

COMMENT: Two commenters suggested that section (18) be amended to allow for service by facsimile. One commenter also suggested that service be allowed by electronic mail.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that electronic communication should be utilized as much as possible and where practicable. Several comments were received indicating a desire for service by facsimile. The Commission will amend this rule to include service by facsimile. The Commission also believes that service by electronic mail where possible is an efficient manner of obtaining service. Therefore, the Commission will also amend this rule to allow for service by electronic mail.

COMMENT: One commenter suggested that a section for amending pleadings be added.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with the commenter that a procedure for amending pleadings should be added. The Commission finds it reasonable to include a procedure similar to the one found in Missouri Supreme Court Rule 55.33. Therefore, the Commission will amend this rule to include a procedure for amending pleadings as new section (21).

COMMENT: Two comments were received suggesting that the Commission's choice to propose a new rule rather than amend the old rule made evaluation of the rule too difficult. The commenter stated that if the Commission had used a method of deletions and additions "the cost and efficiency of the presentation would be more than outweighed by the cost and efficiency of the analyses by affected parties."

RESPONSE: The comment was not addressed to the specific provisions of the rule, but rather to the method by which the Commission chose to complete its rulemaking. The Commission considered the commenter's method before proposing this rule. However, because of the numerous changes being made, the Commission determined that it would be less confusing for the general public to see the rule in its entirety when published in the *Missouri Register*, than if a series of deletions and additions was published. Therefore, the Commission determines that no changes are necessary as a result of this comment. The Commission will consider these comments in future rulemaking proceedings.

4 CSR 240-2.080 Pleadings, Filing, and Service

(5) An unsigned pleading or brief shall be rejected.

(6) By signing a pleading, the signer represents that he or she is authorized to so act, and that the signer is a licensed attorney-at-law in good standing in Missouri or has complied with the rules below concerning any attorney who is not a Missouri attorney or is appearing on his or her own behalf.

(16) Parties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

(17) Any party seeking expedited treatment in any case shall include in the title of the pleading the words "Motion for Expedited Treatment." The pleading shall also set out with particularity the following:

- (A) The date by which the party desires the commission to act;
- (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and
- (C) That the pleading was filed as soon as it could have been or an explanation why it was not.

(18) Methods of Service.

(A) Any person entitled by law may serve a document on a represented party by—

- 1. Delivering it to the party's attorney;
- 2. Leaving it at the office of the party's attorney with a secretary, clerk or attorney associated with or employed by the attorney served;
- 3. Mailing it to the last known address of the party's attorney;

or  
4. Facsimile transmission to the current facsimile machine of the party's attorney.

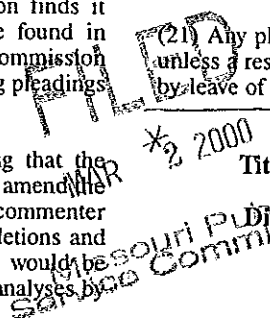
(B) Any person entitled by law may serve a document on an unrepresented party by—

- 1. Delivering it to the party; or
- 2. Mailing it to the party's last known address.

(C) Completion of Service.

- 1. Service by mail is complete upon mailing.
- 2. Service by facsimile transmission is complete upon actual receipt.
- 3. Service by electronic mail is complete upon actual receipt.

(21) Any pleading may be amended within ten (10) days of filing, unless responsive pleading has already been filed, or at any time by leave of the commission.


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 Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
 Division 240—Public Service Commission  
 Chapter 2—Practice and Procedure  
 ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-2.085 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2328-2329). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Written comments were received from two people.

COMMENT: One comment was received which indicated that proposed section (2) creates a problem when used in conjunction with proposed 4 CSR 240-2.065. Section (1) of proposed rule 2.065 requires that a public utility filing a general rate case must file its direct testimony along with the proposed tariff. The commenter explains that when the tariff is filed, there will be no protective order in place to protect highly confidential or proprietary information included in that direct testimony. Thus the commenter suggests that the Commission allow some time between when the direct testimony is due and the tariff filing so that a motion for a protective order can be filed with the tariff and issued before the testimony is due. The commenter also states that this will conform with the requirement in section (15) of proposed 4 CSR 240-2.130 which requires a protective order to be obtained before the filing of documentary evidence.

RESPONSE AND EXPLANATION OF CHANGE: The commenter points out a conflict in the procedural rules as originally proposed. The Commission will revise section (2) of this rule to include the testimony required in section (1) of proposed rule 4 CSR 240-2.065. The Commission is also revising section (15) of proposed rule 4 CSR 240-2.130 to reflect this change.

COMMENT: Two commenters recommended that the highly confidential and proprietary copies of pleadings in proposed section (2) should be served on the attorneys of record rather than the parties in order to protect the confidentiality of those pleadings.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission agrees with the commenter. The proposed rule inadvertently required service on the parties rather than on the parties' attorneys. The Commission will amend section (2) as recommended.

**COMMENT:** One general comment in support of this rule was received. The commenter indicated that the Commission should move away from blanket protective orders and tailor each protective order to the specific information sought to be protected and justified in the motion for protective order.

**RESPONSE:** No changes to this rule are necessary as a result of this comment.

**COMMENT:** One general comment was received recommending that the Commission adopt the text of its standard protective order in the body of this rule. The commenter stated that "[i]t is a waste of natural resources for the Commission to issue a separate, multi-page protective order in each instance when the text of the protective order has not changed in many years." The commenter states that the Commission can save thousands of pieces of paper by issuing a single page order saying that the protective order as set out in the rule is in effect. The commenter states that the Commission would also be able to issue non-standard protective orders when necessary.

**RESPONSE:** The Commission has reviewed the "standard" protective order to which the commenter refers. Contrary to the statement of the commenter, the Commission's "standard" protective order has changed in recent years. The Commission has determined that additional revisions may be needed as well. The Commission finds that inclusion of the text of that "standard" order should only be done after careful consideration and with a chance for comments on the specific language included. Furthermore, inclusion of the protective order language would be cumbersome in this rule. The Commission's current practice of issuing a protective order on a case-by-case basis remains the appropriate method for establishing protective orders. Therefore, the Commission finds that no changes to this rule are needed as a result of this comment.

#### 4 CSR 240-2.085 Protective Orders

(2) Pleadings, testimony, or briefs shall not contain highly confidential or proprietary information unless a protective order has been issued by the commission; except that if the pleading which initiates a case or testimony accompanying a pleading initiating a case contains highly confidential or proprietary information, then the party shall file one (1) original, and eight (8) copies of the public version; and one (1) original, and eight (8) copies of the complete version containing the information to be protected, together with a Motion for Protective Order. A highly confidential or proprietary copy of the pleadings shall be served on the attorneys of record, including general counsel and the public counsel.

#### Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 2—Practice and Procedure

##### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission rescinds a rule as follows:

#### 4 CSR 240-2.090 Discovery and Prehearings is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2329). No changes were made in the proposed rescis-

ion, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This rescission was proposed in conjunction with a replacement proposed rule. The comments received were directed to the proposed rule.

#### Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 2—Practice and Procedure

##### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1999, the commission adopts a rule as follows:

#### 4 CSR 240-2.090 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2329-2330). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** Written comments were received regarding sections (1), (2), (5), (7) and (8).

**COMMENT:** One comment was received objecting to proposed section (2). The commenter stated that data requests should not be required to be signed by a person who could attest to the truthfulness and correctness of the answers. The commenter explains that parties to proceedings before the Commission have three basic methods of obtaining information through discovery. Two of these methods are identical to those used in circuit courts as provided by Rule 57, Interrogatories and Depositions, under the Rules of Civil Procedure. Both interrogatories and depositions are provided under oath. The third method, data requests, are provided for in the current and proposed rules of the Commission. This method has not been required to be submitted under oath. The commenter suggests that requiring the data requests to be signed as proposed, will not insure greater accuracy in the answers provided in the data requests, but will only slow down the process by requiring the party answering the request to track down a person who will be able to swear to the statement's truthfulness. The commenter also does not believe this is necessary because under section 386.560, *Revised Statutes of Missouri*, it is a criminal act to make a false statement required to be made to the Public Service Commission. The commenter also disagrees with the proposal in section (2) that requires the answering party to promptly notify the requesting party of any changes to the answers previously given to a data request. The commenter states that this requirement is too burdensome and is not required due to the process of prefiling written testimony used in most Commission proceedings.

**RESPONSE AND EXPLANATION OF CHANGE:** The purpose of the discovery process is to provide accurate information to the requesting party. The Commission utilizes the discovery methods of interrogatories and depositions as found in the Civil Rules of Procedure. In addition, the Commission's current rules and the proposed rule, provides for an additional method of discovery known as data requests. Data requests are meant to provide information to the requesting party in a more expedited fashion than interrogatories and depositions. However, data requests are not intended to provide less accurate information. After reviewing the comments and analyzing the rule as proposed, the Commission determines that a change to proposed section (1) is necessary to clarify the methods of discovery. The Commission determines that a change to proposed section (2) is necessary to clarify that the