

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-13.030

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

Name of person to call with questions about this rule:

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Data

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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:

Sections (1), (2), and (4)

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON  
ADMINISTRATIVE RULES  
DEC 04 2013



Commissioners  
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Chairman  
STEPHEN M. STOLL  
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***Missouri Public Service Commission***

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

Re: 4 CSR 240-13.030 Deposits and Guarantees of Payment

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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Morris L. Woodruff  
Chief Regulatory Law Judge

**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**

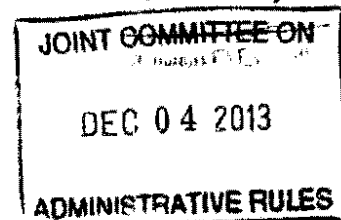
**ORDER OF RULEMAKING**

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 240-13.030 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 1367). 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 Lingum, 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:** Public Counsel proposes a slight change of language in subsection (1)(A). It would replace the words "an unpaid bill" with "a past-due bill." Public Counsel proposes that change so that it is clear that the utility can require a deposit because an applicant for service has a past-due bill, not just because of the applicant has an unpaid bill that is not yet due.

**RESPONSE AND EXPLANATION OF CHANGE:** Public Counsel's proposed change is helpful and will be adopted.

**COMMENT:** The commission proposes to modify subsection (1)(C) in a way that would modify the utilities' ability to use an applicant's credit score when deciding whether to require the applicant to post a deposit before establishing utility service. The current rule allows a utility to establish an acceptable credit rating under standards contained in the utility's tariff. However, the rule also allows the applicant to *prima facie* establish an acceptable credit rating if he or she 1) owns or is purchasing a home; 2) is and has been regularly employed on a full-time basis for at least one year; 3) has a regular source of income; or 4) can provide adequate credit references from a commercial credit source.

The amended rule as published in the Missouri Register would retain the four alternative criteria for establishing an acceptable credit rating, but would allow applicants the use of those criteria only if they have an insufficient credit history to determine a credit score. Applicants for whom the utility could obtain a credit score would be bound by that credit score with no alternative means of establishing an acceptable credit rating.

The utilities that require deposits from applicants for service prefer to use what they believe to be the more definite criteria of a credit score when deciding which applicants must post a deposit. They contend an applicant's credit score is a very reliable indicator of that applicant's likely willingness or ability to pay their utility bill. They argue that the *prima facie* indicators of credit worthiness as used in the existing rule are more subjective and less reliable indicators of willingness or ability to pay.

The utilities would modify the rule further by specifically recognizing a utility's right to use credit scoring to determine an acceptable credit rating. Under

their proposal, applicants would be allowed to rely on the four *prima facie* indicators of credit worthiness only if the utility has no tariffed standards. Applicants who have no credit score would be deemed to have failed to establish an acceptable credit rating and presumably would be required to post a deposit.

The AARP group, Public Counsel, and other consumer oriented commenters are opposed to the use of credit scoring in determining which applicants for utility service will be required to post a deposit. They are concerned that deposit requirements can make it very difficult for low income people to obtain utility service. Such applicants may be able to pay their monthly bills, but would have a great deal of difficulty in coming up with the extra cash to post a deposit. They worry that credit scores may be overly rigid and as a result may not present a true picture of an applicant's ability or willingness to pay their utility bills. In general, the consumer oriented commenters would prefer to err on the side of allowing people to obtain needed utility service without facing the barrier imposed by a deposit requirement.

**RESPONSE:** Utilities and their customers, who ultimately must pay for a utility's bad debt, have a legitimate interest in ensuring that new applicants for utility service are able and willing to pay for that service. One way utilities can protect that interest is by requiring a deposit from those customers who may have difficulty in paying their utility bills. The use of a credit score to determine the need for such a deposit is a fair and objective means of making that determination. Other provisions of the rule place limits on the amount of those deposits and allow a customer to pay the deposit in installments. As a result, the requirement of a deposit should not be an insurmountable barrier to obtaining utility service. However, the *prima facie* indicators of credit worthiness contained in the rule should still be available for use by those few customers who do not have a credit score. For that reason, the commission will not modify the rule as proposed by the Missouri Utilities. The revisions as published in the Missouri Register will be retained.

**COMMENT:** Public Counsel also offers a more general comment about utility credit standards. Public Counsel explains that the current regulation allows utilities to establish their own acceptable credit rating within their own tariffs. Public Counsel suggests the commission should instead establish a uniform credit standard that would apply to all utilities and all ratepayers.

**RESPONSE:** While the regulation allows utilities to establish their own acceptable credit ratings within their tariffs, the commission still has authority to control the contents of those tariffs by suspending or rejecting proposed tariff changes. Nevertheless, Public Counsel's desire for a uniform standard may have merit. The commission cannot create such a standard on the fly at this stage of the rulemaking process. But, if Public Counsel, or any other interested person, is interested in further examining that possibility, they are welcome to file an appropriate petition for rulemaking to bring the matter before the commission.

**COMMENT:** Public Counsel questions the revised language of subsection (2)(C), complaining that the language is unclear. Rick Zucker, representing Laclede Gas Company agreed that the language was unclear, but pointed out that the intent of the new language was to mirror the language of a statute, Section 393.152,RSMo (Supp. 2012). Zucker advised the Commission to closely examine the statute to be sure the language of the regulation does indeed match that of the statute.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission has examined the statute and confirms that the language of the regulation matches that of statute. The confusion comes from some missing context in the regulation. The first part of the subsection, the existing regulation, allows a utility to require a deposit from an existing customer that has failed to pay their bill in five of the previous twelve months. The statute creates an exception that forbids the utility to require a deposit if the customer has made partial payments on his or her bill during that period. That is the exception that the rule revision is attempting to incorporate.

The problem is some missing words after the phrase "notwithstanding the foregoing" that would make it clear that the new language is an exception to the utilities' right to impose a deposit on a customer. That problem can be corrected by inserting "a utility may not require a deposit from a customer if". The rule would then read "Notwithstanding the foregoing; a utility may not require a deposit from a customer if such customer has consistently made a payment ...."

**COMMENT:** The commission has proposed to modify subsection (4)(A). The current regulation limits an allowable deposit to an amount two times the customer's highest bill. The revised regulation, as published in the Missouri Register, would add an alternative to allow a utility to require a deposit in an amount four times the customer's average bill. The utility would choose which measurement to apply in its tariff.

The AARP Group, Public Counsel and Jacqueline Hutchinson suggest that the regulation be modified to allow the utility to charge two times the highest bill, or four times the average bill, whichever results in a smaller deposit. In response, Rick Zucker, representing Laclede Gas Company, explained that the alternative language was added to the rule to accommodate the computer systems of different utilities. He indicated Laclede's computer could determine an amount four times an average bill, but could not reliably determine a maximum bill. Another utility's computer might have the opposite weakness. As a result, the alternative measures are not meant to create a comparison between the two to determine either a higher or lower deposit amount. Requiring such a comparison would, in fact, eliminate the reason for creating the alternative measures.

**RESPONSE:** The commission agrees with Mr. Zucker's explanation and will not modify the rule as proposed by the AARP Group, Public Counsel and Jacqueline Hutchinson.

**COMMENT:** Subsection (4)(G) establishes requirements for a utility to return a deposit to a customer even if the customer cannot produce an original receipt for the payment of the deposit. The proposed revision published in the Missouri Register would modify the language of the section to make it more readable and would impose a five year limitation on the requirement to refund a deposit to a customer who cannot produce an original receipt. Public Counsel objects to the five year limitation and would add an affirmative requirement that the utility make all reasonable efforts to return a deposit to its customer when the customer is entitled to the return of their deposit.

**RESPONSE AND EXPLANATION OF CHANGE:** The five-year limitation contained in this subsection is quite narrow and in this context is reasonable. The five year limitation does not allow a utility to keep a deposit after five years in all circumstances. Instead, the five year limitation applies only when the customer cannot produce a receipt for the payment of the deposit. The previous subsection of the rule, (4)(F) requires the utility to give its customer such a receipt unless the existence of a deposit is tracked on the customer's bill. Thus, the five-year limitation comes into play only if the customer cannot produce a receipt and the deposit is not tracked on the customer's bill. In that circumstance, the five-year limitation is a reasonable protection for the utility against unverifiable claims for the return of a deposit.

The second part of Public Counsel's comment is more persuasive. A review of the entire regulation reveals that there is no requirement placed on a utility to affirmatively attempt to return a deposit to a customer. Subsection (4)(G) is not the best place to impose such a requirement. Rather, subsection (4)(B) currently requires the utility to keep records of efforts to return deposits. The commission will insert a requirement that the utility make all reasonable efforts to return deposits to customers in subsection (4)(B).

**COMMENT:** Public Counsel indicated its opposition to any comment by the utilities that would ask the commission to modify the rule to allow the utilities to deny customers the ability to pay a required deposit in installments if the customer does not have an acceptable credit rating.

**RESPONSE:** No commenter offered such a proposal and the commission will not make such a modification.

#### **4 CSR 240-13.030 Deposits and Guarantees of Payment**

(1) A utility may require a deposit or other guarantee as a condition of new residential service if:

(A) The applicant has a past-due bill, which accrued within the last five (5) years and, at the time of the request for service, remains unpaid and not in dispute with a utility for the provision of the same type of service;

(2) A utility may require a deposit or guarantee as a condition of continuing or re-establishing residential service if:

(C) The customer has failed to pay an undisputed bill on or before the delinquent date for five (5) billing periods out of twelve (12) consecutive monthly billing periods, or two (2) quarters out of four (4) consecutive quarters. Prior to requiring a customer to post a deposit under this subsection, the utility shall send the customer a written notice explaining the utility's right to require a deposit or include such explanation with each written discontinuance notice. Notwithstanding the foregoing, a utility may not require a deposit from a customer if such customer has consistently made a payment for each month during the twelve consecutive months, provided that each payment is made by the delinquent date; and each payment made is at least \$75 or 25% of the total outstanding balance, provided that the total outstanding balance is \$300 or less. This provision shall not apply to any customer whose total outstanding balance exceeds \$300 or to any customer making payments under a payment plan previously arranged with the utility.

(4) A deposit shall be subject to the following terms:

(B) It shall bear interest at a rate specified in the utility's commission-approved tariffs, which shall be credited annually to the account of the customer or paid upon the return of the deposit to the customer, whichever occurs first. Interest shall not accrue on any deposit after the date on which a reasonable effort has been made to return it to the customer. The utility shall make all reasonable efforts to return a deposit to its customer when the customer is entitled to the return of their deposit and shall keep records of efforts to return a deposit. This rule shall not preclude a utility from crediting interest to each service account during one (1) billing cycle annually;