



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

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>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

March 18, 2008

Mr. Gregory A. Steinhoff, Director
Department of Economic Development
301 W. High Street
P.O. Box 1157
Jefferson City, MO 65102

RE: Proposed Amendment of Rule 4 CSR 240-18.010 Safety Standards - Electrical Corporations, Telecommunications Companies and Rural Electric Cooperatives

Dear Mr. Steinhoff:

The Public Service Commission proposes to amend 4 CSR 240-18.010 Safety Standards - Electrical Corporations, Telecommunications Companies and Rural Electric Cooperatives. The proposed amendment updates the safety codes to which the commission requires companies to adhere, and draws attention to other applicable safety requirements in state law.

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. Adoption of the proposed rule will not implicate the takings clause of the U.S. Constitution, because the proposed rule does not involve the taking of real property.

The Commission has also performed the small business analysis required by Section 536.300, RSMo Supp. 2006, and includes small business impact statement with this filing.

If adopted, proposed rule 4 CSR 240-18.010 will not materially change the manner in which regulated utilities maintain their facilities. As a result, the proposed rule will not impose any

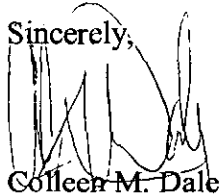
Mr. Gregory Steinhoff
RE: Proposed Rule 4 CSR 240-18.010
March 18, 2008 – Page 2 of 2 Pages

requirement that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." The Commission certifies that it has determined that the proposed rule will not have an economic impact on small businesses.

Please find enclosed a copy of the Proposed Rule, a Small Business Impact Statement, and, for your signature, a Public Entity Cost Affidavit. Please review, sign and return the Affidavit at your earliest convenience so that the Commission may proceed with publishing the proposed rule.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen M. Dale", written over a horizontal line.

Colleen M. Dale
Secretary/Chief Regulatory Law Judge
(573) 751-4255 (telephone)
(573) 526-6010 (facsimile)
cully.dale@psc.mo.gov (e-mail)

Enclosures

Title 4. DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240. Public Service Commission
Chapter 18. Safety Standards

Proposed Amendment

4 CSR 240-18.010 Safety Standards for ~~[Electric Utilities]~~ **Electrical Corporations,**
Telecommunications Companies and Rural Electric Cooperatives

*PURPOSE: This rule prescribes minimum safety standards relating to the operation of electric utilities, telecommunications companies and rural electric cooperatives. Adoption of this rule will not only inform the [regulated] utilities [, to which it applies,] of the minimum safety standards required by the commission [but] **and** will [also] be of assistance to the commission staff in carrying out its assigned duties. **This amendment changes the edition of the National Electrical Safety Code that the commission adopts for the minimum safety standards applicable to electrical corporations, telecommunications companies and rural electric cooperatives, and clarifies that the new standards apply only new installations and extensions.***

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material that is incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the material so incorporated is on file with the adopting agency. Any interested person may view this material at the agency's headquarters pursuant to section 536.031.4, RSMo 2007. Such material will be provided at the cost established by state law. The entire text of the rule is printed here. This note refers only to the material incorporated by reference.

(1) **The minimum safety standards relating to the operation of electrical corporations, telecommunications companies and rural electric cooperatives are** ~~[The commission adopts as its rule and incorporates by reference,]~~ Parts 1, 2 and 3 and Sections 1, 2 and 9 of the ~~[American National Standard,]~~ National Electrical Safety Code (NESC); ~~[2002]~~ **2007** Edition as approved by the American National Standards Institute on June [14, 2001] **16, 2006, as modified by Errata thereto issued on October 5, 2006 and May 14, 2007, and published by the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997.** ~~[The NESC is published by the Institute of Electrical and Electronics Engineers, Inc., as the minimum safety standards relating to the operation of electric utilities and telecommunications companies and rural electric cooperatives.]~~ The NESC is composed of four (4) different parts and four (4) sections, each of which pertain to different aspects of the electric and telecommunications industries. Part 1 specifies rules for the installation and maintenance of equipment normally found in electric generating plants and substations. Part 2 pertains to safety rules for overhead electric and communication lines. Part 3 contains safety rules for underground electric and

communication lines. Section 1 is an introduction to the NESC, Section 2 defines special terms and Section 9 requires certain grounding methods for electric and communications facilities. **The full text of this rule is available at the Energy Department of the Public Service Commission Suite 700, 200 Madison, Jefferson City, Missouri. This rule does not incorporate any subsequent amendments or additions.**

((2) [~~All electric utilities~~] **Electrical corporations**, [~~and~~] telecommunications companies and rural electric cooperatives subject to regulation by this commission pursuant to Chapters 386, 392-394, RSMo **2007** shall [~~be required to adhere to~~] **comply with** the safety standards established by this rule **for new installations and extensions as described in the NESC.**

(3) Incident reporting requirements for [~~electric utilities~~] **electrical corporations** and rural electric cooperatives are found in 4 CSR 240-3.190(4).

(4) Those who excavate near underground facilities or conduct activities within ten feet of overhead power lines are required to notify area utilities prior to engaging in such action, pursuant to the Underground Facility Safety and Damage Prevention Act, §319.010 et seq., RSMo 2007, and the Overhead Power Line Safety Act, §319.075 et seq., RSMo 2007.

AUTHORITY: sections 386.310 RSMo 2007 [Supp. 1998] and 394.160, RSMo 2007. Original rule filed March 15, 1978, effective Oct. 2, 1978. Amended: Filed April 8, 1981, effective Oct. 15, 1981. Amended: Filed Feb. 9, 1984, effective June 15, 1984. Amended: Filed June 12, 1987, effective Sept. 15, 1987. Amended: Filed Jan. 5, 1990, effective April 13, 1990. Amended: Filed March 23, 1993, effective Oct. 10, 1993. Amended: Filed Aug. 27, 1999, effective Feb. 29, 2000. Amended: Filed ***, 2008, effective ****, 2008.*

**Original authority: 386.310, RSMo 1939, amended 1979, 1989, 1996 and 394.160, RSMo 1939, amended 1979.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 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, Colleen M. Dale, 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 *****, 2008, and should include a reference to Commission Case No. EX-2008-0226. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at*

*<<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for *****, 2008, at 10:00 am in Room 310 of the Governor Office Building, 200 Madison Street, 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.*

AFFIDAVIT

PUBLIC COST

STATE OF MISSOURI)

COUNTY OF COLE)

I, Gregory A. Steinhoff, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed rule, 4 CSR 240-18.010, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

Gregory A. Steinhoff

Director

Department of Economic Development

Subscribed and sworn to before me this _____ day of _____, 2008, I am
commissioned as a notary public within the County of _____, State of
Missouri, and my commission expires on _____.

Notary Public

Small Business Regulator Fairness Board Small Business Impact Statement

Date: February 26, 2008

Rule Number: 4 CSR 240-18.010

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: James Ketter

Phone Number: 573-751-0354 **Email:** jim.ketter@psc.mo.gov

Name of Person Approving Statement: Cully Dale

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).*

This amendment changes the edition of the National Electrical Safety Code that the commission adopts for the minimum safety standards applicable to electrical corporations, telecommunication companies and rural electric cooperatives. No impact on small businesses.

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

N/A – Only directly impacts utility companies and cooperatives in the state.

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.

None

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

None

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

N/A

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

Electrical corporations, telecommunication companies and rural electric cooperatives

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.