

Chapter PSC 2

PROCEDURE AND PRACTICE

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Note: Chapter PSC 2 as it existed on June 30, 2002 was repealed and a new chapter PSC 2 was created Register June 2002 No. 558, effective July 1, 2002.

Subchapter I — General

PSC 2.01 Applicability. This chapter establishes the rules of practice and procedure in commission investigations, proceedings and other dockets. Portions of this chapter also apply generally to matters such as filing, computation of time and other administrative matters whether or not in dockets. Where a statute or rule prescribes a different process for certain kinds of matters, that process shall apply wherever this chapter is inconsistent with that process. Unless otherwise provided by statute, all of the provisions of ch. 227, Stats. apply to commission dockets.

Note: Examples of particular processes for certain kinds of matters are the customer complaint rules contained in chapters PSC 113, 134, 165, and 185.

Sections of ch. 227 which apply to commission dockets include s. 227.44(4)(a), authorizing prehearing conferences, and s. 227.45, entitled "Evidence and official notice."

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.02 Definitions. In this chapter:

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

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

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

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

(5) "Complaint" means a complaint authorized to be filed by chs. 196 or 200, Stats.

(6) "Contested case" has the meaning given in s. 227.01 (3), Stats.

(7) "Docket" means an investigation, proceeding, or other matter opened by a vote of the commission.

(8) "Hearing" means a contested case hearing or other trial-type hearing.

(9) "Investigation" means an investigation under chs. 196, 197, 200 or 201, Stats.

(10) "Party" means a person or agency named or admitted as a party in a proceeding or a docket.

(11) "Person" has the meaning given in s. 990.01 (26), Stats.

(12) "Petition" means a written request to the commission, other than an application or complaint, to open a docket.

(13) "Proceeding" means a contested case or other docket that includes a hearing.

(14) "Public hearing" means a hearing that is not a trial-type hearing.

(15) "Working day" has the meaning given in s. 227.01 (14), Stats.

Note: These definitions are new. Terms in use in commission practice are defined, in some cases, differently. For example, the term "proceeding" has generally been used to describe any matter before the commission. Under these rules, a "proceeding" means only a quasi-judicial matter, such as a contested case.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.03 Role of commission staff. (1) Except as provided in sub. (2), members of commission staff appear neither in support of nor in opposition to any cause, but solely to discover and present, if necessary, information pertinent to the docket.

(2) The commission may designate staff as a party in any class 2 contested case. Where a party, staff has the same rights and obligations as the other parties.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.04 Role of administrative law judge. (1) POWERS GENERALLY. Except as otherwise provided, the administrative law judge assigned in a docket shall perform all of the activities identified in s. 227.46 (1)(a) to (g) and (i), Stats., and shall make all of the decisions in the docket.

(2) POWERS RESERVED TO THE COMMISSION. Only the commission may do the following:

(a) Decide motions for interlocutory review, under s. PSC 2.27.

(b) Decide requests to reopen dockets, under s. PSC 2.28.

(c) Make findings of fact, conclusions of law and final decisions.

(d) Informally dispose of a proceeding, in accordance with s. 227.44 (5), Stats.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.05 Computation of time and time limits.

(1) DEFINITION. In this section, "holiday" has the meaning given in s. 230.35 (4) (a), Stats.

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

(3) ENLARGEMENT OF TIME. (a) When an act is required by law or by order to be done at or within a specified time, the period of time may be enlarged, but only for good cause shown and upon just terms. Requests shall be made within a reasonable time prior to the expiration of the period in question. Requests made after the expiration of the period in question shall not be granted unless the failure to act was the result of excusable neglect.

(b) In a proceeding, a motion to enlarge the time for service or filing is governed by s. PSC 2.23 (3).

(c) Only the commission may modify a time period established by the commission, except that the chairperson of the commission may enlarge any period of time established by the commission for up to 3 working days.

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

History: CR 00-187; cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.06 Filing and service. (1) FILING. A person shall file any paper authorized or required to be filed by this chapter with the records management unit of the commission between the hours of 7:45 a.m. and 4:00 p.m. on a working day. Papers are not considered filed until they are date and time stamped by the records management unit. Persons may file in person or by mail. In addition, persons may file submissions of no greater than 25 pages by facsimile.

(2) **COPIES.** Unless otherwise permitted, a person shall file the original and 20 copies of all papers filed with the commission, except that the records management unit will duplicate, at the expense of the filer, any paper filed by facsimile.

(3) **SERVICE.** (a) 1. In a proceeding, parties shall serve upon all other parties, a copy of any paper filed with the commission. In dockets where the commission has ordered or requested written comments, persons filing comments shall serve copies upon the person who filed the request to open the docket.

2. The filing of any paper required to be served constitutes a certification by the person making the filing that a copy of such paper has been served.

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

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

(4) **IMPROPER SERVICE OR FILING.** The commission or the administrative law judge may choose not to consider any paper not properly served or filed.

(5) **ELECTRONIC SERVICE OR FILING.** The commission may authorize and establish procedures for electronic filing. Parties may stipulate to accept service of any document electronically, in lieu of service by another method approved in this section. Electronic service is complete upon transmission.

History: CR 00-187; cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.07 Requests to open dockets. (1) HOW REQUESTED. The commission may open a docket at the written request of any person or on its own motion. A request to open a docket shall be in the form of an application or a complaint, whichever is specified in the statutes or rules for a particular matter, or, where neither an application nor a complaint is specified, in the form of a petition.

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

(a) A statement of the issues presented.

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

(c) A statement of the reasons why the commission should open the docket, and the remedy which the person is seeking in the docket.

(3) **SERVICE REQUIREMENT.** If a request to open a docket alleges a violation by any named person of any statute, rule, or order enforced by the commission, the person filing the request shall serve a copy of the request upon the person named, in the manner provided in s. 801.11, Stats., for service of a summons.

(4) **RESPONSES.** Any person may file a response to the request within 20 days of the date of service of the request. A person filing a response shall serve the response upon the person making the request.

(5) **DETERMINATIONS.** Within 60 days from the date of receipt of a request to open a docket, a petition for rules, or a petition for a declaratory ruling, the commission shall either deny the request or petition, or open a docket. If the request or petition is denied, the commission shall promptly notify the person making the request or filing the petition of its decision, including a brief statement of the reasons for its decision.

Note: The terms "complaint" and "application" are used in the statutes and other chapters of the administrative code. A person is expected to file a "petition" whenever neither a complaint nor an application is mentioned in the statute or rule authorizing the docket.

It is not necessary to file a request to open a docket in order to seek information or assistance from the staff or in order to bring any matter to the commission's attention. As provided in s. PSC 2.07, a person may request or the commission on its own motion may open an investigation, a proceeding, or another docket. The commission may decide to open a docket based upon information acquired from informal contacts with the commission.

History: CR 00-187; cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.08 Informal complaints. (1) Informal complaints may be made in writing addressed to the commission. Letters may be considered as informal complaints. Matters presented in this manner are handled by correspondence or other informal investigation or by a formal investigation instituted by the commission upon its own motion.

(2) Complaints with respect to public utility rates, practices, or service made by less than 25 persons (see s. 196.26, Stats.) will be treated as informal complaints. The commission may open a docket in these matters upon its own motion.

History: CR 00-187; cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.09 Notices. (1) HOW ISSUED. A docket is opened when the commission issues a notice of investigation, a notice of proceeding, or such other notice sufficient to identify the basis and nature of the docket. A notice is issued when the secretary of the commission signs it.

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

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

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

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

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

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

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

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

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

Note: Commission dockets are usually either proceedings or investigations. Rules provide for an "other dockets" category to cover the possibility that a matter will not properly constitute either a proceeding or investigation.

The issuance of a notice initiates a docket. In a proceeding, a notice of proceeding will contain the name or names of the parties. Usually, there will be only one party named in the notice, the person who requested the commission to conduct the proceeding. Other persons desiring to become parties will file requests to intervene, pursuant to s. PSC 2.21.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.10 Application for rate increase; notice to customers. (1) NOTICE OF APPLICATION FOR RATE INCREASE. (a) When a public utility applies for a general revision of rates, which, if authorized, would result in a rate increase, the public utility shall inform each affected customer of the filing of the application and the general nature and effect of the filing.

(b) The public utility shall provide the notice under par. (a) by means of a bill insert over one complete billing cycle, using its standard bill insert and mailing procedures, containing the following information: the amount of the request, the reasons for the request, the dates of any hearings or prehearing conferences already established in the docket and how the customer can contact the commission to learn of any scheduling changes or additions, and the effect on the average customer if the request were to be granted.

(c) If customer bills are not issued monthly, the utility shall furnish the information to customers by a special mailing or by means of a display advertisement in a newspaper having general circulation in the utility's service area.

(2) MUNICIPALITY EXCEPTION. (a) Notwithstanding sub. (1) (b), a municipal utility serving fewer than 1,000 customers may elect to post notice of the information in sub. (1) (a), if the notice is posted in at least 3 public places at locations and in a manner likely to give notice to customers affected.

(3) PROOF OF NOTICE. The utility shall file proof of compliance with this section no later than 3 days prior to the first hearing in the proceeding.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.11 Abandonment or discontinuance of service. No public utility may abandon facilities or discontinue service without commission authorization made after a public hearing. The commission need not hold a public hearing if the application is accompanied by all of the following:

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

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

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.12 Confidential handling. (1) APPLICABILITY. (a) In this section, "record" has the meaning given in s. 19.32 (2), Stats.

(b) This section applies to requests for confidential handling of records filed with the commission.

(2) RESPONSIBILITY FOR ESTABLISHING CONFIDENTIALITY. The burden of establishing the need for confidential handling of any record shall be on the person making the request.

(3) REQUEST. (a) A person may request confidential handling of any record on one of the following grounds:

1. The record contains trade secrets, as defined in s. 134.90 (1) (c), Stats.

2. The record contains information, which would aid a competitor of a public utility in competition with the public utility making the request, as provided under s. 196.14, Stats.

3. The record is an accident report under s. 196.72, Stats.

4. The record is protected business information, under s. 196.795 (9), Stats.

5. The record may otherwise be exempt from disclosure under the Public Records Law, ss. 19.31 to 19.39, Stats.

(b) A person requesting confidential handling of a record shall submit the record, along with an affidavit containing all of the following:

1. The name and address of the person making the request.

2. The name and position of the individual filing the request on the person's behalf.

3. An accurate and complete summary of the contents of the record.

4. How the record satisfies one of the criteria specified in par. (a).

(4) PARTIAL CONFIDENTIALITY. If only portions of a record are eligible for confidential handling, a person requesting confidential treatment shall submit an unredacted copy of that portion and a redacted copy of the record, omitting the confidential information.

(5) DETERMINATION. (a) The commission shall grant or deny a request no later than 30 days after the request is filed. The commission may request additional information in support of the request during that time.

(b) The commission shall grant a request if the commission determines that there is a reasonable basis to conclude that the record, or portion of a record, is exempt from disclosure under one of the grounds listed in sub. (3) (a).

(c) A determination to confidentially handle a record under this section is not a determination that the record is exempt from disclosure under the Public Records Law. A determination under this section has only the effect of identifying the record as possibly exempt, in order that the record may be confidentially handled within the commission.

(d) The commission shall make its determination in writing and post on its Internet website a list of all determinations made under this section and may provide any other notice it considers to be appropriate.

(6) INTERIM CONFIDENTIAL STATUS. A record submitted with a request for confidential handling will be confidentially handled during the period the commission is considering the request and, if the commission denies the request, until 14 days after the issuance of the determination. The commission may not take regulatory action based on the record in a docket during the time it is considering a request under this subsection. If the commission grants confidential status to the record, it shall, prior to taking regulatory action based on the record in a docket, permit a party to that docket to review the record and, prior to the review, may order any protective measures necessary to protect the trade secrets of parties and other information entitled to confidentiality protection.

(7) PROCEEDINGS. (a) This subsection applies to requests to confidentially handle a record submitted in the course of a proceeding, including, but not limited to, a response to a staff data request, pre-filed testimony and evidence offered or identified during a hearing.

(b) In a proceeding, parties shall make their requests in the form of a motion.

(c) During the hearing in a proceeding, the following apply:

1. The person making the request may offer the information called for in sub. (3) through testimony, rather than by affidavit.

2. The administrative law judge may hear the request *in camera*.

3. The administrative law judge may make a determination on the record, rather than in writing.

4. The administrative law judge shall make a determination as soon as practicable, but in no event later than 30 days after the making of the request.

(d) In a proceeding the commission shall, and during the hearing in a proceeding the administrative law judge shall, permit a party or its representative to review the record and participate in any *in camera* proceedings, and may order any protective measures necessary to protect the trade secrets of parties and any information entitled to confidentiality protection.

Note: A person may request at any time that a record submitted under this section be disclosed under the Public Records Law, whether or not the person has participated in any of the determinations, or agreed to any of the protective measures, under this section.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

Subchapter II – Proceedings and Dockets

PSC 2.20 Parties. (1) WHO ARE PARTIES. The following are parties to proceedings or dockets:

(a) In a proceeding, a person filing an application is an applicant.

(b) In a proceeding, a person filing a complaint is a complainant.

(c) In a proceeding, a person filing a petition is a petitioner.

(d) In a proceeding, a person named as provided in s. PSC 2.07(3) is a respondent.

(e) A person admitted as a party in a proceeding under s. PSC 2.21 (1) or (2) or a person admitted as a party in a docket under s. PSC 2.21 (2) is an intervenor.

(f) Commission staff, if designated as provided in s. PSC 2.03 (2).

(2) RIGHT TO TESTIFY. A person may testify at a hearing without becoming a party.

(3) NON-PARTY BRIEFS. The commission may allow a non-party to file briefs as a friend of the commission.

(4) INTERVENTION IN DOCKETS. A person may intervene in a docket as provided in s. PSC 2.21 (2).

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.21 Intervention. (1) INTERVENTION BY RIGHT. A person whose substantial interests may be affected by the commission's action or inaction in a proceeding shall be admitted as an intervenor.

(2) PERMISSIVE INTERVENTION. A person not satisfying the criteria of sub. (1) may nevertheless intervene in a proceeding or docket if the person's participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the person's participation will not impede the timely completion of the proceeding or docket.

(3) PROCEDURE. A person requesting intervention in a proceeding shall file a request no later than 60 days after the issuance of the notice of proceeding, or within a different time set by the administrative law judge at the final prehearing conference. A person requesting intervention in a docket shall file a request no later than 60 days after the opening of the docket, or within a different time set by the commission at the time it opens the docket.

(4) INTERVENTION OUT OF TIME. (a) If a person fails to request intervention within the time prescribed in sub. (3), the person must request to intervene out of time. In acting on such a request, the commission or administrative law judge may consider all of the following:

1. Whether the requestor had good cause for failing to file the request within the prescribed time.

2. Whether any disruption of the proceeding or docket may result from permitting intervention.

3. If any prejudice to, or additional burdens upon, the existing parties may result from permitting the intervention.

(b) Except as otherwise ordered, a grant of an untimely request to intervene shall not be a basis for delaying or deferring any procedural schedule established prior to the grant of the request.

(c) The commission or administrative law judge may impose limitations on the participation of a late intervenor to avoid delay and prejudice to the other participants.

(d) Except as otherwise ordered, a late intervenor shall accept the record of the proceeding or docket as the record was developed prior to the late intervention.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.22 Representatives. A person desiring to participate in a docket, whether on his or her own behalf or as an authorized agent or attorney, shall enter an appearance in person by giving his or her name and address and the name and address of any party he or she represents and in what capacity he or she is employed by that party.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.23 Motions. (1) HOW MADE. A party seeking an order shall make a motion. Unless made during a hearing, a motion shall be made in writing, shall state with particularity the grounds for the motion, and shall set forth the relief requested.

(2) RESPONSES AND REPLIES. Parties may respond to a motion no later than 10 days after service of the motion. The movant may reply to a response no later than 5 days after service of the response.

(3) MOTION TO ENLARGE TIME. A motion to enlarge the time for service or filing for up to 3 days may be acted upon without awaiting a response to the motion.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.24 Discovery. (1) METHODS OF DISCOVERY. In an investigation or proceeding, depositions of witnesses may be taken by the commission or any party as provided in s. 196.33, Stats. In a proceeding, depositions and requests for the production of documents, data, or other information may be taken or made by the commission or any party as provided under ch. 804, Stats.

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

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.25 Synopsis or summary of the evidence.

(1) SERVICE. If the commission staff prepares a summary or synopsis of the evidence pursuant to s. 196.24 (3), Stats., commission staff shall serve it upon the parties to the proceeding.

(2) RESPONSE. A party who wishes to respond to a synopsis or summary of the evidence shall file a statement of additional or corrected facts no later than 10 days after service of the synopsis or summary.

(3) ARGUMENT. Neither a synopsis or summary or a response thereto shall contain argument. If a party believes that a synopsis or summary or another party's response contains argument, the party may file a motion to strike along with its response. The commission may strike, on its own motion, any response that contains argument.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.26 Briefs. (1) (a) Parties shall indicate on the record after the close of testimony whether they desire to file briefs. The party or parties having the affirmative shall file affirmative briefs within the time set by the administrative law judge. Other parties shall file reply briefs within the time set by the administrative law judge, which may be replied to as provided by the administrative law judge.

(b) Where a party having the affirmative does not desire to file a brief but another desires to do so, the administrative law judge shall specify the time and order for filing briefs. If the administra-

tive law judge makes no specific designation as to the time and order for filing briefs where the party having the affirmative does not desire to file a brief, all other briefs shall be filed within 15 days after date of mailing of transcript.

(c) If not specifically covered by this rule, the time and order for filing briefs shall be fixed by the administrative law judge.

(2) Five legible, dated copies of all briefs shall be filed with the commission together with a certification showing when and upon whom copies have been served. Briefs which contain a summary of evidence or facts relied upon shall include also reference to specific pages of the record containing the evidence.

(3) The filing of briefs in less time than allowed shall not change the due dates of remaining briefs.

(4) Notwithstanding sub. (1), the commission may provide for oral argument in lieu of briefs under exigent circumstances. Nothing in this section prohibits the commission from requesting oral arguments in addition to briefs.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.27 Interlocutory review. (1) **DISCRETIONARY REVIEW.** The commission, on the motion of a party or on its own motion, may review any order issued by the administrative law judge and any ruling of the administrative law judge made during a hearing, if the commission finds that to do so would further the proper disposition of the proceeding.

(2) **HOW MADE.** (a) A motion for review of an order must be filed no later than 10 days of the issuance of the order. Parties may respond to the motion no later than 5 days after service of the motion. A motion for review of a ruling made during a hearing shall be filed no later than the next business day after the ruling.

Parties may respond to the motion no later than 2 days after service of the motion.

(b) The filing of a motion under this section does not stay the hearing or any other time period scheduled in the proceeding.

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

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.28 Reopening. If the commission does not decide a request made under s. 196.39, Stats., within 30 days after the filing of the request, the request shall be deemed denied.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.

PSC 2.29 Copies of decisions and transcripts.

(1) **DECISIONS.** One copy of the decision in a proceeding will be furnished free of charge at the time of issuance to each party of record, except that when a party of record is represented by counsel, a copy of the decision will be furnished to counsel. When a municipal utility is a party of record to a proceeding, a copy of the decision will be furnished both to the management of the utility and to the appropriate official of the municipality free of charge at the time of issuance. Certified copies will be provided on request.

(2) **TRANSCRIPTS.** Proceedings in hearings will be transcribed and one copy of the transcript will be furnished each party free of charge upon request by a party on the record at the hearing. Additional copies of transcripts will be furnished upon request, and upon payment of charges in advance.

History: CR 00-187: cr. Register June 2002 No. 558, eff. 7-1-02.