This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety- (90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

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 Public Service Commission under sections 386.040 and 386.410, RSMo 2016, 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 amendment was published in the *Missouri Register* on January 3, 2017 (42 MoReg 14–17). Changes to the proposed amendment are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended February 2, 2017, and the commission held a public hearing on the proposed amendment on February 16, 2017. The commission received timely written comments from the Missouri Cable Telecommunications Association (MCTA) and Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO). In addition, the commission received a written comment from attorney Carl Lumley on November 23, 2016. Although that comment was submitted before the proposed amendment was published in the Register, the commission will respond to it in this order. Jim Fischer, representing KCP&L/GMO; Rick Zucker, representing Laclede Gas and Missouri Gas Energy (Laclede/MGE); Tim Opitz, representing the Office of the Public Counsel; Chris Moody, on behalf of MCTA; and Mark Johnson, representing the commission's staff, appeared at the hearing and offered comments.

COMMENT #1: The comments from MCTA, KCPL/GMO, and Laclede/MGE share an overarching concern that the rule should continue to protect competitively sensitive information from disclosure to employees of competing parties who are engaged in strategic marketing and planning. The existing rule does that by creating two (2) categories of confidential information: proprietary and highly confidential. Information that is designated as highly confidential can be disclosed only to attorneys and outside experts and not be viewed by employees, officers, or directors of the party. Information that should not be made public but which is not competitively sensitive is supposed to be designated as proprietary under the existing rule.

MCTA, KCPL/GMO, and Laclede/MGE would like the enhanced protections for highly confidential information to remain in the rule. Jim Fischer, speaking for KCPL/GMO, was particularly concerned that the commission not go back to routinely issuing "standard protective orders" in every case, as was the practice before the current confidential information rule went into effect in 2006. Fischer believes it would be a waste of resources for the parties to have to negotiate and propose a protective order that can instead be established by rule.

RESPONSE: The new rule will continue to allow for the protection from disclosure of confidential information to persons that should not be allowed to view that information. But, the new rule will discourage the practice of routinely over-designating information as highly confidential.

Proprietary was intended to be the routine designation for confidential information under the existing rule. The highly confidential designation was supposed to be reserved for information deserving of a higher level of protection. Unfortunately, over the years, parties have found it easier to simply designate all confidential information as highly confidential. As one (1) attorney-commenter explained at the hearing, "if I've designated something HC that wasn't, not much happens. But if I fail to designate something HC that was, then I get in some trouble back home."

The new rule tries to correct that over-designation problem by listing only one (1) set of categories that will receive standard protections, which is called "confidential" information in the new rule. If a party believes that certain information should have a higher level of protection, the proposed rule allows the party to file a motion explaining what information must be protected and why. The intent is that the parties can negotiate the appropriate measures to protect that information from improper disclosure. They can then present their agreement to the commission for approval. Or, if they cannot agree, they can present their arguments to the commission for resolution of disputes regarding the details of how particular information should be protected. In that way, the increased protection afforded to highly confidential information can be limited to the information that truly needs to be protected and the public's right to know the information that forms the basis for the commission's decisions can be preserved. No change was made in response to this comment.

COMMENT #2: Paragraph (1)(B)5. of the existing rule, re-designated as paragraph (2)(A)5. of the proposed rule, defines "reports, work papers, or other documents related to work produced by external auditors, consultants or attorneys" as confidential. The amended rule would add that "total amounts billed by each external auditor, consultant, or attorney shall always be public." KCPL/GMO expressed concern that this revision could conflict with the attorney-client privilege as it would apply to attorneys. It also believes the rule is overbroad in saying that all such bills must be public even outside the context of a rate case in which the utility might be trying to recover the cost of such reports. In other words, if a company wants to use shareholder funds to perform a study, or if the study costs were

incurred outside a rate case test-year, those costs should not need to be made public.
RESPONSE AND EXPLANATION OF CHANGE: The commission intended that this provision make public auditor, consultant, and attorney fees that a utility is seeking to recover from its ratepayers in the context of a rate case. It agrees with the comment to the extent that such fees not associated with a rate case do not always need to be made public. The commission will modify paragraph (2)(A)5. to limit its application to "services related to general rate proceedings."

COMMENT #3: MCTA expressed concern that section (4) presumes that all information must be disclosed to the parties in some way because it requires an explanation of how the information "shall" be disclosed to the parties that require the information. It points out that the FCC has found some information so confidential that it should not be disclosed to anyone other than to the commission. MCTA suggests the language be modified to recognize that in some circumstances less, or even non-disclosure, may be appropriate.
RESPONSE AND EXPLANATION OF CHANGE: The commission understands that some information should be afforded extraordinary levels of protection and the rule would allow the commission to order such levels of protection in appropriate circumstances. The commission will alleviate MCTA's concerns by changing "shall be disclosed" to "may be disclosed," and deleting the clause that suggests some parties may require the information.

COMMENT #4: Subsection (4)(A) is intended to protect information from disclosure while a motion seeking a greater level of protection is pending. It does so by limiting disclosure to attorneys and outside experts, which is the restriction on disclosure of highly confidential information under the current rule. MCTA commented that some information may be entitled to even greater protection and should not be disclosed to anyone before the commission has a chance to rule on the request. MCTA suggests the subsection be modified to allow the party making the request to simply describe the information to be protected until the commission decides what limitations on disclosure should be afforded. Public counsel commented that such a description of the information for which protection is sought would have to be sufficiently detailed to allow other parties to respond to the motion.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comments. The subsection will be modified to allow information to be protected from disclosure in the manner sought in the motion while the commission considers that motion. The modification will also require the moving party to provide a detailed summary of the information at issue.

COMMENT #5: Subsection (5)(B) of the proposed amendment requires a party designating discovery information as confidential to describe how "each piece" of that information qualifies as confidential under the rule. KCPL/GMO is concerned that requiring a description of the confidentiality of "each piece" of information could require excessive detail and could lead to additional disputes among the parties.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment. The subsection will be modified to remove the phrase "each piece of" from the requirement of an explanation of how information qualifies as confidential.

COMMENT #6: Laclede/MGE questioned the deletion of existing subsection (3)(C), which states that the rule does not require disclosure of information that would otherwise be protected from disclosure by any privilege or other rule regarding discovery. Laclede/MGE suggests such provision is essential.
RESPONSE: The commission agrees that this rule does not require disclosure of information otherwise protected from discovery. But this subsection is no longer necessary because that protection is now recognized in the first section of the new rule. No change was made in response to this comment.

COMMENT #7: MCTA is concerned that the proposed amendment would allow employees of competitive companies to view highly confidential, competitively sensitive information. It urges the commission to add restrictions to section (6) to prohibit the release of such information to employees of a party who are engaged in marketing or strategic planning activities.
RESPONSE: The commission recognizes that competitively sensitive information may need a higher level of protection from disclosure. The proposed amendment allows for a higher level of protection if the disclosing party wants to seek such protections. For that reason the protections sought by MCTA do not need to be included in the rule. No change was made in response to this comment.

COMMENT #8: The proposed amendment deletes section (5) of the existing rule. That section describes the circumstances in which highly confidential information should be handled and disclosed to parties. KCPL/GMO and MCTA argue that the existing rule's provisions regarding the handling of highly confidential information are helpful and generally accepted by all parties appearing before the commission. They suggest there is no reason to require the parties to renegotiate these provisions in every case.
RESPONSE: The commission agrees that the provisions contained in the deleted section may appropriately be included in a motion for additional protection beyond what is provided in section (2) of the rule. But, the use of such provisions should be considered by the commission on a case-by-case basis when deciding whether to grant such a request. They do not need to be included in the rule and the section will be deleted. No change was made in response to this comment.

COMMENT #9: Carl Lumley points out an error in section (7) of the proposed amendment. The section requires a written certificate of "such expert or party." Earlier in the section reference is made to experts and employees of a party. The second reference should also be to "employee of a party," rather than just "party."
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will correct the error.

COMMENT #10: Section (10) of the proposed amendment continues the existing rule's description of how confidential information is to be delineated in prefiled testimony. Carl Lumley comments that the same delineation requirements should also apply to other documents filed with the commission, such as briefs and pleadings.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will add a new subsection (10)(D) that will apply the same delineation requirements to briefs and pleadings.

COMMENT #11: Carl Lumley comments that section (11) is limited to challenges to the designation of confidential information in discovery or testimony. He suggests it should also apply to briefs and pleadings.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment, and section (11) will be made to apply to briefs and pleadings as well as discovery and testimony.

COMMENT #12: Section (13) of the existing rule allows a party responding to a discovery request to require that voluminous or hard to copy information be reviewed on its premises or at some other location. That section is deleted from the proposed amendment. KCPL/GMO asks that the section be retained in the new rule, contending that it has proven to be useful.
RESPONSE: The commission agrees that provisions of this section regarding voluminous or hard to copy information may be useful. However, they are not related to a question of confidentiality and thus do not belong in this rule. No change was made in response to this comment.

COMMENT #13: Staff pointed to a section of statute that references

"proprietary" information at the commission. Paragraph 392.550.3(7)(c), RSMo 2016 requires a registrant seeking to provide interconnected voice over internet protocol service to give the commission certain information and requires the commission to maintain that information as "proprietary" and not available to the public.
RESPONSE AND EXPLANATION OF CHANGE: The revised rule will no longer recognize a "propriety" designation for confidential information, but the new "confidential" designation will still protect that information from public disclosure as contemplated by the statute. The commission will add a new section (20) to clarify that any reference to proprietary or highly confidential information in any statute or other regulation of this commission shall be interpreted as a reference to confidential information under this rule.

COMMENT #14: Public counsel generally supports the revisions to the rule to ensure that information that should be available to the public is not improperly designated as confidential or highly confidential. In particular, Public counsel applauds the removal of the time limits on the filing of challenges to confidential designation of information.
RESPONSE: The commission thanks Public counsel for its comment. No change was made in response to this comment.

COMMENT #15: In reviewing the proposed amendment, the commission notes that words are missing from subsection (2)(B). The subsection should require a reference to the "paragraph of" 4 CSR 240-2.135(2)(A) through which the information is protected.
RESPONSE AND EXPLANATION OF CHANGE: The missing words have been added to subsection (2)(B).

4 CSR 240-2.135 Confidential Information

(2) Confidential Designation.

(A) Any person may submit to the commission, without first obtaining a protective order, information designated as confidential if that information is—

1. Customer-specific information;
2. Employee-sensitive personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by internal or external auditors, consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney for services related to general rate proceedings shall always be public;
6. Strategies employed, to be employed, or under consideration in contract negotiations;
7. Relating to the security of a company's facilities; or
8. Concerning trade secrets, as defined in section 417.453, RSMo.

(B) Any information designated as confidential shall be submitted with a cover sheet or pleading describing how such information qualifies as confidential under subsection (2)(A) of this rule, including the specific subsection relied upon and an explanation of its applicability. Only the specific information that qualifies as confidential shall be designated as such. In addition, each document that contains confidential information shall bear the designation "Confidential" and the paragraph(s) of 4 CSR 240-2.135(2)(A) through which that information is protected.

(4) The commission may order greater protection than that provided by a confidential designation upon 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 while protecting the interests of the disclosing entity and the public.

(A) While such a motion is pending, the disclosing party requesting greater protection will be afforded the protection sought. However, in all circumstances, the disclosing party must, at a minimum, provide a detailed summary of the information at issue.

(B) Any document that contains such information shall bear the designation "Highly Confidential," rather than "Confidential," but shall otherwise follow the formatting delineated in section (10) of this rule.

(5) 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 confidential.

(A) No order from the commission is necessary before a party in any case pending before the commission may designate discovery responses confidential, and such information shall be protected as provided in this rule.

(B) The party that designates discovery information confidential shall inform, in writing, the party seeking discovery how that information qualifies as confidential under subsection (2)(A) of this rule at the same time it responds to the discovery request. If the party seeking discovery disagrees with the designation placed on the information, that party shall follow the informal discovery dispute resolution procedures set forth in 4 CSR 240-2.090(8). If the party seeking discovery exhausts these dispute resolution procedures, that party may file a motion challenging the designation.

(7) Any employee of a party or outside expert retained by a party that wishes to review confidential information shall first certify in writing that such expert or employee of a party will comply with the requirements of this rule.

(A) The certification shall include the signatory's full name, permanent address, title or position, date signed, the case number of the case for which the signatory will view the information, and the identity of the party for whom the signatory is acting.

(C) The party seeking disclosure of the confidential information shall provide a copy of the certificate to the disclosing party before disclosure is made.

(10) Any prefiled testimony that contains information designated as confidential shall be filed with both a public and a nonpublic version as follows:

(A) For the public version, the confidential portions shall be removed. The removal of confidential information shall be indicated by underlining and two (2) asterisks before and after the confidential information, e.g., **confidential information removed**. The designated information shall be removed in such a way that the lineation and pagination of the public version remains the same as the confidential version;

(B) For the nonpublic version of the prefiled testimony, the confidential information shall be indicated by underlining and by two (2) asterisks before and after the confidential information, e.g., **confidential information**;

(C) At the hearing, the party offering the prefiled testimony shall present a public version of the testimony in which the confidential portions are removed. The public version of the testimony will be marked as Exhibit ___. The offering party shall also present a separate copy of the prefiled testimony containing confidential information, sealed in an envelope. The version of the testimony containing confidential information will be marked as Exhibit ___C.

(D) These delineation requirements shall also be used when designating confidential portions of pleadings and briefs.

(11) At any time after the filing of discovery, testimony, brief, or pleading that contains information designated as confidential, the commission may challenge the designation of the discovery, testimony, brief, or pleading. A party may also challenge such a designation at any time by filing an appropriate motion with the commission.

(20) Any reference in any statute or other regulation of this commission that refers to proprietary or highly confidential information shall be interpreted to mean confidential information under this rule.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 160.400–160.425 and 161.092, RSMo 2016, the board amends a rule as follows:

5 CSR 20-100.260 Standards for Charter Sponsorship **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 17, 2017 (42 MoReg 85). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The board received three (3) comments on the proposed amendment.

COMMENTS: Bill Mendelsohn, Executive Director, Charter Schools Office, University of Missouri-St. Louis; Robbyn Wahby, Executive Director, Missouri Charter Public School Commission; and Victoria Hughes, Ed.D., Office of Charter Schools, University of Central Missouri-Warrensburg; noted that they are in support of these changes.
RESPONSE: No changes have been made to the amendment as a result of these comments.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 160.405 and 161.092, RSMo 2016, the board adopts a rule as follows:

5 CSR 20-100.280 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 17, 2017 (42 MoReg 85–86). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The board received three (3) comments on the proposed rule.

COMMENT #1: Bill Mendelsohn, Executive Director, Charter Schools Office, University of Missouri-St. Louis; and Victoria Hughes, Ed.D., Office of Charter Schools, University of Central Missouri-Warrensburg; noted that they are in support of this rule.
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #2: Robbyn Wahby, Executive Director, Missouri Charter Public School Commission, stated "this proposed rule replicates statute language and is not necessary."
RESPONSE AND EXPLANATION OF CHANGE: The board agreed to make the change to clarify the purpose of the proposed rule.

5 CSR 20-100.280 Charter School Expedited Renewal Application Process

PURPOSE: This rule establishes the method for expediting the renewal process for a charter school that meets the requirements of section 160.405.9.(2)(d), RSMo 2016.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 160.400–160.425 and 167.349, RSMo 2016, the board adopts a rule as follows:

5 CSR 20-100.290 Charter School Expedited Replication and Expansion Application Process **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 17, 2017 (42 MoReg 86). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The board received two (2) comments on this proposed rule.

COMMENTS: Victoria Hughes, Ed.D., Office of Charter Schools, University of Central Missouri-Warrensburg, and Robbyn Wahby, Executive Director, Missouri Charter Public School Commission, noted that they are in support of this rule.
RESPONSE: No changes have been made to the rule as a result of these comments.

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 3—Residency and Transfer

ORDER OF RULEMAKING

By the authority vested in the Department of Higher Education under sections 173.005.2(7), 173.081, 173.1150.3, and 173.1153.4, RSMo 2016, the department amends a rule as follows:

6 CSR 10-3.010 Determination of Student Residency **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2017 (42 MoReg 174–177). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: No comments were received.