

FILED
February 20, 2009
Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 9944
Date Printed: 2/20/2009
Rule Number: 4 CSR 240-20.065
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 2/20/2009
Date Submitted to Joint Committee on Administrative Rules: 2/20/2009

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale	Phone: 4255	Email: cully.dale@psc.mo.gov	Fax:
RuleDataEntry: Cully Dale	Phone: 4255	Email: cully.dale@psc.mo.gov	Fax:

Included with Rulemaking:

Cover Letter	2/20/2009
Affidavit for public cost	2/20/2009

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Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-20.065

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

Data Entry same Phone FAX

Email address

Interagency mailing address MO Public Service Commn, 9th Fl, Governor Ofc Bldg, JC

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
Fairness Board (DED) Stamp
SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

FEB 20 2009

ADMINISTRATIVE RULES



Commissioners
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Chairman

CONNIE MURRAY

JEFF DAVIS

TERRY JARRETT

KEVIN D. GUNN

Missouri Public Service Commission

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

WESS A. HENDERSON
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DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

February 20, 2009

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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Dear Secretary Carnahan:

Re: Proposed Amendment to 4 CSR 240-20.065

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission for filing on this 20th day of February, 2008.

Statutory Authority: Sections 386.250, RSMo 2000 and 386.887, RSMo Supp. 2007.

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. 2007, 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. 2007, 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 amendment 4 CSR 240-20.065 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 the printed name.

Colleen M. Dale
Secretary

Title 4. DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240. Public Service Commission
Chapter 20. Electric Utilities

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Proposed Amendment

SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-20.065 Net Metering

PURPOSE: This amendment removes the recent imposition of insurance requirements on customer-generator systems of 10Kw or less and reduces the insurance requirements for such systems greater than 10Kw to their former levels.

(4) Customer-Generator Liability Insurance Obligation.

(A) Customer-generator systems greater than ten kilowatts (10kW) [~~or less~~] shall carry no less than one hundred thousand dollars (\$100,000) of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the net metering unit. Insurance may be in the form of an existing policy or an endorsement on an existing policy.

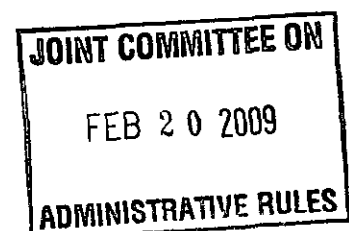
(B) Customer-generator systems [~~greater than~~] ten kilowatts (10kW) or less shall not be required to carry [~~carry no less than one million dollars (\$1,000,000) of~~] liability insurance; however, any tariff or contract offered by a utility or cooperative to customer-generators shall contain language stating that absent clear and convincing evidence of fault on the part of the retail electric supplier, those retail electric suppliers cannot be held liable for any action or cause of action relating to any damages to property or person caused by the generation unit of a customer-generator or the interconnection thereof pursuant to section 386.890.11 (RSMo.Cum.Supp. 2007). Further, any tariff or contract offered by utilities or cooperatives to customer-generators shall state that customer-generators may have legal liabilities not covered under their existing insurance policy in the event the customer-generator's negligence or other wrongful conduct causes personal injury (including death), damage to property or other actions and claims.

INTERCONNECTION APPLICATION/AGREEMENT FOR NET METERING
SYSTEMS WITH CAPACITY OF ONE HUNDRED
KILOWATTS (100 kW) OR LESS

D. Additional Terms and Conditions

In addition to abiding by [Utility Name]'s other applicable rules and regulations, the Customer-Generator understands and agrees to the following specific terms and conditions:

2) Liability



Liability insurance is not required for Customer-Generators of ten kilowatts (10 kW) or less. For generators greater than ten kilowatts (10kW), the Customer-Generator agrees to carry no less than \$100,000 of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the Customer-Generator's System. Insurance may be in the form of an existing policy or an endorsement on an existing policy. **Customer-generators, including those whose systems are 10 kW or less, may have legal liabilities not covered under their existing insurance policy in the event the customer-generator's negligence or other wrongful conduct causes personal injury (including death), damage to property or other actions and claims.**

AUTHORITY: sections 386.250, RSMo 2000 and 386.887, RSMo Supp. 2002. Original rule filed March 11, 2003, effective Aug. 30, 2003. *Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1987, 1988, 1991, 1993, 1995, 1996 and 386.887, RSMo 2002.*

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

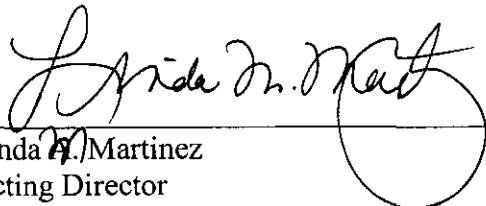
PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

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, written comments must be received at the Commission's offices on or before May 1, 2009, and should include a reference to Commission Case No. EX-2009-0267. 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 May 1, 2009, at 2:00 pm in Room 305 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.

**AFFIDAVIT
PUBLIC COST**

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Linda ~~M~~ Martinez, Acting 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 amendment to 4 CSR 240-20.065, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

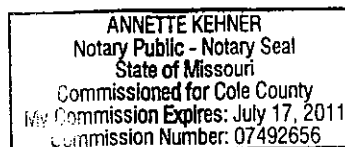


Linda ~~M~~ Martinez
Acting Director
Department of Economic Development

Subscribed and sworn to before me this 10th day of February, 2008, 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



Small Business Regulator Fairness Board Small Business Impact Statement

Date: January 29, 2009

Rule Number: 4 CSR 240-20.065

Name of Agency Preparing Statement: Missouri Public Service
Commission

Name of Person Preparing Statement: Cully Dale

Phone Number: 573-751-4255

Email: cully.dale@psc.mo.gov

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*).

This amendment makes it easier for customer-generators to interconnect with the electrical grid and offset their energy purchases with their own generation. It has no impact on small businesses.

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

N/A – These changes are to be consistent with state and federal law changes.

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.

Regulated utilities and any small businesses that generate electricity.

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.