



Commissioners

SHEILA LUMPE
Chair

CONNIE MURRAY

KELVIN L. SIMMONS

STEVE GAW

Missouri Public Service Commission

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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

June 1, 2001

FILED³

JUN 01 2001

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

Missouri Public
Service Commission

**RE: Case No. EX-2001-450 In the Matter of Proposed Amendment to Commission Rule 4
CSR 240-21.010**

Dear Mr. Roberts:

Enclosed for filing in the official case file is an original of the **RULEMAKING
PACKET FOR PROPOSED AMENDMENT TO RULE 4 CSR 240-21.010.**

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,

Eric William Anderson
Assistant General Counsel
(573) 751-7485
(573) 751-9285 (Fax)
eanderso@mail.state.mo.us

EWA
Enclosure
cc: Counsel of Record

**Service List for
Case No. EX-2001-450
June 1, 2001 (ccl)**

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

RECEIVED

JUN 01 2001

SECRETARY OF STATE
ADMINISTRATIVE RULES

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 240-21.010

Diskette File Name 4 CSR 240-21.010.doc

Name of Person to call with questions about this rule:

Content Eric Anderson Phone (573)751-7485 FAX (573)751-9285

Data Entry Eric Anderson Phone (573)751-7485 FAX (573)751-9285

Interagency Mailing Address Governor Office Building, 200 Madison Street, Suite 812

Statutory Provision for Rulemaking

Authority § 394.312 and 386.800 Provide Most Current RSMo Year 2000

Date Filed With the Joint Committee on Administrative Rules Not Applicable (Exempt pursuant To Section 536.037.3 RSMo 2000)

B. CHECK, IF INCLUDED:

FORMS, List by Mo-Form Number, # of Pages

☒ Cover Letter

☒ Affidavit

☒ Cost Statements

☒ Public Entity Fiscal Note

☒ Private Entity Fiscal Note

OTHER

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency Rulemaking, Must Specify Effective Date

☒ 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.)

Small Business Analysis is included.

E. ORDER OF RULEMAKING: Rule Number N/A

1a. Effective Date for the Order
Statutory 30 days _____ or later specific date _____

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.



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June 1, 2001

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DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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

ATTENTION: Administrative Rules Division

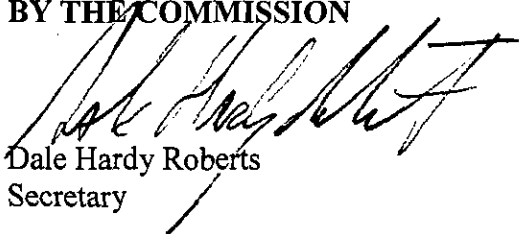
I do hereby certify that the attached are accurate and complete copies of the Proposed Rule Amendment lawfully submitted by the Missouri Public Service Commission for filing this 1st day of June, and that a takings analysis and small business impact analysis have occurred.

Proposed Amendment to Rule: 4 CSR 240-21.010 – Schedule of Fees.
Statutory Authority: § 394.312 and 386.800 RSMo 2000.
Missouri Public Service Commission Case No.: EX-2001-450

If there are any questions please contact:

Eric William Anderson, Assistant General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7485 (Telephone)
(573) 751-9285 (Fax)
eanderso@mail.state.mo.us

BY THE COMMISSION


Dale Hardy Roberts
Secretary

Enclosures

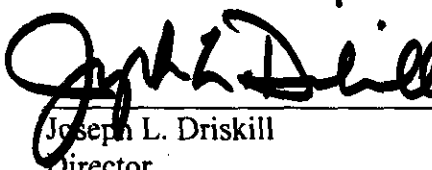
AFFIDAVIT

(PUBLIC ENTITY—COST)

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 attached fiscal note for the *Proposed Amendment* to 4 CSR 240-21.010 is a reasonably accurate estimate.



Joseph L. Driskill
Director

Department of Economic Development

Subscribed and sworn to before me this 10th day of May,
20 . I am commissioned as a notary public within the County of Callaway,
State of Missouri, and my commission expires on September 21, 2004.



NOTARY PUBLIC

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

10 MAY 2004
CALLAWAY COUNTY
MISSOURI

JUN 01 2001

Proposed 4 CSR 240-21.010 Schedule of Fees

PURPOSE: This rule [sets] **establishes** a schedule of fees for commission review of proposed territorial agreements, **petitions for commission designation of** [between] **electric service [suppliers] areas, and annexation-related applications.** SECRETARY OF STATE
ADMINISTRATIVE RULES

(1)[An application for c] Commission review of **an application for a proposed territorial agreement [between electric service suppliers], a petition for commission designation of electric service areas, or an application for resolution of an annexation-related dispute,** shall be accompanied by an initial filing fee [of two hundred fifty dollars (\$250).] **in the amount of five hundred dollars (\$500).**

(2) In addition to the filing fee, the fee for commission review of an opposed application for approval of a proposed territorial agreement between electric service [suppliers] providers is set at [twenty-five dollars (\$25) per hour of hearing] **six hundred and eighty-five dollars (\$685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred and eighty-five dollars (\$685).** [plus] There is an **additional charge of three dollars and fifty cents (\$3.50) per page of transcript.** These fees are in addition to the fees authorized by section 386.300, RSMo.

(3) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the electric territorial agreement, designation of service areas, or annexation-related application. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(4) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars (\$500) specified in section (1) of this rule. However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (2) of this rule.

(5) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time will be modified to match any percentage change in the Consumer Price Index for the twelve-month period ending December 31 of the preceding year.

Auth: section 394.312 and 386.800, RSMo [(Cum. Supp. 1990).] 2000. Original rule filed Oct. 3, 1989, effective Jan. 1, 1990.

PUBLIC ENTITY COST: This proposed amendment will cost municipal electric utilities approximately \$6,800.00 in the aggregate. This amount assumes a ten-year life of the rule, and an increasing consumer price index yearly average. A detailed fiscal note, which estimates the cost of compliance with the rule, has been filed with the Secretary of State.

PRIVATE ENTITY COST: This proposed amendment will cost electric utility companies approximately \$14,750.00 in the aggregate and will cost electric utility cooperatives approximately \$17,000.00. These amounts assume a ten-year life of the rule, and an

increasing consumer price index yearly average. A detailed fiscal note, which estimates the cost of compliance with the rule, has been filed with the Secretary of State.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102, (573) 751-3234. 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. EX-2001-450, and be filed with an original and nine copies. A public hearing is scheduled for August 7, 2001, at 10:00 AM, Room 305 in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, for interested persons to appear and 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 days prior to the hearing at one of the following numbers: Consumer Services Hotline 1-800-392-4211, or TDD Hotline 1-800-829-7541.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 4-DEPARTMENT OF ECONOMIC DEVELOPMENT

Division: 240-Public Service Commission

Chapter: 21-Electric Service Territorial Agreements

Type of Rulemaking: proposed amendment

Rule Number and Name: 4 CSR 240-21.010 Schedule of Fees

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Municipal Electric Utilities	\$6,800.00

III. WORKSHEET

If the average hearing lasts approximately one hour, and by rule the parties cannot be charged for less than one hour, the cost would be: \$500 initial filing fee, plus \$685 for one hour of hearing, for a total of \$1,185. This \$1,185 would then be divided among the parties. Assuming the Commission would split the fees equally between the two parties, the cost would be \$592.50 per party (municipal electric utilities). The rule was last updated in 1991. Further, assuming the Commission waited another ten years to update the proposed rule and taking into account that thirteen municipalities were parties to these cases in twelve years—averaging approximately one party per year—then over the next ten years ten municipalities would incur \$592.50 for an aggregate cost of 5,925.00.

The fees charged will likely increase because they are now tied to the Consumer Price Index under the proposed rule amendment. Following the increasing trend in the Index, the estimated cost of compliance per party increases by nearly 2.8% per year, which increases the total cost to approximately \$6,800 for municipal electric utilities over the life of the rule.

IV. ASSUMPTIONS

The Missouri Public Service Commission keeps records of entities coming before the Commission for approval of territorial agreements and annexations. There have been 35 cases requesting approval of a territorial agreement or disputes involving an annexation brought before the Commission since 1989. One of these cases had more than two parties to the case. None of the cases had more than one municipal electric utility as a party. Thirteen of the thirty-five cases in the past twelve years involved a municipal electric utility. Currently, there are eighty-nine (89) municipal electric utilities operating in the state of Missouri.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 4-DEPARTMENT OF ECONOMIC DEVELOPMENT

Division: 240-Public Service Commission

Chapter: 21-Electric Service Territorial Agreements

Type of Rulemaking: proposed amendment

Rule Number and Name: 4 CSR 240-21.010 Schedule of Fees

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
6	Electric Utility Companies	\$14,750.00
25	Electric Utility Cooperatives	\$17,000.00

III. WORKSHEET

If the average hearing lasts approximately one hour, and by rule the parties cannot be charged for less than one hour, the cost would be: \$500 initial filing fee, plus \$685 for one hour of hearing, for a total of \$1,185. This \$1,185 would then be divided among the parties. Assuming the Commission would split the fees equally between the two parties, the cost would be \$592.50 per party (regulated electric utility companies). The rule was last updated in 1991. Further, assuming that the Commission waited another ten years to update the proposed rule, and that six (6) electric utility companies were parties to these cases twenty-six (26) times in the past twelve years—averaging 2.17 a year—then over the next ten years, twenty-one (21) times an electric utility company would incur \$592.50. This results in an aggregate cost of \$12,442.50 over the life of the rule for an electric utility. Using the same analysis, with thirty (30) cases involving electric cooperatives in the past twelve years (with one case involving two cooperatives)—an average of approximately 2.5 a year—then over the next ten years, twenty-five (25) electric cooperatives would incur \$592.50. This results in an aggregate cost of \$14,812.50.

The fees charged will likely increase because they are now tied to the Consumer Price Index under the proposed rule amendment. Following the increasing trend in the index, the estimated cost of compliance per party increases by nearly 2.8% per year, which increases the total cost to approximately \$14,750 for companies and \$17,000 for cooperatives over the life of the rule.

IV. ASSUMPTIONS

The Missouri Public Service Commission keeps records of entities coming before the Commission for approval of territorial agreements and annexations. There have been 35 cases requesting approval of a territorial agreement or disputes involving an annexation brought before the Commission since 1989. One of these cases had two cooperatives as parties to the case. None of the cases had more than one electric utility company as a party. Twenty-five of the thirty-five cases in the past twelve years involved an electric utility company while thirty of the cases involved electric utility cooperatives. Currently, there are six (6) regulated electric utility companies operating in the state of Missouri and forty (40) electric cooperatives.



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M. DIANNE DRAINER
Vice Chair

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DANA K. JOYCE
General Counsel

May 1, 2001

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

RE: Proposed Amendment to Rule 4 CSR 240-21.010 Schedule of Fees.

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 amendment to the rule increases the fees for filing and resolution of territorial agreements and territorial disputes as well as providing for fees in annexation cases.

Adopting the proposed rule does not implicate the takings clause of the U.S. Constitution, because the rule does not involve the taking of real property.

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "EWA", followed by a horizontal line.

Eric William Anderson
Assistant General Counsel
(573) 751-7485
(573) 751-9285 (Fax)

EWA/cl



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May 1, 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: Proposed Amendment to Rule 4 CSR 240-21.010 Schedule of Fees.

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rule making 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.

The proposed amendment to the rule increases the fees for filing and resolution of territorial agreements and territorial disputes as well as providing for fees in annexation cases and is estimated to have a direct economic impact on small businesses, which are made up of cooperative utilities with less than 50 employees, of five hundred dollars or more in the aggregate.

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

Sincerely yours,

Eric William Anderson
Assistant General Counsel
(573) 751-7485
(573) 751-9285 (Fax)

EWA/cl