

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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JAN 22 2016

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-3.105

COPY

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

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address christine.koenigsfeld@psc.mo.gov

Interagency mailing address GOB 9th Floor

TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☒ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☐ 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:

Sections (1), (2), (3), (4)

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

JAN 22 2016

ADMINISTRATIVE RULES



Commissioners

DANIEL Y. HALL
Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

SCOTT T. RUPP

MAIDA J. COLEMAN

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>

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

WESS A. HENDERSON
Director of Administration

NATELLE DIETRICH
Staff Director

January 22, 2016

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-3.105 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

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

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: sections 386.250, RSMo 2000

If there are any questions regarding the content of this proposed rulemaking, 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

A handwritten signature in black ink, reading "Morris L. Woodruff". The signature is written in a cursive, flowing style with a large, stylized "M" and "W".

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

**AFFIDAVIT
PUBLIC COST**

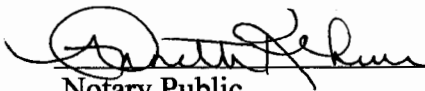
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Mike Downing, 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 rule, 4 CSR 240-3.105, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Mike Downing
Director
Department of Economic Development

Subscribed and sworn to before me this 12th day of January, 2016, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2019.



Notary Public



ANNETTE KEHNER
My Commission Expires
July 17, 2019
Cole County
Commission #15492656

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

PROPOSED AMENDMENT

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SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

4 CSR 240-3.105 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity

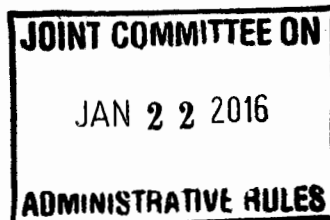
PURPOSE: This amendment revises the filing requirements for applications, pursuant to Section 393.170 RSMo, which request that the commission grant a certificate of convenience and necessity to an electric utility for either a service area or to construct in Missouri electric generating plants, electric transmission lines, or gas transmission lines to facilitate the operation of electric generating plants.

PURPOSE: Applications to the commission, pursuant to section 393.170 RSMo, requesting that the commission grant a certificate of convenience and necessity to an electric utility for a service area or to construct in Missouri an electric generating plant, an electric transmission line, or a gas transmission line to facilitate the operation of an electric generating plant, must meet the requirements of this rule. As noted in the rule,[additional] general requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1). In Missouri, a certificate of convenience and necessity is needed to construct an electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area. However, a separate certificate of convenience and necessity is not needed for the construction of an electric transmission line or for the construction of a gas transmission line to facilitate the operation of an electric generating plant if the line(s) to be constructed is(are) in the electric utility's certificated service area. Finally, this rule is not intended to replace or duplicate the electric utility resource planning requirements or procedures of 4 CSR 240-22.010 – .080.

(1) In addition to the **general** requirements of 4 CSR 240-2.060(1), applications by an electric utility for a certificate of convenience and necessity, **pursuant to Section 393.170 RSMo**, shall include:

(A) If the application is for **authorization to provide electric service to retail customers in a new service area for the electric utility—**

1. A *[statement as to the same or similar utility service,]* list of those entities providing regulated or *[and]* nonregulated*[available in,]* retail electric service in all or any part of the service area *[requested]* proposed, including a map that identifies where each entity is providing retail electric service within the area proposed;



2. If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

3. The legal description of the **service** area to be certificated;

4. A plat **of the proposed service area** drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

5. A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges; and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations[.].

(B) If the application is for a **certificate of convenience and necessity for the construction of electric generating plant(s), electric[al] transmission line(s), or gas transmission line(s) [or] to facilitate the operation of electric[al production facilities] generating plant(s) in Missouri —**

1. A description of the **proposed route or site** of construction and a list of all electric, **gas** and telephone **utility, conduit, wires, cables** and lines of regulated and nonregulated utilities, railroad tracks *[or any]* **and each** underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross **or come within 250 feet of;**

2. **A description of [T]the plans and specifications for the complete scope of the construction project and estimated cost of the construction project [or], which also clearly identifies the operating and other features of the electric generating plant(s), electric transmission line(s), and gas transmission line(s) to facilitate the operation of the electric generating plant(s), when the construction is fully operational and used for service; the projected beginning of construction date and the anticipated fully operational and used for service date of each electric generating plant, each electric transmission line, and each gas transmission line to facilitate the operation of each electric generating plant for which the applicant is seeking the certificate of convenience and necessity; and identify whether the construction project for which the certificate of convenience and necessity is being sought will include common electric generating plant, common electric transmission plant, or common gas transmission plant to facilitate the operation of the common electric generating plant, and if it does, then identify the nature of the common plant. If this information is currently**

unavailable, then a statement of the reasons the information is currently unavailable and a date when it will be *[furnished]* **filed;***[and]*

3. Plans for financing **the construction of the electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s);**

4. An overview of plans for operating and maintaining the electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s);

5. An overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages of the electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s); and

6. The facts showing (a) the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for entering into, identifying, and/or being the projected process for identifying: the design, engineering, procurement, construction management, and construction contracts for the construction of electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), and (b) the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for purchased power capacity and energy from alternative suppliers, reviewed by the electric utility at an identified time(s) as a possible resource(s) in lieu of the construction of electric generating plant(s), electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s).

(C) When no evidence of approval of the affected governmental bodies is necessary, a statement to that effect;

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise*[, or an affidavit of the applicant that consent has been acquired]*; **when consent or franchise by a city that has all or part of its electrical or gas supply provided by a joint municipal utility commission, established pursuant to section 393.700 et seq., RSMo is required, a certified copy of the joint municipal utility commission board resolution granting approval for such project; or a verified statement of the president and secretary of the corporation, showing that the applicant has received the required consent of the proper governmental bodies; and**

2. A certified copy of the required approval of other governmental agencies; and

(E) The facts showing that the granting of the application is *[required by the public convenience and necessity]* **necessary or convenient for the public service.**

(2) The term “construction,” pursuant to section 393.170 RSMo:

(A) Includes construction in Missouri of new electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility’s certificated service area;

(B) Includes construction in Missouri of new electric transmission line(s) or new gas transmission line(s) to facilitate the operation of electric generating plant(s) in Missouri; however, a separate certificate of convenience and necessity is not needed for the construction of new electric transmission line(s) or for the construction of new gas transmission line(s) to facilitate the operation of electric generating plant(s) if the line(s) to be constructed is(are) in the electric utility’s certificated service area;

(C) Includes substantial rebuild, renovation, improvement, retrofit and/or other construction in Missouri that will result in:

1. A substantial increase in the capacity of the electric generating plant beyond the planned capacity of the plant at the time the Commission granted the prior certificate of convenience and necessity for the electric generating plant; and/or

2. A material change in the discharges, emissions, or other environmental by-products of the electric generating plant than those projected at the time the prior certificate of convenience and necessity was granted by the commission for the electric generating plant;

(D) Includes, acquisition of full or partial ownership by purchase or capital lease, of electric generating plant(s) in Missouri, whether the site for the electric generating plant(s) is inside or outside of the electric utility’s certificated service area, and electric transmission line(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), if the electric transmission line(s) or gas transmission line(s) to facilitate the operation of electric generating plant(s) is(are) outside the electric utility’s certificated service area in Missouri;

(E) Does not include periodic, routine or preventative maintenance, or replacement of failed or near term projected failure of equipment or devices with the same or substantially similar items that are intended to restore the

electric generating plant(s) to an operational state at or near a recently rated capacity level.

([2]3) If any of the items required under this rule for the issuance of a certificate of convenience and necessity are unavailable at the time the application is filed, alternatively, as determined by the commission, the[y] unavailable items shall be[furnished] filed prior to the granting of [the] authority [sought] by the commission, or, the commission may grant the certificate subject to the condition that the unavailable items be filed before authority under the certificate is exercised.

(4) The commission may by its order impose upon the issuance of a certificate of convenience and necessity such condition or conditions as it may deem reasonable and necessary.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. *Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; StopAquila.Org v. Aquila, Inc., 180 S.W.3d 24 (Mo.App. W.D. 2005); State ex rel. Cass County v. Public Serv. Comm'n, 259 S.W.3d 544 (Mo.App. W.D. 2008); State ex rel. Harline v. Public Serv. Comm'n, 343 S.W.2d 177 (Mo.App. K.C. 1960).*

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

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$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, Morris L. Woodruff, 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 April 29, 2016, and should include a reference to Commission Case No. EX-2015-0225. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed amendment is scheduled for May 12, 2016, at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., 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.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: March 23, 2015

Rule Number: 4 CSR 240-3.105

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich

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*).

The Commission held three workshops and received written and informal comments from stakeholders addressing their concerns which have been considered in subsequent iterations of the draft rule.

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

Workshops were open to all interested stakeholders and the public. The Office of the Public Counsel participated in the workshops.

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 known.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

None identified for small business.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Electric utilities, entities requiring commission authority to construct electric generating plants, electric transmission lines or gas transmission lines to facilitate the operation of electric generating plants.

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.