 10, 2013. The commission received timely written comments from Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Laclede Gas Company, Ameren Missouri, and The Empire District Electric Company (collectively the Missouri Utilities); the Office of the Public Counsel; Jacqueline Hutchinson, Vice President of Operations for People's Community Action Corporation in St. Louis Missouri; AARP, the Consumers Council of Missouri, and Legal Services of Eastern Missouri, Inc. (collectively the AARP group); Missouri-American Water Company; and the Staff of the Missouri Public Service Commission. In addition, the following people offered comments at the hearing: Rick Zucker, representing Laclede Gas Company and Missouri Gas Energy; Jim Fischer, representing Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Allison Erickson on behalf of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Russ Mitten, representing The Empire District Electric Company; Sarah Giboney, representing Ameren Missouri; Kathy Hart on behalf of Ameren Missouri; Tim Luft, on behalf of Missouri-American Water Company; Marc Poston, representing the Office of the Public Counsel; John Coffman, representing AARP and Consumers Council of Missouri; Jacqueline Hutchinson on behalf of Community Action Corporation in St. Louis Missouri; Jackie Lingham, representing Legal Services of Eastern Missouri, Inc.; Akayla Jones, representing the Staff of the Missouri Public Service Commission; and Gay Fred



and Lisa Kremer on behalf of the Staff of the Missouri Public Service Commission.

The Commission considered this particular rule in conjunction with eleven other rules within Chapter 13. Not all persons offering comments addressed this particular rule.

COMMENT: The commission's staff offered a written comment indicating that it continues to support the amendment as proposed.

RESPONSE: The commission thanks staff for its comment.

COMMENT: The AARP group, the Office of the Public Counsel, Jacqueline Hutchinson, Jackie Lingum, and John Coffmann all expressed a general concern that the commission's proposed rules should not allow for the expanded use by utilities of estimated bills. They believe it is an important consumer protection provision that bills for service be based on actual usage whenever possible. The utilities counter that sometimes an actual meter reading cannot be obtained and suggest that requirements that go too far in requiring an actual meter reading might unnecessarily drive up costs to all consumers.

RESPONSE: In considering the comments, the commission will attempt to strike a balance between the consumer's need for certainty regarding their bill and the need to reduce costs by allowing for the use of estimated bills in appropriate circumstances.

COMMENT: Public Counsel asks the commission to insert the phrase "commission rules and" before the words "approved tariff" in subsection (1). According to Public Counsel, the change would make it clear that the utility must also follow the billing requirements of the regulation. The AARP group also expresses concern about subsection (1), contending that all consumer protections should be in the rule rather than in utility tariffs that are more difficult for consumers to access.

RESPONSE AND EXPLANATION OF CHANGE: The change proposed by Public Counsel may not be necessary because the utilities are required to comply with these rules whether or not Public Counsel's statement is added to the rule. However, including the phrase does not do any harm, and would make the utilities' obligations more clear to a customer who is reading the regulations. The Commission will add the phrase requested by Public Counsel.

The AARP group's concerns about the reference to utility tariffs are unwarranted. It would be impractical for the Commission to establish a one-size-fits-all billing procedure that would apply to all utilities through a regulation. Instead, consumer protections are established by rule, while the utilities are

allowed to establish their own procedures that are not inconsistent with those regulations by means of tariffs filed with the commission.

COMMENT: Public Counsel, the AARP group, and other consumers, are concerned that subsections (2)(A)3 through (2)(A)7 would have the effect of inappropriately expanding the ability of utilities to impose estimated bills on their customers. They contend that the new provisions would allow the utilities to send out an estimated bill anytime the utilities equipment fails and would provide the utility with little incentive to maintain and repair its equipment. They believe the utility, not its customers, should bear the burden if utility-owned equipment fails. The utilities that commented about the rule support those subsections as an appropriate recognition of modern technology.

RESPONSE: The subsections to which the consumer groups object do have the effect of expanding the ability of a utility to rely on estimated bills when, for reasons beyond the utility's control, it is unable to obtain an actual meter reading; for example in some circumstances where company equipment, such as an automated meter reading device has failed. Subsequent provisions of the rule establish standards for the utilities to follow when determining an estimated bill.

The commission is not persuaded by the arguments presented by the consumers. While utilities are obligated to bill their customers for actual usage whenever possible, sometimes, for reasons beyond their control, they are unable to do so. Technological advances, such as automated meter reading devices have reduced the need for utilities to rely on estimated bills and the number of estimated bills sent to consumers has, as a consequence, dropped. But those technological advances have also created new circumstances in which it may be necessary for a utility to send out an estimated bill. The rule changes proposed by Staff reasonably balance the consumer's interest in receiving a bill based on actual usage and the need to allow utilities to send out estimated bills without requiring them to unreasonably spend ratepayer dollars to chase the last possible actual meter reading. The commission will not make the changes proposed by the consumer groups.

COMMENT: Public Counsel is concerned that the proposed changes to subsection (3) would eliminate the right of a customer to self-read their meter whenever the utility is otherwise unable to obtain an actual meter reading. The Missouri Utilities look at the same subsection and argue that the change does not go far enough. The Missouri Utilities would add the phrase "upon mutual agreement of the utility and the customer" to emphasize that customers do not have a right to self-read their meters without the consent of the utility.

RESPONSE: In one regard, the concern of Public Counsel is unfounded. The changes proposed and published in the Register merely improve the readability of the regulation and do not change its substance. Really, Public Counsel is concerned about the change proposed by the Missouri Utilities. It should be

emphasized that under the current regulation, as well as the change proposed by the Missouri Utilities, customers do not have an unbridled right to self-read their meters. Rather, the current regulation requires the utility to notify the customer of the option to self-read their meter if for some reason the utility is unable to obtain an actual meter reading for three consecutive billing periods. If the utility does not want to allow the customer that option, their remedy is to obtain an actual meter reading. There is no need to add the proposed language about a mutual agreement between the utility and customer to proceed with self-reading of the meter. The commission will make no additional change to subsection (3).

COMMENT: The AARP group proposes two changes to section (7) of the existing rule. The commission has not proposed any changes to that section. The regulation currently requires that monthly-billed customers be allowed at least 21 days to pay a bill after it is rendered, while quarterly-billed customers are allowed 16 days to pay their bill. The AARP group contends quarterly-billed customers should also be allowed 21 days to pay their bills.

RESPONSE: The AARP group has not shown sufficient reason to change the payment time for quarterly-billed customers and since the change was not included in the proposed rule filed in the Missouri Register, interested stakeholders who might be able to explain the reason for the shorter payment period for quarterly-billed customers have not had an opportunity to respond. The commission will not make the change proposed by the AARP group.

COMMENT: The other change to section (7) proposed by the AARP group is to require utilities to allow their customers to choose a preferred payment date. The AARP group reasons that customers may be better able to pay their monthly bill on time if they can choose a preferred payment date closely following their receipt of a paycheck or benefit payment.

Again, this proposed amendment was not published in the Missouri Register, so the utilities have not had a full opportunity to respond. In their response at the hearing, the utility representatives in attendance explained that a choose-your-own-payment-date would not be workable precisely because most people would choose a due date just after the 1st or 15th of a month. Billings must be more evenly divided throughout the month because of the sheer number of bills that must be sent out during a month. Furthermore, billing due dates must be spread out to smooth the utility's incoming cash flow as payments are made.

RESPONSE: Good management of the utilities' billing process requires that all bills cannot be sent out at times of the customers' choosing. Furthermore, every customer has 21 days to pay their bill, so they already have significant flexibility in paying their bill. The commission will not make the allowance of a customer-chosen payment date mandatory.

COMMENT: The AARP group proposes a new section as follows: "A utility shall allow payment by mail, but may allow payment through telephone electronic transfer, or through a pay agent, pursuant to the customer's preference." The AARP group contends this provision will protect the right of consumers to pay their bill in any manner they choose.

RESPONSE: This amendment proposed by the AARP group was not published in the Missouri Register so interested persons have not had a full opportunity to comment. However, there is no reason to believe that customers are in any danger of not being allowed to pay their bills by mail. The commission will not add a provision to the rule simply to address speculation and fears about a phantom problem.

COMMENT: The AARP group proposes a new section as follows: "A utility may provide customers current bill status information via telephone, electronic transmission or mail pursuant to the customer's preference." The AARP group's comment does not explain why this new section is needed.

RESPONSE: Again, the amendment proposed by the AARP group was not published in the Missouri Register so interested persons have not had a full opportunity to respond. The AARP group has not demonstrated a need for the amendment and the commission will not add the provision to the rule.

COMMENT: The AARP group proposes a new section as follows:

No utility may enter into any formal pay agent relationship with pawnshops, auto title loan companies, payday loan companies, or other entities that are engaged in the business of making unsecured loans of five hundred dollars or less or that lend money where repayment is secured by the customer's postdated check.

The AARP group, and other consumer oriented commenters explain that this provision is needed to protect utility customers from predatory lenders who might convince a desperate customer to take out a predatory loan to avoid having their utility service shut off.

This proposed rule was not published in the Missouri Register so the opportunity to respond was limited. Kathy Hart, in her comments on behalf of Ameren Missouri said that Ameren Missouri sometimes makes billing arrangements with payday type lenders because that may be the only available retail location willing to be a pay agent in an isolated community.

RESPONSE: The commission is very concerned about the threat posed by predatory lending. However, this is a proposal that deserves full consideration and a fair opportunity for response before implementation. The commission denied a petition for rulemaking on this issue in 2011 (File No. AX-2010-0061),

but the commission will direct its staff to bring this matter back to the commission for full consideration in a future ratemaking

COMMENT: The AARP group proposes a new section to ensure that utilities do not charge extra fees or surcharges for rendering a bill or for issuing other essential billing information. This proposal was not published in the Missouri Register, so other interested stakeholders have not had an opportunity to respond.

RESPONSE: The AARP group has not demonstrated a need for the proposed section. There is no indication that any utility is contemplating such a surcharge and they could only do so by filing a tariff that the commission could suspend or reject. The commission will not add the provision to the rule.

4 CSR 240-13.020 Billing and Payment Standards

(1) A utility shall normally render a bill for each billing period to every residential customer in accordance with commission rules and its approved tariff.