

WISCONSIN LEGISLATIVE COUNCIL STAFF



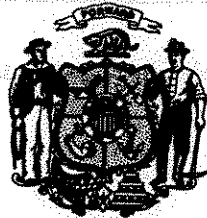
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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-187

AN ORDER to amend PSC 1.04, 3.02 (1) (b) and (e), and 3.04 (1); and to repeal and recreate ch. PSC 2, relating to practice and procedure before the commission.

Submitted by **PUBLIC SERVICE COMMISSION**

12-26-00 RECEIVED BY LEGISLATIVE COUNCIL.
01-25-01 REPORT SENT TO AGENCY.

RS:REL:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

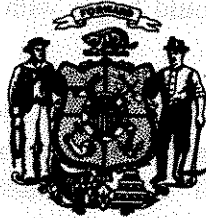
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-187

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In the list of section titles preceding subch. I, the title to s. PSC 2.23 should read: "Depositions." Or, in the alternative, the title to s. PSC 2.23 in the text of the rule should be rewritten to read: "Discovery."

b. In s. PSC 2.01 (intro.), the parentheses should be deleted and replaced with commas. Also, the acronym "PSC" should be replaced by the defined term "commission."

c. In s. PSC 2.03, only the first word of the section title should be capitalized. The entire rule should be reviewed for this problem.

d. In s. PSC 2.04 (1), it is unnecessary to repeat the definition of "working day" previously defined in s. PSC 2.02 (16). In sub. (3) (b), it appears the first sentence should conclude with the phrase "or by facsimile." Also, sub. (4) should be rewritten to read: "The commission will not consider any paper that is not properly served or filed under this section." Finally, under sub. (5), when the commission authorizes and establishes procedures for electronic service and filing, these procedures should be added to the rule.

e. Section PSC 2.05 (3) should conclude with the phrase "under s. 227.01 (3), Stats." In the note following s. PSC 2.05, the second sentence should be rewritten to read: "This section is intended to retain the substance of former s. PSC 2.10 (1) . . ." In the next sentence of the note, the word "new" should be deleted.

f. In s. PSC 2.06 (1), the titles of the notices should not be presented with uppercase lettering.

g. Section PSC 2.07 (1) (b) should begin with the phrase "Except as provided in sub. (3), the."

h. The analysis states that: "The commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice." Therefore, in the second sentence of s. PSC 2.10 (5) (d) 1., "shall" should be inserted between "commission" and "post."

i. If titles are used for any subsection, then all subsections in that section should be titled. This problem occurs in s. PSC 2.23. In s. PSC 2.23 (1), the word "Commission" should be replaced by the word "commission."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PSC 2.05 (5), it appears that the phrase "to open a docket" should be inserted after the word "request."

b. In s. PSC 2.06 (2) (b), it appears that the phrase "other than" should be replaced by the phrase "that are not."

c. Section PSC 2.08 (intro.) refers to "a public utility"; however, "public utility" is not defined in s. PSC 2.02. It is suggested that "public utility" as defined in s. 196.01 (5), Stats., be included in s. PSC 2.02.

d. Section PSC 2.10 (6) would be clearer if the phrase "and denied" is inserted after the word "requested."

e. In s. PSC 2.22 (2), the phrase "seeking an order" should be inserted after the first occurrence of the word "motion."

The Commission will accept written comments on the proposed rules if filed no later than January 19, 2001

ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION

Statutory authority: Sections 196.02(3) and 227.11(2), Stats.

Statutes interpreted: Sections 196.14, 196.24(3), 196.26 to 196.30, 196.33, 196.39, 196.72, and 196.795(9), Stats., and, generally, ch. 196, Stats.

This revision updates and revises the rules relating to practice and procedure before the Commission. This rule also creates procedures for the confidential treatment of records.

The rule establishes processes for filing documents with the Commission, including provisions for facsimile filing, and establishes the number of copies to be filed. The rule identifies persons that need to be served with documents in proceedings and proper methods for service. The rule describes how time is to be computed for determining when a filing or an event is to take place. The rule creates a process for requesting an enlargement of time.

The process for opening dockets by the commission is established in the rule. A docket may be opened at the Commission's own motion or at a person's request. Under the rule, a person may make a request to open a docket by filing an application, petition, or complaint. The rule eliminates the distinction between, and the processes for, the handling of "formal" and "informal" complaints.

If the commission decides to open a docket, it issues a notice of proceeding or notice of investigation. The current rules do not describe how dockets are opened.

Like the current rule, this rule describes who may be parties in a proceeding. The rule establishes the standards that are to be met in order to become a party by right or a party by permissive intervention. The rule repeals the previous distinction between a "limited" and a "full" intervenor.

The rule identifies the role and authority of the administrative law judge presiding at a proceeding and retains the provision from the current rule that commission staff do not appear in a proceeding in support or opposition to a position, but only to discover and present information pertinent to the proceeding.

The rule eliminates specific provisions that detail particular aspects of hearings, such as rules for prehearing conferences, appearances, order of presenting evidence, changes in the time or place of hearings, conduct of hearings, briefs, and transcripts.

The rule revises processes for filing motions, conducting discovery, reopening proceedings, and for requesting interlocutory review by the Commission of rulings of the administrative law judge.

The rule retains provisions requiring notice to customers when a utility requests a general rate increase and provisions requiring a hearing if a utility wishes to abandon facilities or discontinue service. The rule repeals outdated provisions relating to motor carrier authority applications and provisions relating to municipal acquisition proceedings.

The rule also creates a process for a commissioner to request a synopsis or summary of evidence pursuant to s. 196.24(3), Stats. Under the rule, commission staff will prepare a synopsis or summary of the evidence if requested by a commissioner. Parties have the opportunity to respond to the synopsis to add or correct facts.

This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The determination will specify what, if any, information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

TEXT OF PROPOSED RULE

1 SECTION 1. PSC 1.04 is amended to read:

2
3 **PSC 1.04 Supervisor of hearings.** The supervisor of hearings ~~in the legal department [of the~~
4 ~~commission]~~ of the commission is authorized and directed to assign to each of such agents any
5 administrative law judge employed by the commission the supervision of any particular
6 investigation or the conduct of hearings and taking of testimony bearing upon any particular
7 investigation or hearing made or held by the commission. Such assignments by the supervisor of
8 hearings for the conduct of hearings, if made by indication on the commission calendar of
9 hearings shall constitute specific authority to the agent thus designated to conduct the particular
10 hearing and the taking of testimony in the matter or proceeding to which such designation
11 pertains. The secretary to the commission is authorized, in the absence of the supervisor of
12 hearings, to perform the latter's duties.

13
14 SECTION 2. Chapter PSC 2 is repealed and recreated to read:

15 **PUBLIC SERVICE COMMISSION**

16 **Chapter PSC 2**

17 **PRACTICE and PROCEDURE**

18 **Subchapter I – General**

- 19
20 PSC 2.01 Applicability
21 PSC 2.02 Definitions
22 PSC 2.03 Computation of Time and Time Limits
23 PSC 2.04 Filing and Service
24 PSC 2.05 Requests to Open Dockets
25 PSC 2.06 Notices
26 PSC 2.07 Application for Rate Increase; Notice to Customers

- 1 PSC 2.08 Abandonment or Discontinuance of Service
- 2 PSC 2.10 Confidential Status
- 3
- 4 **Subchapter II – Proceedings**
- 5
- 6 PSC 2.20 Parties and Role of Commission Staff and Administrative Law Judge
- 7 PSC 2.21 Intervention
- 8 PSC 2.22 Motions
- 9 PSC 2.23 Discovery *Depositions*
- 10 PSC 2.24 Synopsis or Summary of the Evidence
- 11 PSC 2.25 Interlocutory Orders of the Commission
- 12 PSC 2.26 Reopening
- 13
- 14
- 15

Subchapter I – General

16 **PSC 2.01 Applicability.** This chapter establishes the rules of practice and procedure in PSC *Commission defined*
17 investigations, proceedings and other dockets. Portions of this chapter also apply generally to
18 matters such as filing (including filing with a request for confidentiality) computation of time X
19 and other administrative matters whether or not in dockets. Where a statute or rule prescribes a
20 particular process for certain kinds of matters, that process shall apply wherever inconsistent
21 with this chapter.

22
23 **NOTE:** Examples of particular processes for certain kinds of matters are the
24 customer complaint rules contained in chapters PSC 113, 134, 165, and 185.
25

26 **PSC 2.02 Definitions.** In this chapter:

- 27 (1) "Administrative law judge" means a person designated to preside over a proceeding.
- 28 (2) "Application" means a written request that the commission issue or amend a certificate,
29 license, permit or any other approval, authorization or exemption.
- 30 (3) "Chairperson" means the chairperson of the commission.
- 31 (4) "Commission" means the public service commission. ←

- 1 (5) "Complaint" means a complaint authorized to be filed by ch. 196, Stats.
- 2 (6) "Contested case" has the meaning given in s. 227.01(3), Stats.
- 3 (7) "Docket" means an investigation, proceeding or other matter opened by a vote of the
4 commission.
- 5 (8) "Hearing" means a contested case hearing or other trial-type hearing.
- 6 (9) "Investigation" means an investigation under ch. 196, Stats.
- 7 (10) "Party" means a person or agency named or admitted as a party in a proceeding.
- 8 (11) "Person" has the meaning given in s. 990.01(26), Stats.
- 9 (12) "Petition" means a written request to the commission, other than an application or
10 complaint, to open a docket.
- 11 (13) "Proceeding" means a contested case or other docket that includes a hearing.
- 12 (14) "Public hearing" means a hearing, which is not a trial-type hearing.
- 13 (15) "Secretary" means the secretary to the commission.
- 14 (16) "Working day" has the meaning given in s. 227.01(14), Stats.
- 15
- 16 **PSC 2.03 Computation of Time and Time Limits. (1) DEFINITION.** In this section, "holiday"
17 has the meaning given in s. 230.35(4)(a), Stats.
- 18 **(2) COMPUTATION OF TIME.** In computing any period of time, the day of the act, event, or default
19 from which the designated period of time begins to run shall not be included. The last day of the
20 period so computed shall be included, unless it is a day the commission is closed, in which case
21 it shall be the next day the commission is open. When a period of time prescribed or allowed is
22 less than 11 days, Saturdays, Sundays, and holidays shall be excluded in the computation.

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1 (3) ENLARGEMENT OF TIME. (a) When an act is required by law or by order to be done at or
2 within a specified time, the period of time may be enlarged, but only on good cause shown and
3 upon just terms. Requests under this subsection, when made in a proceeding, shall be made by
4 motion. Requests under this subsection, when made in docket other than a proceeding, shall be
5 made in a letter addressed to the secretary. Requests shall be made within a reasonable time
6 prior to the expiration of the period in question. Requests made after the expiration of the
7 specified time shall not be granted unless the failure to act was the result of excusable neglect.

8 (b) 1. Only the commission may modify a period of time established by the commission.
9 2. Notwithstanding subd. 1., the chairperson of the commission may enlarge a period established
10 by the commission for up to 3 working days.

11 (4) SERVICE BY MAIL. Whenever a person is authorized or required to do some act within a
12 prescribed period after the service of any paper upon the person and the paper is served upon the
13 person by mail, 3 days shall be added to the prescribed period.

14
15 **PSC 2.04 Filing and Service.** (1) DEFINITION. In this section, "working day" has the meaning
16 given in s. 227.01(14), Stats. } already
in
2.02(14)

17 (2) FILING. (a) A person shall file any paper authorized or required to be filed by this chapter } on p. 2
18 with the records management unit of the commission between the hours of 7:45 a.m. and
19 4:00 p.m. on a working day. Papers are not considered filed until they are date and time stamped
20 by the records management unit. Persons may file in person or by mail. In addition, persons
21 may file submissions of no greater than 25 pages by facsimile.

1 (b) A person, other than an individual, shall file the original and 19 copies of all papers, except
2 that the records management unit will make the required number of copies of any paper filed by
3 facsimile and bill the filer for the cost. An individual shall file the original and 3 copies of any
4 paper.

5 (3) SERVICE. (a) 1. In a proceeding, parties shall serve upon all other parties, a copy of any paper
6 filed with the commission. In dockets other than proceedings, where the commission has
7 ordered or requested written comments, persons filing comments shall serve copies upon all
8 persons identified on the service list established in the docket, if any.

9 2. Notwithstanding the subd. 1., individuals are not required to serve their comments on any
10 other person.

11 3. The filing of any paper required to be served constitutes a certification by the person mailing
12 the filing that a copy of such paper has been served.

13 (b) Service shall be made by delivering or mailing a copy. ^{or by facsimile} Delivery means handing it to the
14 person; transmitting a copy of the paper by facsimile machine to the person's office; or leaving it
15 at the person's office with a clerk or other person in charge or, if there is no one in charge,
16 leaving it in a conspicuous place at the office; or, if the office is closed or the person to be served
17 has no office, leaving it at his or her dwelling house or usual place of abode with some person of
18 suitable age and discretion then residing at that location. Service by mail is complete upon
19 mailing. Service by facsimile is complete upon transmission.

20 (c) A party may not serve submissions of greater than 25 pages by facsimile. A party shall serve
21 a paper copy of any paper served or filed by facsimile within 2 days of transmission.

that is

1 (4) IMPROPER SERVICE OR FILING. The commission will not consider any paper not properly
2 served nor filed. or

3 (5) ELECTRONIC SERVICE OR FILING. The commission may authorize and establish procedures
4 for electronic service and filing.

} when done, put in rule

5
6 **PSC 2.05 Requests to Open Dockets. (1) HOW REQUESTED.** The commission may open a
7 docket at the request of any person or on its own motion. A person requesting the commission to
8 open a docket shall file an application, a complaint, or a petition, depending upon the legal basis
9 for the request.

10 (2) REQUEST REQUIREMENTS. A request to open a docket shall contain all of the following:

- 11 (a) A statement of the issues presented.
- 12 (b) A statement of the facts necessary to an understanding of the issues.
- 13 (c) A discussion of the statutes or rules conferring jurisdiction upon the commission.
- 14 (d) A statement of the reasons why the commission should exercise its jurisdiction.
- 15 (e) A statement of whether the applicant, complainant, or petitioner is requesting an
16 investigation, a proceeding, or both.

17 (3) CONTESTED CASE STATUS. If a person requests the commission to open a proceeding, the
18 request shall state whether the matter should be a contested case and, if so, shall discuss how the
19 matter meets the statutory definition of contested case.

20 (4) SERVICE REQUIREMENT. If a request to open a docket alleges a violation by any named
21 person of any statute, rule or order of the commission, the person filing the request shall serve a

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1 copy of the request on the person named, in the manner provided in s. 801.11, Stats., for service
2 of a summons.

3 (5) RESPONSES. No person may file a response to a request ^{to open a docket} unless the commission requests or
4 orders a response.

5 *date this*

6 **NOTE:** It is not necessary to file a request to open a docket in order to seek
7 information or assistance from the staff or in order to bring any matter to the
8 commission's attention. This section is intended to retain the substance of format
9 rule s. PSC 2.10(1) except that there no longer are "formal investigations." As
10 provided in new s. PSC 2.05, a person may request or the commission on its own
11 motion may open an investigation, a proceeding, or another docket. The
12 commission may decide to open a docket based upon information acquired from
13 informal contacts with the commission.
14

15 **PSC 2.06 Notices. (1) HOW ISSUED.** A docket is opened when the commission issues a ~~Notice~~
16 of ~~Investigation~~, a ~~Notice of Proceeding~~, or such other notice sufficient to identify the basis and
17 nature of the docket. A notice is issued when it is signed by the secretary at the direction of the
18 commission.

19 (2) PROCEEDINGS. (a) A notice of proceeding shall state all of the following:

- 20 1. Whether the proceeding is being initiated on the commission's own motion or upon request.
- 21 2. The purpose of the proceeding.
- 22 3. The legal basis for the proceeding.
- 23 4. The names of the parties.
- 24 5. Whether the proceeding is a contested case and, if so, what class of contested case or, if the
25 proceeding is not a contested case, what procedures will govern the proceeding.

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1 (b) Unless otherwise stated in a notice of proceeding or order of the commission, the procedures
2 of ch. 227, Stats., concerning class 1 contested cases shall apply to all proceedings ^{that are not} ~~other than~~
3 contested cases.

4 (c) A notice of proceeding may contain any of the following:

- 5 1. A statement of the issues for decision.
- 6 2. A date for a prehearing conference or hearing.
- 7 3. A notice of assessment pursuant to s. PSC 5.09.
- 8 4. Any other information pertinent to the proceeding.

9 (d) If a notice of proceeding schedules a contested case hearing, the notice shall comply with
10 ss. 227.44(1) and (2), Stats.

11 (3) INVESTIGATIONS. (a) A notice of investigation shall state the matter to be investigated and
12 the legal basis for the investigation.

13 (b) A notice of investigation may contain any of the following:

- 14 1. An order or request for comments.
- 15 2. An order for a public hearing.
- 16 3. A notice of assessment pursuant to s. PSC 5.09.
- 17 4. Any other information pertinent to the investigation.

18 (4) OTHER DOCKETS. In dockets other than proceedings or investigations, the commission's
19 notice may include any information pertinent to the docket.

20 **NOTE:** Commission dockets are usually either proceedings or investigations. These
21 rules provide for an "other dockets" category to cover the possibility that a matter will
22 not properly constitute either a proceeding or investigation.
23

1 **PSC 2.07 Application for Rate Increase; Notice to Customers. (1) NOTICE OF**

2 **APPLICATION FOR RATE INCREASE. (a)** When a public utility applies for a general
3 revision of rates, which, if authorized, would result in a rate increase, the public utility
4 shall inform each affected customer of the filing of the application and the general nature
5 and effect of the filing.

Except as provided in sub. (3)

6 (b) The public utility shall provide the notice under par. (a) by means of a bill insert over one
7 complete billing cycle, using its standard bill insert and mailing procedures. If customer bills are
8 not issued monthly, the utility shall furnish the information to customers by a special mailing or
9 by means of a display advertisement in a newspaper having general circulation in the utility's
10 service area.

11 **(2) MUNICIPALITY EXCEPTION.** Notwithstanding sub. (1) (b), a municipal utility serving fewer
12 than 1,000 customers may elect to post notice of the information in sub. (1) (a), if the notice is
13 posted in at least 3 public places at locations and in a manner likely to give notice to customers
14 affected and the notice is posted within 7 days of the utility filing its application.

15 **(3) NOTICE OF HEARING. (a)** A public utility subject to sub. (1) (a) shall notify each affected
16 customer of the hearing regarding the utility's application for the revision of rates. The notice
17 shall include, at a minimum, the date, time and place of the hearing, and information regarding
18 how customers may contact the utility to confirm the hearing schedule. The public utility shall
19 distribute the notice in a manner authorized under subs. (1) (b) and (2). Except as provided in
20 par. (b), the notice shall be given at least 10 days before the hearing.

21 (b) Except for a municipal utility that may provide notice under sub. (2), if a public utility cannot
22 provide 10 days notice by means of a bill insert, the utility shall inform its customers by a special

1 mailing or a display advertisement in a newspaper of general circulation in the utility's service
2 area.

3 **(4) PROOF OF NOTICE.** At the hearing concerning the application for the revision of rates, the
4 public utility shall furnish proof of compliance with this section.

5
6 **PSC 2.08 Abandonment or Discontinuance of Service.** No public utility may abandon
7 facilities or discontinue service without commission authorization made after a public hearing.

8 The commission need not hold a public hearing if the application is accompanied by all of the
9 following:

10 **(1)** A map indicating the location of the facilities to be abandoned or the facilities from which
11 service is to be discontinued, as well as the location of all actual or potential customers affected
12 by the proposed action.

13 **(2)** A statement that all actual or potential consumers have either consented to or waived
14 objection to abandonment or discontinuance.

15
16 **PSC 2.10 Confidential status.**

17 **(1) APPLICABILITY.** This section applies to requests made to the commission to treat as
18 confidential information in possession of the commission or being requested by the commission.

19 **(2) RESPONSIBILITY FOR ESTABLISHING CONFIDENTIALITY.** The burden of establishing the need
20 for confidential treatment of any information shall be on the person requesting confidential
21 treatment of the information.

1 (3) APPLICATION FOR CONFIDENTIAL STATUS. Any person seeking confidential treatment of
2 information shall file with the commission a written application for confidential status containing
3 in affidavit form all of the following:

4 (a) The name and address of the applicant.

5 (b) The name and position of the individual filing the application.

6 (c) The specific type of information for which confidential status is sought.

7 (d) The facts and supporting legal authority believed to constitute a basis for obtaining
8 confidential treatment of the information.

9 (4) ADDITIONAL INFORMATION. (a) Within 21 days after receiving a complete application, the
10 commission shall mail to the applicant a list of written interrogatories the answers to which are
11 necessary for a determination under this section. If a confidentiality determination can be made
12 solely on the basis of information appearing in the application, the commission may waive
13 written interrogatories.

14 (b) If an extension has not been granted and if the applicant fails to answer all the interrogatories
15 within 30 days after the date the commission mails the interrogatories, the commission shall
16 deny the application. The commission may also deny the application if the applicant fails to
17 provide the information requested in the interrogatories.

18 (c) The responses to the interrogatories shall be treated as confidential if the applicant submits a
19 request for confidential treatment of the responses. }

20 (5) DETERMINATION. (a) Within 30 days after receiving a complete application if interrogatories
21 are waived, or within 30 days after receiving the information requested in the interrogatories, the

- 1 commission shall issue a written determination on the request for confidentiality. The
2 determination shall include all of the following:
- 3 1. A finding which identifies the type of information sought to be assigned confidential status.
 - 4 2. A determination of whether the commission has the authority to compel submittal of the
5 information if the commission requested the information.
 - 6 3. If the authority exists, a determination of whether the commission is authorized by law to
7 assign confidential status to the type of information at issue.
 - 8 4. The decision to deny or to grant the request in whole or in part.

9 (b) A determination to assign confidential status shall be made pursuant to one or more of the
10 following:

- 11 1. Section 196.14, Stats.
- 12 2. Section 196.72, Stats.
- 13 3. Section 196.795(9), Stats.
- 14 4. Upon a finding consistent with the ruling in *State ex rel. Youmans v. Owens*, 28 Wis.2d 672,
15 (1965) that confidential treatment of the information is in the public interest.
- 16 5. Other specific statutory or common law right to confidential treatment of information.

17 (c) A determination made pursuant to par. (b)4. shall also include answers to all of the following
18 questions:

- 19 1. How many people have knowledge of the supposedly "secret" information? Will disclosure
20 increase that number to a significant degree?
- 21 2. Does the contested information have any value to the possessor? To a competitor? Is that
22 value substantial?

1 3. What damage, if any, would the possessor of the secret suffer from its disclosure? What
2 advantages would its competitors reap from disclosure?

3 4. What benefits are likely to flow from disclosure? To whom? Are they significant? In this
4 connection, what is the public "need" for disclosure? Can it be satisfied in any other way?

5 (d) 1. The commission shall notify the applicant in writing of the determination. The
6 commission ^{shall} post on its internet website a list of all determinations made under this section and
7 may provide any other notice it considers to be appropriate.

8 2. If information that is granted confidential status is filed in conjunction with a commission
9 proceeding, the applicant shall serve a copy of the determination on all persons listed on the
10 service list for the proceeding, and shall file proof of service with the commission.

11 (6) INTERIM CONFIDENTIAL STATUS. Information for which confidential status is requested shall
12 not be open to public scrutiny until 40 days after issuance of the determination.

13 (7) CONTESTED CASES. In any contested case hearing before the commission, the administrative
14 law judge, in determining the merits of a request for confidential treatment of information which
15 arises during the course of the hearing, may render a ruling on the request only after receiving
16 answers to the questions appearing in sub. (5) (c) 1. to 4.

anal denied
3
X

17

18

Subchapter II - Proceedings

19 **PSC 2.20 Parties and Role of Commission Staff and Administrative Law Judge. (1) WHO**
20 **ARE PARTIES.** The following are parties to proceedings:

21 (a) A person filing an application is an applicant.

22 (b) A person filing a complaint is a complainant.

1 (c) A person filing a petition is a petitioner.

2 (d) A person admitted to the proceeding pursuant to s. PSC 2.21 is an intervener.

3 (2) **ROLE OF COMMISSION STAFF.** Members of the commission staff appear neither in support of
4 nor in opposition to any cause, but solely to discover and present, if necessary, information
5 pertinent to the proceeding.

6 (3) **ROLE OF ADMINISTRATIVE LAW JUDGE.** (a) The administrative law judge presiding over a
7 proceeding has all of the powers identified in s. 227.46, Stats., except, as provided in
8 s. 227.46(1)(h), Stats., ^{amend} the power to make or recommend findings of fact, conclusions of law and
9 decisions in proceedings other than class 2 contested cases.

10 (b) The commission retains jurisdiction to direct the progress of any docket notwithstanding
11 s. 227.46, Stats.

12
13 **PSC 2.21 Intervention.** (1) **INTERVENTION BY RIGHT.** A person satisfying the criteria of
14 s. 227.44(2m), Stats., may intervene in a proceeding as a matter of right.

15 (2) **PERMISSIVE INTERVENTION.** A person not satisfying the criteria of s. 227.44(2m), Stats., may
16 nevertheless intervene in a proceeding if the person's participation likely will promote the proper
17 disposition of the issues to be determined in the proceeding and if the person's participation will
18 not impede the timely completion of the proceeding.

19 (3) **PROCEDURE.** A person requesting intervention shall file a motion no later than 14 days after
20 issuance of the notice of proceeding. A party may respond to the motion no later than 7 days
21 after service of the motion.

1 **PSC 2.22 Motions. (1) HOW MADE.** A party seeking an order shall file a motion. Unless made
2 during a hearing, a motion shall be made in writing, shall state with particularity the grounds for
3 the motion, and shall set forth the relief requested.

4 **(2) RESPONSES TO MOTION.** Another party may respond to a motion ^{seeking an order} no later than 5 days after
5 service of the motion.

6 **(3) MOTION FOR PROCEDURAL ORDER.** A motion for a procedural order may be acted upon
7 without a response to the motion.

8
9 **PSC 2.23 Depositions. (1) Parties and ~~Commission~~ staff** may take depositions in the same
10 manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or
11 prohibited by statute or as otherwise determined by the commission or the administrative law
12 judge.

13 **(2) MOTIONS.** Any motion pursuant to s.804.12, Stats. shall include a certification that the
14 movant has in good faith conferred or attempted to confer with the person subject to the motion
15 in an effort to resolve their dispute without commission action.

16
17 **PSC 2.24 Synopsis or Summary of the Evidence. (1) HOW REQUESTED.** If a commissioner
18 informs commission staff that he or she wishes to consider deciding a proceeding on the basis of
19 a summary or synopsis of the evidence, pursuant to s. 196.24(3), Stats., commission staff shall
20 prepare a summary or synopsis and serve it upon the parties to the proceeding.

1 (2) RESPONSE. A party who wishes to respond to a synopsis or summary of the evidence shall
2 file a response no later than 10 days after service of the synopsis or summary. A response shall
3 be limited to a statement of additional or corrected facts and may not contain argument.

4
5 **PSC 2.25 Interlocutory Orders of the Commission. (1) DISCRETIONARY REVIEW.** The
6 commission, on the motion of a party or on its own motion, may review an order or any other
7 ruling of the administrative law judge and may, on its own motion, issue any order if the
8 commission finds that to do so would further the proper disposition of the proceeding. A motion
9 under this section shall be treated as a motion for a procedural order.

10 (2) HOW MADE. A motion under this section must be filed no later than 5 working days after the
11 ruling is made or the order is signed, whichever is sooner. Unless otherwise ordered, no party
12 may respond to the motion. The filing of a motion under this section does not stay the
13 proceeding.

14 (3) DISPOSITION. If the commission does not issue an order with respect to a motion under this
15 section within 10 days after the motion is filed, the motion is considered denied.

16
17 **PSC 2.26 Reopening.** A request pursuant to s. 196.39(1), Stats., shall be made by motion. If the
18 commission does not issue an order with respect to the motion within 30 days, the motion is
19 considered denied.

1 SECTION 3. PSC 3.02(1)(b) is amended to read:

2 PSC 3.02(1)(b) Someone for whom full intervention in the proceeding would cause significant
3 financial hardship without compensation from the commission.

4 SECTION 4. PSC 3.02(1)(e) is amended to read:

5 PSC 3.02(1)(e) Someone who has been granted full party status and who will participate in the
6 proceeding as a full party.

7

8 SECTION 5. PSC 3.04(1) is amended to read:

9 PSC 3.04(1) Compensation shall not exceed the actual and reasonable expenses authorized by
10 the commission and incurred as a result of the applicant's participation as a full party in a
11 commission proceeding.

12

13 SECTION 6. INITIAL APPLICABILITY.

14 (1) This rule first applies to a request to open a docket filed on the effective date of the rule and
15 to a proceeding opened on the effective date of the rule.

16 (2) The treatment of section PSC 2.10 the Wisconsin Administrative Code first applies to a
17 request for confidential treatment made to the commission on the effective date of this rule.

18

19 SECTION 7. EFFECTIVE DATE.

20 This rule shall take effect as provided in s. 227.22(2)(intro.), Stats.

21

22

(end)

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This rules revision does not directly affect small businesses, as defined in s. 227.114(1)(a), Stats. Because the revisions are intended to establish consistent procedures for practice before the Commission, no special provisions are included for small businesses.

FISCAL ESTIMATE

A fiscal estimate is attached.

CONTACT PERSON

Questions from the media may be directed to Jeffrey L. Butson, Public Affairs Director at (608) 267-0912.

Questions regarding these rules should be directed to Edward S. Marion at (608) 266-1264, or by e-mail at *marioe@psc.state.wi.us*. Hearing or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

LLD:JLL:mem:g:\notice\pending\1-AC-190.doc

DATE MAILED

DEC 22 2000

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Revision of Wis. Admin. Code Chapter PSC 2 Practice and Procedure Before the Commission 1-AC-190

NOTICE OF HEARING

Hearing Date:	Friday, January 26, 2001 – 9:00 a.m.
Hearing Location:	Public Service Commission, 610 North Whitney Way, Madison, WI (Amnicon Falls Hearing Room, 1st Floor)

Comments Due: Friday, January 19, 2001 – Noon	Address Comments To: Lynda L. Dorr, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854 FAX (608) 266-3957
FAX Due: Thursday, January 18, 2001 – Noon	

The Commission proposes an order to amend ss. PSC 1.04, PSC 3.02(1)(b) and (e), and PSC 3.04(1) and to repeal and recreate ch. PSC 2, Wis. Admin. Code, relating to practice and procedure before the Commission.

NOTICE IS GIVEN that pursuant to ss. 196.02(3) and 227.11(2), Stats., and interpreting ss. 196.24(3), 196.26 to 196.30, 196.33 and 196.39, Stats., and, generally, ch. 196, Stats., the Commission will hold a hearing in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Friday, January 26, 2001, at 9:00 a.m. to consider the amendment and the repeal and recreation of rules relating to practice and procedure before the Commission.

This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations to participate in this hearing or who needs to obtain this document in a different format should contact the person identified below.

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The Commission will accept written comments on the proposed rules if filed no later than January 19, 2001

ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION

Statutory authority: Sections 196.02(3) and 227.11(2), Stats.

Statutes interpreted: Sections 196.14, 196.24(3), 196.26 to 196.30, 196.33, 196.39, 196.72, and 196.795(9), Stats., and, generally, ch. 196, Stats.

This revision updates and revises the rules relating to practice and procedure before the Commission. This rule also creates procedures for the confidential treatment of records.

The rule establishes processes for filing documents with the Commission, including provisions for facsimile filing, and establishes the number of copies to be filed. The rule identifies persons that need to be served with documents in proceedings and proper methods for service. The rule describes how time is to be computed for determining when a filing or an event is to take place. The rule creates a process for requesting an enlargement of time.

The process for opening dockets by the commission is established in the rule. A docket may be opened at the Commission's own motion or at a person's request. Under the rule, a person may make a request to open a docket by filing an application, petition, or complaint. The rule eliminates the distinction between, and the processes for, the handling of "formal" and "informal" complaints.

If the commission decides to open a docket, it issues a notice of proceeding or notice of investigation. The current rules do not describe how dockets are opened.

Like the current rule, this rule describes who may be parties in a proceeding. The rule establishes the standards that are to be met in order to become a party by right or a party by permissive intervention. The rule repeals the previous distinction between a "limited" and a "full" intervenor.

The rule identifies the role and authority of the administrative law judge presiding at a proceeding and retains the provision from the current rule that commission staff do not appear in a proceeding in support or opposition to a position, but only to discover and present information pertinent to the proceeding.

The rule eliminates specific provisions that detail particular aspects of hearings, such as rules for prehearing conferences, appearances, order of presenting evidence, changes in the time or place of hearings, conduct of hearings, briefs, and transcripts.

The rule revises processes for filing motions, conducting discovery, reopening proceedings, and for requesting interlocutory review by the Commission of rulings of the administrative law judge.

The rule retains provisions requiring notice to customers when a utility requests a general rate increase and provisions requiring a hearing if a utility wishes to abandon facilities or discontinue service. The rule repeals outdated provisions relating to motor carrier authority applications and provisions relating to municipal acquisition proceedings.

The rule also creates a process for a commissioner to request a synopsis or summary of evidence pursuant to s. 196.24(3), Stats. Under the rule, commission staff will prepare a synopsis or summary of the evidence if requested by a commissioner. Parties have the opportunity to respond to the synopsis to add or correct facts.

This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The determination will specify what, if any, information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

TEXT OF PROPOSED RULE

1 SECTION 1. PSC 1.04 is amended to read:

2
3 **PSC 1.04 Supervisor of hearings.** The supervisor of hearings ~~in the legal department [of the~~
4 ~~commission]~~ of the commission is authorized and directed to assign to each of such agents any
5 administrative law judge employed by the commission the supervision of any particular
6 investigation or the conduct of hearings and taking of testimony bearing upon any particular
7 investigation or hearing made or held by the commission. Such assignments by the supervisor of
8 hearings for the conduct of hearings, if made by indication on the commission calendar of
9 hearings shall constitute specific authority to the agent thus designated to conduct the particular
10 hearing and the taking of testimony in the matter or proceeding to which such designation
11 pertains. The secretary to the commission is authorized, in the absence of the supervisor of
12 hearings, to perform the latter's duties.

13
14 SECTION 2. Chapter PSC 2 is repealed and recreated to read:

15 **PUBLIC SERVICE COMMISSION**

16 **Chapter PSC 2**

17 **PRACTICE and PROCEDURE**

18 **Subchapter I – General**

- 19
20 PSC 2.01 Applicability
21 PSC 2.02 Definitions
22 PSC 2.03 Computation of Time and Time Limits
23 PSC 2.04 Filing and Service
24 PSC 2.05 Requests to Open Dockets
25 PSC 2.06 Notices
26 PSC 2.07 Application for Rate Increase; Notice to Customers

1 PSC 2.08 Abandonment or Discontinuance of Service

2 PSC 2.10 Confidential Status

3
4 **Subchapter II – Proceedings**

5
6 PSC 2.20 Parties and Role of Commission Staff and Administrative Law Judge

7 PSC 2.21 Intervention

8 PSC 2.22 Motions

9 PSC 2.23 Discovery

10 PSC 2.24 Synopsis or Summary of the Evidence

11 PSC 2.25 Interlocutory Orders of the Commission

12 PSC 2.26 Reopening

13
14
15 **Subchapter I – General**

16 **PSC 2.01 Applicability.** This chapter establishes the rules of practice and procedure in PSC
17 investigations, proceedings and other dockets. Portions of this chapter also apply generally to
18 matters such as filing (including filing with a request for confidentiality) computation of time
19 and other administrative matters whether or not in dockets. Where a statute or rule prescribes a
20 particular process for certain kinds of matters, that process shall apply wherever inconsistent
21 with this chapter.

22
23 *NOTE:* Examples of particular processes for certain kinds of matters are the
24 customer complaint rules contained in chapters PSC 113, 134, 165, and 185.
25

26 **PSC 2.02 Definitions.** In this chapter:

27 (1) "Administrative law judge" means a person designated to preside over a proceeding.

28 (2) "Application" means a written request that the commission issue or amend a certificate,
29 license, permit or any other approval, authorization or exemption.

30 (3) "Chairperson" means the chairperson of the commission.

31 (4) "Commission" means the public service commission.

- 1 (5) "Complaint" means a complaint authorized to be filed by ch. 196, Stats.
- 2 (6) "Contested case" has the meaning given in s. 227.01(3), Stats.
- 3 (7) "Docket" means an investigation, proceeding or other matter opened by a vote of the
4 commission.
- 5 (8) "Hearing" means a contested case hearing or other trial-type hearing.
- 6 (9) "Investigation" means an investigation under ch. 196, Stats.
- 7 (10) "Party" means a person or agency named or admitted as a party in a proceeding.
- 8 (11) "Person" has the meaning given in s. 990.01(26), Stats.
- 9 (12) "Petition" means a written request to the commission, other than an application or
10 complaint, to open a docket.
- 11 (13) "Proceeding" means a contested case or other docket that includes a hearing.
- 12 (14) "Public hearing" means a hearing, which is not a trial-type hearing.
- 13 (15) "Secretary" means the secretary to the commission.
- 14 (16) "Working day" has the meaning given in s. 227.01(14), Stats.

15
16 **PSC 2.03 Computation of Time and Time Limits. (1) DEFINITION.** In this section, "holiday"
17 has the meaning given in s. 230.35(4)(a), Stats.

18 **(2) COMPUTATION OF TIME.** In computing any period of time, the day of the act, event, or default
19 from which the designated period of time begins to run shall not be included. The last day of the
20 period so computed shall be included, unless it is a day the commission is closed, in which case
21 it shall be the next day the commission is open. When a period of time prescribed or allowed is
22 less than 11 days, Saturdays, Sundays, and holidays shall be excluded in the computation.

1 (3) ENLARGEMENT OF TIME. (a) When an act is required by law or by order to be done at or
2 within a specified time, the period of time may be enlarged, but only on good cause shown and
3 upon just terms. Requests under this subsection, when made in a proceeding, shall be made by
4 motion. Requests under this subsection, when made in docket other than a proceeding, shall be
5 made in a letter addressed to the secretary. Requests shall be made within a reasonable time
6 prior to the expiration of the period in question. Requests made after the expiration of the
7 specified time shall not be granted unless the failure to act was the result of excusable neglect.

8 (b) 1. Only the commission may modify a period of time established by the commission.
9 2. Notwithstanding subd. 1., the chairperson of the commission may enlarge a period established
10 by the commission for up to 3 working days.

11 (4) SERVICE BY MAIL. Whenever a person is authorized or required to do some act within a
12 prescribed period after the service of any paper upon the person and the paper is served upon the
13 person by mail, 3 days shall be added to the prescribed period.

14
15 **PSC 2.04 Filing and Service.** (1) DEFINITION. In this section, "working day" has the meaning
16 given in s. 227.01(14), Stats.

17 (2) FILING. (a) A person shall file any paper authorized or required to be filed by this chapter
18 with the records management unit of the commission between the hours of 7:45 a.m. and
19 4:00 p.m. on a working day. Papers are not considered filed until they are date and time stamped
20 by the records management unit. Persons may file in person or by mail. In addition, persons
21 may file submissions of no greater than 25 pages by facsimile.

1 (b) A person, other than an individual, shall file the original and 19 copies of all papers, except
2 that the records management unit will make the required number of copies of any paper filed by
3 facsimile and bill the filer for the cost. An individual shall file the original and 3 copies of any
4 paper.

5 (3) SERVICE. (a) 1. In a proceeding, parties shall serve upon all other parties, a copy of any paper
6 filed with the commission. In dockets other than proceedings, where the commission has
7 ordered or requested written comments, persons filing comments shall serve copies upon all
8 persons identified on the service list established in the docket, if any.

9 2. Notwithstanding the subd. 1., individuals are not required to serve their comments on any
10 other person.

11 3. The filing of any paper required to be served constitutes a certification by the person mailing
12 the filing that a copy of such paper has been served.

13 (b) Service shall be made by delivering or mailing a copy. Delivery means handing it to the
14 person; transmitting a copy of the paper by facsimile machine to the person's office; or leaving it
15 at the person's office with a clerk or other person in charge or, if there is no one in charge,
16 leaving it in a conspicuous place at the office; or, if the office is closed or the person to be served
17 has no office, leaving it at his or her dwelling house or usual place of abode with some person of
18 suitable age and discretion then residing at that location. Service by mail is complete upon
19 mailing. Service by facsimile is complete upon transmission.

20 (c) A party may not serve submissions of greater than 25 pages by facsimile. A party shall serve
21 a paper copy of any paper served or filed by facsimile within 2 days of transmission.

1 (4) **IMPROPER SERVICE OR FILING.** The commission will not consider any paper not properly
2 served nor filed.

3 (5) **ELECTRONIC SERVICE OR FILING.** The commission may authorize and establish procedures
4 for electronic service and filing.

5
6 **PSC 2.05 Requests to Open Dockets. (1) HOW REQUESTED.** The commission may open a
7 docket at the request of any person or on its own motion. A person requesting the commission to
8 open a docket shall file an application, a complaint, or a petition, depending upon the legal basis
9 for the request.

10 **(2) REQUEST REQUIREMENTS.** A request to open a docket shall contain all of the following:

11 (a) A statement of the issues presented.

12 (b) A statement of the facts necessary to an understanding of the issues.

13 (c) A discussion of the statutes or rules conferring jurisdiction upon the commission.

14 (d) A statement of the reasons why the commission should exercise its jurisdiction.

15 (e) A statement of whether the applicant, complainant, or petitioner is requesting an
16 investigation, a proceeding, or both.

17 **(3) CONTESTED CASE STATUS.** If a person requests the commission to open a proceeding, the
18 request shall state whether the matter should be a contested case and, if so, shall discuss how the
19 matter meets the statutory definition of contested case.

20 **(4) SERVICE REQUIREMENT.** If a request to open a docket alleges a violation by any named
21 person of any statute, rule or order of the commission, the person filing the request shall serve a

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1 copy of the request on the person named, in the manner provided in s. 801.11, Stats., for service
2 of a summons.

3 **(5) RESPONSES.** No person may file a response to a request unless the commission requests or
4 orders a response.

5
6 **NOTE:** It is not necessary to file a request to open a docket in order to seek
7 information or assistance from the staff or in order to bring any matter to the
8 commission's attention. This section is intended to retain the substance of format
9 rule s. PSC 2.10(1), except that there no longer are "formal investigations." As
10 provided in new s. PSC 2.05, a person may request or the commission on its own
11 motion may open an investigation, a proceeding, or another docket. The
12 commission may decide to open a docket based upon information acquired from
13 informal contacts with the commission.
14

15 **PSC 2.06 Notices. (1) HOW ISSUED.** A docket is opened when the commission issues a Notice
16 of Investigation, a Notice of Proceeding, or such other notice sufficient to identify the basis and
17 nature of the docket. A notice is issued when it is signed by the secretary at the direction of the
18 commission.

19 **(2) PROCEEDINGS. (a)** A notice of proceeding shall state all of the following:

- 20 1. Whether the proceeding is being initiated on the commission's own motion or upon request.
- 21 2. The purpose of the proceeding.
- 22 3. The legal basis for the proceeding.
- 23 4. The names of the parties.
- 24 5. Whether the proceeding is a contested case and, if so, what class of contested case or, if the
25 proceeding is not a contested case, what procedures will govern the proceeding.

1 (b) Unless otherwise stated in a notice of proceeding or order of the commission, the procedures
2 of ch. 227, Stats., concerning class 1 contested cases shall apply to all proceedings other than
3 contested cases.

4 (c) A notice of proceeding may contain any of the following:

- 5 1. A statement of the issues for decision.
- 6 2. A date for a prehearing conference or hearing.
- 7 3. A notice of assessment pursuant to s. PSC 5.09.
- 8 4. Any other information pertinent to the proceeding.

9 (d) If a notice of proceeding schedules a contested case hearing, the notice shall comply with
10 ss. 227.44(1) and (2), Stats.

11 **(3) INVESTIGATIONS.** (a) A notice of investigation shall state the matter to be investigated and
12 the legal basis for the investigation.

13 (b) A notice of investigation may contain any of the following:

- 14 1. An order or request for comments.
- 15 2. An order for a public hearing.
- 16 3. A notice of assessment pursuant to s. PSC 5.09.
- 17 4. Any other information pertinent to the investigation.

18 **(4) OTHER DOCKETS.** In dockets other than proceedings or investigations, the commission's
19 notice may include any information pertinent to the docket.

20 **NOTE:** Commission dockets are usually either proceedings or investigations. These
21 rules provide for an "other dockets" category to cover the possibility that a matter will
22 not properly constitute either a proceeding or investigation.
23

1 **PSC 2.07 Application for Rate Increase; Notice to Customers. (1) NOTICE OF**
2 **APPLICATION FOR RATE INCREASE.** (a) When a public utility applies for a general
3 revision of rates, which, if authorized, would result in a rate increase, the public utility
4 shall inform each affected customer of the filing of the application and the general nature
5 and effect of the filing.

6 (b) The public utility shall provide the notice under par. (a) by means of a bill insert over one
7 complete billing cycle, using its standard bill insert and mailing procedures. If customer bills are
8 not issued monthly, the utility shall furnish the information to customers by a special mailing or
9 by means of a display advertisement in a newspaper having general circulation in the utility's
10 service area.

11 **(2) MUNICIPALITY EXCEPTION.** Notwithstanding sub. (1) (b), a municipal utility serving fewer
12 than 1,000 customers may elect to post notice of the information in sub. (1) (a), if the notice is
13 posted in at least 3 public places at locations and in a manner likely to give notice to customers
14 affected and the notice is posted within 7 days of the utility filing its application.

15 **(3) NOTICE OF HEARING.** (a) A public utility subject to sub. (1) (a) shall notify each affected
16 customer of the hearing regarding the utility's application for the revision of rates. The notice
17 shall include, at a minimum, the date, time and place of the hearing, and information regarding
18 how customers may contact the utility to confirm the hearing schedule. The public utility shall
19 distribute the notice in a manner authorized under subs. (1) (b) and (2). Except as provided in
20 par. (b), the notice shall be given at least 10 days before the hearing.

21 (b) Except for a municipal utility that may provide notice under sub. (2), if a public utility cannot
22 provide 10 days notice by means of a bill insert, the utility shall inform its customers by a special

1 mailing or a display advertisement in a newspaper of general circulation in the utility's service
2 area.

3 (4) **PROOF OF NOTICE.** At the hearing concerning the application for the revision of rates, the
4 public utility shall furnish proof of compliance with this section.

5
6 **PSC 2.08 Abandonment or Discontinuance of Service.** No public utility may abandon
7 facilities or discontinue service without commission authorization made after a public hearing.

8 The commission need not hold a public hearing if the application is accompanied by all of the
9 following:

10 (1) A map indicating the location of the facilities to be abandoned or the facilities from which
11 service is to be discontinued, as well as the location of all actual or potential customers affected
12 by the proposed action.

13 (2) A statement that all actual or potential consumers have either consented to or waived
14 objection to abandonment or discontinuance.

15
16 **PSC 2.10 Confidential status.**

17 (1) **APPLICABILITY.** This section applies to requests made to the commission to treat as
18 confidential information in possession of the commission or being requested by the commission.

19 (2) **RESPONSIBILITY FOR ESTABLISHING CONFIDENTIALITY.** The burden of establishing the need
20 for confidential treatment of any information shall be on the person requesting confidential
21 treatment of the information.

1 (3) APPLICATION FOR CONFIDENTIAL STATUS. Any person seeking confidential treatment of
2 information shall file with the commission a written application for confidential status containing
3 in affidavit form all of the following:

- 4 (a) The name and address of the applicant.
- 5 (b) The name and position of the individual filing the application.
- 6 (c) The specific type of information for which confidential status is sought.
- 7 (d) The facts and supporting legal authority believed to constitute a basis for obtaining
8 confidential treatment of the information.

9 (4) ADDITIONAL INFORMATION. (a) Within 21 days after receiving a complete application, the
10 commission shall mail to the applicant a list of written interrogatories the answers to which are
11 necessary for a determination under this section. If a confidentiality determination can be made
12 solely on the basis of information appearing in the application, the commission may waive
13 written interrogatories.

14 (b) If an extension has not been granted and if the applicant fails to answer all the interrogatories
15 within 30 days after the date the commission mails the interrogatories, the commission shall
16 deny the application. The commission may also deny the application if the applicant fails to
17 provide the information requested in the interrogatories.

18 (c) The responses to the interrogatories shall be treated as confidential if the applicant submits a
19 request for confidential treatment of the responses.

20 (5) DETERMINATION. (a) Within 30 days after receiving a complete application if interrogatories
21 are waived, or within 30 days after receiving the information requested in the interrogatories, the

1 commission shall issue a written determination on the request for confidentiality. The

2 determination shall include all of the following:

3 1. A finding which identifies the type of information sought to be assigned confidential status.

4 2. A determination of whether the commission has the authority to compel submittal of the

5 information if the commission requested the information.

6 3. If the authority exists, a determination of whether the commission is authorized by law to

7 assign confidential status to the type of information at issue.

8 4. The decision to deny or to grant the request in whole or in part.

9 (b) A determination to assign confidential status shall be made pursuant to one or more of the

10 following:

11 1. Section 196.14, Stats.

12 2. Section 196.72, Stats.

13 3. Section 196.795(9), Stats.

14 4. Upon a finding consistent with the ruling in *State ex rel. Youmans v. Owens*, 28 Wis.2d 672,
15 (1965) that confidential treatment of the information is in the public interest.

16 5. Other specific statutory or common law right to confidential treatment of information.

17 (c) A determination made pursuant to par. (b)4. shall also include answers to all of the following

18 questions:

19 1. How many people have knowledge of the supposedly "secret" information? Will disclosure
20 increase that number to a significant degree?

21 2. Does the contested information have any value to the possessor? To a competitor? Is that
22 value substantial?

1 3. What damage, if any, would the possessor of the secret suffer from its disclosure? What
2 advantages would its competitors reap from disclosure?

3 4. What benefits are likely to flow from disclosure? To whom? Are they significant? In this
4 connection, what is the public "need" for disclosure? Can it be satisfied in any other way?

5 (d) 1. The commission shall notify the applicant in writing of the determination. The
6 commission post on its internet website a list of all determinations made under this section and
7 may provide any other notice it considers to be appropriate.

8 2. If information that is granted confidential status is filed in conjunction with a commission
9 proceeding, the applicant shall serve a copy of the determination on all persons listed on the
10 service list for the proceeding, and shall file proof of service with the commission.

11 (6) INTERIM CONFIDENTIAL STATUS. Information for which confidential status is requested shall
12 not be open to public scrutiny until 40 days after issuance of the determination.

13 (7) CONTESTED CASES. In any contested case hearing before the commission, the administrative
14 law judge, in determining the merits of a request for confidential treatment of information which
15 arises during the course of the hearing, may render a ruling on the request only after receiving
16 answers to the questions appearing in sub. (5) (c) 1. to 4.

17
18 **Subchapter II - Proceedings**

19 **PSC 2.20 Parties and Role of Commission Staff and Administrative Law Judge. (1) WHO**
20 **ARE PARTIES.** The following are parties to proceedings:

- 21 (a) A person filing an application is an applicant.
22 (b) A person filing a complaint is a complainant.

1 (c) A person filing a petition is a petitioner.

2 (d) A person admitted to the proceeding pursuant to s. PSC 2.21 is an intervener.

3 **(2) ROLE OF COMMISSION STAFF.** Members of the commission staff appear neither in support of
4 nor in opposition to any cause, but solely to discover and present, if necessary, information
5 pertinent to the proceeding.

6 **(3) ROLE OF ADMINISTRATIVE LAW JUDGE.** (a) The administrative law judge presiding over a
7 proceeding has all of the powers identified in s. 227.46, Stats., except, as provided in
8 s. 227.46(1)(h), Stats., the power to make or recommend findings of fact, conclusions of law and
9 decisions in proceedings other than class 2 contested cases.

10 (b) The commission retains jurisdiction to direct the progress of any docket notwithstanding
11 s. 227.46, Stats.

12
13 **PSC 2.21 Intervention.** **(1) INTERVENTION BY RIGHT.** A person satisfying the criteria of
14 s. 227.44(2m), Stats., may intervene in a proceeding as a matter of right.

15 **(2) PERMISSIVE INTERVENTION.** A person not satisfying the criteria of s. 227.44(2m), Stats., may
16 nevertheless intervene in a proceeding if the person's participation likely will promote the proper
17 disposition of the issues to be determined in the proceeding and if the person's participation will
18 not impede the timely completion of the proceeding.

19 **(3) PROCEDURE.** A person requesting intervention shall file a motion no later than 14 days after
20 issuance of the notice of proceeding. A party may respond to the motion no later than 7 days
21 after service of the motion.

1 **PSC 2.22 Motions. (1) HOW MADE.** A party seeking an order shall file a motion. Unless made
2 during a hearing, a motion shall be made in writing, shall state with particularity the grounds for
3 the motion, and shall set forth the relief requested.

4 **(2) RESPONSES TO MOTION.** Another party may respond to a motion no later than 5 days after
5 service of the motion.

6 **(3) MOTION FOR PROCEDURAL ORDER.** A motion for a procedural order may be acted upon
7 without a response to the motion.

8
9 **PSC 2.23 Depositions. (1)** Parties and Commission staff may take depositions in the same
10 manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or
11 prohibited by statute or as otherwise determined by the commission or the administrative law
12 judge.

13 **(2) MOTIONS.** Any motion pursuant to s.804.12, Stats. shall include a certification that the
14 movant has in good faith conferred or attempted to confer with the person subject to the motion
15 in an effort to resolve their dispute without commission action.

16
17 **PSC 2.24 Synopsis or Summary of the Evidence. (1) HOW REQUESTED.** If a commissioner
18 informs commission staff that he or she wishes to consider deciding a proceeding on the basis of
19 a summary or synopsis of the evidence, pursuant to s. 196.24(3), Stats., commission staff shall
20 prepare a summary or synopsis and serve it upon the parties to the proceeding.

1 (2) RESPONSE. A party who wishes to respond to a synopsis or summary of the evidence shall
2 file a response no later than 10 days after service of the synopsis or summary. A response shall
3 be limited to a statement of additional or corrected facts and may not contain argument.

4
5 **PSC 2.25 Interlocutory Orders of the Commission.** (1) DISCRETIONARY REVIEW. The
6 commission, on the motion of a party or on its own motion, may review an order or any other
7 ruling of the administrative law judge and may, on its own motion, issue any order if the
8 commission finds that to do so would further the proper disposition of the proceeding. A motion
9 under this section shall be treated as a motion for a procedural order.

10 (2) HOW MADE. A motion under this section must be filed no later than 5 working days after the
11 ruling is made or the order is signed, whichever is sooner. Unless otherwise ordered, no party
12 may respond to the motion. The filing of a motion under this section does not stay the
13 proceeding.

14 (3) DISPOSITION. If the commission does not issue an order with respect to a motion under this
15 section within 10 days after the motion is filed, the motion is considered denied.

16
17 **PSC 2.26 Reopening.** A request pursuant to s. 196.39(1), Stats., shall be made by motion. If the
18 commission does not issue an order with respect to the motion within 30 days, the motion is
19 considered denied.

1 SECTION 3. PSC 3.02(1)(b) is amended to read:

2 PSC 3.02(1)(b) Someone for whom full intervention in the proceeding would cause significant
3 financial hardship without compensation from the commission.

4 SECTION 4. PSC 3.02(1)(e) is amended to read:

5 PSC 3.02(1)(e) Someone who has been granted full party status and who will participate in the
6 proceeding as a full party.

7
8 SECTION 5. PSC 3.04(1) is amended to read:

9 PSC 3.04(1) Compensation shall not exceed the actual and reasonable expenses authorized by
10 the commission and incurred as a result of the applicant's participation as a full party in a
11 commission proceeding.

12
13 SECTION 6. INITIAL APPLICABILITY.

14 (1) This rule first applies to a request to open a docket filed on the effective date of the rule and
15 to a proceeding opened on the effective date of the rule.

16 (2) The treatment of section PSC 2.10 the Wisconsin Administrative Code first applies to a
17 request for confidential treatment made to the commission on the effective date of this rule.

18
19 SECTION 7. EFFECTIVE DATE.

20 This rule shall take effect as provided in s. 227.22(2)(intro.), Stats.

21
22 (end)

Docket 1-AC-190

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This rules revision does not directly affect small businesses, as defined in s. 227.114(1)(a), Stats. Because the revisions are intended to establish consistent procedures for practice before the Commission, no special provisions are included for small businesses.

FISCAL ESTIMATE

A fiscal estimate is attached.

CONTACT PERSON

Questions from the media may be directed to Jeffrey L. Butson, Public Affairs Director at (608) 267-0912.

Questions regarding these rules should be directed to Edward S. Marion at (608) 266-1264, or by e-mail at *marioe@psc.state.wi.us*. Hearing or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

Dated at Madison, Wisconsin, December 19, 2000

By the Commission:



Lynda L. Dorr
Secretary to the Commission

LLD:JLL:mem:g:\notice\pending\I-AC-190.doc

FISCAL ESTIMATE

DOA-2048 N(R10/96)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Revise Chapter PSC 2 – Practice and Procedure

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- | | | |
|---|---|---|
| <p>1. <input type="checkbox"/> Increase Costs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Units Affected:</p> <p><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities</p> <p><input type="checkbox"/> Counties <input type="checkbox"/> Others _____</p> <p><input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts</p> |
|---|---|---|

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

21.155(l)(g)

Assumptions Used in Arriving at Fiscal Estimate

This proposed rule clarifies, streamlines, and updates various provisions related to the practices and procedures in PSC investigations, proceedings and other dockets. Contained within the rule is a new process for determining the confidentiality of records submitted by public utilities to the Commission. The process the rule prescribes requires the PSC to make a determination of confidentiality and notify the applicant. The PSC processed 1,280 requests for confidential treatment of data in calendar year 1999 and has processed 975 requests so far in calendar year 2000. This proposed rule will not have a fiscal impact on the PSC or local government.

The rule does not propose changes that would create fiscal effects on either state or local governments.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

PSC/Gordon Grant 267-9086

Authorized Signature/Telephone No.

Gordon Grant

Date

11/28/00

SENATOR JUDITH B. ROBSON
CO-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 8952
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(608) 264-6486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

February 21, 2001

Senator Fred Risser
Senate President
Room 220 South

Representative Scott Jensen
Speaker of the Assembly
Room 211 West

Re: Emergency Rule ATCP 16
Emergency Rule PSC 2.06

Dear Senator Risser and Representative Jensen:

We are writing pursuant to § 227.24(2)(c), *Stats.*, to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on February 20, 2001. At that meeting, the JCRAR received public testimony regarding the following emergency rules:


- Emergency Rule ATCP, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state; and
- Emergency Rule PSC 2.06, relating to procedures for the confidential treatment of documents.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP for 60 days. The committee approved the motion on a 10 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule PSC 2.06 for 60 days. The committee approved the motion on a 10 to 0 vote.

We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *Stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's actions.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da