

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: January 13, 2000

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

CASE NO: AX-2000-117

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file an Order of Rulemaking with the Office of Secretary of State for the following Proposed Rule:

4 CSR 240-2.085 Protective Orders



Sheila Lumpe, Chair



Harold Crumpton, Commissioner



Connie Murray, Commissioner



Robert Schemenauer, Commissioner



M. Dianne Drainer, Vice Chair

RECEIVED

**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 240-2.085
Diskette File Name 2.085 rule (Word 97 format)
Name of Person to call with questions about this rule:
Context Nancy Dippell Phone 573-751-4393 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 OTHER _____
 Private Entity Fiscal Note _____

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)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-2.085

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 the first sentence of section (2), immediately following the phrase "pleading which initiates a case" the phrase "or testimony accompanying a pleading initiating a case" is inserted. In the last sentence of section (2), which begins "A highly confidential ...", the word "parties" is changed to the phrase "attorneys of record".

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

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

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. KOLLIS
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
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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 240-2.085 Protective Orders 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 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 commentator 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 commentator 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 commentator 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: The commentator 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 commentators 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: The Commission agrees with the commentator. 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 commentator 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 commentor 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 commentor 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 commentor 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 commentor refers. Contrary to the statement of the commentor, 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.