



**Commissioners**  
**KELVIN L. SIMMONS**  
Chair  
**CONNIE MURRAY**  
**STEVE GAW**  
**BRYAN FORBIS**  
**ROBERT M. CLAYTON III**

## **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>**

**ROBERT J. QUINN, JR.**  
Executive Director  
**WESS A. HENDERSON**  
Director, Utility Operations  
**ROBERT SCHALLENBERG**  
Director, Utility Services  
**DONNA M. PRENGER**  
Director, Administration  
**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge  
**DANA K. JOYCE**  
General Counsel

**October 8, 2003**

**Mr. Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**  
**Missouri Public Service Commission**  
**P. O. Box 360**  
**Jefferson City, MO 65102**

**Re: Proposed Amendments to Rules 4 CSR 240-3.165, 4 CSR 240-3.245,**  
**4 CSR 240-3.335, 4 CSR 240-3.435, 4 CSR 240-3.540, and 4 CSR 240-3.640,**  
**Submission Requirements for Public Service Commission Annual Reports.**  
***No. AX-2004-0160***

**Dear Mr. Roberts:**

Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule or rules affect small businesses by causing a direct and significant economic burden, it must then prepare a small business impact statement for submission to the Secretary of State.

In consultation with the staff of the Public Service Commission, I have undertaken an analysis of whether the proposed rule modifications updating the Commission's annual report submission regulations affect small businesses. I have determined that the proposed rule modifications do not affect small businesses in a direct and significant manner, nor do they directly relate to the formation, operation or expansion of a small business.

The rule modifications listed above are designed to address, in a uniform fashion, changes to the Public Service Commission's annual report submissions for electric, gas, sewer, steam heating, telecommunications, and water utilities, respectively. The modifications update the Commission's rules to standardize terminology, take into account electronic filing options, clarify submission extension options, incorporate existing statutory penalty provisions, and clarify confidential treatment arrangements. As a matter of practice, the Commission has already

accepted and treated submissions in the manner outlined in the proposed modifications. None of these modifications will have any direct and significant economic burden upon small businesses. Therefore, preparation of a small business impact statement is not required in this matter.

Please let me know if you have any questions based upon the foregoing.

Sincerely,



David A. Meyer

Associate General Counsel

(573) 751-8706

(573) 751-9285 (Fax)



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4 CSR 240-3.335, 4 CSR 240-3.435, 4 CSR 240-3.540, and 4 CSR 240-3.640,  
Submission Requirements for Public Service Commission Annual Reports.  
*No. AX-2004-0160***

**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 a real property owner of all economically beneficial use of that real 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 modifications are designed to address, in a uniform fashion, changes to the Public Service Commission's Annual Report submissions for electric, gas, sewer, steam heating, telecommunications, and water utilities, respectively.

The proposed rule does not implicate the takings clause of the U.S. Constitution, because these rule modifications do not involve the taking of real property.

Please let me know if you have any questions on this issue.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "David A. Meyer". The signature is fluid and cursive, with the first name "David" being more prominent.

David A. Meyer  
Associate General Counsel  
(573) 751-8706  
(573) 751-9285 (Fax)

# MEMORANDUM

Dale Hardy Roberts, Secretary

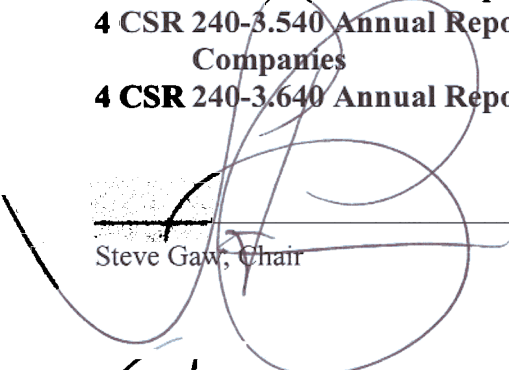
**DATE:** November 6, 2003

Authorization to File Proposed Rulemaking with the Office of Secretary of State

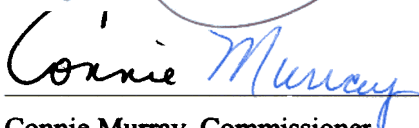
**CASE NO:** AX-2004-0160

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rulemakings with the Office of Secretary of State, to wit:

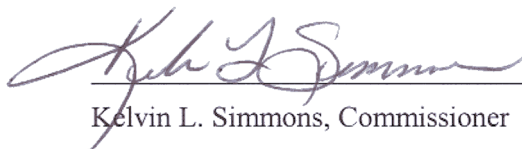
- 4 CSR 240-3.165 Annual Report Submission Requirements for Electric Utilities
- 4 CSR 240-3.245 Annual Report Submission Requirements for Gas Utilities
- 4 CSR 240-3.335 Annual Report Submission Requirements for Sewer Utilities
- 4 CSR 240-3.435 Annual Report Submission Requirements for Steam Heating Utilities
- 4 CSR 240-3.540 Annual Report Submission Requirements for Telecommunications Companies
- 4 CSR 240-3.640 Annual Report Submission Requirements for Water Utilities



Steve Gaw, Chair



Connie Murray, Commissioner



Kelvin L. Simmons, Commissioner



Bryan Forbis, Commissioner





**Commissioners**

**STEVE GAW**  
Chair

**CONNIE MURRAY**

**KELVIN L. SIMMONS**

**BRYAN FORBIS**

**ROBERT M. CLAYTON III**

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**November 7, 2003**

**ROBERT J. QUINN, JR.**  
Executive Director

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. PRENGER**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

**Missouri Small Business Regulatory Fairness Board**

c/o Mr. Joseph Driskill, Director  
Department of Economic Development  
301 West High Street  
Jefferson City, MO 65102

**Re: Small Business Impact Statement for the following rules:**

- 4 CSR 240-3.165, Annual Report Submission Requirements for Electric Utilities
- 4 CSR 240-3.245, Annual Report Submission Requirements for Gas Utilities
- 4 CSR 240-3.335, Annual Report Submission Requirements for Sewer Utilities
- 4 CSR 240-3.435, Annual Report Submission Requirements for Steam Heating Utilities
- 4 CSR 240-3.540, Annual Report Submission Requirements for Telecommunications Companies
- 4 CSR 240-3.640, Annual Report Submission Requirements for Water Utilities

**Dear Mr. Driskill:**

Executive Order 03-15 requires state agencies to determine whether implementation of a proposed rule making will have direct economic impact on small businesses. A small business is defined in the Executive Order as "a for-profit enterprise consisting of fifty (50) or fewer full or part-time employees." Pursuant to the order, the Commission has completed a "small business analysis" of the above referenced proposed amended rules. The following statement contains the Commission's determinations as required by the Executive Order:

- 1** Small utility companies will not be adversely affected by the rule amendments.
- 2.** The rule will apply to all electric, gas, sewer, steam heating and water utilities and telecommunications companies, as defined in Chapter 386 RSMo. (2000), and some of these entities meet the executive order's definition of "small business."
- 3** The Commission's Staff has determined that the level of costs will not increase as a result of these rule amendments.
- 4.** The Commission expects that neither it nor any other state agency will incur additional costs as a result of the implementation of the proposed rule.

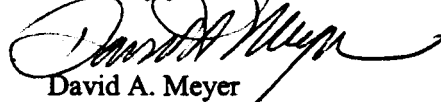
November 7, 2003

Page 2

5. Because it has determined that small businesses will not be adversely impacted by the rule the Commission found it unnecessary to make efforts to reduce the impact on small business.
6. The Commission invited all utilities to participate in a roundtable discussion hosted in Jefferson City in 2001 to address the topics encompassed by these rule amendments.
7. There is no comparable federal rule for the State's annual report submission requirements, but some of the annual report filings do relate to filings at federal regulatory agencies.

Please let me know if you have any questions concerning this proposed rule.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David A. Meyer", with a stylized flourish extending to the right.

David A. Meyer  
Associate General Counsel  
Missouri Public Service Commission  
(573) 751-8706  
(573) 751-9285 (Fax)

**MATT BLUNT**  
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 240-3.640  
 Diskette File Name Rule 3.640 Word 2000  
 Name of Person to call with questions about this rule: David Meyer  
 Content David Meyer Phone 573-751-8706 FAX 573-751-9285  
 Data Entry Tammy Vieth Phone 573-751-8377 FAX Same as above  
 Email Address davidmeyer@psc.state.mo.us  
 Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO  
 Statutory Authority 393.140, 386.250 Current RSMo date 2000  
 Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

**B. CHECK, IF INCLUDED:**

- |                                     |                            |                          |                                              |
|-------------------------------------|----------------------------|--------------------------|----------------------------------------------|
| <input checked="" type="checkbox"/> | This transmittal completed | <input type="checkbox"/> | Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> | Cover letter               | <input type="checkbox"/> | Authority with history of the rule           |
| <input checked="" type="checkbox"/> | Affidavit                  | <input type="checkbox"/> | Public cost                                  |
| <input type="checkbox"/>            | Forms, number of pages __  | <input type="checkbox"/> | Private cost                                 |
| <input type="checkbox"/>            | Fiscal notes               | <input type="checkbox"/> | Hearing and comment period                   |

### C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination  
**MUST include effective date**  
☒ Proposed Rulemaking (check one) ☐ rule ☒ amendment ☐ rescission  
☐ Order of Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination  
**MUST complete page 2 of this transmittal**  
☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency  
☐ Rule action notice  
☐ In addition  
☐ Rule under consideration

**D. SPECIFIC INSTRUCTIONS:** Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)

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**

**STEVE GAW**  
Chair

**CONNIE MURRAY**

**KELVIN L. SIMMONS**

**BRYAN FORBIS**

**ROBERT M. CLAYTON III**

**Missouri Public Service Commission**

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<http://www.psc.mo.gov>

November 6, 2003

**ROBERT J. QUINN, JR.**  
Executive Director

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. PRENGER**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

Hon. Matt Blunt  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt,

Re: Proposed Amendment to Rule 4 CSR 240-3.640  
Annual Report Submission Requirements for Water Utilities

**CERTIFICATION OF ADMINISTRATIVE RULE**

I hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission for filing on this 4th day of November 2003.

The Missouri Public Service Commission has determined and hereby certifies that this proposed amendment will not have an economic impact on small businesses. 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 amendment does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: Sections 386.250 and 393.140 RSMo 2000.

If there are any questions, please contact:

David Meyer, Associate General Counsel  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-8701, FAX (573) 751-9285  
[davidmeyer@psc.state.mo.us](mailto:davidmeyer@psc.state.mo.us)

BY THE COMMISSION

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

**AFFIDAVIT**

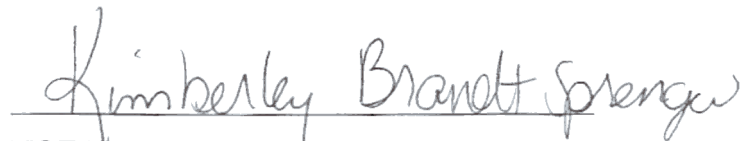
**STATE OF MISSOURI     )**  
**)**  
**COUNTY OF COLE        )**

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 Amendment of 4 CSR 240-3.640 Annual Report Submission Requirements for Water Utilities**, 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 31<sup>st</sup> day of October, 2003.  
I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on April 29, 2006.



NOTARY PUBLIC

KIMBERLEY BRANDT SPRENGER  
NOTARY PUBLIC STATE OF MISSOURI  
COLE COUNTY  
MY COMMISSION EXP. APR. 29, 2006

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

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COPY  
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SECRET

PROPOSED AMENDMENT

**4 CSR 240-3.640 Annual Report [Filing]Submission Requirements for Water Utilities.** The commission is proposing to amend the title of the rule, the purpose section of the rule and all existing sections of the rule, and to add four new sections to the rule and renumber the existing sections of the rule as needed.

*PURPOSE: The changes proposed in this amendment are intended to update the rule to comport with current commission procedures regarding the submission of annual reports by commission-regulated utilities. References to the commission's electronic information and filing system, and the use of that system, are also being added to the rule.*

*PURPOSE: Section 393.140(6), RSMo, includes an obligation for the commission to require every person and corporation under its supervision to submit an annual report to the commission. This rule establishes the standards for [filing]the submission of annual reports by water utilities that are subject to the jurisdiction of the [Missouri Public Service Commission]commission, including the procedures for [filing]submitting non-public annual report information[ under seal].*

(1) All water utilities *[subject to the jurisdiction of the Missouri Public Service Commission shall file]*shall submit an annual report *[with]*to the commission on or before April 15 of each year, except as otherwise provided for in this rule.

(2) Water utilities shall *[file]*submit their annual reports *[on ]*either on a form provided by the commission or on a computer-generated replica *[which]*that is acceptable to the commission. Reports being submitted on paper are to be prepared in loose-leaf format and sent to the attention of the secretary of the commission. Computer-generated reports can be submitted through the commission's electronic filing and information system (EFIS). Attempts to substitute forms such as stockholder reports without concurrently submitting official commission forms with appropriate cross-references will be considered non-compliant. All requested information shall be included in the annual report, where applicable, even if it has been provided in a previous annual report.

(3) A water utility that receives a notice from the commission stating that deficiencies exist in the information provided in the annual report shall respond to that notice within twenty (20) days after the date of the notice, and shall provide the information requested in the notice in its response.

*[(3) Where a]***(4) If a water utility subject to this rule considers the information requested on the annual report form to be [confidential, it must make a written request to the secretary of the commission to file that information under seal and state good cause for maintaining the information under seal. The secretary of the commission shall then, through the general counsel, present that request to the commission for approval. The secretary of the commission shall inform the utility within three (3) days of the commission decision whether the request has been granted.]non-public information, it must submit both a fully completed version to be kept under seal and a redacted public version that clearly informs the reader that the redacted information has been submitted as non-public information to be kept under seal. Submittals made under this section that do not include both versions will not receive confidential treatment and will be subject to public disclosure. In addition to the foregoing, submittals made under this section must meet the following requirements:**

(A) A cover letter stating that the utility is designating some or all of the information in its annual report as confidential information, and including the name, phone number and e-mail address (if available) of the person responsible for addressing questions regarding the confidential portions of the annual report, must be submitted with the reports;

(B) The cover of each version of the report must clearly identify whether it is the public or non-public version;

(C) A detailed affidavit that identifies the specific types of information to be kept under seal, provides a reason why the specific information should be kept under seal and states that none of the information to be kept under seal is available to the public in any format must be prominently attached to both versions of the report; and

(D) Each page of each version of the report that contains non-public information shall be clearly identified as containing such information.

(5) If an entity asserts that any of the information contained in the non-public version of the annual report should be made available to the public, then that entity must file a pleading with the commission requesting an order to make the information available to the public, and shall serve a copy of the pleading on the utility affected by the request. The pleading must explain how the public interest is better served by disclosure of the information than the reason provided by the utility justifying why the information should be kept under seal. The utility affected by the request may file a response to a pleading filed under these provisions within ten (10) days after the filing of such a pleading. Within five (5) business days after the due date for the filing of the utility's response to a request filed under these provisions, the general counsel by filing of a pleading will make a recommendation to the commission advising whether the request should be granted.

~~[(4)]~~(6) A water utility ~~[which]~~that is unable to meet the ~~[filing]~~submission date established in section (1) of this rule ~~[shall make a written request to extend the filing date for its annual report to the secretary of the commission and state the reason for the extension request. The secretary of the commission, through the chief administrative law judge, shall present the report to the commission for approval. The secretary of the commission shall inform the utility in writing within three (3) days of the decision of the commission.]~~may obtain an extension of up to thirty (30) days for submitting its annual report by:

(A) Submitting a written request, which states the reason for the extension, to the attention of the secretary of the commission prior to April 15; and

(B) Certifying that a copy of the written request was sent to all parties of record in pending cases before the commission where the utility's activities are the primary focus of the proceedings.

(7) A water utility that is unable to meet the submission date established in section (1) of this rule may request an extension of greater than thirty (30) days for submitting its annual report by:

(A) Filing a pleading, in compliance with the requirements of Chapter 2 of 4 CSR 240, which states the reason for and the length of the extension being requested, with the commission prior to April 15; and

(B) Certifying that a copy of the pleading was sent to all parties of record in pending cases before the commission where the utility's activities are the primary focus of the proceedings.

(8) Responses to deficiency notices under the provisions of section (3) of this rule, requests for confidential treatment under the provisions of section (4) of this rule, pleadings requesting public disclosure of information contained under seal under the provisions of section (5) of this rule, and requests for extensions of time under the provisions of sections (6) or (7) of this rule may be submitted through the commission's electronic filing and information system (EFIS).

(9) A water utility that does not timely file its annual report, or its response to a notice that its annual report is deficient, is subject to a penalty of one hundred (\$100) dollars and an additional

penalty of one hundred (\$100) dollars for each day that it is late in filing its annual report or its response to a notice of deficiency.

***AUTHORITY:*** sections 386.250 and 393.140, RSMo 2000.\* Original rule filed Aug. 16, 2002, effective April 30, 2003.

***\*Original authority:*** 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, RSMo 1939, amended 1949, 1967.

***PUBLIC COST:*** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

***PRIVATE COST:*** This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

***NOTICE TO SUBMIT COMMENTS:*** Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices within thirty (30) days of publication in the Missouri Register, and should include a reference to Commission Case No. AX-2004-0160. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. No public hearing is scheduled.