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May 16, 2001

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General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. AX-2001-634

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **MOTION TO OPEN A CASE AND TO FIND NECESSITY FOR RULEMAKING.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely, yours,

Cliff E. Snodgrass
Senior Counsel
(573) 751-3966
(573) 751-9285 (Fax)

CES:sw
Enclosure
cc: Counsel of Record

FILED³

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MAY 16 2001

Missouri Public
Service Commission

In the Matter of a Proposed Rescission of)
4 CSR 240-10.020)

Case No. AX-2001-634

MOTION TO OPEN A CASE AND TO FIND NECESSITY FOR RULEMAKING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Office of General Counsel, and for its *Motion to Open a Case and to Find Necessity for Rulemaking* ("Motion") states as follows:

1. § 536.010 (4) RSMo 2000 provides, among other things, that the term "rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. This statute goes on to say that the word "rule" also refers to the amendment or repeal of an existing rule. § 536.016 (1) RSMo 2000 provides, in part, that a state agency shall propose rules based upon a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority. 4 CSR 240-2.180 (2) provides authority for the initiation of rescission of a rule through an internally generated rulemaking case.

2. Staff is requesting the rescission or "repeal" of 4 CSR 240-10.020, Income on Depreciation Fund Investments, which is an existing rule. This rule was adopted in connection with the provisions of §§ 392.280 and 393.240 RSMo. The first statute just mentioned authorizes the Commission to require telecommunications companies to carry a proper and

adequate depreciation account in accordance with such rules as the Commission shall prescribe.

§ 393.240 RSMo grants the Commission authority over the other public utilities.


3. The basis for repeal is that this rule is obsolete to rate base regulated utilities and should therefore be rescinded. Basically, this rule prescribed the use of income on investment from depreciation funds, the appropriate interest rate to calculate and how the funds are accounted for when setting reasonable rates. The current practice, which has been used for several decades, is to use the accumulated depreciation reserve amount as an offset or reduction to rate base when calculating reasonable rates.

4. Staff presented a "Rulemaking Issue Paper" to the Commission through the Agenda process in April of 2001 regarding the repeal of this rule. The aforesaid Rulemaking Issue Paper is attached hereto, labeled Appendix A, and is incorporated herein by reference. The text of the rule sought to be rescinded is attached hereto, labeled Appendix B, and incorporated herein by reference.

WHEREFORE, the Staff respectfully requests, based upon the foregoing, that the Commission open a case for the purpose stated herein and that the Commission make a finding that a rulemaking or repeal of the specified rule is necessary.

Respectfully submitted,

DANA K. JOYCE
General Counsel


Cliff Snodgrass
Senior Counsel
Missouri Bar No. 52302

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 16th day of May, 2001.



Rulemaking Issue Paper

4-5-01
Agenda

4-12-01
Agenda approved
Order of Priority

What is the affected rule?

Chapter 10-10.020 Income on Depreciation Fund Investment

What is the problem and proposed solution?

This rule is no longer applicable and is obsolete to rate base regulated utilities and should be rescinded.

This rule prescribed the use of income on investment from depreciation funds, the appropriate interest rate to calculate and how the funds are accounted for when setting reasonable rates.

The current practice, which has been used for several decades, is to use the accumulated depreciation reserve amount as an offset or reduction to rate base when calculating reasonable rates.

What is the rational for making the suggested changes now?

PSC staff is underway with a review of all PSC rules. They will be reviewing the current rules for rules that should be rescinded, such as Chapter 10, or rules that should otherwise be changed or modified.

Would this rule change affect existing or establish new processes or procedures?

No.

Who will be affected by rescinding this rule?

No one.

What is the fiscal impact to the PSC?

None.

What is the fiscal impact to rate base regulated utilities, businesses or customers?

None.

Service List for
Case No. AX-2001-_____
May 16, 2001 (SW)

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