

## MEMORANDUM

**TO:** Dale Hardy Roberts, Secretary

**DATE:** December 2, 1999

**RE:** Authorization to File Orders of Rulemaking With the Office of Secretary of State

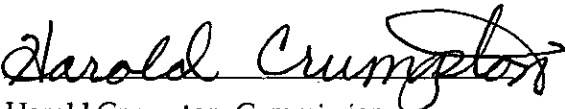
**CASE NO:** AX-2000-108

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file Orders of Rulemaking with the Office of Secretary of State, to wit:

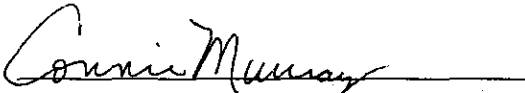
**4 CSR 240-2.010 Definitions**



Sheila Lumpe, Chair



Harold Crumpton, Commissioner



Connie Murray, Commissioner



Robert Schemenauer, Commissioner



M. Dianne Drainer, Vice Chair

PSC OFFICIAL  
FILE

Administrative Rules Stamp

4 X-2000-108

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JAN 21 2000

SECRETARY OF STATE  
ADMINISTRATIVE RULES DIVISION

REBECCA MCDOWELL COOK  
Secretary of State  
Administrative Rules Division  
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-2.010  
Diskette File Name 2.010 rule (Word 97 format)  
Name of Person to call with questions about this rule:  
Context Vicky Ruth Phone 573-522-8459 FAX 573-751-1847  
Data Entry Judy Pope Phone 573-751-6526 FAX 573-751-1847  
Interagency Mailing Address Truman Bldg., 301 W. High St., Room 530, Jefferson City, MO

Statutory Provision for Rulemaking

Authority § 386.410 Provide Most Current RSMo Year 1998  
Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages  
☒ Cover Letter  
☐ Affidavit  
☐ Cost Statements  
☐ Public Entity Fiscal Note  
☐ Private Entity Fiscal Note  
OTHER \_\_\_\_\_

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency Rulemaking, Must Specify Effective Date  
☐ Proposed Rulemaking  
☒ Order of Rulemaking (MUST complete page 2 of this transmittal)  
☐ Withdrawal (Rule, Amendment, Rescission or Emergency)  
☐ Rule Action Notice  
☐ In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc:)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RULE TRANSMITTAL (PAGE 2)**

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-2.010

1a. Effective Date for the Order

Statutory 30 days ☒ or later specific date \_\_\_\_\_

1b. Does the Order of Rulemaking contain changes to the rule text?

YES ☒ NO \_\_\_\_\_

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

- In section (2), the phrase "or page of a document" has been added after the phrase "Certificate of service means a document".
- In section (2), the words "attorney of record served or" have been added after the phrase "Certificate of service means a document or page of a document showing the caption of the case,".
- Section (13) has been amended by adding the words "staff recommendation," before the phrase "or other similar written document".
- Section (16) has been amended by inserting the word "the" before the words "Public Counsel".

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



*Commissioners*

**SHEILA LUMPE**  
Chair

**HAROLD CRUMPTON**

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**M. DIANNE DRAINER**  
Vice Chair

## **Missouri Public Service Commission**

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JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
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January 21, 2000

**GORDON L. PERSINGER**  
Acting Executive Director  
Director, Research and Public Affairs

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. KOLILIS**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

Honorable Rebecca McDowell Cook  
Secretary of State  
600 West Main Street  
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Orders of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 21st day of January, 2000.

Rules: 4 CSR 240-2.010 – Definitions  
4 CSR 240-2.015 – Waiver of Rules  
4 CSR 240-2.040 – Practice Before the Commission  
4 CSR 240-2.050 – Computation of Time  
4 CSR 240-2.060 – Applications  
4 CSR 240-2.065 – Tariff Filings Which Create Cases  
4 CSR 240-2.070 – Complaints  
4 CSR 240-2.075 – Intervention  
4 CSR 240-2.080 – Pleadings, Filing, and Service  
4 CSR 240-2.085 – Protective Orders  
4 CSR 240-2.090 – Discovery and Prehearings  
4 CSR 240-2.100 – Subpoenas  
4 CSR 240-2.110 – Hearings  
4 CSR 240-2.115 – Nonunanimous Stipulations and Agreements  
4 CSR 240-2.116 – Dismissal  
4 CSR 240-2.120 – Presiding Officers  
4 CSR 240-2.125 – Procedures for Alternative Dispute Resolution  
4 CSR 240-2.130 – Evidence  
4 CSR 240-2.140 – Briefs and Oral Argument  
4 CSR 240-2.150 – Decisions of the Commission  
4 CSR 240-2.160 – Rehearings or Reconsideration  
4 CSR 240-2.180 – Rulemaking  
4 CSR 240-2.200 – Small Company Rate Increase Procedure

Honorable Rebecca McDowell Cook

Page two

January 21, 2000

Statutory authority: Section 386.410, RSMo Supp. 1998

Effective date of the rules: thirty days after publication in the *Code of State Regulations*

Missouri Public Service Commission Case Nos.: AX-2000-108 through AX-2000-128, and  
AX-2000-130 through AX-2000-131

If there are any questions, please contact: *(These rules are assigned to several regulatory law judges. Please refer to the transmittal form for the name, phone number and fax number of the regulatory law judge assigned to a particular rule.)*

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

DHR:jp

Enclosures: Packets for 23 Orders of Rulemaking  
Orders of Rulemaking in Word 97 format on 3-1/2" diskette

**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. 1998, the commission adopts a rule as follows:

**4 CSR 240-2.010 Definitions is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on Oct. 1, 1999 (24 MoReg 2318-2319). 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:** The Commission received written comments from several sources. The Commission also made a minor grammatical change to the rule by inserting the word "the" before the words "Public Counsel" in section (16).

**COMMENT:** In section (2), the "certificate of service" refers to "the name of the party served." One comment suggested that this should be "attorney of record served or the name of the party served."

**RESPONSE:** The Commission finds that the suggested wording does clarify the intent. The Commission will amend the provisions to include "attorney of record served" as suggested.

**COMMENT:** The proposed rule adds a definition, section (2), for "certificate of service," meaning a "document showing the caption of the case, the name of the party served, the date and manner of service, and the signature of the serving party or attorney." One comment states that the Commission should clarify that as long as the certificate of service contains the information required by the new definition, the certificate could be incorporated into a pleading (e.g., at the end of the pleading as is customarily done today).

**RESPONSE:** The Commission agrees that as long as the certificate of service contains the information required, the certificate could be incorporated into a pleading. The Commission will clarify this intent by adding the words "or page of a document" to the definition.

**COMMENT:** One comment recommends that section (9) be revised as discussed in the provision regarding section (17). There is a need to balance the public policy preference for open records and the need of the company to protect confidential information. Highly confidential (HC) information is information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation relating to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations where the party seeking protection from the disclosure of this

information has made a showing that the detriment to the party outweighs the public interest in public disclosure.

RESPONSE: The Commission has reviewed the comment and has determined that, although the comment contains some merit, it requires further review. In addition, the proposed changes would be of such a substantial nature that they would best be addressed in a new proposed rulemaking. The Commission will keep the comments in mind for possible future revisions. No changes were made to the proposed rule as a result of this comment.

COMMENT: One comment states that the terms "highly confidential information" and "proprietary information," found in sections (9) and (17), have been included in the Commission's "standard" protective order for many years. It is a waste of natural resources for the Commission to issue a separate, multipage protective order in each instance where the text of the protective order has not changed in many years. Therefore, the Commission should adopt a rule containing the text of the protective order. Then, when the Commission decides to issue an order making the protective order apply in a particular case, the Commission can simply issue a one-page order saying the protective order, as provided in the rule, is in effect. If the Commission wishes to issue a non-standard protective order, it can at least incorporate by reference the provisions in the rule that would still apply. This suggestion could save potentially thousands of pieces of paper.

RESPONSE: The Commission has reviewed the comment and has determined that, although the comment contains some merit, further review is necessary. In addition, the matter would best be addressed in a separate rulemaking provision and not in the definitions rule. No changes were made to this rule as a result of this comment.

COMMENT: One comment states that although section (12) purports to define "person," the term "person" is already statutorily defined and the Commission does not have the statutory authority to expand on a statutorily defined term. There are numerous court cases which say that any rule which expands on or conflicts with a statute is void. *See, e.g., Missourians for Honest Elections v. Missouri Elections Commission*, 536 S.W.2d 766, 772 (Mo. App. E.D. 1976). The rule should simply reference the statutory section.

RESPONSE: The Commission disagrees with the comment's interpretation and applicability of the cited case. The Commission notes that the proposed definition of "person" is very similar to the current rule's definition of "person." The proposed definition substitutes the term "natural person" for the previous term of "individual." The proposed definition also added the phrase "state or federal agency." These changes were made to clarify the rule. The Commission finds that these changes are appropriate procedural changes and do not change any substantive rights. No changes were made to the rule as a result of this comment.

COMMENT: One comment indicates that the "Pleading" definition in section (13) should specify that the "staff recommendation" is a pleading so that the response time rule applies. A Staff recommendation is always signed by an attorney for the General Counsel's Office and is treated in every significant way as if it were a pleading.

COMMENT: Another comment suggests that the Commission should add "staff recommendation" to the enumerated documents considered to be a pleading in section (13), or at least clarify in its discussion of the final rule that it considers recommendations from the Staff of the Missouri Public Service Commission to be "pleadings."

RESPONSE: The Commission agrees to amend the definition of pleading to include Staff recommendation.

COMMENT: One comment indicates that section (13) should specify whether a Staff "recommendation" is a pleading or not, or the Commission should direct the Staff to cease filing "recommendations" which are not in the commonly recognized form of a pleading. The most problematic recommendations are those which are issued by the Staff in Actual Cost Adjustment proceedings. Sometimes these recommendations are complex and require more than ten days in which to formulate a response; they are also not in the form of a pleading with numbered paragraphs to which a response either admitting or denying the allegations can be made. If Staff recommendations are to continue in the current form, they should not be considered pleadings for purposes of the rule because the response time would be too short in most cases, and thus the Commission should issue orders specifying the response time in each instance.

RESPONSE: As previously noted, the Commission finds that the definition of pleading should be amended to include Staff recommendation. If a party believes that in a particular case the standard response time is inadequate, it may file a motion requesting additional time. As a result of this and other comments, the Commission will amend the definition of pleading to include Staff recommendations.

COMMENT: A comment states that section (17) should be revised. It appears that the standard protective order mixes the scope of protection for proprietary and highly confidential (HC) information. Suggested language is as follows: "Proprietary Information - information concerning trade secrets, as well as confidential or private technical, financial and business information where the party seeking protection from the disclosure of this information has made a showing that public disclosure of the information would be detrimental to the party's marketing and strategic planning of competitive products or services."

RESPONSE: The Commission has reviewed this comment and determines that the rule is appropriate as written. However, if the Commission later decides to promulgate a new rule addressing protective orders, as suggested by another comment, the Commission will then reevaluate the definitions of "highly confidential information" and "proprietary information." No changes were made to the rule as a result of this comment.

COMMENT: The Commission received a comment suggesting that although section (18) purports to define "public utility," the term "public utility" is already defined in Section 386.020(42), RSMo 1994. The comment contends that the Commission does not have the statutory authority to expand on a statutorily defined term. There are numerous court cases which say that any rule which expands on or conflicts with a statute is void. *See, e.g., Missourians for Honest Elections v. Missouri Elections Commission*, 536 S.W.2d 766, 772 (Mo. App. E.D. 1976). The rule should simply reference the statutory section.

RESPONSE: The Commission disagrees with the comment's interpretation and applicability of the cited case. The Commission notes that proposed definition of "public utility" is very similar to the current rule's definition of this term. The changes are appropriate procedural changes intended to clarify the rule and are not intended to change any substantive rights. No changes were made to the rule as a result of this comment.

#### **4 CSR 240-2.010 Definitions**



(2) Certificate of service means a document or page of a document showing the caption of the case, attorney of record served or the name of the party served, the date and manner of service, and the signature of the serving party or attorney.

(13) Pleading means any application, complaint, petition, answer, motion, staff recommendation, or other similar written document, which is not a tariff or correspondence, and which is filed in a case. A brief is not a pleading under this definition.

(16) Public counsel means the Office of the Public Counsel as created by the Omnibus State Reorganization Act of 1974, and includes the assistants who represent the public before the commission.