

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-2.135

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

FILED  
July 7, 2011  
Data Center  
Missouri Public  
Service Commission

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-4393 FAX \_\_\_\_\_

Email address Nancy.dippell@psc.mo.gov

Data Entry same Phone \_\_\_\_\_ FAX \_\_\_\_\_

Email address \_\_\_\_\_

Interagency mailing address Public Service Commission, 9<sup>th</sup> Fl, Gov.Ofc Bldg, JC, MO

### TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order \_\_\_\_\_

☒ Statutory 30 days OR Specific date \_\_\_\_\_

Does the Order of Rulemaking contain changes to the rule text? ☒ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

JUL 06 2011

ADMINISTRATIVE RULES



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## *Missouri Public Service Commission*

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Chief Staff Counsel

Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Dear Secretary Carnahan,

Re: 4 CSR 240-2.135 Confidential Information

### CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.040 and 386.410, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact me at the address and number below.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell, Deputy Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4393  
[Nancy.dippell@psc.mo.gov](mailto:Nancy.dippell@psc.mo.gov)

Enclosure

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT**  
**Division 240 – Public Service Commission**  
**Chapter 2 – Practice and Procedure**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.040 and 386.410, RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-2.135 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendments was published in the *Missouri Register* on April 15, 2011 (36 MoReg 1060). No changes have been made to the proposed amendments, so they are not reprinted here. These proposed amendments become effective thirty (30) days after publication in the *Code of State Regulations*.

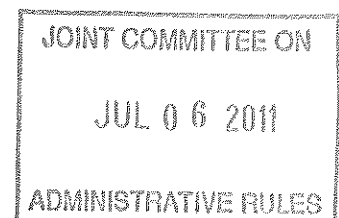
SUMMARY OF COMMENTS: A public hearing on the proposed amendments was held May 19, 2011, and the public comment period ended May 16, 2011. Two (2) written comments were received and two (2) people testified at the public hearing.

COMMENT # 1: Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment questioning why section (2) is needed in the rule.

RESPONSE: The commission has received several requests for a protective order under the current protective order rule which is being rescinded. The provisions of the rescinded rule are being placed into this rule so that it is easier to locate. The current rule, 4 CSR 240-2.135, only provides protection during the discovery process and not for less formal information gathering which the commission regularly conducts. Thus, it is important to have the option to protect sensitive information available for anyone not a party to a contested case or other formal proceeding. The commission makes no change as the result of this comment.

COMMENT #2: Lewis Mills, on behalf of the Office of the Public Counsel, filed a written comment and testified at the hearing. In his opinion sections (4) and (5) should be clarified to provide that a non-attorney who is a party to a case has the same access to proprietary and highly confidential information as an attorney representing other parties. Mr. Mills testified that he believes there are certain instances when such a party should not be allowed access to the information, but that should be the exception to the rule. Mr. Mills stated that if the commission were to rely on information that a party cannot access, then there could be a due process violation.

Rick Zucker, on behalf of Laclede Gas Company, testified in response to Mr. Mills comment that the rule specifically should not allow *pro se* parties to access this type of information. Mr. Zucker testified that allowing an unrepresented party to have access to highly confidential information while not allowing the officers and employees of a corporation to have



access could undercut the entire rule. Mr. Zucker also commented that the commission should not make a major change in this rule without further study.

RESPONSE: The commission agrees with Mr. Zucker that it is not appropriate to rewrite this rule without additional study and a chance for further comment and publication of any changes. The commission will open a new chapter 2 rulemaking file to examine this issue and any additional revisions proposed by the relevant stakeholders. No comments were made as a result of these comments.