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Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 12615
Date Printed: 3/2/2011
Rule Number: 4 CSR 240-2.135
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 3/2/2011
Date Submitted to Joint Committee on Administrative Rules: 3/2/2011

Name of Person to Contact with questions concerning this rule:

Content: Nancy Dippell	Phone: 1-4393	Email: Nancy.dippell@psc.mo.gov	Fax: na
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter	3/02/2011
Affidavit for public cost	3/02/2011

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Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-2.135

COPY

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

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, 9th 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:

Amending Sections (3), (4), (7), (19), and (20); adding (2); and renumbering (2), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (21), and (22).

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JCAR Stamp

JOINT COMMITTEE ON

MAR 02 2011

ADMINISTRATIVE RULES



Commissioners

KEVIN GUNN
Chairman

ROBERT M. CLAYTON III

JEFF DAVIS

TERRY M. JARRETT

ROBERT S. KENNEY

Missouri Public Service Commission

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573-751-1847 (Fax Number)
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WESS A. HENDERSON
Executive Director

VACANT
Director, Administration and
Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

NATELE DIETRICH
Director, Utility Operations

STEVEN C. REED
Secretary/General Counsel

KEVIN A. THOMPSON
Chief Staff Counsel

March 2, 2011

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

Re: 4 CSR 240-2.135 Confidential Information

Dear Secretary Carnahan,

CERTIFICATION OF ADMINISTRATIVE RULE

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

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: sections 386.040 and 386.410, RSMo 2000

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

Sincerely,

A handwritten signature in black ink, reading "Nancy Dippell". The signature is fluid and cursive, with the first name "Nancy" being larger and more prominent than the last name "Dippell".

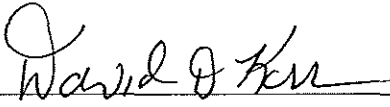
Nancy Dippell, Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4393
Nancy.dippell@psc.mo.gov

Enclosure

**AFFIDAVIT
PUBLIC COST**

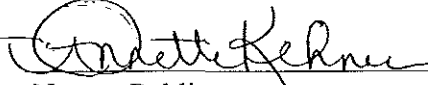
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, David Kerr, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-2.135, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

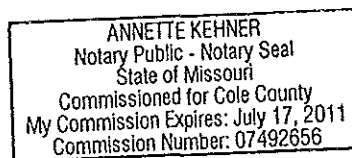


David Kerr
Director
Department of Economic Development

Subscribed and sworn to before me this 18th day of Feb., 2011, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2011



Notary Public



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

PROPOSED AMENDMENT

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SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-2.135 Confidential Information The commission is amending sections (3), (4), (7), (19), and (20), adding a new section (2), and renumbering sections (2), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (21), and (22).

PURPOSE: The amendment to this rule incorporates portions of 4 CSR 240-2.080, Protective Orders, which is being rescinded.

(2) Protective Order. In addition to discovery and testimony which may be designated as "highly confidential" or "proprietary" without a protective order from the commission as set out in this rule, any person may seek an order protecting information from disclosure by the commission. A request for a protective order shall be made as follows:

(A) By filing a separate pleading denominated "Motion for Protective Order";

(B) The pleading shall state with particularity why the moving party seeks protection, and what harm may occur if the information is made public;

(C) The pleading shall also state whether any of the information for which a claim of confidentiality is made can be found in any other open public document;

(D) The information provided to the commission may be designated as "highly confidential" or "propriety" while the motion is pending;

(E) Any information designated as "highly confidential" or "proprietary" shall be provided in a redacted public version and a complete confidential version the same as for testimony as set out in section (11) of this rule; and

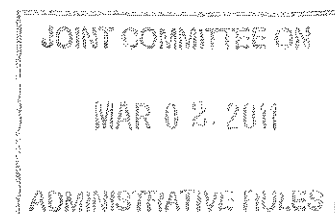
(F) If the motion is granted, the information shall be protected from disclosure as set out in sections (3) – (22) of this rule.

~~(2)~~**3** When a party seeks discovery of information that the party from whom discovery is sought believes to be confidential, the party from whom discovery is sought may designate the information as proprietary or highly confidential.

~~(3)~~**4** 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.

(B) If a party wants any employee or outside expert to review proprietary information, the party must identify that person to the disclosing party by name, title, and job classification, before disclosure. Furthermore, the person to whom the information is to be disclosed must comply with the certification requirements of section ~~(6)~~**7** of this rule.

(C) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as proprietary.



(~~4~~5) Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purpose of the case.

(D) If a party wants an outside expert to review highly confidential information, the party must identify that person to the disclosing party before disclosure. Furthermore, the outside expert to whom the information is to be disclosed must comply with the certification requirements of section (~~6~~7) of this rule.

(E) Subject to subsection (~~4~~5)(B), the party disclosing information designated as highly confidential shall serve the information on the attorney for the requesting party.

(~~5~~6) If any party believes that information must be protected from disclosure more rigorously than would be provided by a highly confidential designation, it may file a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.

(~~6~~7) Any employee of a party that wishes to review proprietary information, or any outside expert retained by a party that wishes to review highly confidential or proprietary information must first certify in writing that he or she will comply with the requirements of this rule.

(~~7~~8) Attorneys possessing proprietary or highly confidential information or testimony may make such information or testimony available only to those persons authorized to review such information or testimony under the restrictions established in sections (~~3~~4) and (~~4~~5).

(~~8~~9) If information to be disclosed in response to a discovery request is information concerning another entity—whether or not a party to the case—which the other entity has indicated is confidential, the disclosing party must notify the other entity of its intent to disclose the information. If the other entity informs the disclosing party that it wishes to protect the material or information, the disclosing party must designate the material or information as proprietary or highly confidential under the provisions of this rule.

(~~9~~10) Any party may use proprietary or highly confidential information in prefiled testimony, in a pleading, or at hearing, if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained. Before including nonpublic information that it has obtained outside this proceeding in its pleading or testimony, a party must ascertain from the source of the information whether that information is claimed to be proprietary or highly confidential.

(~~10~~11) A party may designate portions of prefiled or live testimony as proprietary or highly confidential. Prefiled testimony that contains information designated as proprietary or highly confidential must be filed as follows:

(~~11~~12) Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

~~(12)~~13) 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.

~~(13)~~14) If prefiled testimony includes information that has previously been designated as highly confidential or proprietary in another witness's prefiled testimony, that information must again be designated as highly confidential or proprietary.

~~(14)~~15) All live testimony, including cross-examination and oral argument, ~~[that]~~which reveals information that is designated as proprietary or highly confidential, may be offered only after the hearing room is cleared of all persons except those persons to whom the highly confidential or proprietary information is available under this rule. The transcript of such live testimony or oral argument will be kept under seal and copies will be provided only to the commission and the attorneys of record. The contents of such transcripts may not be disclosed to anyone other than those permitted access to the designated information under this rule.

~~(15)~~16) Proprietary or highly confidential information may not be quoted in briefs or other pleadings unless those portions of the briefs or other pleading are also treated as proprietary or highly confidential.

~~(16)~~17) All persons who have access to information under this rule must keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using highly confidential or proprietary information obtained under this rule as the basis for additional investigations or complaints against any utility company.

~~(17)~~18) After receiving an appropriate writ of review, the commission will deliver proprietary and highly confidential testimony constituting part of the record before the commission to the reviewing court under seal, unless otherwise directed by the court.

~~(18)~~19) Within ninety (90) days after the completion of the proceeding, including judicial review, all copies of all proprietary and highly confidential information, testimony, exhibits, transcripts or briefs in the possession of any party must be returned to the party claiming a confidential interest in such information, if that party requests that the information be returned. Otherwise, the information must be destroyed by the party possessing such information. Any notes pertaining to such information must be destroyed.

~~(19)~~~~20~~) The provisions of sections ~~(3)~~~~4~~, ~~(4)~~~~5~~, ~~(6)~~~~7~~, ~~(7)~~~~8~~, and ~~(18)~~~~19~~ of this rule do not apply to officers or employees of the commission or to the public counsel or employees of the Office of the Public Counsel. The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480, RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

~~(20)~~~~21~~) Outside experts of the staff of the commission or the Office of the Public Counsel who have been contracted to be witnesses in the proceeding have access to designated information and testimony on the same basis as the staff of the commission and the Office of the Public Counsel except that the outside expert must comply with the provisions of sections ~~(6)~~~~7~~ and ~~(18)~~~~19~~. Outside experts of the staff of the commission and the Office of the Public Counsel who have not been contracted to be witnesses in the proceeding are subject to all provisions of this rule.

~~(21)~~~~22~~) A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential.

~~(22)~~~~23~~) The commission may waive or grant a variance from any provision of this rule for good cause shown.

AUTHORITY: sections 386.040 and 386.410, RSMo 2000. Original rule filed May 25, 2006, effective Jan. 30, 2007. Amend: Filed _____.*

**Original authority: 386.040, RSMo 1939 and 386.410, RSMo 1939, amended 1947, 1977, 1996.*

PUBLIC ENTITY COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment,

and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Small Business Regulatory Fairness Board

Small Business Impact Statement

Date: 1-27-11

Rule Number: 4 CSR 240-2.135 Confidential Information

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Nancy Dippell

Phone Number: 573-751-4393 Email: nancy.dippell@psc.mo.gov

Name of Person Approving Statement: Morris Woodruff, Chief Regulatory Law Judge, Public Service Commission

Please describe the methods your agency considered or used to reduce the impact on small businesses: This rule is being amended to consolidate all procedural rules dealing with confidential information into one rule. The rule should have little to no impact on small businesses.

Please explain how your agency has involved small businesses in the development of the proposed rule.

This rule is being amended to consolidate all procedural rules dealing with confidential information into one rule. The rule should have little to no impact on small businesses. The Commission held a roundtable discussion on November 30, 2010, and invited the public to comment informally on the draft of the proposed rules. The Commission subsequently incorporated some changes from that roundtable into the rules for clarity and ease of use.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

There are no monetary costs or benefits to any agencies and no fees are imposed or collected under this rule.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

No small businesses are "required" to comply with the rule, as the rule sets out the procedure for designating information as confidential.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

There are no costs of compliance associated with this amendment.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

All utilities, large and small, and all ratepayers, residential or commercial, will benefit from the rule being clarified and all rules relating to confidential information being in one rule.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No_X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.