

**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 240-2.075 Intervention 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 2326-2327). No changes were made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: One written comment was received regarding each of sections (2), (5) and (6). Two written comments were received regarding section (4).

COMMENT: A comment was received which proposed that a new subsection be added, or subsection (2) be amended to allow persons who request intervention immediate status as a party pending a ruling by the presiding officer. The commenter proposed the following new language: Rights of persons with pending motions to intervene. Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

RESPONSE: The Commission finds that no changes are necessary as a result of the comment. Intervention is not always a matter of right and therefore, the potential intervenors should not be given rights and burdens should not be placed on the parties to the case, until a determination regarding the request for intervention has been made. There are also provisions within the Commission's procedural rules for requests for expedited treatment, if a potential intervenor seeks expedited consideration.

COMMENT: One commenter suggests that in section (4) the phrase "The commission may on application permit any person to intervene" be changed to "The commission shall. . ." The commenter argues that if the required showing is made under subsection (4), that the intervenor should be granted intervention as a matter of right.

RESPONSE: Intervention is not always a matter of right, but is sometimes a discretionary function of the Commission. Therefore, the Commission finds that no changes are necessary to this rule as a result of the comment.

COMMENT: One comment was received in opposition to section (4). The commenter disagrees with requiring the applicant to show at the very early stages of the case that it may be adversely affected by a final order. Sprint states that this may preclude the participation of many parties which have an interest or which will have an interest as the case progresses because it is often not known when notice is first provided of the case precisely what issues will be addressed.

RESPONSE: The rule as proposed does not require that a potential intervenor show that it will be adversely affected by the final order of the Commission. The proposed rule requires only a showing that the potential intervenor "may be adversely affected." Therefore, the Commission determines that no changes to this rule are needed as a result of this comment.

COMMENT: One commenter suggested that section (5) should be amended to provide criteria for determining when a late intervention should be granted.

RESPONSE: The Commission has considered the criteria for determining when a late intervention should be granted as suggested in the comment. However, the Commission finds that the standard of "good cause" is sufficient. Therefore the Commission finds that no changes are needed to this rule as a result of this comment.

COMMENT: One written comment suggested that "the Commission adopt a[n] *amicus curiae* procedure like in the Missouri Rules of Civil Procedure 84.05(f)(2). The rule should provide for an application for *amicus curiae* to set out the reasons why the PSC should grant the party relief to file a brief. The application should include the nature of the party's interest and the facts or questions of law the party proposes to address." The commenter also stated that it supports the replacement of the "participant without intervention" as provided in the current rule with an "*amicus curiae*" as provided in the proposed rule.

RESPONSE: In the Commission's experience, the numbers of persons making application to participate without intervention have been relatively few. The Commission anticipates that there will be relatively few parties asking to enter cases as an *amicus curiae*, as well. Therefore, the Commission finds that the procedure as proposed in section (6) will provide sufficient information and the more strict standards of Civil Rule 84.05(f)(2) are not necessary. No changes to this rule were made as a result of this comment.

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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 240-2.080 Pleadings is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2327). No changes were made in the proposed rescission, 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.

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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 240-2.080 is adopted.

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Missouri Public Service Commission

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A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2327-2328). 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: One written comment each was received to sections (2), (6), (7), (10), two written comments each to sections (8) and (18), eight written comments to section (16), and three written comments to section (17) were received. One commenter suggested a new section (21). The Commission also made one change to section (5) upon its own review.

COMMENT: One commenter stated that section (2) should not require the signing of a pleading or brief to provide its electronic mail address because none of the statutes governing the means of communication by the Commission authorizes it.

RESPONSE: The Commission has the statutory authority to adopt procedural rules. The Commission finds that its ability to communicate quickly and efficiently with counsel for parties before it will be enhanced by having an electronic mail address for counsel if one exists. The Commission notes that in the same document this commenter applauds the Commission's attempts to reduce paper filings and recommends the Commission utilize electronic filing as much as possible and recommends that service by facsimile be added to the methods of service on parties' attorneys. The Commission fails to see why the commenter would not also want the Commission to communicate with the parties or their attorneys in the most expedient manner possible. Therefore, the Commission finds that no changes are necessary to this rule as a result of this comment.

COMMENT: One comment was received supporting the restatement of general ethical responsibilities of counsel in section (7).

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

COMMENT: Two commenters applauded the Commission for reducing its filing requirements from 14 copies to 8 copies. One of those commenters encouraged the Commission to reduce paper filings even more by utilizing electronic filing as much as possible.

RESPONSE: The Commission expects to have ready a system by which electronic filings can be possible in the near future. When that system is ready, it will be necessary for the Commission to revise its procedural rules to accommodate that method of filing. However, until the Commission has the systems and technology in place, the Commission has reduced the number of paper copies required. The Commission finds that no changes to this rule are necessary as a result of this comment.

COMMENT: One comment in support of the Commission's reduction in the number of copies needed for filing a complaint was received.

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

EXPLANATION OF OTHER CHANGES: Upon review of the proposed rule, the Commission finds that the word "stricken" is incorrect and should be replaced by the word "rejected" in section (5). In this context, "stricken" would incorrectly imply that the pleading or brief was accepted by the Commission to be filed and then removed from the record. The term "rejected" would correctly mean that the pleading or brief was never accepted for filing with the Commission.

COMMENT: One comment was received suggesting that for grammatical reasons, the phrase "By signing a pleading," should be added to the beginning of section (6).

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with the comment and for clarity and consistency the Commission will make the change as recommended.

COMMENT: Seven comments were received objecting to the shortening of the time to respond from ten days to seven days in proposed section (16) and one comment supported the shortened response time with an amendment. The commenters cited holidays and weekends, postal service delays, and the ability of parties to request a shortened response time where necessary under other rules of the Commission, as reasons for objecting to this proposed rule. Two commenters suggested that the response period in section (16) could be seven days if the Commission allowed an additional three days where service of the pleading was made by mail. Two commenters also suggested that requiring or permitting service by facsimile would help to shorten the response time.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the comments and has determined that the time period for filing a response should be ten days. However, the Commission notes that by operation of law, when the tariff effective date or operation of law date occurs sooner than ten days from the filing of the pleading, the responsive party may not have a full ten days available to respond before the Commission takes action. Therefore, the Commission finds that section (16) should be amended.

COMMENT: Two identical comments were received which stated that the requirement of subsection (17)(C) is inappropriate. The commenter stated that the information was not relevant to the issue of whether expedited treatment should be granted. The commenter stated that the information could only be used to assign blame that is not an appropriate consideration in making a determination of whether expedited treatment is in the public interest.

RESPONSE: Proposed section (17) of this rule, sets up a procedure for requesting expedited consideration of a case. The Commission does not intend to use subsection (C) as a means of punishing parties who might suffer harm, or where failure to expedite might cause harm to the general public, because the party has caused a delay in requesting expedited treatment. However, the Commission also does not intend to reward bad actors or take extraordinary measures in cases where the requesting party has orchestrated, by intent or neglect, its own emergency. Therefore, the Commission finds that no change to this rule is needed as a result of this comment.

COMMENT: One commenter suggested that section (17) regarding motions for expedited treatment should also include a requirement for disclosure of any negative effect the request may have on the company's customers or the public.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with the commenter. Knowing the negative effect, if any, on the public of expediting the request is important to the Commission. Therefore, the Commission will amend this rule to include this recommendation.

COMMENT: One commenter stated that proposed subsection (17)(C) should be amended by changing the words "An attestation by the moving party" to "A statement in the pleading by the moving party or counsel."

RESPONSE AND EXPLANATION OF CHANGE: The Commission has reviewed this subsection and agrees that an amendment should be made. When read in conjunction with the opening phrases of section (17) and with the Commission rule requiring pleadings to be verified, the Commission determines that the only revision necessary to this rule is to strike the words "An attestation by the moving party" because they are unnecessary.

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 a responsive pleading has already been filed, or at any time by leave of the commission.

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.