

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-3.135

Diskette File Name Amended 3.135

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

RULE TRANSMITTAL (PAGE 2)

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.

SEE ATTACHMENT.

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.

Rule 3.135

Published Title of Rule – Some language has been added and deleted.

Published Rule Purpose Statement – Some language has been added and deleted.

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

Published subsection (1)(A) – Substituted “requested relief” for “annexation”.

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

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

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

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

Published subsection (1)(H) - Added the word “and” at the end.

Published subsection (1)(I) – This subsection was deleted and the subsequent subsection relettered.

Published subsection (1)(J) – Language was added and deleted for clarification.

Published section (2) – Changed reference to subsection “J” to “I”.

New section (3) – Inserted new section (3) and new subsections (3)(A) through (3)(E).

New section (4) – Inserted new section (4) for clarification.

Published section (3) – Language has been added and deleted for clarification before renumbering this to section (5).

Published section (4) – Language has been added and deleted for clarification before renumbering this to section (6).

Published section (5) - Deleted “annexation related” and renumbered to section (7).

Published section (6) – The word “will” has been changed to “may” and the section has been renumbered to section (8).

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



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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August 8, 2005

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

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

Dear Secretary Carnahan,

RE: 4 CSR 240-3.135 – Filing Requirements and Schedule of Fees Applicable to Applications for Post-Annexation Assignment of Exclusive Service Territories and Determination of Compensation

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 240-3.135 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 240-3.135 (rule 3.135), the nature and purpose of changes Staff proposed to the rule 3.135 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 regarding the reporting of tax impacts in proposed subsection (3)(E). It is Staff's impression that the Commission has requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENT: In its comments filed on May 6, 2005, Staff filed its recommended changes to the version of rule 3.135 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the collaborative meeting held on April 18, 2005. 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 objection raised by parties at the collaborative meeting was in regard to new subsection (3)(E), as provided in Staff's Appendix A in its May 6, 2005 comments, which requires reporting of tax revenue impact. KCPL participated in the collaborative meeting held on April 18, 2005 and supported the proposed modifications subsequently set out in Staff's May 6, 2005 written comments, with the exception of the provisions in subsections (1), (1)(B), (1)(D), (3), and (3)(C). AMEC also noted that it generally supports the proposed changes to rule 3.135 proposed by Staff and subsequently included in its Appendix A, with exception to Staff's proposed language in subsection (3)(E).

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the Staff's proposed additional changes to the version of rule 3.135 published in the *Missouri Register*, and with exception of subsections (1), (1)(B), (1)(D), (3), (3)(C), and (3)(E), will adopt those additional changes proposed by Staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding subsections (1), (1)(B), (1)(D), (3), (3)(C), and (3)(E) are addressed by the Commission in the Responses provided below.

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended rule 3.135 subsection (1). KCPL's written comments state: "*As one reads the Post-Annexation Rule, it becomes apparent that the applications being discussed in Section (1) of the rule are those to be submitted by municipal electric utilities. Nonetheless, KCPL believes that the rule would be clearer if the rule stated this fact expressly in the first sentence of the Section, as the rule does with respect to Section (3), which applies to electric suppliers. KCPL therefore respectfully requests that the MPSC revise Section (1) of the Post-Annexation Rule to clarify expressly that the section applies to municipal electric utilities.*"

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully reviewed subsection (1) of Staff's Appendix A and finds that revising the text of subsection (1) to clarify that this subsection applies to municipally owned electric utility applications is appropriate and will make this change to the proposed rule amendment.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public 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.*" KCPL stated: "*We are aware and understand the 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)(B) of Staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary 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.”

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended rule 3.135 subsections (1)(D) and (3)(C). KCPL’s written comments state: *“Section (3)(C) of the Post-Annexation Rule provides that an affected electric supplier must provide its estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation.”* KCPL is concerned that this language, as well as the corresponding provision contained in Section (1)(D) of proposed amended rule 3.135 is unclear and potentially confusing. KCPL therefore requests that the MPSC revise Section (3)(C) of the proposed amended rule to clarify the information that the MPSC intends to require. KCPL further requests that the MPSC make comparable changes to Section (1)(D).

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully reviewed subsection (1)(D) and (3)(C) of Staff’s Appendix A and believes this concern has been addressed in Staff’s testimony at the hearing. At the May 18, 2005 hearing, Staff stated that: *“... this section reasonably points to the provisions of Revised Statutes of Missouri 386.800, Section 5, which authorizes the request for this information.”* The Commission believes the language addresses statutory requirements, is consistent with these requirements, and should remain in these subsections in the form proposed by Staff.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented on the proposed amended rule 3.135 subsection (3). KCPL’s written comments state: *“Section (3) of the proposed Post-Annexation Rule provides that the electric suppliers must submit certain information to the MPSC within ten (10) days of receiving notice from the MPSC of a municipality’s application for an exclusive service territory and a determination of compensation. KCPL is concerned that ten (10) days is not a sufficient amount of time for electric suppliers to provide the required information.”* KCPL additionally stated that it *“respectfully requests that the MPSC grant electric suppliers twenty business days to provide the information required by Section (3) of the proposed Post-Annexation Rule.”*

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully reviewed subsection (3) of Staff’s Appendix A and believes this is a valid concern that has been agreed upon by all parties based on testimony at the May 18, 2005 hearing. At the hearing, Staff Witness Wood indicated that Staff had no objections to the revision, but noted a one hundred twenty (120)-day statutory limit regarding these provisions and that this additional time further reduces the time for other parties to do their work, as well as the time for the Commission to formulate an Order. The Commission believes that changing this language from ten (10) days to twenty (20) days will not greatly affect the timeline for processing cases under this rule; thus, the rule will be changed to incorporate the twenty (20)-day deadline.

COMMENT: AMEC, at the public hearing on May 18, 2005, objected to proposed amended rule 3.135 subsection (3)(E). At the hearing, AMEC representative Lisa Chase indicated that,

notwithstanding its omission of the case number for rule 3.135 when it filed its comments, AMEC was equally concerned with subsection (3)(E), as it was with Section 4 CSR 240-3.130(1)(G) in Case No. EX-2003-0371. Ms. Chase addressed AMEC's concerns over the statement of tax impact in this section by stating: "*The Commission lacks jurisdiction to require rural electric cooperatives 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 (3)(E) of Staff's Appendix A and will not require that this information be provided in the filing requirements of rule 3.135. Staff and other parties can request this information through data requests if necessary. The Commission believes that the Commission's proposed amendment to rule 3.135, as revised by Staff's Appendix A, provides for sufficient initial discovery without this provision. The subsections will be renumbered as a result of this change.

4 CSR 240-3.135 Filing Requirements and Schedule of Fees Applicable to Applications for Post-Annexation Assignment of Exclusive Service Territories and Determination of Compensation.

PURPOSE: This rule establishes the requirements that must be met and a schedule of fees for applications to the commission for post-annexation assignment of exclusive service territories and determination of compensation. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).

(1) In addition to the requirements of 4 CSR 240-2.060(1), municipally owned electric utility applications for post-annexation assignment of exclusive service territories and determination or compensation shall include:

- (A) An explanation as to why the requested relief is in the public interest;
- (B) A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary 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;
- (C) The electric rates that will be charged if the proposed change of supplier is allowed;
- (D) The municipal electric utility's estimate of the fair and reasonable compensation to be paid to the affected electric supplier for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;
- (E) Any effect on the municipal electric utility's system operation, including, but not limited to, how the increased load will be served;
- (F) Any power contracts that the municipality has agreed to with the affected electric supplier to serve the annexed area;
- (G) Any issues on which the municipally owned electric utility and the affected electric supplier agree;
- (H) A copy of the newspaper notification, as well as notifications sent to any affected supplier; and

(I) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(2) If any of the information required by subsections (1)(A)–(I) 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 commission shall notify the affected electric suppliers within ten (10) days of receipt of an application from a municipally owned electric utility and, that the affected electric suppliers are made parties to the proceeding and shall file with the commission within twenty (20) days of the notice the following information:

(A) A response to the applicant's requested relief;

(B) The current electric rates that are charged in the proposed exclusive electric service territory;

(C) The electric supplier's estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(D) Any effect on the electric supplier's system operation, including, but not limited to, loss of load and loss of revenue; and

(E) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(4) If any of the information required by subsections (3)(A)–(E) of this rule is unavailable within twenty (20) days of the notice, the responsive pleading must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished.

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

(6) In addition to the filing fee, the fee for commission review of the application 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.

(7) 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 application. 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.

(8) 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.