

## MEMORANDUM

**TO:** Steven C. Reed, Secretary

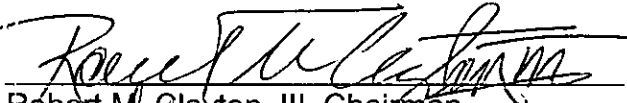
**DATE:** April 28, 2010

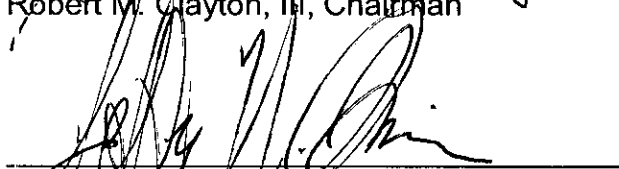
**RE:** Authorization to file Final Order of Rulemaking with the Office of Secretary of State

**CASE NO.:** EX-2010-0122

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of the Secretary of State, to wit:

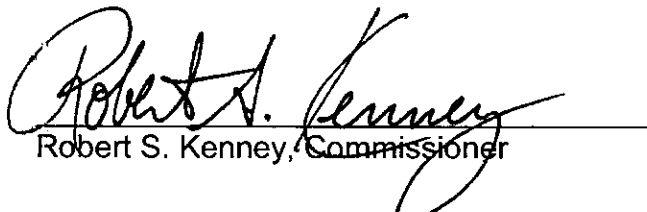
**Proposed Amendment 4 CSR 240-3.190 – Reporting Requirements for  
Electric Utilities and Rural Electric Cooperatives**

  
Robert M. Clayton, III, Chairman

  
Jeff Davis, Commissioner

  
Terry M. Jarrett, Commissioner

  
Kevin D. Gunn, Commissioner

  
Robert S. Kenney, Commissioner

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-3.190

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris L. Woodruff Phone 573-636-8957 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Morris L.

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Interagency mailing address PSC, Ste. 900, Gov. Ofc. Bldg. Jefferson City, MO 65102

### TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order \_\_\_\_\_

☒ Statutory 30 days OR Specific date \_\_\_\_\_

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

4 CSR 240-3.190(1)(J), (4), (4)(B), (4)(C), and (5) have been amended

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

APR 28 2010

ADMINISTRATIVE RULES



**Commissioners**

**ROBERT M. CLAYTON III**  
Chairman

**JEFF DAVIS**

**TERRY M. JARRETT**

**KEVIN GUNN**

**ROBERT S. KENNEY**

***Missouri Public Service Commission***

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**ROBERT SCHALLENBERG**  
Director, Utility Services

**NATELLE DIETRICH**  
Director, Utility Operations

**STEVEN C. REED**  
Secretary/General Counsel

**KEVIN A. THOMPSON**  
Chief Staff Counsel

Honorable Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

**Re: Amendment of 4 CSR 240-3.190**

**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing.

Statutory Authority: Sections 386.250 and 394.160, RSMo 2000.

If there are any questions, please contact: **Morris L. Woodruff**, Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-2849  
[morris.woodruff@psc.mo.gov](mailto:morris.woodruff@psc.mo.gov)

A handwritten signature in cursive script, reading "Morris L. Woodruff".

**Morris L. Woodruff**  
Chief Regulatory Law Judge  
Missouri Public Service Commission

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 240 – Public Service Commission  
Chapter 3—Filing and Reporting Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under sections 386.250 and 394.160, RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-3.190 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 207). The sections with changes are reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

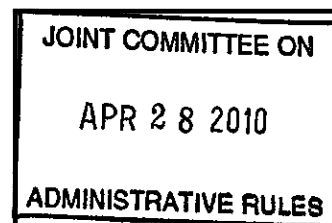
**SUMMARY OF COMMENTS:** The public comment period ended March 5, 2010, and a public hearing on the proposed rule was held March 8, 2010. Timely written comments were received from the staff of the Missouri Public Service Commission, Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), the Association of Missouri Electric Cooperatives (AMEC), and from Union Electric Company d/b/a AmerenUE. In addition, the commission's staff, AMEC, and AmerenUE offered comments at the hearing. The comments proposed various modifications to the amendment.

**COMMENT 1 Changes to Subsection (1)(B):** At the hearing, Staff suggested changes to the new (B) that would make the subsection read as follows:

Monthly as-burned fuel report for each carbon based fuel generating unit, including the **ending inventory balance**, the amount of each type of fuel consumed, the British thermal unit (Btu) value of each fuel consumed, **the average cost per unit burned broken into fixed and variable components**, and the blending percentages (if applicable).

Staff indicates it is currently getting this additional information from most utilities, but would like to include the requirement in the rule.

No one commented on the substance of the change, but AmerenUE pointed out that Staff's proposal to amend this section would be procedurally inappropriate because the proposed change was not published in the proposed rule and thus the public has not had an opportunity to review and comment on the new language.



**RESPONSE:** The commission believes that Staff's proposed change should receive public comment before being implemented. Therefore, the commission will not change this aspect of the amendment.

**COMMENT 2 Changes to Subsection 1(J):** The existing rule requires an electric utility to submit to Staff the terms of certain new contracts that require the utility to expend more than \$100,000. KCPL proposed that the \$100,000 threshold be increased to \$200,000. Staff supported the change proposed by KCPL.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission agrees with KCPL's comment and will modify the amendment in the manner proposed by KCPL.

**COMMENT 3 Changes to Section (2):** Section (2) is being amended to require electric utilities to provide the information required in subsections (1)(A) through (I) in an electronic format from which the data can be easily extracted for analysis in spreadsheet or database software. KCPL asks that that requirement not go into effect until January 2011, to allow time to facilitate planning, budgeting, and programming of changes needed to provide that information in that form. Staff opposes the delay requested by KCPL.

**RESPONSE:** The amendment's requirement that electric utilities submit data in a format that will allow Staff to easily analyze that data should not impose an undue burden on the utilities. The commission will not delay the implementation of this requirement, and no change is made as a result of these comments

**COMMENT 4 Changes to Subsection (3)(A):** This subsection requires electric utilities to report details of any accident or event at a power plant that causes injury, death, or more than \$200,000 in property damage, up from \$100,000 in the existing rule. The amendment also adds a requirement that the electric utility submit either a detailed investigative report or, if the investigation is not complete, a draft of a plan for its investigation, within 90 days. AmerenUE is concerned that it would be a poor use of its employees' time to prepare a "detailed investigative report" within 90 days and asks the commission to remove that requirement. Empire also contends 90 days is too aggressive, and believes the \$200,000 reporting threshold is too low. Staff supports the amended subsection as published.

**RESPONSE:** The commission believes that any electric utility that experiences an accident or event at a power plant that results in \$200,000 in property damage is likely to undertake a detailed investigation into that accident or event regardless of whether it is required to do so by a commission regulation. Therefore, the reporting requirement will not be unduly burdensome. Similarly, the 90-day reporting requirement is not unduly burdensome, as it does not require the report to be completed in 90 days, instead allowing the electric utility

to merely submit a draft plan for the investigation within that time. The commission will not modify the amendment.

**COMMENT 5 Changes to Subsection (3)(C):** This subsection requires electric utilities to report forced outages of any fossil-fired generating unit when the outage is expected to last more than three days. Currently the subsection requires a report when the affected unit would constitute 20 percent or more of the utility's accredited capacity. The proposed amendment would require a report when the affected unit's capacity is greater than 100 megawatts. Empire complains that this change would increase its reporting requirement from just one unit constituting at least 20 percent of its capacity to seven units that are greater than 100 megawatts. Staff responded that the amendment is designed to require utilities to file outage reports on more of their plants.

**RESPONSE:** The commission agrees with its staff. A three-day or longer forced outage of any fossil-fired plant greater than 100 megawatts is a significant event about which the commission's staff should be informed. The rule's requirement of a phone call and a written follow-up five days later will not impose an undue burden on the electric utility. The commission will not modify the amendment.

**COMMENT 6 Changes to Section (4):** This section requires electric utilities and electric cooperatives to notify the commission of certain accidents or events. The section includes subsections (A), (B), and (C) that will be addressed separately. KCPL suggests that a provision be added to section (4) that would waive the reporting requirements if they were already required to be reported in a similar but separate report, and suspend the requirement during an extraordinary operation event. Staff replied that it knows of no other rule that would require such accidents or events to be reported. Staff also does not support suspending the reporting requirements during an extraordinary operation event.

More generally, AMEC asks that the commission exclude the cooperatives entirely from the reporting requirements of this section because it believes cooperatives are less likely to require extensive safety regulation.

Finally, AMEC commented at the hearing that the last sentence of section (4) contains a reference to "incident," when everywhere else in the rule, the term used is "accident or event." AMEC does not ask that "accident or event" be changed to "incident," but advises the commission to make the references consistent.

**RESPONSE:** The commission is not aware of any duplicative reporting requirements that would eliminate the need for an electric utility or cooperative to report under this rule. Therefore, KCPL's proposed language is unnecessary. The commission is mindful of KCPL's concern that electric utilities and cooperatives might have difficulty notifying the commission of accidents or events that occur during an extensive outage following a major storm or other catastrophe. However, the rule only requires the electric utility or cooperative to place a phone call to the commission's Staff, followed by a written report ten

business days later. That requirement will not be unduly burdensome even during a major outage.

Section 394.160, RSMo (2000) requires the commission to regulate the transmission and distribution systems operated by an electric cooperative to the extent necessary to protect public safety. The reporting requirements contained in this rule relate to public safety and are necessary to allow the commission to be aware of possible problems on those transmission and distribution systems when they occur. The commission will not exempt the cooperatives from these reporting requirements.

AMEC's reference to "incident" in the last sentence of section (4) was apparently based on a review of the proposed amendment as it appeared in the commission's electronic filing system. Fortunately, that error was corrected in the proposed amendment as published in the Missouri Register. Therefore, no change is necessary.

**COMMENT 7 Changes to Subsection 4(A):** This subsection requires an electric utility or cooperative to notify the Commission of injuries to employees or other persons that result from contact, arc, or flash that result in hospitalization or death. AMEC would limit the reporting requirement to injuries that result in "immediate" admission to a hospital. It is concerned that an injury that does not result in an "immediate" hospitalization might not come to the attention of the electric utility or cooperative. Staff opposes the "immediate" language as overly restrictive.

AmerenUE points out that subsection (A) does not include the limiting language in subsection (B) that requires a utility or cooperative to report only those incidents of which it has received proper notice, or of which it has actual knowledge. AmerenUE asks that the limiting language in (B) also be made to apply to (A) by moving it into section (4) so that it applies to subsections (A), (B), and (C). Staff supports that change.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission is mindful of the cooperatives concern about their ability to notify the commission of incidents that result in hospitalization only some time after the incident. However, the rule only requires an electric utility to notify the commission of an incident when it has received "proper notice or has actual knowledge of the accident or event." Whether a victim has been immediately hospitalized or is hospitalized days or weeks later will not affect whether the electric utility has proper notice or actual knowledge of a qualifying accident or event, as it will not become a qualifying accident or event until the electric utility or cooperative has that proper notice or actual knowledge. Therefore, the proposed restriction is not necessary.

The commission agrees that the limiting language in (B) should also apply to (A) and (C) and will move that language into section (4), as proposed by AmerenUE.

**COMMENT 8 Changes to Subsection (4)(B):** This subsection expands the reporting requirement to include accidents or events believed to have occurred

on the customer's side of the meter. AMEC and AmerenUE ask the Commission to remove this requirement entirely. They are concerned that events that occur on the customer's side of the meter are beyond the control, and frequently beyond the knowledge of the electric utility or cooperative.

More specifically, AMEC and AmerenUE, as well as Empire, are concerned that the rule is not clear about who should report an incident that occurs in an area served by more than one service provider. For example, an incident may involve a cooperative's customer but the suspected current may have flowed from an AmerenUE transmission line across the road. AMEC proposed to remedy this confusion by inserting the term "at a premises" where it supplies power in place of "within areas" where it supplies power. The idea is to limit the reporting requirement to incidents involving a premises served by the cooperative or utility. That way, AmerenUE would report an incident that occurred at premises it serves and the cooperative would report an incident that occurred at premises it serves. Staff agreed that the rule should clearly define which entity should report an incident.

AMEC and AmerenUE are also concerned about the provision that requires them to report incidents on the customer side of a meter that are reported to them. They would limit the requirement to report to those incidents for which they have received "credible notice from a competent source." Staff believes that language is too restrictive and supports keeping the current "proper notice" requirement.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission is aware that electric utilities and cooperatives usually cannot control what happens on the customer's side of the meter and that they may not even be aware of accidents or events that occur on the customer's side of the meter. That is why the rule only requires to electric utility or cooperative to tell the commission about such accidents or events when the utility or cooperative becomes aware of them. The commission is amending this rule to avoid a repeat of a situation where the commission learned about such an accident only from newspaper reports of a large civil judgment against an electric utility for an accidental electrocution that the utility contended was caused by electric current originating on the customer's side of the meter. The commission will not eliminate this requirement of the amendment.

The commission shares the commenter's concern that the rule must clearly establish responsibility for which entity will report an accident or event. For that reason, the commission will modify the amendment as recommended by AMEC by inserting "at locations" instead of "within areas," and by changing the source "of the problem" to the source "of the electric current."

The commission does not expect electric utilities or cooperatives to report accidents or events of which they are not aware. The purpose of this rule is to ensure that electric utilities and cooperatives share the information they possess with the commission's staff. The phrase "proper notice" is sufficient to meet that requirement and the proposed modification to "credible notice from a competent source" is not necessary and will not be included in the amendment.



**COMMENT 9 Changes to Subsection (4)(C):** This subsection is a catch-all provision that would require an electric utility or cooperative to report any other accident or event that it considers significant. AMEC suggests changes clarifying that the provision applies to property damage considered significant by management of the utility or cooperative. KCPL and AmerenUE suggest the subsection be removed because it is vague, potentially overly broad, and does not add any requirements not already covered by subsections (A) or (B). Staff would modify the subsection to remove the words "accident or event resulting from," but wants to keep the catch-all provision so that electric utilities and cooperatives would still be required to report electrical contact, arc, or flash that they find significant.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission will make the modification proposed by Staff, but will not otherwise modify the subsection. By its terms, this subsection merely requires the electric utility or cooperative to report any electrical contact, arc, or flash that the utility or cooperative finds significant. Again, this regulation is only designed to require electric utilities and cooperatives to share important information with the commission. The determination of whether to report any electrical contact, arc, or flash as significant under this subsection is entirely within the discretion of the utility or cooperative.

**COMMENT 10 Changes to Section (5):** This section requires an electric utility or cooperative to submit a written report within five days after the discovery of the accident or event. AmerenUE suggests the five-day period for submitting a follow-up report be increased to ninety days so that it would have more time to conduct a follow-up investigation. Staff contends too much information could be lost by waiting 90 days to put anything in writing, but suggests the five-day period be expanded to ten.

AMEC proposes to add a waiver provision to section (5) to clarify that the submission of any report under this rule is not an admission of liability or waiver of privilege by the reporting electric utility or cooperative. Staff supports including the proposed admission and waiver language.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with Staff that 90 days is too long to wait to have information put in writing. The rule does not require the electric utility or cooperative to submit an extensive investigative report, rather it simply requires the utility or cooperative to submit any additional details known to them at that time. The commission will extend that reporting date from five business days to ten as recommended by Staff.

The commission will also include the waiver language proposed by AMEC.

#### **4 CSR 240-3.190 Reporting Requirements for Electric Utilities and Rural Electric Cooperatives**

(1) Commencing on September 1, 1991, every electric utility shall accumulate the following information and submit it to the manager of the Energy Department of the commission, or his/her designee, no later than the last business day of the month following the month to be reported and after that on a monthly basis:

(J) The terms of new contracts or existing contracts which will be booked to Accounts 310-346 or Accounts 502-546 of the FERC's Uniform System of Accounts requiring the expenditure by the electric utility of more than two hundred thousand dollars (\$200,000) including, but not limited to, contracts for engineering, consulting, repairs and modifications or additions to an electric plant; and

(4) Every electric utility and rural electric cooperative shall notify designated commission personnel by telephone of an accident or event by the end of the first business day following the discovery of any accident or event, provided the utility or rural electric cooperative first has received proper notice or has actual knowledge of the accident or event. Accidents or events that shall be reported shall be those resulting from:

(B) Human contact with electric current of significant voltage at locations where it supplies power or operates energized electrical supply facilities that results in admission to a hospital or the fatality of an employee or other person, even when the source of the electric current is believed to have originated on the customer's side of the meter; or

(C) Any other electrical contact, arc, or flash considered significant by the utility or rural electric cooperative.

(5) The electric utility or rural electric cooperative shall submit to designated commission personnel within ten (10) business days following the discovery a written report consisting of an update of the accident or event and any details not available at the time of the initial telephone notification. Neither the notification required by section (4), the submission of the written report required by this section, nor the public availability of either, shall be deemed to be an admission or waiver of any privilege of the notifying or reporting electric utility or rural electric cooperative.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Rulemaking to                     )  
Amend the Reporting Requirements for                     )       EX-2010-0122  
Electric Utilities and Rural Electric Cooperatives       )

**CONCURRING OPINION OF COMMISSIONER TERRY M. JARRETT**

I concur in the Order of Rulemaking issued by the Commission because it lacks any financial funding mechanism with regard to its safety jurisdiction over rural electric cooperatives<sup>1</sup>. Missouri's citizens have a vested interest in the provision of a safe power supply – but the regulation of that safety function by the Commission cannot be performed in a financial vacuum.

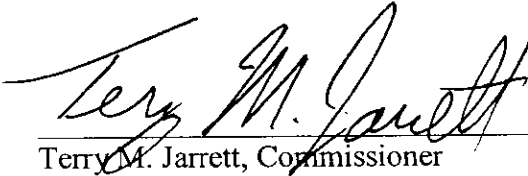
Utilities regulated by the Commission have traded their free market position for monopoly status. The cost of regulating these utilities is paid for by assessments assigned to and paid for by the utilities the Commission regulates, and ultimately a cost born by the utilities' ratepayers and shareholders.

Despite the safety jurisdiction of this Commission over rural electric cooperatives, no assessments are assigned to them. The Commission's rule here assigns work to Commission staff, but provides no source for funding that work. The Commission must be mindful of taking on work that has no funding mechanism for support. The legislature vested in this agency the safety jurisdiction over rural electric cooperatives and there should be a mechanism to charge them for the Commission's work in this area. It is

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<sup>1</sup> 394.160.1 RSMo 2000 “ ... The jurisdiction, supervision, powers and duties of the public service commission shall extend to every such cooperative so far as concerns the construction, maintenance and operation of the physical equipment of such cooperative to the extent of *providing for the safety of the public* ...” (Emphasis added).

unfair for the ratepayers and shareholders of the regulated utilities to subsidize these costs.

  
Terry M. Jarrett, Commissioner

Submitted this 28<sup>th</sup> day of April, 2010.