

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-10.075

COPY

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

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address Christine.koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Fl., Gov. Ofc. Bldg., JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date
 Proposed Rulemaking
 Withdrawal Rule Action Notice In Addition Rule Under Consideration
 Request for Non-Substantive Change
 Statement of Actual Cost
 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:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

OCT 05 2017

ADMINISTRATIVE RULES



Commissioners

DANIEL Y. HALL
Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

SCOTT T. RUPP

MAIDA J. COLEMAN

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>

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

October 5, 2017

John R. Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-10.075 Staff Assisted Rate Case Procedure

Dear Secretary Ashcroft,

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.

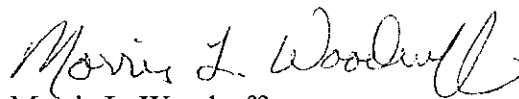
The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law.

The Public Service Commission has determined and hereby also certifies that if the proposed rulemaking does affect small business pursuant to sections 536.300 to 536.310, RSMo, a small business impact statement has been filed as required by those sections. If no small business impact statement has been filed the proposed rulemaking either does not affect small business or the small business requirements do not apply pursuant to section 536.300.4, RSMo.

Statutory Authority: section 386.040, 386.250, 393.140 and 393.290, RSMo 2000, and 393.291, RSMo Supp. 2007.

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

Morris Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
Morris.Woodruff@psc.mo.gov

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, looping initial "M".

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

September 18, 2017

Daniel Hall
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

Dear Chairman Hall:

This office has received your rulemaking for staff assisted rate case procedure, 4 CSR 240-10.075 (new) and 4 CSR 240-3.050 (rescission).

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations. After our review of this rulemaking, we approve the rules' submission to JCAR and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin D. Smith", written over a horizontal line.

Justin D. Smith
Deputy Counsel

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rules of
Department of Economic Development
Division 240 - Public Service Commission
Chapter 10 - Utilities

COPY

PROPOSED RULEMAKING

4 CSR 240-10.075 Staff Assisted Rate Case Procedure

PURPOSE: This rule prescribes the process to be followed when the Commission processes a utility rate case for certain small utilities.

(1) Definitions. As used in this rule, the following terms mean:

(A) A small utility means a gas utility serving ten thousand (10,000) or fewer customers, a water or sewer utility serving eight thousand (8,000) or fewer customers, or a steam utility serving one hundred (100) or fewer customers.

(B) A disposition agreement is a document that sets forth the signatories' proposed resolution of some or all of the issues pertaining to a small utility rate case.

(2) This rule describes the process for small utility rate cases.

(A) In addition to the commission's provisions regarding dismissal of a case in 4 CSR 240-2.116, the commission may dismiss a small utility rate case at any time if—

1. The utility is not current on the payment of all of its commission assessments;
2. The utility fails to submit its annual report or annual statement of operating revenue; or
3. The utility is not in good standing with the Missouri Secretary of State, if applicable.

(3) Commencement. A small utility rate case may be commenced by—

JOINT COMMITTEE ON

OCT 05 2017

ADMINISTRATIVE RULES

(A) A letter received by the secretary of the commission from a small utility stating the amount of the requested increase in its overall annual operating revenues;

1. Any such letter need not be accompanied by any proposed tariff revisions.

2. Upon receipt of the letter, the secretary of the commission will cause a rate case to be opened and will file a copy of the letter in that case.

3. At any time before day one hundred fifty (150) of the timeline described in subsection (5) of this rule, the utility may submit to the secretary of the commission a letter withdrawing its previous request for an increase in its annual operating revenues. Upon receipt of such a letter, the secretary of the commission will close the rate case.

(B) A complaint filed by staff or by any eligible entity or entities pursuant to section 386.390.1, RSMo., or section 393.260.1, RSMo.

(C) A proposed tariff stating a new rate or charge filed by a small utility pursuant to section 393.150.1, RSMo.

(4) Staff will assist a small utility in processing a small utility rate case insofar as the assistance is consistent with staff's function and responsibilities to the commission.

(5) Rate Case Timeline. Within one (1) week after a small utility rate case is opened, staff will file a timeline under which the case will proceed, specifying due dates for the activities required by this rule.

(A) Staff and the utility may agree in writing that the deadlines set out in the rate case timeline be extended for up to thirty (30) days. If an extension is agreed upon, staff shall file the agreement and an updated timeline reflecting the extension in the case file.

(6) Local public hearing. A local public hearing shall be scheduled to occur no later than sixty (60) days after the opening of the case unless Staff files a notice in the case stating that all parties agree a local public hearing is not necessary.

(7) Notice. At least ten (10) days prior to a local public hearing, or upon the filing of a notice that a local public hearing is not necessary, the utility shall mail a written notice, as approved by staff and the office of the public

counsel (OPC), to its customers stating–

(A) The time, date, and location of the local public hearing, consistent with the order setting the hearing, if applicable;

(B) A summary of the proposed rates and charges, the effect of the proposed rate increase on an average residential customer's bill, and any other company requests that may affect customers, if known;

(C) An invitation to submit comments about the utility's rates and quality of service within thirty (30) days after the date shown on the notice and instructions as to how comments can be submitted electronically, by telephone, and in writing; and

(D) Instructions for viewing the publicly available filings made in the case via the commission's electronic filing system.

(E) Staff will file a copy of the notice in the case file.

(8) Investigation and audit. After a small utility rate case is opened, the staff shall, and the public counsel may, conduct an investigation of the utility's request.

(A) This investigation may include a review of any and all information and materials related to the utility's cost of providing service and its operating revenues, the design of the utility's rates, the utility's service charges or fees, all provisions of the utility's tariffs, and any operational or customer service issues that are discovered during the investigation. The Staff's audit and investigation will follow Staff internal procedures designed to ensure reasonable consistency in the recommended rate treatment of the utility's rate base, revenue and expenses with that of other similarly situated utilities.

(B) The investigation may include a review of the records generated since the utility's previous rate case, the case in which the utility was granted its Certificate of Convenience and Necessity, or the utility's transfer of assets case, whichever is most recent.

(C) If an investigation of the utility's request includes the submission of data request to the utility, copies of the data requests shall be provided to all parties to the case when they are submitted to the utility.

(D) The investigation shall include an update of the utility's rate base.

(E) In determining the utility's cost of service, the value of normal

expense items and plant-in-service and other rate base items, for which documentation is not available, may be based upon such evidence as is available or may be estimated in order to include reasonable levels of those costs. Unusual expense or rate base items, or expense or rate base items for which the utility claims unusual levels of cost may require additional support by the utility. Nothing in this section diminishes the utility's obligation to adhere to the Commission's rules regarding appropriate record-keeping.

(F) Not later than ninety (90) days after a small utility rate case is opened, the staff, and the public counsel if conducting its own investigation, shall provide to all parties, a report of its preliminary investigation, audit, analysis, and workpapers including:

1. An evaluation of the utility's record-keeping practices; and
2. A list of the cost of service items that are still under consideration with an explanation for why those items are not yet resolved.

(9) Settlement proposals.

(A) Staff's confidential settlement proposal. Not later than one hundred twenty (120) days after a small utility rate case is opened, staff, and the public counsel if conducting its own investigation, shall provide to all parties to the case, a confidential settlement proposal as follows.

1. Staff's settlement proposal will address the following subjects:
 - A. The utility's annual operating revenues;
 - B. The utility's customer rates;
 - C. The utility's service charges and fees;
 - D. The utility's plant depreciation rates;
 - E. The utility's tariff provisions;
 - F. The operation of the utility's systems; and
 - G. The management of the utility's operations.
2. Staff's settlement proposal will include the following documents:
 - A. Draft revised tariff sheets reflecting the settlement proposal;
 - B. A draft disposition agreement reflecting the settlement proposal;
 - C. Staff's updated workpapers; and
 - D. Any other documents supporting the staff's settlement proposal.
3. OPC's settlement proposal will address the following subjects:

- A. The utility's annual operating revenues; and
- B. The utility's customer rates.
- C. If applicable, the utility's service charges and fees; and
- D. The utility's plant depreciation rates.

4. OPC's settlement proposal will include the following documents:
- A. OPC's updated workpapers; and
 - B. Any other documents supporting OPC's settlement proposal.

(B) Any settlement proposal, including any draft disposition agreement, and all supporting documents attached thereto are strictly intended for settlement negotiations only. If staff and the utility are unable to reach a full or partial settlement via disposition agreement, neither party is bound to any position stated or implied by the settlement proposal, draft disposition agreement, or supporting documents provided.

(C) Not later than ten (10) days after staff provides its settlement proposal, the public counsel, the utility, and any other parties to the case shall notify staff whether they agree with the proposal or, if not, provide any suggested changes and the reasoning for those changes to the parties. Any party suggesting changes shall provide to all other parties any audit workpapers, rate design workpapers, or other documents in its possession that support its suggestions.

(10) At any time prior to the filing of a disposition agreement, any party may request the assigned regulatory law judge meet with the participants and mediate discussions to assist them in reaching at least a partial agreement.

(11) Disposition agreement.

(A) Not later than one hundred fifty (150) days after a small utility rate case is opened, staff shall file one of the following:

1. A disposition agreement between at least staff and the utility providing for a full resolution of the small utility rate case;

2. A disposition agreement between at least staff and the utility providing for a partial resolution of the small utility rate case and a motion requesting that the case proceed to an evidentiary hearing; or

3. A motion stating that agreements cannot be reached on any of the issues related to the small utility rate case and asking that the case proceed to an evidentiary hearing.

(B) If the disposition agreement provides for a full resolution of the small utility rate case and is executed by all parties, the utility will submit to the commission, within five (5) business days of staff's filing, new and/or revised tariff sheets bearing an effective date of not fewer than thirty (30) days later, to implement the agreement.

(C) If the disposition agreement filed by staff provides for a full resolution of the small utility rate case but is not executed by all parties, the utility will submit to the commission concurrent with staff's filing new and/or revised tariff sheets, bearing an effective date that is not fewer than forty-five (45) days after they are filed, to implement the agreement.

(D) No later than five (5) business days after the filing of a full or partial disposition agreement that is not executed by all parties, each non-signatory party shall file a pleading stating its position regarding the disposition agreement and the related tariff revisions and providing the reasons for its position. If the non-signatory party intends to ask that the case be resolved by evidentiary hearing, it must do so in this pleading. If a disposition agreement is not executed by all parties, and a hearing is requested, then no party is bound to any position stated or implied by the disposition agreement or supporting documents if the company determines it no longer wants to pursue positions in the disposition agreement.

(E) If any party requests an evidentiary hearing where the disposition agreement filed by staff provides for a full resolution of the small utility rate case and is executed by at least the utility and staff, either the utility or staff may present evidence in support of the disposition agreement.

1. If the utility requests to be excused from participating as a party in such an evidentiary hearing through a utility representative's affidavit submitted by Staff or a motion submitted by the utility, the regulatory law judge may grant that request and issue a notice in the case file that the request has been made and granted. However, representatives of the utility may still be called as witnesses by other parties.

(12) Evidentiary hearing procedures.

(A) Any party may file a request for an evidentiary hearing. A request for an evidentiary hearing shall include a specified list of issues that the requesting party believes should be the subject of the hearing.

(B) Once such a request is filed, the regulatory law judge will issue a procedural schedule designed to resolve the case in the time remaining in

the small utility rate case process, consistent with the requirements of due process and fairness to the parties and the utility's customers and will suspend the utility's pending tariff revisions, if any, pending completion of the hearing.

(13) The small utility rate case shall be wholly submitted to the commission for decision not later than two hundred forty (240) days after the small utility rate case is opened in order for the commission's report and order regarding the case to be effective not later than two hundred seventy (270) days after the small utility rate case is opened.

(14) The commission must set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease.

(15) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown.

AUTHORITY: sections 386.040, 386.250, 393.140 and 393.290, RSMo 2000, and 393.291, RSMo Supp. 2007. Original rule filed Nov. 15, 2007, effective May 30, 2008.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 393.140, RSMo 1939, amended 1949, 1967; 393.290, RSMo 1993, amended 1967; and 393.291, RSMo 2003.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions in excess of \$500.00 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities in excess of \$500.00 in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of, or in opposition to, this proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before December 15, 2017, and should include a reference to Commission Case No. AX-2018-0050. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for December 21, 2017, at 10:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to Commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers:

Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: August 22, 2017

Rule Number: 4 CSR 240-10.075

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427 Email: natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

The Commission is rescinding 4 CSR 240-3.050 and proposing new rule 4 CSR 240-10.075. The Commission received informal comments on June 1, 2017 and July 10, 2017 and held a workshop to address concerns raised by stakeholders.

Please explain how your agency has involved small businesses in the development of the proposed rule.

Workshops were open to all interested stakeholders. Representatives of small water and sewer companies participated.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

It is anticipated the proposed rule and associated rescission will result in a net benefit to small businesses since they are designed to reduce the regulatory burdens of the current process, remove any incentives to unnecessarily delay the process, and reduce rate case expense that will be borne by ratepayers, including ratepayers that are small businesses.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Small water and sewer utilities that request to use the Staff-assisted rate case process will be required to comply. No adverse impact is expected.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

None identified.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Small utilities regulated by the Commission, business owners that are ratepayers of those utilities.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No_X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.