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August 2, 2006

Ms. Cully Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65102

Re: Case No. AX-2003-0404
Adoption of Rule 4 CSR 240-2.135 Confidential Information that prescribes the procedures for handling confidential information in cases before the commission.

Dear Ms. Dale:

The Office of the Public Counsel submits its comments to the proposed rule as published in the *Missouri Register*, July 3, 2006, Vol. 31, No. 13, in accordance with the notice of the proposed rule.

Public Counsel supports the codification of the Commission's standard protective order. The rulemaking process provides interested parties with an opportunity to be heard on the terms and conditions for the disclosure and use of confidential information before the Commission. This rulemaking also affords an opportunity to consider any problems or revisions that have come to light under the administrative practice that is reflected in the proposed rule.

Public Counsel recognizes the delicate balance at work here. On one hand, the consumer and the public have a right and need to have a public and open decision-making process based on publicly available records and documents. On the other hand, the utilities have a real and vital interest to protect proprietary and highly confidential information where public disclosure may not only be detrimental to their business interests, but could have an adverse effect on rates.

Public Counsel submits that the standard protective order embodied in this proposed rule has provided a reasonable and workable process with few exceptions. For that reason, Public Counsel in general supports the rule. However, this rule can be improved and the public policy interests advanced without eroding the protection to business information or individual privacy.

PROPOSED REVISIONS TO RULE

1. In Section (9), Public Counsel suggests a specific reference to consultant and other reports that contain both publicly available information and confidential analysis of that information. The Commission should reaffirm that a full report should not be designated HC in its entirety, but only should apply to those portions that provide the confidential analysis. Designation of entire reports, tables, spreadsheets, and data summaries is overreaching and inconsistent with the rule. Past practice has shown an increasing use of blanket designations which should be curtailed and limited to specific proprietary and HC information. Parties should not have to spend funds and effort to declassify information in good faith should be public, but is unnecessarily restricted.
2. Section (12) should be amended to recognize the wide use of electronic document preservation and retrieval.

(12) If a response to a discovery request requires the duplication of material that is so voluminous, or of such a nature that copying would be unduly burdensome, the furnishing party may require that the material be reviewed on its own premises, or at some other location, within the state of Missouri. Materials shall not be considered as voluminous or that providing a copy is burdensome if the requested material can be duplicated from electronic records or can be furnished or made available in an electronic media or electronic format, including, but not limited to, computer disks, CDs, DVDs or other storage, retrieval, or transmission media. If possible, electronic copies should be provided in the electronic format requested by the party making the discovery request.

3. Add a new rule section known as (16 a) to provide that Staff and Public Counsel may use confidential information for any purpose (testimony, cross-examination, etc.) in proceedings other than in the proceeding in which that information was obtained. This is consistent with these parties as agents of the regulators and the public and consumers who should have access and use of all relevant and material information concerning the company in any matter before the Commission relating to the utility. It avoids the needless taxpayer expense of duplicating discovery for each proceeding.

(16 a)The Staff and the Office of the Public Counsel may use information designated as highly confidential and proprietary in a proceeding for any purpose in other proceedings relating to the same utility company , if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained. Use of such highly confidential and proprietary information by Staff or Public Counsel shall not require additional discovery requests in the other proceedings.

Please submit these comments to the Commission for its consideration. Thank you in advance for your assistance.

Respectfully submitted,

Mike Dandino
Deputy Public Counsel

/s/ Michael F. Dandino

MFD:ks
Cc: Kevin Thompson, General Counsel