

delivered to the Missouri Department of Agriculture, Weights, Measures and Consumer Protection Division, Mr. Ronald G. Hayes, Division Director, 1616 Missouri Blvd., Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 90—Weights, Measures and Consumer  
Protection  
Chapter 65—Cadastral Mapping Survey Standards**

**PROPOSED RULE**

**2 CSR 90-65.080 Disclaimer**

*PURPOSE:* This rule describes the disclaimer to be included with any digital or hard copy map produced from a digital cadastral parcel mapping system.

A digital cadastral parcel map provides graphic representation and access to cadastral information, but it does not purport to represent the results of a property boundary survey of each parcel shown. It is not intended for property boundary determination of individual parcels, nor be used in lieu of a property boundary survey by a licensed professional land surveyor. Therefore, prominent display of the following disclaimer, or equivalent wording, shall be on any digital or hard copy map that displays cadastral parcel data.

*"This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries."*

*AUTHORITY:* section 60.670, RSMo 2016. Original rule filed Dec. 1, 2016.

*PUBLIC COST:* This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with Missouri Department of Agriculture, Weights, Measures and Consumer Protection Division, Mr. Ronald G. Hayes, Division Director, PO Box 630, Jefferson City, MO 65102. Hand carried copies may be delivered to the Missouri Department of Agriculture, Weights, Measures and Consumer Protection Division, Mr. Ronald G. Hayes, Division Director, 1616 Missouri Blvd., Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

**PROPOSED AMENDMENT**

**4 CSR 240-2.135 Confidential Information.** The commission is amending sections (1), (2), (3), (4), (7), (9), (10), (11), (12), (15), (17), (18), (19), (20), (21), and (22), adding a new section (4), deleting (5), (6), (8), (13), (14), and (16), and renumbering as necessary.

*PURPOSE:* This amendment revises the procedures for handling confidential information in cases before the commission.

(1) [The commission recognizes two (2) levels of protection for information that should not be made public.] All items filed in case proceedings before the commission shall be open to the public unless protected pursuant to this rule or otherwise protected by law.

**(2) Confidential Designation.**

(A) [Proprietary information is information concerning trade secrets, as well as confidential or private technical, financial, and business information.] Any person may submit to the commission, without first obtaining a protective order, information designated as confidential if that information is—

[(B) Highly confidential information is information concerning—]

1. [Material or documents that contain information relating directly to specific c)Customer/s]-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, [or] consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney shall always be public;

6. Strategies employed, to be employed, or under consideration in contract negotiations; [and/

7. [Information r)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 4 CSR 240-2.135(2)(A) through which that information is protected.

[(2)](3) 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) In addition to information that may be designated as confidential as set out in this rule, any person may seek a protective order from the commission designating specific information as confidential. If a protective order is granted, the protected information shall be considered confidential information. A request for a protective order shall be made as follows:

[(A)]1. By filing a separate pleading denominated "Motion for Protective Order," which may initiate a new case if a related case is not already pending;

[(B)]2. The pleading shall state with particularity why the moving party seeks protection and what harm may occur if the information is made public;

[(C)]3. 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)](B) The information [provided to the commission] for which a claim of confidentiality is made may be designated as



[highly] confidential [or proprietary] while the motion is pending[;] if only the specific information at issue is designated as such.

[(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.]

(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 shall be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.

(A) While such a motion is pending, the information about which such a claim is made may be disclosed only to the attorneys of record or to outside experts that have been retained for the purpose of the case.

(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.

[(3)](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 [as proprietary or highly] confidential.

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

(B) The party that designates discovery information [as proprietary or highly] confidential [must] shall inform, in writing, the party seeking discovery [of the reason for the designation] how each piece of 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, [it must utilize] that party shall follow the informal discovery dispute resolution procedures set forth at 4 CSR 240-2.090(8). If the party seeking discovery [continues to disagree with the designation placed on the information, it] exhausts these dispute resolution procedures, that party may file a motion challenging the designation.

[(C) This rule does not require the disclosure of any information that would be protected from disclosure by any privilege, rule of the commission, or the Missouri Rules of Civil Procedure.]

[(4)](6) [Proprietary] Confidential 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.

(A) The party disclosing information designated as [proprietary] confidential shall serve the information on the attorney for the requesting party.

(B) If a party wants any employee or outside expert to review [proprietary] confidential information, the party [must] shall identify that person to the disclosing party by name, title, and job classification before disclosure. [Furthermore, t]The person to whom the information is to be disclosed [must] shall comply with the certification requirements of section (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] confidential.

[(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.

(A) Employees, officers, or directors of any of the parties in a proceeding, or any affiliate of any party, may not be outside experts for purposes of this rule.

(B) The party disclosing highly confidential information may, at its option, make such information available only on the furnishing party’s premises, unless the discovering party can show good cause for the disclosure of the information off-premises.

(C) The person reviewing highly confidential information may not make copies of the documents containing the information and may make only limited notes about the information. Any such notes must also be treated as highly confidential.

(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 (7) of this rule.

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

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

[(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.]

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

(A) The certification [must] 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 [highly] confidential [or proprietary] information [must] shall provide a copy of the certificate to the disclosing party before disclosure is made.

[(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 (4) and (5).]

[(9)](8) 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] that the other entity has indicated is confidential, the disclosing party [must] shall 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] shall designate the [material or]



information as *[proprietary or highly]* confidential under the provisions of this rule.

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

[(11)](10) *[A party may designate portions of prefiled or live testimony as proprietary or highly confidential. Prefiled testimony]* Any prefiled testimony that contains information designated as *[proprietary or highly]* confidential *[must]* shall be filed with both a public and a nonpublic version as follows:

(A) *[A public version of the prefiled testimony must be filed along with the proprietary or highly confidential version of the testimony.]* For the public version, the *[proprietary or highly]* confidential portions *[must]* shall be *[obliterated or]* removed. *[The proprietary pages must be marked "P" and the removal of proprietary information shall be indicated by one (1) asterisk before and after the information, e.g., \*proprietary information removed\*. The highly confidential pages must be marked "HC" with t]*The removal of *[highly]* confidential information shall be indicated by underlining and two (2) asterisks before and after the *[highly]* confidential information, e.g., *\*\*[highly c]Confidential information removed\*\**. The designated information *[must]* shall be removed *[with blank spaces remaining so]* in such a way that the lineation and pagination of the public version remains the same as the *[highly]* confidential *[and proprietary]* version/s];

(B) For the nonpublic version of the prefiled testimony, the *[proprietary pages must be marked "P" and the proprietary information indicated by one (1) asterisk before and after the information, e.g., \*Proprietary\*. The highly confidential pages shall be stamped "HC" with the highly]* confidential information shall be indicated by underlining and by two (2) asterisks before and after the *[highly]* confidential information, e.g., *\*\*[Highly C]Confidential information\*\**; and

(C) At the hearing, the party offering the prefiled testimony *[must]* shall present a public version of the testimony in which the *[proprietary or highly]* confidential portions are *[obliterated or]* removed. The public version of the testimony will be marked as Exhibit \_\_\_\_\_. The offering party *[must]* shall also present a separate copy of the prefiled testimony containing *[proprietary or highly]* confidential information, sealed in an envelope. The version of the testimony containing *[proprietary or highly]* confidential information will be marked as Exhibit \_\_\_\_\_ *[P or H]C*, as appropriate].

[(12)](11) *[Not later than ten (10) days]* At any time after the filing of discovery or testimony *[is filed]* that contains information designated as *[proprietary or highly]* confidential, *[any party that wishes to]* the commission may challenge the designation of the discovery or testimony *[may file]*. A party may also challenge such a designation at any time by filing an appropriate motion with the commission.

*[(A) If the designation of the testimony is challenged, the party asserting that the information is proprietary or highly confidential must, not later than ten (10) days, unless a shorter time is ordered, file a pleading establishing the specific nature of the information that it seeks to protect and establishing the harm that may occur if that information is disclosed to the public.*

*[(B) If the asserting party fails to file the pleading required by this section, the commission may order that the designated information be treated as public information.*

*(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.*

*(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.]*

[(15)](12) All live testimony, including cross-examination and oral argument, 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]* shall be kept under seal and copies *[will]* shall be provided only to the commission and *[the]* attorneys of record. The contents of such transcripts *[may]* shall not be disclosed to anyone other than those permitted access to the designated information under this rule.

*[(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.]*

[(17)](13) All persons who have access to information under this rule *[must]* shall 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 public utility *[company]*.

[(18)](14) After receiving *[an appropriate writ of review]* a notice of appeal, 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.

[(19)](15) Within ninety (90) days after the completion of *[the]* a 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]* shall 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]* shall be destroyed by the party possessing such information. Any notes pertaining to such information *[must]* shall be destroyed.

[(20)](16) The provisions of sections [(4), (5)] (6), (7), [(8),] and [(19)] (15) 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.

[(21)](17) 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 shall 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]* shall comply with the provisions of sections (7) and *[(19)]* (15). 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]* shall be subject to all provisions of this rule.

*[(22)](18)* A claim that information is *[proprietary or highly]* confidential *[is]* constitutes a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is~~is~~, *in fact, proprietary or highly]* confidential pursuant to the section of this rule cited as justification for the designation.

*[(23)](19)* 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] 2016. Original rule filed May 25, 2006, effective Jan. 30, 2007. Amended: Filed March 2, 2011, effective Oct. 30, 2011. Amended: Filed Nov. 21, 2016.

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

**PRIVATE 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, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before February 2, 2017, and should include reference to Commission Case No. AX-2017-0068. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed amendment is scheduled for February 16, 2017, at 9:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., 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.

**SPECIAL NEEDS:** 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 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 4—Standards of Conduct**

**PROPOSED RULE**

**4 CSR 240-4.015 General Definitions**

**PURPOSE:** This rule sets forth the definitions of certain terms used in rules 4 CSR 240-4.017 through 4 CSR 240-4.050.

(1) Contested case—Shall have the same meaning as in section 536.010(4), RSMo.

(2) Commission—Means the Missouri Public Service Commission as created by Chapter 386, RSMo.

(3) Commissioner—Means one (1) of the members of the Missouri Public Service Commission.

(4) Discussed case—A contested or noticed contested case that includes, or will likely include, substantive issues that are the subject of an ex parte or extra-record communication regulated under this rule.

(5) Ex parte communication—Any communication outside of the case process between a member of the office of the commission and any party, or the agent or representative of a party, regarding any substantive issue in, or likely to be in, a contested or noticed contested case. Ex parte communications shall not include a communication regarding general regulatory policy allowed under section 386.210.4, RSMo, communications listed in 4 CSR 240-4.040, communications made thirty (30) days after the commission issues a final determination in a case, or communications that are de minimis or immaterial.

(6) Extra-record communication—Any communication outside of the case process between a member of the office of the commission and any person not a party to a contested or noticed contested case regarding any substantive issue in, or likely to be in, that contested or noticed contested case. Extra-record communications shall not include communications regarding general regulatory policy allowed under section 386.210.4, RSMo, communications with members of the general assembly or other government official allowed under section 386.210.5, RSMo, communications listed in 4 CSR 240-4.040, communications made thirty (30) days after the commission issues a final determination in a case, communications between the office of the commission and the commission's non-party employees, or communications that are de minimis or immaterial.

(7) Final determination—A decision of the commission that resolves a contested case, including all applications for rehearing and reconsideration.

(8) Noticed contested case—Any case for which a notice of contested case has been filed in compliance with 4 CSR 240-4.017.

(9) Office of the commission—Commissioners, a commissioner, a member of the commission's advisory staff, or the commission's regulatory law judges.

(10) Party—Any applicant, complainant, petitioner, respondent, intervenor, or person with an application to intervene pending in a contested or noticed contested case before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate in the relevant proceeding within the period of time established for interventions by commission rule or order.

(11) Person—Any individual, partnership, company, corporation, cooperative, association, political subdivision, or any other entity or body.

(12) Public counsel—Shall have the same meaning as in section 386.700, RSMo.

(13) Substantive issue—Facts, evidence, claims, or positions specific to a contested or noticed contested case that have been or are likely to be presented or taken in that case. The term substantive issue does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case.