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November 1, 2007  
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Missouri Public  
Service Commission



**Robin Carnahan**  
Secretary of State

**Administrative Rules Division  
Rulemaking Transmittal Receipt**

Rule ID: 7593  
Date Printed: 10/31/2007  
Rule Number: 4 CSR 240-3.162  
Rulemaking Type: Proposed Rule  
Date Submitted to Administrative Rules Division: 10/31/2007  
Date Submitted to Joint Committee on Administrative Rules: 10/31/2007

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Name of Person to Contact with questions concerning this rule:

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Included with Rulemaking:

Cover Letter

10/31/2007

Affidavit for public cost

10/31/2007

Print Close

**Robin Carnahan**  
Secretary of State  
Administrative Rules Division  
**RULE TRANSMITTAL**

Administrative Rules Stamp

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

**COPY**

Rule Number 4 CSR 240-3.162

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

Name of person to call with questions about this rule:

Content Cully Dale Phone 751-4255 FAX

Email address cully.dale@psc.mo.gov

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Interagency mailing address Public Service Commission, 9th Floor, Governor Office Bldg

**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:

Small Business Regulatory  
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REGULATORY FAIRNESS  
BOARD

JCAR Stamp

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***Missouri Public Service Commission***

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**COLLEEN M. DALE**  
Secretary/Chief Regulatory Law Judge

**KEVIN A. THOMPSON**  
General Counsel

October 31, 2007

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

Dear Secretary Carnahan:

**Re: Proposed Rule 4 CSR 240-3.162**

**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 31<sup>st</sup> day of October, 2007.

Statutory Authority: Sections 386.210.2 and 386.250 RSMo 2000.

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


Section 536.300, RSMo Supp. 2006, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees" and elaborates

that a proposed rule "affects" a small business if it "impose[s] any potential or actual 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." Section 536.300.3, RSMo Supp. 2006, in part, provides: "If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . ."

Proposed rule 4 CSR 240-3.162 does not impose requirements that have an economic impact on small businesses, 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.

If there are any questions, please contact: Colleen M. Dale, Secretary  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4255  
cully.dale@psc.mo.gov

BY THE COMMISSION

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

Colleen M. Dale  
Secretary

COPY

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

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

PROPOSED RULE

**4 CSR 240-3.162 Electric Utility Environmental Cost Recovery Mechanisms Filing and Submission Requirements.**

(1) As used in this rule, the following terms mean:

(A) EFIS means the electronic filing and information system of the commission;

(B) Electric utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo;

(C) Environmental compliance plan means a twenty (20) year forecast of environmental compliance investments and a detailed four (4) year plan for complying with federal, state, and local environmental laws, regulations and rules. The four (4) year plan will include plans to use emission allowances for compliance, plans for emission allowance transactions and, on a generation unit basis, plans for investments in emission control equipment. The environmental compliance plan shall be consistent with the implementation plan of the most recent resource plan filing except as otherwise explained by the electric utility. Approval of an ECRM does not imply approval or predetermination of prudence of the environmental compliance plan.

(D) Environmental Cost Recovery Mechanism (ECRM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the net increases or decreases in an electric utility's environmental costs.

(E) Environmental costs means prudently incurred costs, both capital and expense, directly related to compliance with any federal, state, or local environmental law, regulation or rule.

1. Environmental costs do not include fuel and purchased power costs as defined in 4 CSR 240-3.161(1)(A).

2. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility.

(F) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission.

(G) Rate class is a customer class defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class.

(2) When an electric utility files to establish an ECRM as described in 4 CSR 240-20.091(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(2)(E);

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(B) An example customer bill showing how the proposed ECRM shall be separately identified on affected customers' bills in accordance with 4 CSR 240-20.091(8);

(C) Proposed ECRM rate schedules;

(D) A general description of the design and intended operation of the proposed ECRM;

(E) A complete explanation of how the proposed ECRM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A complete explanation of how the proposed ECRM shall be trued-up to reflect over-or under-collections on at least an annual basis;

(G) A complete description of how the proposed ECRM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed ECRM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all of the costs, both capital and expense, incurred to comply with any current federal, state, or local environmental law, regulation or rule that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records.

(J) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed ECRM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(K) A complete explanation of any feature designed into the proposed ECRM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed ECRM;

(L) For each of the major categories of costs that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed base amount of environmental costs in permanent rates and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(M) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(N) The electric utility's environmental compliance plan including a complete description of

1. The electric utility's long-term environmental compliance planning process;

2. The analysis performed to develop the electric utility's environmental compliance plan; and

3. If the environmental compliance plan is inconsistent with the electric utility's most recent resource plan filing, a detailed explanation of why such inconsistencies exist.

(O) Authorization for the commission staff to release the previous five (5) years of historical surveillance reports submitted to the commission staff by the electric utility to all parties to the case.

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described by 4 CSR 240-20.091(2) in which it requests that its ECRM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(2)(E);

(B) If the electric utility proposes to change the identification of the ECRM on the customer's bill, an example customer bill showing how the proposed ECRM shall be separately identified on affected customers' bills, including the proposed language, in accordance with 4 CSR 240-20.091(8);

(C) Proposed ECRM rate schedules;

(D) A general description of the design and intended operation of the proposed ECRM;

(E) A complete explanation of how the proposed ECRM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A complete explanation of how the proposed ECRM shall be trued-up to reflect over-or under-collections on at least an annual basis;

(G) A complete description of how the proposed ECRM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed ECRM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all of the costs, both capital and expense, incurred to comply with any current federal, state, or local environmental law, regulation or rule, that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records.

(J) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed ECRM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(K) A complete explanation of any feature designed into the proposed ECRM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed ECRM;

(L) For each of the major categories of costs that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed base amount of environmental costs in permanent rates and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(M) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed ECRM in setting the electric utility's

allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(N) A description of how responses to subsections (B) through (M) differ from responses to subsections (B) through (M) for the currently approved ECRM;

(O) The electric utility's environmental compliance plan including a complete description of

1. the electric utility's long-term environmental compliance planning process;
2. the analysis performed to develop the electric utility's environmental compliance plan; and
3. if the environmental compliance plan is inconsistent with the electric utility's most recent resource plan filing, a detailed explanation of why such inconsistencies exist.

(P) Any additional information that may have been ordered by the commission in the prior general rate proceeding to be provided.

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described in 4 CSR 240-20.091(3) in which it requests that its ECRM be discontinued, the electric utility shall file with the commission and serve parties as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(3)(B);

(B) A complete explanation of how the over-collection or under-collection of the ECRM that the electric utility is proposing to discontinue shall be handled;

(C) A complete explanation of why the ECRM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(D) A complete explanation of any change in business risk to the electric utility resulting from discontinuation of the ECRM in setting the electric utility's allowed return, in addition to any other changes in business risk experienced by the electric utility; and

(E) Any additional information that may have been ordered by the commission in the prior general rate proceeding to be provided.

(5) Each electric utility with a ECRM shall submit, with an affidavit attesting to the veracity of the information, the following information on a monthly basis to the manager of the auditing department of the commission, the Office of the Public Counsel (OPC) and others, as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS. The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of each month when the ECRM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the ECRM goes into effect. It shall contain, at a minimum:

(A) The revenues billed pursuant to the ECRM by rate class and voltage level, as applicable;



(B) The revenues billed through the electric utility's base rate allowance by rate class and voltage level;

(C) The electric utility's actual environmental compliance costs and revenues allocated by rate class and voltage level, as applicable, consistent with the most recent commission approved allocation methods and rate design.;

(D) All significant factors that have affected the level of ECRM revenues along with workpapers documenting these significant factors;

(E) The difference, by rate class and voltage level, as applicable, between the total environmental revenues collected through base rates and the ECRM and the environmental compliance revenues received and costs incurred;

(F) Any additional information ordered by the commission to be provided;

(G) To the extent any of the requested information outlined above is provided in response to another section, the information only needs to be provided once.

(6) Each electric utility with an ECRM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report, which shall be treated as highly confidential, as required in 4 CSR 240-20.091(9), to the manager of the auditing department of the commission, OPC and others as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS.

(A) There are five (5) parts to the electric utility Surveillance Monitoring Report. Each part, except Part one, Rate Base Quantifications, shall contain information for the last twelve (12)-month period and the last quarter data for total company electric operations and Missouri jurisdictional operations. Page one, Rate Base Quantifications shall contain only information for the ending date of the period being reported. The form of the Surveillance Monitoring Report form is included herein.

1. Rate Base Quantifications Report. The quantification of rate base items on page one shall be consistent with the methods or procedures used in the most recent rate proceeding unless otherwise specified. The report shall consist of specific rate base quantifications of:

A. Plant in service;

B. Reserve for depreciation;

C. Materials and supplies;

D. Cash working capital;

E. Fuel inventory;

F. Prepayments;

G. Other regulatory assets;

H. Customer advances;

I. Customer deposits;

J. Accumulated deferred income taxes;

K. Any other item included in the utility's rate base in the most recent rate proceeding;

L. Net Operating Income from page three; and

M. Calculation of the overall return on rate base.

2. Capitalization Quantifications Report. Page two shall consist of specific capitalization quantifications of:

- A. Common stock equity (net);
- B. Preferred stock (par or stated value outstanding);
- C. Long-term debt (including current maturities);
- D. Short-term debt; and
- E. Weighted cost of capital including component costs.

3. Income Statement. Page three shall consist of an income statement containing specific quantification of:

- A. Operating revenues to include sales to industrial, commercial and residential customers, sales for resale and other components of total operating revenues;
- B. Operating and maintenance expenses for fuel expense, production expenses, purchased power energy and capacity;
- C. Transmission expenses;
- D. Distribution expenses;
- E. Customer accounts expenses;
- F. Customer service and information expenses;
- G. Sales expenses;
- H. Administrative and general expenses;
- I. Depreciation, amortization and decommissioning expense;
- J. Taxes other than income taxes;
- K. Income taxes; and
- L. Quantification of heating degree and cooling degree days, actual and normal;

4. Jurisdictional Allocation Factor Report. Page four shall consist of a listing of jurisdictional allocation factors for the rate base, capitalization quantification reports and income statement.

5. Financial Data Notes. Page five shall consist of notes to financial data including, but not limited to:

- A. Out of period adjustments;
- B. Specific quantification of material variances between actual and budget financial performance;
- C. Material variances between current twelve (12)-month period and prior twelve (12)-month period revenue;
- D. Expense level of items ordered by the commission to be tracked pursuant to the order establishing the ECRM;
- E. Budgeted capital projects;
- F. Events that materially affect debt or equity surveillance components; and
- G. All settlements in regards to environmental compliance causing the electric utility to incur expenses or make investments in excess of one hundred thousand (100,000) dollars or fines against the electric utility in regards to environmental compliance greater than one hundred thousand (100,000) dollars.

(B) The Surveillance Monitoring Report shall contain any additional information ordered by the commission to be provided.

(C) The electric utility shall annually submit its approved budget, in electronic form, based upon its budget year in a format similar to the Surveillance Monitoring Report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget shall be submitted within thirty (30) days of its approval by the electric utility's management or within sixty (60) days of the beginning of the electric utility's fiscal year, whichever is earliest. The budget submission shall be treated as highly confidential pursuant to 4 CSR 240-2.135.

(D) If the electric utility has a rate adjustment mechanism as defined in 4 CSR 240-20.090(1)(G), the surveillance report submitted by the electric utility as required by 4 CSR 240-3.161(6) along with information submitted in response to (A)5.G. of this subsection shall meet the surveillance reporting required by this section.

(7) When an electric utility files tariff schedules to adjust an ECRM rate as described in 4 CSR 240-20.091(4) with the commission, and serves upon parties as provided in sections (9) through (11) in this rule, the tariff schedules must be accompanied by supporting testimony, and at least the following supporting information:

(A) The following information shall be included with the filing:

1. For the period from which historical costs are used to adjust the ECRM rate:

A. Emission allowance costs differentiated by purchases, swaps and loans;

B. Net revenues from emission allowance sales, swaps and loans;

C. Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason;

D. Base rate component of environmental compliance costs and revenues; and

E. Any additional requirements ordered by the commission in the prior general rate proceeding;

2. The levels of environmental capital costs and expenses in the base rate revenue requirement from the prior general rate proceeding;

3. The levels of environmental capital cost in the base rate revenue requirement from the prior general rate proceeding as adjusted for the proposed date of the periodic adjustment;

4. The capital structure as determined in the prior general rate proceeding;

5. The cost rates for the electric utility's debt and preferred stock as determined in the prior general rate proceeding;

6. The electric utility's cost of common equity as determined in the prior general rate proceeding;

7. Calculation of the proposed ECRM collection rates; and

8. Calculations underlying any seasonal variation in the ECRM collection rates.

(B) Workpapers supporting all items in subsection (A) shall be submitted to the manager of the auditing department, and served upon parties as provided in sections (9) through (11) in this rule. The workpapers may be submitted to the manager of the auditing department through EFIS.

(8) When an electric utility that has an ECRM files its application containing its annual true-up with the commission, as described in 4 CSR 240-20.091(5), any rate schedule filing must be accompanied by supporting testimony, and the electric utility shall:

(A) File the following information with the commission and serve upon parties as provided in sections (9) through (11) in this rule:

1. Amount of costs that it has over-collected or under-collected through the ECRM by rate class and voltage level, as applicable;
2. Proposed adjustments or refunds by rate class and voltage level as applicable;
3. Electric utility's short-term borrowing rate; and
4. Any additional information ordered by the commission.

(B) Submit the following information to the manager of the auditing department and serve upon the parties as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS.

1. Workpapers detailing how the determination of the over-collection or under-collection of costs through the ECRM was made including any model inputs and outputs and the derivation of any model inputs;
2. Workpapers detailing the proposed adjustments or refunds;
3. Basis for the electric utility's short-term borrowing rate; and
4. Any additional information ordered by the commission to be provided.

(9) Providing to other parties items required to be filed or submitted in preceding sections (3) through (8). Information required to be filed with the commission or submitted to the manager of the auditing department of the commission and to OPC in sections (3) through (8) shall also be, in the same format, served on or submitted to any party to the related general rate proceeding in which the ECRM was approved by the commission, periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same ECRM, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

(10) Party status and providing to other parties affidavits, testimony, information, reports and workpapers in related proceedings subsequent to general rate proceeding establishing ECRM.

(A) A person or entity granted intervention in a general rate proceeding in which an ECRM is approved by the commission, shall be a party to any subsequent related periodic adjustment proceeding, annual true-up or prudence review, without the necessity of applying to the commission for intervention. In any subsequent general rate proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that case. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same ECRM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or

discontinue the same ECRM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

(B) A person or entity not a party to the general rate proceeding in which an ECRM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic adjustment proceeding, annual true-up, or prudence review, or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent general rate case to modify, extend or discontinue the same ECRM. If no party to a subsequent periodic adjustment proceeding, annual true-up, or prudence review, objects within ten (10) days of the filing of an application for intervention, the applicant shall be deemed as having been granted intervention without a specific commission order granting intervention, unless within the above-referenced ten (10)-day period the commission denies the application for intervention on its own motion. If an objection to the application for intervention is filed on or before the end of the above-referenced ten (10)-day period, the commission shall rule on the application and the objection within ten (10) days of the filing of the objection.

(11) Discovery. The results of discovery from a general rate proceeding where the commission may approve, modify, reject extend or discontinue an ECRM, or from any subsequent periodic adjustment proceeding, annual true-up, or prudence review relating to the same ECRM, may be used without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(12) Supplementing and updating data requests in subsequent related proceedings. If a party which submitted data requests relating to a proposed ECRM in the general rate proceeding where the ECRM was established or in the general rate proceeding where the same ECRM was modified or extended, or in any subsequent related periodic adjustment proceeding, annual true-up, or prudence review, wants the responding party to whom the prior data requests were submitted to supplement or update that responding party's prior responses for possible use in a subsequent related periodic adjustment proceeding, annual true-up, prudence review or general rate case to modify, extend or discontinue the same ECRM, the party which previously submitted the data requests shall submit an additional data request to the responding party to whom the data requests were previously submitted which clearly identifies the particular data requests to be supplemented or updated and the particular period to be covered by the updated response. A responding party to a request to supplement or update shall supplement or update a data request response from: a related general rate proceeding where a ECRM was established; a general rate case where the same ECRM was modified or extended; or a related periodic adjustment proceeding, annual true-up, or prudence review, which the responding party has learned or subsequently learns is in some material respect incomplete or incorrect.

(13) Separate cases for each general rate proceeding involving an ECRM and for each mutually exclusive twelve (12)-month annual true-up period of an ECRM. Each general rate proceeding where the commission may approve, modify, or reject an ECRM; each general rate case where the commission may authorize the modification, extension, or discontinuance of an ECRM; and each mutually exclusive twelve (12)-month period of an ECRM that encompasses an annual true-up, prudence review, and possible periodic adjustments shall comprise a separate case. The same procedures for handling confidential information shall apply, pursuant to 4 CSR 240-2.135, as in the immediately preceding ECRM case for the particular electric utility, unless otherwise directed by the commission on its own motion or as requested by a party and directed by the commission.

(14) New ECRM. For the purposes of this rule, an ECRM, if continued, modified or extended in a general rate case, even in substantially the form approved in the prior general rate proceeding, shall be considered to be a new distinct ECRM after each general rate proceeding required by section 386.266.4(3), RSMo.

(15) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

(16) Waivers. Provisions of this rule may be waived by the commission for good cause shown.

(17) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2011, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 386.266, SB179, effective January 1, 2006.*

*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 January 2, 2008, and should include a reference to Commission Case No. EX-2008-0105. 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 January 17, 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.*

In the Matter of Proposed Rule 4 CSR 240-3.162 and  
4 CSR 240-20.091, Environmental Cost Recovery  
Mechanisms.

1



reasonably accurate. It is not DED's role to pass judgment on the merits of a proposed rulemaking.

Following the investigation into the storms of 2006, this Commissioner believes establishing high standards for electrical reliability is of the utmost importance. That investigation found evidence of poor reliability both during storm conditions and under normal weather conditions. The results of the investigation have led to a three-pronged approach to improving reliability, including rules affecting vegetation management practices and reporting as well as infrastructure inspection and replacement. While this Commissioner has been disappointed that the majority failed to adopt adequate rules in vegetation management and infrastructure inspection, improved reliability service can still be snatched from the jaws of mediocre service by adoption of the most important leg on the "three-legged stool" relating to reliability standards and reporting. Ratepayers are entitled to reliable service which will result from these aggressive new standards that have never before existed in Missouri.


Unfortunately, the DED has prioritized the ECRM rule – a rule that will clearly benefit electric utilities financially, while it flagrantly disregards a rule that will demand high standards for reliable electrical service and action to rectify those reliability problems. This Commissioner cannot vote to advance the ECRM in the rulemaking process while the Reliability Rule is ignored as unimportant. Such a vote endorses the prioritization of a rule that benefits a utility while a rule that sets high standards for electric utilities is prevented from advancing in the rulemaking process.

This Commission has a responsibility to balance the interests of utility shareholders and ratepayers. By moving forward with the new surcharge rulemaking while delaying reliability, the balance is shifted in favor of the utilities over consumers. Following the storms of 2006 and

2007, the public and the General Assembly demanded that the Commission take strong, responsible action at improving service to Missouri customers. Reliability standards must be in place to measure utility performance and improve reliability.

For the foregoing reasons, this Commissioner dissents from the majority's vote to send the ECRM rule to the Secretary of State for publication and urges prompt action on the proposed rules relating to reliability.

Respectfully submitted,

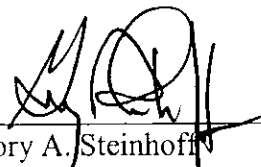
  
Robert M. Clayton III  
Commissioner

Dated at Jefferson City, Missouri,  
on this 31<sup>st</sup> day of October 2007.

**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 240-3.162, 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 22<sup>nd</sup> day of October, 2007, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2011.

  
\_\_\_\_\_  
Notary Public

ANNETTE KEHNER Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: July 17, 2011 Commission Number: 07492656
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# **Small Business Regulator Fairness Board**

## **Small Business Impact Statement**

Date: October 10, 2007

Rule Number: 4 CSR 240-3.162

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Lena Mantle

Phone Number: 573-751-7520 Email: Lena Mantle

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).*

N/A – Only directly impacts the four investor-owned utility companies in the state.

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

N/A – Only directly impacts the four investor-owned utility companies 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.**

The four investor-owned utility companies in the state.

**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.*

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

In the Matter of Proposed Rules 4 CSR 240-3.162     )  
and 4 CSR 240-20.091, Environmental Cost     )  
Recovery Mechanisms     )     Case No. EX-2008-0105

**NOTICE OF FINDING OF NECESSITY**

Issue Date: October 31, 2007

Due to the passage of SB179, which allows for Environmental Cost Recovery Mechanisms, the Commission opened this case to provide filing requirements and substantive requirements concerning such mechanisms. The specific proposed rules are as follows: 4 CSR 240-3.162, and 4 CSR 240-20.091. The subject rules are necessary in that they effectuate the Environmental Cost Recovery Mechanism provisions.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Dated at Jefferson City, Missouri,  
on this 31st day of October, 2007.

Dale, Chief Regulatory Law Judge