

COPY

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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AUG 08 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-3.130

Diskette File Name Amended 3.130

Name of person to call with questions about this rule:

Content Warren Wood Phone 573-751-2978 FAX 573-526-0142

E-mail address warren.wood@psc.mo.gov

Data entry Rosemary Robinson Phone 573-751-4335 FAX 573-751-9285

E-mail address rosemary.robinson@psc.mo.gov

Interagency mailing address GOB, 200 Madison Street, 8th Floor, Jefferson City

Statutory Authority 386.250 and 393.140

Current RSMo date 2000

Date filed with the Joint Committee on Administrative Rules Exempt per Section

B. CHECKLIST guide for rule packets:

☒ This transmittal completed

☒ Cover letter

☐ Affidavit

☐ Small business impact statement

☐ Fiscal notes

☐ Forms, number of pages _____

☐ Authority section with history of the rule

☐ Public cost statement

☐ Private cost statement

☐ Hearing date _____

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST include effective date _____

☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission

☒ Order of Rulemaking (choose one) ☐ rule, ☒ amendment, ☐ rescission, or ☐ termination

MUST complete page 2 of this transmittal

☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency)

☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

E. ORDER OF RULEMAKING: Rule Number _____

1a. Effective Date for the Order

☐ Statutory 30 days

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 of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

Rule 3.130

Published subsection (1)(A) – Some language has been added and deleted.

Published subsection (1)(D) – Clarifying language has been added.

Published subsection (1)(E) – This subsection has been deleted and subsequent subsections under section (1) have been relettered.

Published subsection (1)(F) – Some language has been added and deleted.

Published subsection (1)(G) – This subsection has been deleted.

Published section (2) – This section has been deleted and all subsequent sections renumbered.

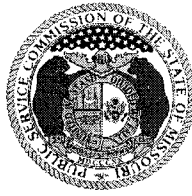
Published section (3) – Some language has been added to this section.

Published section (7) – The word “will” has been changed to “may”.

All sections and subsections of this rule were renumbered and relettered, as necessary, to correct order.

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.



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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WESS A. HENDERSON
Executive Director

ROBERT SCHALLENBERG
Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

August 8, 2005

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

Dear Secretary Carnahan,

RE: 4 CSR 240-3.130 – Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission on this 8th day of August 2005.

The Missouri Public Service Commission has determined and hereby certifies that this proposed rule will not have an economic impact on small business. The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to Section 536.017, RSMo 2000 and that this proposed rule does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: Section 386.250 and 393.140, RSMo 2000

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

Dennis L. Frey
200 Madison Street
Jefferson City, MO 65101
Phone (573) 751-8700
Email: denny.frey@psc.mo.gov

Sincerely yours,

A handwritten signature in black ink, appearing to read "Colleen M. Dale".

Colleen M. Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission

Title 4 - DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240 - Public Service Commission

Chapter 3 - Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission (Commission or PSC) under sections 386.250 and 393.140, RSMo 2000, the Public Service Commission amends a rule as follows:

4 CSR 240-3.130 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2005 (*Missouri Register*, Vol. 30, No. 7). 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: A public hearing on this proposed amendment was held on May 18, 2005, following a public comment period which ended on May 9, 2005. At the hearing, Lisa Chase appeared on behalf of the Association of Missouri Electric Cooperatives (AMEC), Curtis Blanc appeared on behalf of Kansas City Power & Light (KCPL), and Dennis Frey and Warren Wood appeared on behalf of the Staff of the Missouri Public Service Commission (Staff). During the hearing, Mr. Wood, Manager of the Staff's Energy Department, explained the current scope of rule 4 CSR 240-3.130 (rule 3.130), the nature and purpose of changes Staff proposed to the rule 3.130 version published in the *Missouri Register*, the purpose of the collaborative meeting held with interested parties on April 18, 2005, and the changes agreed to among the parties in the collaborative meeting. Mr. Wood also explained that during the collaborative meeting, the Staff did not agree with removing the requirements in the rule that rate information in proposed subsection (1)(E) and tax impacts in proposed subsection (1)(G) be provided to the Commission, as it was Staff's impression that the Commission had requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENTS: In its written comments filed on May 6, 2005, Staff filed its recommended changes to the version of rule 3.130 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the April 18, 2005 collaborative meeting. Staff proposed that the final rule approved by the Commission include the changes proposed in the version of the rule published in the *Missouri Register* on April 1, 2005, as additionally modified by the changes attached to Staff's written comments as Appendix A in order to improve the clarity of the rule. Staff noted in its written comments that the only objections raised by parties at the collaborative meeting were in regard to new subsections (1)(E) and (1)(G), as provided in Staff's Appendix A in its May 6, 2005 comments, which require the reporting of rate comparisons and tax impacts, respectively. AmerenUE and AMEC both participated in the April 18, 2005 collaborative meeting, and both support the proposed modifications in Staff's written comments filed on May 6, 2005, with the exception of the additional provisions in subsections (1)(E) and (1)(G). KCPL also noted that it generally supports the proposed changes to rule 3.130 proposed by Staff in its

Appendix A, with the exception of Staff's proposed language in subsection (1)(A) regarding the need for a legal description.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the Staff's proposed additional changes to the version of rule 3.130 published in the *Missouri Register*, and with the exception of subsections (1)(A), (1)(E) and (1)(G), will adopt the additional changes proposed by Staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding subsections (1)(A), (1)(E) and (1)(G) are addressed by the Commission in the Responses provided below. Subsections will be relettered as a result of these changes.

COMMENTS: AmerenUE and AMEC, in their written comments, objected to proposed amended rule 3.130 subsection (1)(E). In AmerenUE's written comments it stated:

"The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by seeking information which 91.025, 393.106, 394.135 specifically provides is not to be considered in determining whether or not to approve a proposed customer exchange."

In AMEC's written comments it stated:

"The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by providing information which 91.025, 393.106, 394.135 specifically states is not to be considered in determining whether or not to approve a proposed customer exchange."

During the public hearing, Staff noted that subsection (1)(E) in particular would specifically require that information be provided that the Staff has been asked for in the past to provide to the press and to customers who have called the Staff regarding particular proceedings.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully considered the required provision proposed in subsection (1)(E) of Staff's Appendix A filed with their comments, and will not require that this information be provided in the filing requirements of rule 3.130. Staff and other parties can request this information through data requests if necessary, and this information is considered generally available with a minimum level of effort if needed. As noted by AmerenUE and AMEC, this information is not necessary for the Commission to reach its decision whether the proposed agreement is not detrimental to the public interest.

COMMENTS: AmerenUE and AMEC, in their written comments, objected to proposed amended rule 3.130 subsection (1)(G). In AmerenUE's written comments it stated:

"...applications for the approval of a proposed territorial agreement need not include a request from an IOU like AmerenUE to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed seeking approval of

proposed territorial agreement, then this provision is meaningless. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which requires [sic] the IOU to state what tax impact will have because of the transfer."

In AMEC's written comments it stated:

"...applications for the approval of a proposed territorial agreement need not include a request from an IOU to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed for approval of a proposed territorial agreement, then this provision is not relevant. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which require the IOU to state what the tax impact will be due to the transfer."

AMEC also stated in its written comments:

"Furthermore, AMEC believes that the Commission lacks the jurisdiction to require an electric cooperative to provide tax impact information, as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility."

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully considered the provision proposed in subsection (1)(G) of Staff's Appendix A filed with its comments, and will not require that this information be provided in the filing requirements of rule 3.130. Staff and other parties can request this information through data requests if necessary. The Commission believes that proposed amendment to rule 3.130, as revised by Staff's Appendix A, provides for sufficient initial discovery without this provision.

COMMENTS: KCPL, in its written comments filed on May 9, 2005, and at the hearing on May 18, 2005, commented that *"formal legal descriptions are unnecessary and onerous."* In its written comments KCPL stated: *"Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges and Sections by county."* KCPL further stated: *"KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest."* In the public hearing, Staff was questioned regarding the meaning of a *"legal description."* In response to these questions, Staff noted that the term *"legal description"* was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, Staff further responded: *"The point is we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line."* During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term *"legal description"* and stated: *"we are aware and understand that Staff and the Commission needs the necessary information to draw reliable lines on the map..."* KCPL further stated that it would be happy to submit draft alternative language regarding the term *"legal description."*

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully considered the use of the term *"legal description"* in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries, and will adopt the following change to the language proposed in subsection (1)(A) of Staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

“A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary including the legal description of the area that is the subject of the application or petition;”

4 CSR 240-3.130 Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas.

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for commission approval of territorial agreements and petitions for designation of electric service areas shall include:

(A) A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area that is the subject of the application or petition;

(B) A list of other electric utilities that serve in the affected area(s), if any;

(C) An illustrative tariff which reflects any changes in a regulated utility's operations or certification;

(D) An explanation as to why the territorial agreement is not detrimental to the public interest or the proposed electric service area designation(s) is in the public interest; and

(E) A list of all persons and structures whose utility service would be changed by the proposed agreement at the time of filing.

(2) If any of the information required by subsections (1)(A)–(E) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The application or petition shall be accompanied by an initial filing fee in the amount of five hundred dollars (\$500).

(4) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars (\$500). However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (5) of this rule.

(5) In addition to the filing fee, the fee for commission review is set at six hundred eighty-five dollars (\$685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars (\$685). There is an additional charge of three dollars and fifty cents (\$3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(6) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the electric territorial agreement or petition for designation of service areas. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(7) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.