

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

RECEIVED

APR 05 2018

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-20.045

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 Public Service Commission, 9th Fl., Gov. Ofc. Bldg., JC, MO

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:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

APR 05 2018

RECEIVED

JCAR Stamp

JOINT COMMITTEE ON

APR 05 2018

ADMINISTRATIVE RULES



Commissioners
DANIEL Y. HALL
Chairman
WILLIAM P. KENNEY
SCOTT T. RUPP
MAIDA J. COLEMAN
RYAN A. SILVEY

Missouri Public Service Commission

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

SHELLEY BRUEGGEMANN
General Counsel
MORRIS WOODRUFF
Secretary
LOYD WILSON
Director of Administration
NATELLE DIETRICH
Staff Director

April 5, 2018

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-20.045 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity

Dear Secretary Ashcroft,

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.

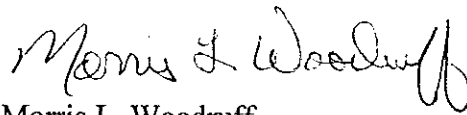
The Public Service Commission has determined and hereby certifies that this proposed rule will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017,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

The Public Service Commission has determined and hereby also certifies that this proposed rule 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: section 700.040, RSMo.

If there are any questions regarding the content of this proposed rule, please contact:

Morris 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, appearing to read "Morris L. Woodruff". The signature is written in a cursive style with a large, stylized "M" and "W".

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GRETTENS
GOVERNOR

P.O. Box 720
(573) 751-3222

March 7, 2018

Daniel Hall
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

Dear Chairman Hall:

This office has received your proposed rulemaking relating to filing requirements for electric utility applications for certificates of convenience and necessity, 4 CSR 240-3.105 (rescission) and 4 CSR 240-20.045 (proposed).

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, rescind regulations, or adopt new regulations. After our review, we approve the submission of this rule rescission and proposed rule to JCAR and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin D. Smith", written over a horizontal line.

Justin D. Smith
Deputy Counsel

**AFFIDAVIT
PUBLIC COST**

**STATE OF MISSOURI)
)
COUNTY OF COLE)**

I, Rob Dixon, 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 240-20.045, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

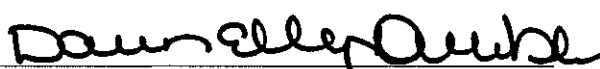


Rob Dixon
Director
Department of Economic Development

Subscribed and sworn to before me this 19th day of March, 2018 I am
commissioned as a notary public within the County of Moniteau, State of
Missouri, and my commission expires on Dec. 13, 2019



DAWN ELLEN OVERBEY
My Commission Expires
December 13, 2019
Moniteau County
Commission #16466886



Notary Public

**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20 – Electric Utilities**

PROPOSED RULE

RECEIVED

APR 05 2018

SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

4 CSR 240-20.045 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity

PURPOSE: This proposed rule outlines the requirements for 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 acquire or to construct an electric generating plant, a substation, an electric transmission line, or a gas transmission line that facilitates the operation of an electric generating plant.

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

(A) Acquire or acquisition means full or partial ownership by purchase or capital lease.

(B) Asset includes electric generating plant, substation or gas transmission line that facilitates the operation of electric generating plant regardless of whether the item(s) to be acquired/constructed is located inside the electric utility's certificated service area or is located outside the electric utility's certificated service area but will be used to serve Missouri customers and paid for by Missouri retail ratepayers.

(C) Construction includes:

1. Construction of new asset(s);
2. Construction of a new electric transmission line or a rebuild of a transmission line that will result in a significant increase in the capacity of the transmission line, or a change in the route or easements;
3. Construction of a new substation or a rebuild of the substation that will result in a significant increase in the capacity and/or size of the substation;
4. Construction of a new gas transmission line that facilitates the operation of an electric generating plant or a rebuild of a gas transmission line that will result in a significant increase in the capacity of the gas transmission line that facilitates the operation of an electric generating plant, or a change in the route or easements of the gas transmission line; and
5. Improvement or retrofit of an electric generating plant that will result in:
 - A. A substantial increase in the capacity of an 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;
 - B. 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;
 - C. An increase in the useful life of an existing electric generating plant; or,
 - D. A 10% increase in rate base.

JOINT COMMITTEE ON

APR 05 2018

ADMINISTRATIVE RULES

6. Construction does not include:

- A. Construction of a new electric transmission line or a new gas transmission line that facilitates the operation of electric generating plant if the line to be constructed is in the electric utility's Missouri certificated service area;
- B. 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 or substation to an operational state at or near a recently rated capacity level; or,
- C. Transmission projects where the only relationship to Missouri ratepayers is through the regional transmission organization/independent system operator cost allocation process.

(2) In addition to the general requirements of 4 CSR 240-2.060(1), the following additional general requirements apply to all applications for a certificate of convenience and necessity, pursuant to Section 393.170 RSMo:

- (A) The application shall include facts showing that granting the application is necessary or convenient for the public service.
- (B) If an asset to be acquired or constructed is outside Missouri, the application shall include plans for allocating costs, other than regional transmission organization/independent system operator cost sharing, to the applicable jurisdiction.
- (C) If any of the items required under this rule are unavailable at the time the application is filed, the unavailable items may be filed prior to the granting of authority 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.
- (D) 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.
- (E) In determining whether to grant a Certificate of Convenience and Necessity, the commission may, by its order, make a determination on the prudence of the decision to acquire or construct an electric generating plant, a substation, an electric transmission line, or a gas transmission line that facilitates the operation of electric generating plant subject to the commission's post-construction review of the project.

(3) If the application is for authorization to provide electric service to retail customers in a service area for the electric utility, the application shall also include:

- (A) A list of those entities providing regulated or nonregulated retail electric service in all or any part of the service area proposed, including a map that identifies where each entity is providing retail electric service within the area proposed;
- (B) 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;

- (C) The legal description of the service area to be certificated;
 - (D) 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 state's Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and
 - (E) 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.
- (4) If the application is for authorization to acquire assets, the application shall also include:
- (A) A description of the asset(s) to be acquired;
 - (B) The value of the asset(s) to be acquired;
 - (C) The purchase price and plans for financing the acquisition;
 - (D) Plans and specifications for the utility system, including as-built drawings;
- (5) If the application is for authorization to construct assets, the application shall include:
- (A) A description of the proposed route or site of construction;
 - (B) A list of all electric, gas, and telephone conduit, wires, cables, and lines of regulated and nonregulated utilities, railroad tracks, and each underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;
 - (C) A description of the plans, specifications, and estimated costs for the complete scope of the construction project that also clearly identifies what will be the operational features of the electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant once it is fully operational and used for service;
 - (D) The projected beginning of construction date and the anticipated fully operational and used for service date of each electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant for which applicant is seeking the certificate of convenience and necessity;
 - (E) An indication of whether the construction project for which the certificate of convenience and necessity is being sought will include common electric generating plant, or common gas transmission plant that facilitates the operation of electric generating plant, and if so, the nature of the common plant;
 - (F) Plans for financing the construction of the electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant;
 - (G) For non-incumbent electric providers, an overview of plans for operating and maintaining the electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant;
 - (H) For non-incumbent electric providers, an overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages of the electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant;
 - (I) Evidence that the electric utility utilized a non-discriminatory, fair, and reasonable process to evaluate whether distributed energy resources, energy efficiency, or renewable energy resources would provide a reasonable alternative to the construction proposed;

(J) Evidence that the electric utility utilized a non-discriminatory, fair, and reasonable competitive bidding process to evaluate whether purchased power capacity or suppliers of alternative energy would be a reasonable resource in lieu of the construction proposed; and
(K) Evidence that the electric utility utilized or will utilize a non-discriminatory, fair, and reasonable competitive bidding process for entering into contracts for the design, engineering, procurement, construction management, and construction of the electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant.

(6) If the application is for authorization to acquire or construct an electric transmission line, the application shall also include:

- (A) A description of the proposed route or site of construction;
- (B) A list of all electric, gas, and telephone conduit, wires, cables, and lines of regulated and nonregulated utilities, railroad tracks, and each underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;
- (C) A description of the plans, specifications, and estimated costs for the complete scope of the construction project that also clearly identifies what will be the operational features of the electric transmission line once it is fully operational and used for service;
- (D) The projected beginning of construction date and the anticipated fully operational and used for service date of the electric transmission line;
- (E) An indication of whether the construction project for which the certificate of convenience and necessity is being sought will include a common electric transmission line(s);
- (F) Plans for financing the construction of the electric transmission line;
- (G) For non-incumbent electric providers, an overview of plans for operating and maintaining the electric transmission line;
- (H) For non-incumbent electric providers, an overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages of the electric transmission line;
- (I) Evidence that the electric utility utilized or will utilize a non-discriminatory, fair, and reasonable competitive bidding process for entering into contracts for the design, engineering, procurement, construction management, and construction of the electric transmission line; and
- (J) An affidavit or other verified certification of compliance with the following notice requirements to landowners directly affected by electric transmission line routes or substation locations proposed by the application. The proof of compliance shall include a list of all directly affected landowners to whom notice was sent.

1. Applicant shall provide notice of its application to the owners of land, or their designee, as stated in the records of the county assessor's office, on a date not more than sixty (60) days prior to the date the notice is sent, who would be directly affected by the requested certificate, including the preferred route or location, as applicable, and any known alternative route or location of the proposed facilities. For purposes of this notice, land is directly affected if a permanent easement or other permanent property interest would be obtained over all or any portion of the land or if the land contains a habitable structure that would be within three hundred (300) feet of the centerline of an electric transmission line.

2. Any letter sent by applicant shall be on its representative's letterhead or on the letterhead of the utility, and it shall clearly set forth—
 - A. The identity, address, and telephone number of the utility representative;
 - B. The identity of the utility attempting to acquire the certificate;
 - C. The general purpose of the proposed project;
 - D. The type of facility to be constructed; and
 - E. The contact information of the Public Service Commission and Office of the Public Counsel.
3. If twenty-five (25) or more persons in a county would be entitled to receive notice of the application, applicant shall hold at least one (1) public meeting in that county. The meeting shall be held in a building open to the public and sufficient in size to accommodate the number of persons in the county entitled to receive notice of the application. Additionally:
 - A. All persons entitled to notice of the application shall be afforded a reasonable amount of time to pose questions or to state their concerns;
 - B. To the extent reasonably practicable, the public meeting shall be held at a time that allows affected landowners an opportunity to attend; and
 - C. Notice of the public meeting shall be sent to any persons entitled to receive notice of the application.
4. If applicant, after filing proof of compliance, becomes aware of a person entitled to receive notice of the application to whom applicant did not send such notice, applicant shall, within twenty (20) days, provide notice to that person by certified mail, return receipt requested, containing all the required information. Applicant shall also file a supplemental proof of compliance regarding the additional notice.

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

*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 June 14, 2018, and should include a reference to Commission Case No. EX-2018-0189. 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 rule is scheduled for June 19, 2018, at 10:00 a.m., in Room 310 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: January 3, 2018

Rule Number: 4 CSR 240-20.045

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).*

Clarify definitions and scope of rule and application process. Simplify existing Commission rules by combining most, if not all, electric-only rules into the electric utility chapter. Remove language that may be inconsistent with statutory requirements.

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

Rulemaking was initiated in 2015. Several workshops were open to all interested stakeholders and the public. The Office of the Public Counsel participated in the workshops. The rulemaking was withdrawn in July 2016 and a new rulemaking process was initiated addressing issues raised in the previous rulemaking process.

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.