

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

In the Matter of a Proposed Rule to Establish a )	
Procedure for Handling Confidential Information in )	Case No. AX-2003-0404
Commission Proceedings )	

**COMMENTS IN SUPPORT OF PROPOSED RULE 4 CSR 240-2.135**

**INTRODUCTION**

The Missouri Public Service Commission published proposed rule 4 CSR 240-2.135, Confidential Information, in the July 3, 2006 edition of the *Missouri Register*. The General Counsel's Office supports the adoption of the proposed rule.

**COMMENTS**

Since at least 1997, the Commission has issued when requested, i.e., on a case-by-case basis, a standard protective order. The standard protective order defines two levels of confidential information: Highly Confidential and Proprietary. The standard protective order sets forth the procedures for classifying and disclosing such information. The proposed rule generally codifies the standard protective order.

Under the current practice, discovery of confidential material is delayed until a protective order is requested and issued in those instances when the responding party claims that the requested information is confidential. Codifying the standard protective order will make the discovery process more efficient by eliminating the seemingly perfunctory motion for and issuance of a standard protective order.

The General Counsel's Office suggests a change to the proposed rule. The standard protective order and the proposed rule both provide that proprietary information may be disclosed only to attorneys of record, to employees of a party who are working on the case, and

to outside experts; and that highly confidential information may be disclosed only to attorneys of record and outside experts. This provision was intended to prevent the employees of one company from seeing and then acting upon a competitor's confidential business information. The provision, however, has the unintended consequence of prohibiting a pro se litigant from seeing confidential material. Due process requires that a party to a case be allowed to see information in the case. Pro se litigation at the Commission frequently involves a disputed bill over an amount that is less than the expense of hiring an attorney or an expert. Therefore, the General Counsel's Office recommends that rule sections (3) and (4) be revised to permit the disclosure of proprietary information and highly confidential information to pro se litigants.

The first sentence of section (3) would then read, "Proprietary information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case, *or to pro se litigants in that case.*"<sup>1</sup> The first sentence of section (4) would then read, "Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purposes of the case, *or to pro se litigants in that case.*"<sup>2</sup>

WHEREFORE, the General Counsel's Office supports the adoption of proposed rule 4 CSR 240-2.135, Confidential Information, with a revision to allow pro se litigants to see highly confidential and proprietary information.

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<sup>1</sup> Suggested language is shown in italics.

<sup>2</sup> Suggested language is shown in italics.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28<sup>th</sup> day of July 2006.

/s/ William K. Haas