MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: September 7, 2004

RE: Authorization to File Amended Order of Rulemaking for 4 CSR 240-13.055, the Cold Weather Rule, with the Office of the Secretary of State

CASE NO.: GX-2004-0496

The undersigned commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file with the Office of the Secretary of State the Amended Order of Rulemaking for the Cold Weather Rule, to-wit:

4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather.

Steve Gaw, Chair

Connie Murray, Commissioner

Robert Clayton by Telephone
R Stewart

Robert Clayton, Commissioner

Jeff Davis, Commissioner

Lin Appling, Commissioner

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 13 – Service and Billing Practices for Residential Customers of Electric, Gas, and Water Utilities

AMENDED 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 240-13.055 is amended.

A notice of the proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2004 (*Missouri Register*, Vol. 29, No. 10). 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 July 9, 2004, and the public comment period ended June 17, 2004. At the public hearing, Warren Wood, Manager of the Energy Department of the Commission, explained the creation of the Commission's Task Force that participated in amending the existing Cold Weather Rule (CWR). Warren Wood further went on to state that the Commission's Staff (Staff) fully supported the recommended changes to the proposed amendment filed by the Task Force on June 17, 2004, and addressed a number of other changes that Staff suggested be incorporated. Robin Acree and Mary Hussmann, both on behalf of Grass Roots Organizing (GRO); Rachel Steffen; the CWR and Long Term Energy Affordability Task Force (Task Force); Staff; Jacqueline Hutchinson, on behalf of Human Development Corporation (HDC) of Metropolitan St. Louis; Ruth O'Neill of the Office of the Public Counsel (OPC); and Michael C. Pendergast, Thomas M. Byrne, Dean L. Cooper and James M. Fischer, on behalf of Aquila, Inc., Atmos Energy Corporation, The Empire District Electric Company, Kansas City Power & Light Company, Laclede Gas Company, Missouri Gas Energy (MGE) and Union Electric Company d/b/a AmerenUE (Utilities) all submitted written comments on the proposed amendment on or before June 17, 2004. Warren Wood of the Staff; Ruth O'Neill and John Coffman of the OPC; Mike Pendergast and Paul Wildeisen of Laclede Gas Company; James Fischer on behalf of Atmos Energy and Kansas City Power & Light; Jacqueline (Jackie) Hutchinson of the HDC; Thomas Byrne of AmerenUE; Kim Lambert of MGE; Nathan Stephens and Mary Hussmann of GRO; Ivan Lee Eames of the HDC; Robin Sherrod; Barbara Ross; and Jeanna Machon of the Family Support Division testified at the public hearing on July 9, 2004.

COMMENTS: GRO recommended that the CWR cold temperature moratorium be revised to, 'will drop below forty degrees Fahrenheit (40°F)'. In the hearing, Ms. Hussmann reiterated this recommendation and testified that the current disconnect moratorium of thirty degrees Fahrenheit (30°F) is dangerously low and does not provide protection for even the most vulnerable customers like low income elderly, disabled and children. Ms. Hussmann further testified that temperatures can drop lower after the shutoff, and it doesn't matter how low it goes, the shutoff remains until a payment agreement is reached. In her written comments, Rachel

Steffen recommended that the CWR should be modified so that forty degrees Fahrenheit (40°F) is the non-payment shutoff minimum. Rachel Steffen further commented that this provision would provide vulnerable customers sufficient time to either restore their utilities, or find alternate heating sources. In the hearing, Mr. Eames stated that HDC strongly supports changing the disconnect moratorium from thirty degrees Fahrenheit (30°F) to forty degrees Fahrenheit (40°F). In the hearing, Ms. Ross noted that she supports the notion of changing the moratorium to forty degrees Fahrenheit (40°F). In her written comments, Jackie Hutchinson recommended that the temperature moratorium be raised to thirty-five degrees Fahrenheit (35°F), as this would provide protection from non-payment cutoff approximately seventy-eight percent (78%) of the coldest days of the winter. In the hearing, Ms. Hutchinson reiterated her recommendation that the temperature moratorium be raised to thirty-five degrees Fahrenheit (35°F) as a compromise to her preferred change to forty degrees Fahrenheit (40°F). In the hearing, Ms. Hutchinson also provided statistics that illustrated the number of low income households in Missouri and the difficulties that these customers are experiencing in paying their utility bills. In their written comments, the OPC proposed thirty-five degrees Fahrenheit (35°F) as a compromise between the positions of the parties and to be consistent with the protections afforded in the state of Kansas. The OPC noted that this increased temperature would protect the vulnerable segments of the population from the adverse consequences of shutoff in cold weather without increasing the administrative burden to utilities or community action agencies. In the hearing, the OPC noted that they believe that the current temperature threshold for disconnect is too low to protect vulnerable populations from the health risks of having their heat shut off during the winter months. The OPC further noted that they believe that most of the benefits that would derive from an increase in the temperature moratorium to forty degrees Fahrenheit (40°F) could also be accomplished if the temperature moratorium was only increased to thirty-five degrees Fahrenheit (35°F). The OPC also proposed that an alternative option to protect vulnerable populations would be to slightly increase the temperature moratorium to thirty-two degrees Fahrenheit (32°F) and add a blanket moratorium on disconnects during the CWR period for vulnerable populations. This blanket moratorium would be extended to low income seniors, disabled persons and families with children under the age of three (3). In the hearing, the OPC further noted that the thirty-two degree Fahrenheit (32°F) plus other protections is an approach taken by a number of other jurisdictions, although the way they identify those populations eligible for the moratorium vary widely from state to state. OPC noted that they believe that the biggest drawback to this approach is determining which customers should benefit from that total moratorium and also how the companies can verify that the persons who are seeking that protection are eligible. The OPC commented that, by raising the "no-cut" temperature to thirty-five degrees Fahrenheit (35°F), the most vulnerable populations are more likely to be protected from hypothermia and other health concerns than they are under the current version of the CWR. In the hearing, the OPC reiterated these proposals. The OPC noted that it recognizes the financial burden that is likely to be imposed on the State of Missouri, community assistance program agencies and/or utility companies if the moratorium temperature is only raised to thirty-two degrees Fahrenheit (32°F) with special protections for vulnerable populations. OPC therefore believes that it would be in the public interest to raise the moratorium temperature to thirty-five degrees Fahrenheit (35°F). In the hearing, the Staff noted that it believes that changing the moratorium to forty degrees Fahrenheit (40°F) would act basically as a winter moratorium on disconnects. Although Staff could support a change on the current moratorium to thirty-two degrees Fahrenheit (32°F), it noted that this change would not provide much additional temperature protection. Staff's

assessment of the issue was that it is probably best resolved by the task force in its work on long-term energy affordability and not by additional changes to the CWR. In the hearing, Mr. Byrne stated that AmerenUE is opposed to changing the current thirty degree Fahrenheit (30°F) moratorium to a higher temperature since it would only defer the problem, result in customers having higher arrears than they would otherwise, and while it could protect some customers who cannot pay it would also protect some customers who choose not to pay. In the hearing, Ms. Lambert of MGE noted that MGE is opposed to the temperature moratorium and believes that this issue would be better addressed in the work of the Task Force.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully considered increasing the cut-off temperature to some temperature higher than thirty degrees Fahrenheit (30°F). After carefully reviewing the provisions of other states and the positions of the parties in this rulemaking docket, the Commission has decided to change the current temperature moratorium from thirty degrees Fahrenheit (30°F) to thirty-two degrees Fahrenheit (32°F) and implement additional protections for low income registered elderly or disabled customers. These changes will provide for a higher level of protection to all customers during the winter months with special protections to those customers most at risk.

COMMENTS: GRO commented that the utility companies contend that they do everything they can to prevent the shut-off of low income disabled and elderly during the cold weather period, but that the utilities do not want this moratorium 'codified in the law.' GRO also noted that children are a vulnerable population not protected or considered under the 'charitable conditions' the utilities contend they use to forestall the disabled and elderly from shut-off. Further, GRO noted that it is time-consuming, bureaucratic, and expensive to educate, screen, track, and continuously verify if a person is eligible for a 'most vulnerable population' category and stated that they believe that the most responsible and efficient thing to do is to protect all customers by raising the temperature threshold to forty degrees Fahrenheit (40°F). In her written comments and testimony at the hearing, Jackie Hutchinson recommended that in addition to a higher temperature moratorium that a complete moratorium from cut-off during the CWR period from November 1 through March 31 be implemented for customers who are registered elderly or disabled and whose incomes are below one hundred fifty percent (150%) of the federal poverty index. In the hearing, Ms. Hutchinson further explained that she believes that a cut off moratorium for elderly and disabled is indeed what most utilities have right now. Ms. Hutchinson recommended that utility companies may require that customers send documentation with the elderly registration form, or may elect to include a self-declaration of income statement on their elderly registration forms. In her written testimony, Ms. Hutchinson also noted that while thirteen (13) of the fifty (50) states have a temperature-based seasonal termination protection policy, a majority of the states identify "protected classes" of customers who are low income elderly, disabled or families with children. In the hearing, Ms. Hutchinson testified that twenty-two (22) states include some reference to inability to pay in their CWRs and there are various different ways of determining inability to pay from people who receive TANIF, SSI, Social Security, LIHEAP or weatherization. In her written comments, Ms. Hutchinson indicated that these families are usually receiving income from an easily verifiable source such as TANIF, SSI, SSA, unemployment compensation, LIHEAP, weatherization, or other types of fixed income. Jackie Hutchinson further expressed that verification could be as simple and as non-threatening as possible, with a single form that is self-certified by the client, or by verbal self-

declaration of eligibility. In response to questions from Chairman Gaw, Ms. Hutchinson indicated that implementation of protections for low income customers could be associated with some type of a declaration of poverty and be based on a percentage of the poverty index. Ms. Hutchinson further testified that this process could be as complicated as you want to make it with self-declaration being a simple option, looking for information like a letter to verify that a house is TANIF eligible being slightly more involved and verification of percentage of FPG being still more involved. In response to a question from Chairman Gaw, Ms. Hutchinson noted that most states have long-term affordability plans and that some states have a requirement that some minimum payment is made on a monthly basis. Ms. Hutchinson further testified that based on figures she had reviewed from Roger Colton that eighty-five percent (85%) of customers in New Jersey who have a required payment that recognizes their ability to pay make those payments every month. Ms. Hutchinson also noted that the Committee to Keep Missourians Warm had discussed the level of a minimum payment and had arrived at a figure of forty dollars ($40) based on six percent (6%) of the income of low income households that were receiving LIHEAP in the state at that time. In their written comments and testimony at the hearing, the OPC commented that the current temperature is too low compared to temperature moratoriums in other jurisdictions and is too low to prevent vulnerable populations from the health risks of having their heat shut off during the winter months and indicated that they had made two (2) proposals in their written comments to address this situation. The OPC noted that their preferred proposal, which they believe represents a compromise between the parties, would raise the moratorium threshold temperature to thirty-five degrees Fahrenheit (35°F). OPC's alternative proposal would raise that "no-cut" temperature only to thirty-two degrees Fahrenheit (32°F), but also prohibit cutting service to low income elderly, disabled and families with young children. OPC further noted that the thirty-two degree Fahrenheit (32°F) plus other protections is an approach taken by a number of other jurisdictions, although the way they identify those populations eligible for the moratorium vary widely from state to state. OPC noted that they believe that the biggest drawback to this approach is determining which customers should benefit from that total moratorium and also how the companies can verify that the persons who are seeking that protection are eligible. The OPC further noted that while many jurisdictions prohibit disconnection at the slightly higher temperature of thirty-two degrees Fahrenheit (32°F), these provisions are generally coupled with special provisions that protect vulnerable populations from having their heating source shut-off during the coldest months. The OPC also noted that during the deliberations of the Task Force that the utility representatives participating in the task force asserted that they take special measures to ensure that at risk elderly and disabled customers do not lose their service for non-payment, indicating that the principle behind this policy is acceptable. The OPC commented that while such an informal practice is commendable, this practice does not rise to the level of a legal obligation, and therefore is subject to being applied in an inequitable or discriminatory fashion. In the hearing, Staff noted that Missouri's Family Support Division and utility representatives attending the Task Force's meetings both expressed significant concerns related to the administration of programs to expand the disconnect moratorium to low income elderly or disabled customers and low income families with young children as well as the availability of data to implement these additional protections. Staff noted that with additional research and data, Staff could possibly support expanding the disconnect moratorium to low income elderly or disabled individuals who are living at or below one hundred fifty percent (150%) of the Federal Poverty Guideline (FPG) and believes this could be accomplished at a reasonable administrative cost. Staff was not, however, immediately

supportive of this change since Staff believes that it could result in the very customers it is designed to assist only getting farther behind in the amount they owe before they are disconnected and not providing the long-term assistance that was the objective. Staff's assessment of the issue was that it is probably best resolved by the Task Force in its upcoming work on long-term energy affordability and not by additional changes to the CWR. In the hearing Mr. Wood testified that certain states have no special seasonal protections and other states have protections that are either tied to temperatures, income levels, age or disability or some combination of all the above. In the hearing, Ms. Lambert noted that MGE has concerns about low income households as it relates to a temperature moratorium regarding administrative costs and burdens, and in particular trying to determine what households include small children. In response to questions from Chairman Gaw, Mr. Pendergast stated that Laclede makes every effort to go ahead and avoid disconnection of people who have registered as disabled or elderly. Mr Pendergast clarified that this is not a written policy and indicated his concern that by incorporating broadly written provisions that apply to anybody that is sixty (60) years or older or anybody that has a child that is under three (3) years of age into the CWR, that other people would register and would exacerbate the problem of availability of assistance mechanisms to people who really do not need it and costs would go up significantly. Mr. Byrne indicated that AmerenUE also makes special efforts on behalf of registered elderly and disabled customers.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully considered the written comments and testimony received in this rulemaking docket and will incorporate provisions into the CWR that prohibit disconnection of registered elderly customers who are sixty-five (65) years old or older or disabled customer households who receive an income below one hundred fifty percent (150%) of the FPG. In addition to changing the temperature moratorium from thirty degrees Fahrenheit (30°F) to thirty-two degrees Fahrenheit (32°F), the Commission will revise the CWR to include a moratorium that will: be in effect from November 1 to March 31; apply to registered low income elderly or disabled customer households who receive an income below one hundred fifty percent (150%) of the FPG; include provisions for eligibility verification by the utility; and require that low income registered elderly or disabled customers make a minimum payment of the lesser of fifty percent (50%) of their payment plan amount or their billed amount based on actual usage for that billing cycle in order to remain under this disconnect moratorium during the winter. The Commission will not add provisions specifically prohibiting disconnection of customers with young children because verification of this provision is not practical at this time.

COMMENTS: GRO recommended that if a family has been shut-off, that more realistic payment plan option(s) for reconnect be implemented right away. In the hearing, Ms. Hussmann testified that GRO recommends that reconnection amounts be twenty-five percent (25%) of what's owed or one hundred dollars ($100), whatever is lower. In the hearing, Mr. Eames stated that he supports changing the CWR to include a provision that would allow customers who have broken a past payment agreement to be reconnected if they can pay the lesser of twenty-five percent (25%) of what is owed or forty dollars ($40). In the hearing, Staff noted that they support adding a provision to the CWR that would provide a maximum amount for reconnection of eighty percent (80%) of the balance owed or eight hundred dollars ($800), whichever is less, if the customer agrees to a payment agreement for the remaining balance. Staff stated that it does not believe that this would represent an undue hardship on utilities as utilities often implement

internal procedures now that do not require a full payment to restore service. Staff noted that associated with this change it supports adding language to the CWR that would permit a utility to file tariffs to: (1) incorporate means-testing to check if customers have an income at or below one hundred fifty percent (150%) of the (FPG) to determine their eligibility to the financial provisions of the CWR; and(2) address the situation where a customer repeatedly receives service for the eight hundred dollar ($800) payment, does not pay for the service they receive after being reconnected and incurs more in arrearages than their initial payment to receive service. In the hearing, Staff noted that they recently agreed to a number of additional provisions as a result of negotiations before the hearing. Staff recommended that the Commission consider incorporation of a provision into the CWR that would require the customers who have not defaulted on a CWR payment agreement in the past could be placed on a payment agreement after an initial payment of fifteen percent (15%) of their total levelized bill amount due. In the hearing, Mr. Pendergast explained the operation of the eighty percent (80%) or eight hundred dollar ($800) provision and the operation of the fifteen percent (15%) initial payment. Mr. Pendergast also noted that Laclede believes that some form of means-testing is appropriate to incorporate into the CWR, as well as a way to address the customer who gets back on under the eighty percent (80%) or eight hundred dollar ($800) provision and defaults again. Mr. Pendergast further noted that Laclede has offered to address both of these issues through tariffs rather than the CWR. Finally, Mr. Pendergast proposed language to address these proposed CWR provisions and this proposed language was entered into the record as Exhibit No. 2. In the hearing, Commissioner Murray noted that the eighty percent (80%) or eight hundred dollar ($800) language ends with "unless the utility and customer agree to a lesser amount," and asked if this could also be a greater amount. Mr. Pendergast responded that a change to permit this would be appropriate. Jackie Hutchinson recommended that for a low income customer who has defaulted on a previous CWR payment agreement, the initial payment required for reconnection be fifty percent (50%) of the total bill, with a maximum payment required of six hundred dollars ($600). In the hearing, Ms. Hutchinson reiterated her proposal that customers who have broken a past payment agreement be able to be reconnected for fifty percent (50%) of their unpaid arrears or six hundred dollars ($600) and noted that the current incentives customers face do not encourage them to pay any portion of their bill if they cannot pay the total bill since they will still be disconnected. In the hearing, Ms. Hutchinson responded that the fifteen percent (15%) payment to be restored almost doubles what that family would have to pay and does not believe that it would be fair to sacrifice the payment of a few in order to reduce the payment. Ms. Hutchinson further noted that she is in favor of the eight hundred dollar ($800) cap and is willing to move to this number from the six hundred dollars ($600) she had originally proposed. Ms. Hutchinson also stated that she is in favor of means-testing. In response to a question from Chairman Gaw, Ms. Hutchinson testified that the proposal to require that first time CWR applicants pay fifteen percent (15%) versus one-twelfth (1/12) would be a problem as these customers are usually people who are unemployed and have had a drastic drop in income and that requiring significantly more money up front will require them to apply for assistance, thereby lowering the amount of assistance, because the amount of energy assistance available does not change. Mr. Coffman testified that he would echo the concerns that Ms. Hutchinson voiced on this issue. Ms. Sherrod also testified on this issue noting that customers who are trying to get reconnected often represent people who have lost their jobs, have become disabled and are in a crisis situation, were in shelter and are coming out, their credit is bad or they are coming up with their first and last month's rent and noted that being reconnected at the lowest

possible cost is preferred. The OPC recommended that customers who have been disconnected as a result of default on a CWR payment agreement be allowed to re-establish service upon payment of less than all of the arrearages on their account. In their written comments and testimony at the hearing, the OPC proposed that such customers should be reconnected at the start of the CWR period if they can pay at least fifty percent (50%) of their past due bill, or seven hundred fifty dollars ($750), whichever is less, provided that they are willing to enter into a payment agreement for the remaining past due balance. In the hearing, the OPC further stated that they believe that the eighty percent (80%) or eight hundred dollars ($800) is worth considering as long as it does not adversely affect the ability of first-time participants to get financing under the CWR.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has carefully considered incorporating into the CWR a maximum payment amount in order to have service restored if a past payment agreement has been broken and will revise the CWR to incorporate a provision that limits the initial payment to eighty percent (80%) of the customer's balance, unless the utility and customer agree to a different amount. Further, the Commission will add a provision to the CWR to permit utilities to file a tariff to address circumstances where a customer has defaulted on another payment agreement after having service reconnected for eighty percent (80%) of the balance due. Associated with these additional provisions, the Commission will also permit utilities to file a tariff to establish a procedure for limiting the availability of the payment agreements under section (10) of the CWR to customers residing in households with income levels below one hundred fifty percent (150%) of the FPG. Finally, the Commission will further revise the CWR to make the initial payment for customers who have not defaulted on a CWR payment plan no more than twelve percent (12%) of the total twelve (12)-month budget bill amount. While this will increase the initial payment amount, it will also decrease the monthly payments after this initial payment. The Commission will also change the last sentence of the language proposed by Laclede for a tariff provision related to addressing customers who have repeatedly broken payment agreements by changing "all" to "higher amounts toward."

COMMENT: GRO commented that the Missouri Public Service Commission should find ways to mandate that all Missouri municipalities abide by the CWR.

RESPONSE: The Commission has considered this comment but does not have the authority to implement it.

COMMENTS: In their written comment, GRO commented that increased efforts should be made to educate utility CEO's, their employees, stockholders, and the entire Missouri public about the value of the "Cold Weather Rule." In their written comments and in the hearing, GRO proposed that all utility companies be required, every year, to inform their customers in writing of the "Cold Weather Rule." In her written comments, Jackie Hutchinson commented that an additional notice requirement should be added to the CWR. This notification would detail the provisions of the CWR and should be sent to all customers who have been disconnected for non-payment during the period of April 1 through October 30. Ms. Hutchinson recommended that this communication should be sent by mail, to the last known customer address, during the month of October each year. In the hearing, Ms. Hutchinson noted that the lack of a notice of the CWR to customers who have been disconnected outside of the winter period leaves many of the

new poor, who have not experienced having their utilities cut off before, without the information they should be provided with regarding their ability to be reconnected before the winter season for an amount less than their total arrearage.

RESPONSE: The Commission has considered this recommendation and will not revise the CWR to incorporate this comment. Current CWR notice provisions prior to disconnection, initial customer mailings, annual mailings, and information available through local action agencies provide sufficient information to customers to make them aware of the CWR. Commissioners, Staff and OPC regularly issue press releases and speak with the media about the CWR and its provisions. The Commission's internet site provides a number of fliers that detail the provisions of the CWR. Requiring an additional mailing would result in an additional annual expense to all the utilities that all customers could eventually be required to pay for in higher rates.

COMMENT: GRO commented that the PSC should establish a "Hot Weather Rule" as soon as possible.

RESPONSE: The Commission does not believe that this comment is directed at a particular change to this CWR, but understands that further deliberations of the Task Force will include discussions on this issue.

COMMENTS: In its written comments, the Task Force recommended that subsection (1)(D) of the proposed amendment should be modified to better describe registered elderly or disabled customers and provided suggested language. The Utilities stated that they believe that the new procedures recommended by the Task Force for addressing elderly and disabled customers will make for a more orderly, efficient and effective process for identifying and registering such customers. The Utilities further stated that by clarifying the documentation that a customer may provide to qualify for registration, including the use of disability award letters from the federal government, the new procedures should simplify the registration process for many customers. The Utilities noted that by establishing an annual renewal process, the new procedures should ensure that registration lists remain current and are updated in an orderly manner. The Utilities recommended that these procedures be adopted by the Commission as part of the proposed amendment.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the language proposed by the Task Force in this revision to the CWR and will adopt the recommended language with a change to make it consistent with the revision to the CWR regarding the age of customers who are considered elderly. To be consistent with the new provision regarding how low income elderly customers are defined, subsection (1)(C) of the revised CWR will be changed to reflect sixty-five (65) years old instead of the current sixty (60). This revised language better defines registered elderly and disabled customers and may improve the overall identification and registration of these customers.

COMMENTS: In its written comments, the Task Force recommended that section (4) of the proposed amendment should be modified to specifically address the situation where a utility employee makes an oral representation of service termination when termination is not permitted and provided suggested language. The Utilities noted that section (4) of the proposed

amendment as originally published in the Missouri Register contained language that purported to prohibit threats of service disconnections when the utility had no present intent to actually discontinue service. The Utilities stated that in its original form, this proposed prohibition was vague, difficult to administer and potentially inconsistent with other rule provisions that affirmatively require that customers be provided with multiple notices before service may be discontinued. The Utilities further noted that the new language proposed by the Task Force for section (4) avoids these problems by focusing on those circumstances where there is a known "no- cut" day under the temperature moratorium provisions of CWR. The Missouri Utilities believe this is a workable and appropriate addition to the CWR and should be approved by the Commission.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the language proposed by the Task Force in this revision to the CWR and will adopt the recommended language. This revised language clearly prohibits oral representations of service termination when the threatened disconnection would occur on a known "no-cut" day because of forecasted weather with a low below thirty degrees Fahrenheit (30°F).

COMMENTS: In its written comments, the Task Force recommended that section (7) of the proposed amendment should be modified to better address the situation where a customer, who is under a CWR payment agreement, moves from one residence to another in the service territory of the same utility and provided suggested language. The Task Force asserts that the language in the proposed amendment restricts the continuation of service provision more than current normal practice. Also, the Task Force recommended that the reference to a change in residence not being considered an application for new service should be removed because this creates unnecessary difficulties in the utilities' customer accounting systems. The Utilities stated that both the proposed amendment, as well as the modifications proposed by the Task Force, contain language that would allow customers to reinstate or preserve existing CWR agreements under various circumstances. The Utilities stated that although this represents an expansion of reinstatement rights over what was originally proposed in the CWR, the Missouri Utilities believe that the provision recommended by the Task Force is reasonable and should be adopted by the Commission.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the language proposed by the Task Force and endorsed by the Utilities in this revision to the CWR and will adopt the recommended language. This revised language will provide for clearer application and enforcement of the CWR in circumstances where a customer on a payment agreement moves from one residence to another within a utility's service territory.

COMMENTS: In its written comments the Task Force recommended that paragraph (10)(B)5 of the proposed amendment be modified by deletion of the last sentence. The Task Force noted this language should also be clarified by adding "Cold Weather Rule" in front of "payment agreement" and deleting "deferred" where it appears in this section. The Task Force noted that the provision for only accepting reinstatement once is more restrictive than current utility practice. The Utilities noted that they support adoption of the Task Force's recommended language. The Utilities indicated that this language is designed to provide the same reinstatement rights as those set forth in section (7) in circumstances where a customer faces

imminent disconnection at his or her existing service location. The Utilities believe that it is reasonable and appropriate to provide customers with the opportunity to preserve their payment agreements and avoid disconnection as long as the appropriate payments set forth in the proposed provision are made prior to disconnection. The Staff noted that section (7) of the proposed amendment has been modified to more clearly identify the amount that is due from a customer who moves and is under a payment agreement that they may have broken. The Staff noted that the language in section(7) that addresses this reads as follows: "if the customer pays in full the amounts that should have been paid pursuant to the agreement up to the date service is requested, as well as, amounts not included in a payment agreement that have become past due." Staff further noted that paragraph (10)(B)5 of the proposed amendment has a similar provision for continuation of service for a customer who has broken a payment agreement but has not yet been disconnected and that the language in paragraph (10)(B)5 that addresses this reads as follows: "if the customer pays in full the amounts that should have been paid up to that date pursuant to the original payment agreement (including any amounts for current usage which have become past due)." Staff recommended that paragraph (10)(B)5 be modified to more closely track the language revisions to section (7) of the CWR to avoid any confusion in the future regarding the amount due in these circumstances.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the language proposed by the Task Force and endorsed by the Utilities in this revision to the CWR and will adopt language that is similar to that proposed by the Task Force, but with revisions to address the concerns expressed by Staff. This revised language will better define CWR treatment when a customer breaks a CWR payment agreement but has not yet had service disconnected.

COMMENTS: In its written comments the Task Force recommended that paragraph (10)(C)1 of the proposed amendment should be modified by deletion of the language that was added in the proposed amendment submitted to the Secretary of State for filing. The Task Force noted that the language "within the last three (3) or more years" is not necessary, as the utilities have not been interpreting the CWR as not being available to any customer who has ever broken a CWR payment agreement. Similarly, the Task Force also recommended that paragraph (10)(C)2 of the proposed amendment should be modified by deletion of the language that was added in the proposed amendment submitted to the Secretary of State for filing. The Task Force noted that under current utility practices any customer who has been able to pay the total amount due has been reinstated on a CWR payment agreement. In fact, the Task Force further noted that utilities often adopt internal procedures, which may vary from one year to the next in response to average arrearage levels and gas prices, which permit customers who have broken a payment agreement to receive service if they can pay a certain percentage of their arrearage. The Utilities stated that as originally drafted, the proposed amendment contained modifications to paragraphs 1 and 2 of renumbered subsection (10)(C) that would have specified that customers are eligible for certain initial payments under CWR payment agreements as long as they did not default on such an agreement within the last three (3) years. The Utilities noted that, because customers remain eligible for CWR payment agreements as long as they make the required payments provided by the CWR, this three (3)-year default language was unnecessary. The Utilities recommended that this language be deleted from any final Amendment.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this proposal to the delete the proposed language originally published in the proposed amendment and will eliminate the language objected to by the Task Force and the Utilities. The additional proposed language is unnecessary.

COMMENTS: In its written comments the Task Force recommended that subsections (6)(B) and (9)(B) of the proposed amendment should be deleted from the CWR. The Task Force noted that as a matter of practice the utilities have not had the information to verify that the customer has applied for financial assistance. The Task Force indicated that it discussed at length the possible establishment of coordination provisions between the utilities and the agencies that maintain this information. The Task Force noted that the outcome of these discussions was agreement between all the Task Force members that these sections of the CWR should be deleted.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered deletion of these sections as proposed by the Task Force and will delete these sections from the CWR. These provisions of the CWR have not been practical to administer and enforce and should no longer be included as a requirement of the CWR.

COMMENTS: In the hearing, Staff stated that it agrees that the utilities should be provided with a reasonable means to recover additional administrate cost, increased expenses, decreased revenues and/or increased bad debts that can be specifically attributed to the proposed changes to the CWR that were not agreed to by the Task Force. Staff was not supportive of a surcharge to all customers to cover the cost of this CWR between rate cases and recommended that an Accounting Authority Order (AAO) would be the mechanism to recognize these incremental expenses when they can be justified. In her written comments and testimony at the hearing, Jackie Hutchinson stated that the utility companies should be allowed reasonable recovery of any increased cost associated with this CWR. Ms. Hutchinson further noted that any estimated rates must be reviewed by, and agreed to in advance by, the PSC. She stated that the Staff should do an annual review of those rates and a refund of any overcharges by the utility should be required. In their written comments and testimony at the public hearing, the OPC stated that they believe that the current provisions of the CWR allow the Commission to recognize and allow recovery of reasonable costs that utilities incur to comply with the current CWR and the proposed revisions submitted by the Task Force. The OPC further testified at the public hearing that it does not support a surcharge based on estimated costs or an additional component of the Purchased Gas Adjustment (PGA) charge for gas and views these types of recovery mechanisms as unlawful single-issue ratemaking and bad public policy. In their written comments, the OPC did state that they recognize that the utilities may incur additional expenses if the Commission adopts proposals other than those adopted by the Task Force. The OPC further indicated that they believe that some savings and/or increased revenues may also result from implementing these changes, which may offset, at least to a degree, increased expenses the utility may incur. The OPC further stated that they would not oppose including, in the new section 12 (old section 10) a provision that would specifically authorize a utility to apply for an AAO to address these costs. The OPC recommended that the AAO language mirror the language contained in the AAO provision of the 2001 emergency CWR, but with an ending date coinciding with the company's

next rate case or three (3) years from the date of the implementation of the amendment. The language OPC suggested reads as follows:

The Commission shall grant an Accounting Authority Order, as defined below, upon application of a gas or electric utility company, and the utility may book to Account 186 for review, audit and recovery all incremental expenses incurred and incremental revenues that are caused by changes to this rule. Any such Accounting Authority Order shall be effective until the utility's next rate case, or for a period of three (3) years from the date of the change in the rule, whichever occurs sooner.

The Utilities stated that at least one (1) additional modification to the proposed amendment should be made to comply with what they believe are the prevailing legal requirements in the event the Commission decided that any rule changes beyond those recommended by the Task Force are made. Specifically, the Utilities recommended that language should be added to the new section (12) of the proposed amendment to clarify that utilities will be permitted to file tariffs and adjust their rates as necessary to permit recovery of any estimated increase in operating expenses or decrease in revenues resulting from implementation of any modifications to the CWR. The language that the Utilities recommended be added to the new section (12) of the CWR reads as follows:

The commission shall recognize and permit recovery of reasonable operating expenses incurred by a utility because of this rule. If any change to this rule is implemented between general rate proceedings, the utility shall be permitted to file a tariff adjusting its rates as necessary to permit recovery of any estimated increase in operating expenses or decrease in revenues resulting from such implementation. Such tariff shall be subject to review and approval by the Commission and shall become effective at the same time as the Rule is made effective for the utility.

In the public hearing, Mr. Pendergast noted that the changes recommended by OPC and Ms. Hutchinson that go beyond those recommended by the Task Force will not result in more energy assistance for vulnerable customers and will, in fact, more likely simply defer the problem until the future and leave other parties to worry about the financial consequences as new arrearages pile up on top of old arrearages. Mr. Pendergast then submitted Exhibit No. 1 that is Laclede's estimate of what they believe these proposal's financial impacts on Laclede would be. Mr. Pendergast further noted that Laclede believes that Staff and OPC are wrong on the issue of single-issue ratemaking and in fact, it's necessary to go ahead and provide the adjustment, not to go ahead and violate the principles that underlie single-issue ratemaking. Mr. Pendergast then explained Laclede's proposal to comply with the revenue neutrality requirement as one that would permit the utility to file a tariff to go ahead and adjust rates in order to go ahead and reflect the decrease in revenues or increase in costs associated with any changes to the CWR. Mr. Pendergast also noted other cost recovery mechanisms that were not accepted by one or more of the Task Force parties. Mr. Pendergast further noted that an AAO is not an adequate mechanism based on past experiences and court determinations. In the hearing, Mr. Byrne stated that if the Commission decides to increase the temperature moratorium that AmerenUE supports the positions of Mr. Pendergast and Ms. Hutchinson that the Commission needs to make provision so that the utilities can recover their costs. In the hearing, Ms. Lambert stated that MGE would like to see some sort of cost recovery mechanism implemented and would like to

see more conversation about this during the energy affordability piece of the Task Force's meetings. In the hearing, Mr. Fischer noted that Atmos Energy had experienced utilization of an AAO associated with cleaning-up a manufactured gas plant where no recovery was permitted since they did not file a rate case in the time required. Mr. Fischer also generally noted that although an AAO may look like a reasonable cost recovery mechanism it is the details of the AAO, like a requirement to file a rate case, that make them a problem. In response to a question from Chairman Gaw, OPC and Staff noted that they had not proposed that a limit on the time period until the next rate case would be required to be part of an AAO and also noted that they would certainly consider shorter time frames for recovery.

RESPONSE AND EXPLANATION OF CHANGE: Having carefully considered the various changes that are being made to the CWR through this proceeding, the Commission believes that the net sum of the cost increases and revenue increases associated with these changes result in little or no cost impact to the utilities. The twelve percent (12%) initial payment for customers who have not previously defaulted on a CWR payment agreement versus the current one-twelfth (1/12) payment is an increase in initial payments to the utility. In these rulemaking proceedings several utilities indicated that they currently take special measures to avoid disconnecting low income elderly or disabled customers during the winter period. In these rulemaking proceedings several utilities also noted that they currently permit customers who have previously defaulted on a payment agreement to be reconnected for some amount less than the total balance due. Finally, raising the temperature moratorium from thirty degrees Fahrenheit (30°F) to thirty-two degrees Fahrenheit (32°F) may represent a decrease in opportunities to disconnect customers who are delinquent on their payments and are eligible for disconnect. The Commission does not however believe that this temperature change represents a significant reduction in revenues or increase in cost of operations. The current CWR includes provisions for cost recovery in section (12) and this provision is viewed as sufficient to provide for whatever cost recovery the utilities may believe is necessary should they decide to pursue an AAO.

COMMENT: The Task Force noted that the CWR should be revised to correct the reference in the Purpose Statement where it refers to "4 CSR 240-3.175 for electric utilities" to "4 CSR 240-3.180 for electric utilities."

RESPONSE AND EXPLANATION OF CHANGE: The Commission will consider this proposed correction when it next reviews the CWR.

COMMENT: The Task Force recommended that "handicapped" should be changed to "disabled" throughout the CWR.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this revision and agrees that this change should be incorporated into the CWR.

COMMENT: The Task Force commented that the CWR should no longer reflect any references to ECIP, as the LIHEAP language in the CWR is sufficient to cover both LIHEAP and ECIP.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and will revise the CWR to no longer refer to ECIP.

COMMENT: The Task Force commented that the CWR should be revised to remove any references to Utilicare because the LIHEAP administrating agency language in the CWR is sufficient to cover both LIHEAP and any Utilicare funding that may be available in the future.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and will revise the CWR to remove references to Utilicare.

COMMENT: The Task Force recommended that "company" be changed to "utility" wherever it appears in the CWR for consistency.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and will revise the CWR to use "utility" wherever "company" currently appears.

COMMENT: The Task Force recommended that "Division of Family Services" be changed to "Family Support Division" wherever it appears in the CWR since this agency has changed its name.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered this comment and will revise the CWR to correctly use "Family Support Division" instead of "Division of Family Services."

COMMENT: The Task Force recommended deleting the "and" and inserting an "or" at the end of subsection (5)(A) of the proposed amendment since subsections (5)(A) and (5)(B) do not both need to be satisfied in order for disconnection to be prohibited.

RESPONSE AND EXPLANATION OF CHANGE: The Commission will incorporate this change into the CWR.

COMMENT: The Task Force recommended that all sections of the CWR be renumbered as necessary after the revisions to the CWR have been incorporated.

RESPONSE AND EXPLANATION OF CHANGE: The Commission will revise all the section numbers accordingly after the changes have been incorporated into the CWR.

4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather

(1) The following definitions shall apply in this rule:

(C) Low Income Home Energy Assistance Program (LIHEAP) means the federal LIHEAP administered by the Missouri Family Support Division under section 660.110, RSMo;

(D) Registered elderly or disabled customer means a customer's household where at least one (1) member of the household has filed with the utility a form approved by the utility attesting to the fact that s/he:

1. is sixty-five (65) years old or older;

2. is disabled to the extent that s/he has filed with their utility a medical form submitted by a medical physician attesting that such customer's household must have natural gas or electric utility service provided in the home to maintain life or health; or

3. has a formal award letter issued from the federal government of disability benefits.

In order to retain his/her status as a registered elderly or disabled customer, each such customer must renew his/her registration with the utility annually. Such registration should take place by October 1 of each year following his/her initial registration; and

(E) Low income registered elderly or disabled customer means a customer registered under the provisions of subsection (1)(C) of this rule whose household income is less than one hundred fifty percent (150%) of the federal poverty guidelines, and who has a signed affidavit attesting to that fact on file with the utility. The utility may periodically audit the incomes of low income registered elderly or disabled customers. If, as a result of an audit, a registered low income elderly or disabled customer is found to have materially misrepresented his/her income at the time the affidavit was signed, that customer's service may be discontinued per the provisions of this rule that apply to customers who are not registered low income elderly or disabled customers and payment of all amounts due, as well as, a deposit may be required before service is reconnected.

(4) The utility will not make oral representations of service termination for nonpayment when termination would occur on a known "no-cut" day as governed by the temperature moratorium.

(5) Weather Provisions. Discontinuance of gas and electric service to all residential users, including all residential tenants of apartment buildings, for nonpayment of bills where gas or electricity is used as the source of space heating or to control or operate the only space heating equipment at the residence is prohibited:

(A) On any day when the National Weather Service local forecast between 6:00 a.m. to 9:00 a.m., for the following twenty-four (24) hours predicts that the temperature will drop below thirty-two degrees Fahrenheit (32° F); or

(B) On any day when utility personnel will not be available to reconnect utility service during the immediately succeeding day(s) (Period of Unavailability) and the National Weather Service local forecast between 6:00 a.m. to 9:00 a.m. predicts that the temperature during the Period of Unavailability will drop below thirty-two degrees Fahrenheit (32° F); or

(C) From November 1 through March 31, for any registered low income elderly or low income disabled customer (as defined in this rule), provided that such customer has entered into a cold weather rule payment plan, made the initial payment required by section (10) of this rule and has made and continues to make payments during the effective period of this rule that are at a minimum the lesser of fifty percent (50%) of:

1. The actual bill for usage in that billing period, or

2. The levelized payment amount agreed to in the cold weather rule payment plan.

Such reductions in payment amounts may be recovered by adjusting the customer's subsequent levelized payment amounts for the months following March 31.

(D) Nothing in this section shall prohibit a utility from establishing a higher temperature threshold below which it will not discontinue utility service.

(6) Discontinuance of Service. From November 1 through March 31, a utility may not discontinue heat-related residential utility service due to nonpayment of a delinquent bill or account provided—

(A) The customer contacts the utility and states his/her inability to pay in full;

(B) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section (10) of this rule;

(C) The customer complies with the utility's requests for information regarding the customer's monthly or annual income; and

(D) There is no other lawful reason for discontinuance of utility service.

(7) Whenever a customer, with a cold weather rule payment agreement, moves to another residence within the utility's service area, the utility shall permit the customer to receive service if the customer pays in full the amounts that should have been paid pursuant to the agreement up to the date service is requested, as well as, amounts not included in a payment agreement that have become past due. No other change to the terms of service to the customer by virtue of the change in the customer's residence with the exception of an upward or downward adjustment to payments necessary to reflect any changes in expected usage between the old and new residence shall be made.

(8) Deposit Provisions. A utility shall not assess a new deposit or bill deposits that were previously assessed during or after the period of this rule to those customers who enter into a payment agreement and make timely payments in accordance with this rule.

(9) Reconnection Provisions. If a utility has discontinued heat-related utility service to a residential customer due to nonpayment of a delinquent account, the utility, from November 1 through March 31, shall reconnect service to that customer without requiring a deposit; provided—

(A) The customer contacts the utility, requests the utility to reconnect service and states an inability to pay in full;

(B) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section (10) of this rule;

(C) The customer complies with the requests of the utility for information regarding the customer's monthly or annual income;

(D) None of the amount owed is an amount due as a result of unauthorized interference, diversion or use of the utility's service, and the customer has not engaged in such activity since last receiving service; and

(E) There is no other lawful reason for continued refusal to provide utility service.

(10) Payment Agreements. The payment agreement for service under this rule shall comply with the following:

(A) A pledge of an amount equal to any payment required by this section by the agency which administers LIHEAP shall be deemed to be the payment required. The utility shall confirm in writing the terms of any payment agreement under this rule, unless the extension granted the customer does not exceed two (2) weeks.

(B) Payment Calculations.

1. The utility shall first offer a twelve (12)-month budget plan which is designed to cover the total of all preexisting arrears, current bills and the utility's estimate of the ensuing bills.

2. If the customer states an inability to pay the budget plan amount, the utility and the customer may upon mutual agreement enter into a payment agreement which allows payment of preexisting arrears over a reasonable period in excess of twelve (12) months. In determining a reasonable period of time, the utility and the customer shall consider the amount of the arrears, the time over which it developed, the reasons why it developed, the customer's payment history and the customer's ability to pay.

3. A utility shall permit a customer to enter into a payment agreement to cover the current bill plus arrearages in fewer than twelve (12) months if requested by the customer.

4. The utility may revise the required payment in accordance with its budget or levelized payment plan.

5. If a customer defaults on a cold weather rule payment agreement but has not yet had service discontinued by the utility, the utility shall permit such customer to be reinstated on the payment agreement if the customer pays in full the amounts that should have been paid pursuant to the agreement up to the date service is requested, as well as, amounts not included in a payment agreement that have become past due.

(C) Initial Payments.

1. For a customer who has not defaulted on a payment plan under the cold weather rule, the initial payment shall be no more than twelve percent (12%) of the twelve (12)-month budget bill amount calculated in subsection (10)(B) of this rule unless the utility and the customer agree to a different amount.

2. For a customer who has defaulted on a payment plan under the cold weather rule, the initial payment shall be an amount equal to eighty percent (80%) of the customer's balance, unless the utility and customer agree to a different amount.

(11) If a utility refuses to provide service pursuant to this rule and the reason for refusal of service involves unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customer's premises, the utility shall maintain records concerning the refusal of service which, at a minimum, shall include: the name and address of the person denied reconnection, the names of all utility personnel involved in any part of the determination that refusal of service was appropriate, the facts surrounding the reason for the refusal and any other relevant information.

(12) The commission shall recognize and permit recovery of reasonable operating expenses incurred by a utility because of this rule.

(13) A utility may apply for a variance from this rule by filing an application for variance with the commission pursuant to the commission's rules of procedure. A utility may also file for Commission approval of a tariff or tariffs establishing procedures for limiting the availability of the payment agreements under section (10) of this rule to customers residing in households with income levels below one hundred fifty percent (150%) of the federal poverty level, and for determining whether, and under what circumstances, customers who have subsequently defaulted on a new payment plan calculated under paragraph (10)(C)2. should be required to pay higher amounts toward delinquent installments owed under that payment plan.