

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the Application of the Empire)
District Electric Company for a Certificate of)
Convenience and Necessity Related to its) Case No. EA-2019-0010
Customer Savings Plan)

MOTION FOR PROTECTIVE ORDER

COMES NOW Missouri Department of Conservation ("MDC"), and pursuant to 4 CSR 240-2.135(4) requests issuance by the Missouri Public Service Commission ("Commission") of a protective order as outlined herein.

In support of its request, MDC states as follows:

1. Under 4 CSR 240-2.135(6), information defined as "Confidential" by 4 CSR 240-2.135(2)(A) is available to the attorneys of record for a party in the Commission case at issue and to employees of a party if those employees are working as subject-matter experts for the attorneys or intend to file testimony upon a filing by such an employee of the certification required by 4 CSR 240- 2.135(7).

2. MDC possesses information that may, or likely will, be the subject of discovery requests and included in testimony that should not be made public.

3. Confidential protection for these materials is needed for several reasons.

(a) Section 252.240, RSMo, charges MDC with establishing a list of endangered species and providing protection for them. Section 3 CSR 10-4.111 of the Wildlife Code contains the list of endangered species in Missouri and related regulations.

(b) Since 1983, MDC has maintained the Missouri Natural Heritage Database (the “Heritage Database”), which contains site specific information for over 800 sensitive species and natural community types in Missouri. The information is obtained from the Missouri Natural Features Inventory, field biologists, universities, scientific literature, herbaria, and other individuals and organizations. The information provides an understanding of the abundance, distribution, condition and conservation needs of these sensitive elements. Species and natural communities are evaluated and ranked on the basis of their global and statewide status. These ranks are revised as new information becomes available; changes in ranking can be the result of changes in species populations or in changes in our knowledge of the species.

(c) Site specific information is shared with the general public on a county basis (<https://mdc.mo.gov/property/responsible-construction/missouri-natural-heritage-program>). County based information provides information for conservation planning, environmental review, scientific research, land acquisition, and planning for economic development.

(d) If a person or entity wants to know location information down to the range, township and section, they can conduct a search on MDC's Missouri Natural Heritage Review Website ([Error! Hyperlink reference not valid.](#)), but the person or entity is required to create an account and agree to terms and conditions which require them "not [to] reproduce, distribute nor release any information from the website in any format or spatial resolution, by use of the internet or any other form of disclosure or release, without prior written consent from the Missouri Department of Conservation."

(e) If a researcher, agency, or developer wants even more detailed information regarding species location, such as down to GPS coordinates, then they would have to request a data-sharing agreement because this information is treated as confidential and closed under section 610.021(22) of the Missouri Sunshine law, which protects records "relating to scientific and technological innovations in which the owner has a proprietary interest."

5. MDC anticipates such detailed information (specific information regarding bat, eagle and other species locations) which would usually be protected and provided only pursuant to a data-sharing agreement, and even then only with buffered locations, will be requested during the pendency of this case and be utilized in MDC's testimony.

6. 4 CSR 240-2.135(3) is in keeping with Missouri Supreme Court Rule 56.01(c), which provides that protective orders may be issued "... to

protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including ... that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way[.]”

7. Granting this protective order will prevent access to confidential information that would work to the disadvantage of the preservation efforts of MDC.

8. The information for confidential treatment sought cannot be found in any other public document.

9. On November 8, 2018, the Commission issued a Protective Order (on Empire’s Motion) in this case and designated a nondisclosure agreement form for all persons authorized to access “highly confidential” information. If the Commission grants this Motion, a similar form should be used for those wishing to access "confidential" information.

WHEREFORE, the Missouri Department of Conservation respectfully prays that the Commission issue the protective order requested herein and direct the use of the Non-Disclosure Agreement to access information designated "confidential" by MDC.

