

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-4.015

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

Name of person to call with questions about this rule:

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TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date
- Proposed Rulemaking
- Withdrawal Rule Action Notice In Addition Rule Under Consideration
- Request for Non-Substantive Change
- Statement of Actual Cost
- 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:

Sections (1), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14)

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
APR 06 2017
ADMINISTRATIVE RULES



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

March 29, 2017


Daniel Hall
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

Dear Daniel:

This office has received your rulemaking for ex parte / extra-record communications: 4 CSR 240-4.015; 4 CSR 240-4.017; 4 CSR 240-4.020; 4 CSR 240-4.030; 4 CSR 240-4.040; and 4 CSR 240-4.050.

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations. After our review of this rulemaking, we approve the rules' submission to JCAR and the Secretary of State.

Sincerely,


Justin D. Smith
Deputy Counsel



Commissioners
DANIEL Y. HALL
Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY
SCOTT T. RUPP
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Missouri Public Service Commission

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John R. Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-4.015 General Definitions

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

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

Statutory Authority: sections 386.410, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

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Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

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

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-4.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2017 (42 MoReg 17-18). Those sections with changes are reprinted here. The proposed rule 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 on February 16, 2017, the commission held a public hearing on the proposed rescission. Timely written comments were received from the Office of the Public Counsel (OPC), the Missouri Energy Development Association (MEDA), the Missouri Cable Telecommunications Association (MCTA), Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), Missouri Industrial Energy Consumers (MIEC), Midwest Energy Consumers Group (MECG), and Consumers Council of Missouri. In addition to those entities, the commission's staff, Missouri American Water Company, Laclede Gas Company, Kansas City Power & Light Company, Empower Missouri, and AARP all offered comments at the hearing. The comments of regulated utilities and utility associations generally supported the proposed rule, with modifications. The Office of the Public Counsel and other organizations representing consumers all strongly opposed adopting the proposed rule.

COMMENT #1: Application of the proposed rule would be limited to contested cases, but OPC suggests adding the words "pending case" throughout the section to also include non-contested cases, which can be cases involving large sums of money of great public interest. Staff also expressed the opinion that the definition of an ex parte communication should be expanded to include all pending cases, rather than limited to contested cases, as it is sometimes hard to distinguish between contested and non-contested cases. MCTA is also concerned that the proposed rule limits ex parte and extra record communications to contested cases.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that distinguishing between contested and non-contested cases is difficult and that



the ex parte and extra-record communication requirements should apply to all pending cases, with limited exceptions. However, rather than adding the words "pending case" throughout the rules, it would be more clear and efficient to remove the definition of "contested case" and replace it with a new definition of "case" to reach the same result throughout the revised rules.

COMMENT #2: MCTA stated that the disclosure of communications regarding general regulatory policy under the existing rule should be continued and not excluded from the definitions of ex parte and extra record communications. OPC proposes to include a new section with a definition of "general regulatory policy" to prevent ambiguity, since the phrase is stated throughout the revised rules.

RESPONSE: The Commission has determined that adding a definition of general regulatory policy would not be helpful, as any definition would be too broad and the new definitions of "ex parte communication" and "extra-record communication" should remove any confusion as to application of the rules. No changes have been made to the rule as a result of this comment.

COMMENT #3: Ameren Missouri comments that the words "or more" should be included in sections 5 and 6 to make clear that communications that occur any time after 30 days has passed once the Commission has fully disposed of a case are not ex parte communications and not just communications that take place on the 30th day.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that for clarity the words "or more" should added as suggested.

COMMENT #4: Ameren Missouri comments that the proposed language in section (6) regarding the Commission's "non-party employees" is confusing for persons unfamiliar with Commission operations and could result in disputes in the future, considering that other rules define the Commission Staff to include all employees working for the Commission other than Commissioners. Ameren Missouri suggests replacing the phrase "the commission's non-party employees" with "commission employees within the commission's executive or administration divisions" to make more clear which employees are excluded from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that this language could be confusing, but rather than adopting Ameren Missouri's proposed alternative the Commission will use the phrase "commission employees who are not commission staff" and include in this rule a new section with a definition of "commission staff".

COMMENT #5: In the proposed rule 4.017(4), OPC and Ameren Missouri state that the language refers to Section 386.210.4, RSMo, but does not quote it entirely, and suggest that additional language from the statute should be added

to make it clear that discussion of the merits of specific facts and evidence are not permitted communications.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with these comments and will revise the definition of “substantive issue” in subsection (14) with the words “Merits of specific facts, evidence, claims, or positions...” to correct this error.

4 CSR 240-4.015 General Definitions

(1) Case— Any matter filed before the commission for its determination except working dockets, rulemaking dockets, and investigatory dockets.

(4) Commission staff – Commission employees who report to the Staff Director.

(5) Discussed case—A case or noticed 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.

(6) 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 case or noticed 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 or more after the commission issues a final determination in a case, or communications that are de minimis or immaterial.

(7) 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 case or noticed case regarding any substantive issue in, or likely to be in, that case or noticed 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 or more after the commission issues a final determination in a case, communications between the office of the commission and commission employees who are not commission staff, or communications that are de minimis or immaterial.

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

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

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

(11) Party—Any applicant, complainant, petitioner, respondent, intervenor, or person with an application to intervene pending in a case or noticed 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.

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

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

(14) Substantive issue—Merits of specific facts, evidence, claims, or positions specific to a case or noticed 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 case.