

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

In the Matter of a Proposed Rulemaking to)
Amend Commission Rule 4 CSR)
240-18.010.)

Case No. EX-2008-0226

MOTION FOR ADDITIONAL FINAL ORDER OF RULEMAKING

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through its Office of General Counsel, pursuant to Section 536.016 RSMo 2000, and for its Motion for Additional Final Order of Rulemaking states:

1. By filing dated January 8, 2008 the Staff filed a Motion for Final Order of Rulemaking seeking for the Commission to initiate a rulemaking to amend rule 4 CSR 240-18.010 which addresses minimum operation safety standards that must be met by electrical corporations, telecommunications companies and rural electric cooperatives.

2. Since making that filing the Staff has determined it would be appropriate to add an additional related rule to place notice in the Commission’s rules of the *Underground Facility Safety and Damage Prevention Act*, as amended, and the *Overhead Power Line Safety Act* promulgated by the Missouri Legislature. The first act generally requires excavators to contact utilities to locate underground facilities before commencing to excavate and the second requires notice to the public utility who owns or operates overhead high voltage power lines if (a) objects that conduct electricity will come within ten feet of the power line or (b) persons performing functions or activities that will, or reasonably could be expected will, cause that person to come within ten feet of the power line. Thus, both acts relate to safety.

3. The Legislature has given the Commission, through Section 386.310 RSMo 2000, rulemaking authority “to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public,” As to rural electric cooperatives, the Legislature has given the Commission, through Section 394.160 RSMo 2000, similar rulemaking authority.

4. Section 536.016 RSMo 2000 requires a state agency to find, based upon substantial evidence on the record, that a rule is necessary to carry out the purposes of the statute that granted the rulemaking authority.

5. Appended hereto as Attachment A is a draft rule 4 CSR 240-18.020 the Staff proposes the Commission should adopt as a new rule.

6. Accordingly, the Staff recommends the Commission amend the style of this rulemaking to include the new rule (notice provisions) as follows: “In the Matter of a Proposed Rulemaking to Amend Commission Rule 4 CSR 240-18.010 and to Add New Rule 4 CSR 240-18.020”.

WHEREFORE, the Staff respectfully requests that the Commission, in addition to finding that an amendment to rule 4 CSR 240-18.010 is necessary to update the minimum safety standards relating to the operation of electrical corporations, telecommunications companies and rural electric cooperatives; and clarify that the new standards apply only to new installations and extensions as described in the version of the *National Electrical Safety Code* adopted by the Commission for minimum safety standards, also find that it is necessary that notice of the *Underground Facility Safety and Damage Prevention Act*, as amended, and the *Overhead Power Line Safety Act* codified in the Revised Statutes of Missouri be provided by Commission rule.

Respectfully submitted,

/s/ **Robert S. Berlin**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28th day of January 2008.

/s/ **Robert S. Berlin**

**Title 4--DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240--Public Service Commission
Chapter 18--Safety Standards**

Proposed Rule

4 CSR 240-18.020 Safety Standards—Notice required by those performing excavations near underground utility lines, those who cause property that conducts electricity to be near overhead electrical lines and those who cause persons to engage in activities near overhead electrical lines

Purpose: This rule provides notice of the Underground Facility Safety and Damage Prevention Act, as amended, and the Overhead Power Line Safety Act where notices designed to safeguard persons and property are found.

PURPOSE: This rule provides notice of the statutory requirements of the *Underground Facility Safety and Damage Prevention Act*, as amended, and the *Overhead Power Line Safety Act*.

(1) The *Underground Facility Safety and Damage Prevention Act*, as amended, generally requires excavators to contact utilities to locate underground facilities before commencing to excavate. The specific provisions of the *Underground Facility Safety and Damage Prevention Act* are codified at Section 319.010-050 RSMo.

(2) The *Overhead Power Line Safety Act* requires notice to the public utility who owns or operates overhead high voltage power lines if (a) objects that conduct electricity will come within ten feet of the power line or (b) persons performing functions or activities that will, or reasonably could be expected will, cause that person to come within ten feet of the power line. The specific provisions of the *Overhead Power Line Safety Act* are codified at Section 319.075 RSMo.

AUTHORITY: sections 386.310 RSMo

Original rule filed Filed Jan. XX, 2008, effective XX, 2008.

**Original authority: 386.310, RSMo 1939, amended 1979, 1989, 1996 and 394.160, RSMo 1939, amended 1979.*

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, Cully 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 Month/Day/Year, and should include a reference to Commission Case No. EX-2008-####. 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 Month/Day/Year, at Time in Room ??? 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.