

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

In the Matter of Proposed Amendment to     )  
Commission Rule 4 CSR 240-3.135 Filing     )  
and Reporting Requirements.                     )

Case No. EX-2003-0372

**STAFF COMMENTS IN SUPPORT OF PROPOSED AMENDMENT  
TO RULE 4 CSR 240-3.135**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), and states the following in support of the Proposed Amended Rule:

1. Commission rule 4 CSR 240-3.135 currently addresses fees applicable to applications for approval of electric service territorial agreements, petitions for designation of electric service area and applications for resolution of annexation-related disputes. Filing requirements for application for approval of electric service territorial agreements are provided in Commission rule 4 CSR 240-3.130. Staff is proposing that rule 4 CSR 240-3.135 be revised to require that filing requirements associated with applications for resolution of annexation-related disputes be added to this rule, and that the scope of this rule be narrowed such that it no longer addresses fees for applications for approval of electric service territorial agreements and petitions for designation of electric service areas, as these provisions will be moved to rule 4 CSR 240-3.130. Case No. EX-2003-0372 has been assigned to this proceeding.

2. In order to resolve as many of the potential issues as possible before the Commission hearing on May 18, 2005, the Staff arranged and conducted a collaborative meeting with interested parties on April 18, 2005. The existing rule, all changes initially proposed by

Staff in the rule version published by the Secretary of State in the Missouri Register on April 1, 2005, and all additional changes proposed by the parties in attendance were discussed.

3. As a result of this collaborative meeting and the negotiations that took place in it, the Staff is proposing that the final rule approved by the Commission include the changes proposed in the version of the rule published in the Missouri Register on April 1, 2005, as additionally modified by the changes attached in Appendix A in order to improve the clarity of the rule. During the meeting, the only problematic objection to the language published on April 1, 2005 was raised by counsel for the rural electric cooperatives and counsel for the municipal utilities. The objection concerned the inclusion of new subsection (3)(E), which requires the reporting of tax revenue impact. The Staff elected to retain the language in its proposal because the Commission in past proceedings has requested this information. The Staff believes that the Commission should hear the arguments regarding this provision prior to determining whether or not the provision should be included.

4. In Appendix A, bold text is language that was new to the original rule in the version published in the Missouri Register, text in square brackets is language that was deleted from the original rule in the Missouri Register version, underlined text is new language from the April 18<sup>th</sup> collaborative meeting, and strikeout text is language that is deleted from the version published in the Missouri Register as a result of discussions in the April 18<sup>th</sup> meeting.

WHEREFORE, Staff respectfully requests that the Commission give due consideration to the comments provided herein.

Respectfully submitted,

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General Counsel

**/s/ Dennis L. Frey**

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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 6th day of May 2005.

**/s/ Dennis L. Frey**

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

PROPOSED AMENDMENT

4 CSR 240-3.135 *Filing Requirements and Schedule of Fees Applicable to* ~~[Applications for Approval of Electric Service Territorial Agreements, Petitions for Designation of Electric Service Areas and] Applications for Post-Annexation Assignment of Exclusive Service Territories and Determination of Compensation-Resolution of Annexation-Related Disputes~~. The commission is amending the title, Purpose, and adding two (2) new sections, deleting one (1) section and amending the remaining sections.

*PURPOSE: The changes in this amendment establish filing requirements for applications for resolution of annexation-related disputes. It removes references to filing fee requirements for territorial agreement filings because the requirement of these fees is being added to 4 CSR 240-3.130. It adds a filing fee for hearing time for applications for resolution of annexation-related disputes.*

*PURPOSE: This rule establishes the requirements that must be met and a schedule of fees for applications to the commission [review of proposed territorial agreements, petitions for commission designation of electric service areas, and annexation-related applications] for post-annexation assignment of exclusive service territories and determination of compensation ~~the resolution of annexation-related disputes regarding a municipality providing electric service outside of the municipality's corporate boundaries~~. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).*

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications by a municipally owned electric utility for commission resolution of post-annexation assignment of exclusive service territories and determination of compensation ~~annexation-related disagreements~~ shall include ~~from each party:~~

- (A) An explanation as to why the requested relief ~~annexation~~ is in the public interest;
- (B) A specific designation of the proposed exclusive electric service territory boundary including a map showing the boundary and the legal description of the area ~~that is in dispute~~;
- (C) ~~A comparison of~~ The electric rates that will be charged ~~currently apply to the annexed area and the rates if the proposed change of supplier is allowed~~;
- (D) The municipal electric utility's estimate of the fair and reasonable compensation to be ~~paid by the municipally owned electric utility~~ to the affected electric supplier for the ~~with~~ existing distribution system ~~operations~~ within the proposed exclusive electric service territory ~~annexed area~~, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;
- (E) Any effect on the municipal electric utility's system operation, including, but not limited to, how the increased loss of load will be served and loss of revenue;
- (F) Any power contracts that the municipality has agreed to with the affected electric supplier to serve the annexed area;
- (G) Any issues on which the municipally owned electric utility and the affected electric supplier agree;
- (H) A copy of the newspaper notification, as well as notifications sent to any affected supplier; and
- ~~(I) The impact, if any, that the annexation-related change of electrical supplier will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the utilities involved are located; and~~
- ~~(J) Affirmation record~~ of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(2) If any of the information required by subsections (1)(A)–~~(J)~~ of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The Commission shall notify the affected electric suppliers within ten (10) days of receipt of an application from a municipally owned electric utility and that they have been made parties to the proceeding. Within ten (10) days of the notice, the affected electric suppliers are made parties to the proceeding and shall file the following information with the Commission within ten (10) days of the notice the following information:

- (A) A response to the applicant's requested relief;
- (B) The current electric rates that are charged in the proposed exclusive electric service territory;
- (C) The electric supplier's estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(D) Any effect on the electric supplier's system operation, including, but not limited to, loss of load and loss of revenue;

(E) The impact, if any, that the annexation-related change of electrical supplier will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the utilities involved are located (an area to bring to Commission's attention...); and

(F) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(4) If any of the information required by subsections (3)(A)-(F) of this rule is unavailable within ten (10) days of the notice, the responsive pleading must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished.

~~[(1)](53)~~ [Commission review of a] ~~The An~~ application [for a proposed territorial agreement, a petition for commission designation of electric service areas, or an application] ~~for resolution of an annexation-related dispute~~[,] shall be accompanied by an initial filing fee in the amount of five hundred dollars (\$500).

~~[(2)](64)~~ In addition to the filing fee, the fee for commission review of ~~the an~~ [opposed] application ~~for approval of a proposed territorial agreement~~ ~~resolution of an annexation-related dispute between electric service providers~~ is set at six hundred eighty-five dollars (\$685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars (\$685). There is an additional charge of three dollars and fifty cents (\$3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

~~[(3)](75)~~ The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the ~~[electric territorial agreement, designation of service areas or]~~ ~~annexation-related~~ application. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

*[(4) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars (\$500) specified in section (1) of this rule. However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (2) of this rule.]*

~~[(5)](86)~~ On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time ~~may will~~ be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

*AUTHORITY: sections 386.250[,] and 386.800 [and 394.312], RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed Feb. 24, 2005.*

*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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, 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 May 9, 2005, and should include a reference to Commission Case No. EX-2003-0372. 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 amendment is scheduled for May 18, 2005, at 10:00 a.m. 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 amendment, 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.*

**APPENDIX A**