



Commissioners  
KELVIN L. SIMMONS  
Chair  
  
SHEILA LUMPE  
  
CONNIE MURRAY  
  
STEVE GAW

**Missouri Public Service Commission**

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>

July 27, 2001

WESS A. HENDERSON  
Director, Utility Operations  
ROBERT SCHALLENBERG  
Director, Utility Services  
DONNA M. KOLILIS  
Director, Administration  
DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

**FILED<sup>3</sup>**

JUL 27 2001

Missouri Public  
Service Commission

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 In the Matter of Proposed Rescission of Commission  
Rule 4 CSR 240-10.020**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case is the rulemaking material filed with the Secretary of State's Office for the proposed rescission of Rule 4 CSR 240-10.020.

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

**Service List for**  
**Case No. AX-2001-634**  
**Revised: July 27, 2001 (SW)**

**Office of the Public Counsel**  
**P.O. Box 7800**  
**Jefferson City, MO 65102**

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JUL 26 2001

SECRETARY OF STATE  
ADMINISTRATIVE RULES



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Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

July 23, 2001

Honorable Matt Blunt  
Secretary of State  
600 West Main Street  
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Proposed Rescissions lawfully submitted by the Missouri Public Service Commission for filing this 23<sup>rd</sup> day of July, 2001, and that a takings analysis and small business impact analysis have occurred.

Rule: 4 CSR 240-10.020 - Income on Depreciation Fund Investments

Statutory authority: 536.010(4) and 536.016(1) RSMo 2000

Missouri Public Service Commission Case Number: AX-2001-634

If there are any questions, please contact: Cliff E. Snodgrass  
Senior Counsel  
Missouri Public Service Commission  
200 Madison Street, PO box 360  
Jefferson City, Missouri 65102  
(573) 751-3966

BY THE COMMISSION

  
Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

Enclosures: Proposed Rescission to existing rule 4 CSR 240-10.020 (hard copy and electronic copy on diskette); Rule Transmittal; Takings Analysis; Small Business Impact Analysis.

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**MATT BLUNT**  
**Secretary of State**  
**Administrative Rules Division**  
**RULE TRANSMITTAL**

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

A. Rule Number 4 CSR 240-10.020  
 Diskette File Name 4 CSR 240-10.020  
 Name of Person to call with questions about this rule: Cliff E. Snodgrass  
 Context Senior Counsel Phone 573-751-3966 FAX 573-751-9285  
 Data Entry Same as above Phone Same as above FAX Same as above  
 Interagency Mailing Address Governor Office Bldg., 200 Madison St., Suite 800, Jefferson City, MO

**Statutory Provision for Rulemaking**

Authority 536.010(4), 536.016(1) Provide Most Current RSMo Year 2000

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages

<u>Y</u>	Cover Letter	
<u>Y</u>	Affidavit	
<u>Y</u>	Cost Statements	
	Public Entity Fiscal Note	<u>OTHER</u>
	Private Entity Fiscal Note	

C. RULEMAKING ACTION TO BE TAKEN

       Emergency Rulemaking, Must Specify Effective Date  
  X   Proposed Rulemaking (New Rule or Amendment or Rescission of Existing Rule)  
       Order of Rulemaking (MUST complete page 2 of this transmittal)  
       Withdrawal (Rule, Amendment, Rescission or Emergency)  
       Rule Action Notice  
       In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)

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E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-10.020

JUL 26 2001

1a. Effective Date for the Order

Statutory 30 days \_\_\_\_\_ or later specific date

SECRETARY OF STATE  
ADMINISTRATIVE RULES

1b. Does the Order of Rulemaking contain changes to the rule text?

YES \_\_\_\_\_ NO \_\_\_\_\_

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer language that appears at the bottom of this page.)

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

# Missouri Public Service Commission

P. O. Box 360  
Jefferson City, MO 65102  
Phone: (573) 751-8705  
Fax: (573) 751-9285

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## Memo

**To:** Joseph L. Driskill, Director  
Department of Economic Development

**From:** Cliff E. Snodgrass, Senior Counsel *CS*

**Date:** June 27, 2001

**Re:** Affidavit for Proposed Rescission of Rule 4 CSR 240-10.020 Income on Depreciation Fund Investments

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As required by statute, attached for your signature is:

- (1) an affidavit regarding public entity costs for proposed rule 4 CSR 240-10.020 – Income on Depreciation Fund Investments
- (2) a copy of the proposed rule rescission

If you have any questions, please contact me at 751-3966. Thank you.

Attached: Proposed Rule Rescission 4 CSR 240-10.020

Affidavit (Public Entity)

RECEIVED

JUL 18 2001

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION

AFFIDAVIT

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ADMINISTRATIVE RULES

STATE OF MISSOURI    )  
                              )  
COUNTY OF COLE     )

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the *Proposed Rescission of 4 CSR 240-10.020, Income on Depreciation Fund Investments*, is less than five hundred dollars (\$500) in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

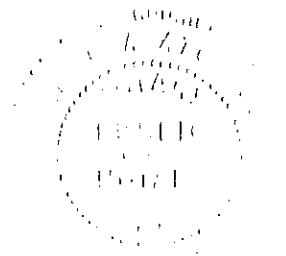
  
\_\_\_\_\_  
Joseph L. Driskill  
Director

Department of Economic Development

Subscribed and sworn to before me this 16<sup>th</sup> day of July, 2001. I  
am commissioned as a notary public within the County of Callaway,  
State of Missouri, and my commission expires on September 21, 2004

JULIE A. ATCHISON  
NOTARY PUBLIC STATE OF MISSOURI  
CALLAWAY COUNTY  
MY COMMISSION EXP. SEPT 21, 2004

  
\_\_\_\_\_  
NOTARY PUBLIC







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June 15, 2001

Commissioners  
SHEILA LUMPE  
Chair  
CONNIE MURRAY  
KELVIN L. SIMMONS  
STEVE GAW

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

### Proposed Rescission of Rule 4 CSR 240-10.020 Income on Depreciation Fund Investments

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rulemaking will have direct economic impact on small businesses of five hundred dollars or more in the aggregate. A small business is defined in the Executive Order as an independently owned and operated business entity that employs fifty or fewer full time employees.

Rescinding the above rule will not have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

Please let me know if you have any questions on this issue

Sincerely,

Cliff E. Snodgrass  
Senior Counsel  
(573) 751-3966  
(573) 751-9285 (Fax)  
[snodgra@mail.state.mo.us](mailto:snodgra@mail.state.mo.us) (E-Mail)



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June 15, 2001

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STEVE GAW

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

### Proposed Rescission of Rule 4 CSR 240-10.020 Income on Depreciation Fund Investments

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation 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. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The proposed rescission of this rule does not implicate the takings clause of the U.S. Constitution because the proposed rescission does not involve the taking of real property.

Mr. Dale Hardy Roberts  
June 15, 2001  
Page 2

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

Please let me know if you have any questions on this issue.

Sincerely yours,



Cliff E. Snodgrass  
Senior Counsel  
(573) 751-3966  
(573) 751-9285 (Fax)  
snodgra@mail.state.mo.us (E-Mail)

SW  
Enclosure

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JUL 26 2001

Title 4-DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240-Public Service  
Commission  
Chapter 10-Utilities

SECRETARY OF STATE  
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PROPOSED RESCISSION

**4 CSR 240-10.020 Income on Depreciation Fund Investments.** This Rule prescribed the use of income on investments from depreciation funds and the means for accounting for that income.

*PURPOSE: The rule was adopted in connection with the provisions of Sections 392.280 (governing telecommunications companies) and 393.240 (governing all other regulated companies) RSMo 2000. These statutes authorize the Commission to require regulated companies to carry an adequate depreciation account under the Commission's rules. The rule is obsolete concerning rate-based regulated companies. The rule prescribes the uses of income on investments from depreciation funds, the appropriate interest rate, 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 a reduction to rate base when calculating reasonable rates.*

*AUTHORITY: sections 536.010 (4), 536.016(1) RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Rescinded: \_\_\_\_\_.*

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

*PRIVATE COST: This proposed rescission will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition of this proposed rescission with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. Comments should refer to Case No.AX-2001-634 and be filed with an original and eight copies. No public hearing is scheduled.*