

John R. Ashcroft

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

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MAY 10 2017

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

COPY

Rule Number 4 CSR 240-4.017

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

Name of person to call with questions about this rule:

Content Michael Bushmann Phone 573-751-4393 FAX 573-526-6010

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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
☐ 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), (3), (4), (5), and (6)

**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

MAIDA J. COLEMAN

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 240-4.017 General Provisions

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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Jefferson City, MO 65102
(573) 751-4393
Michael.bushmann@psc.mo.gov

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

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

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MAY 10 2017

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

COPY

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

4 CSR 240-4.017 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 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: OPC comments that in section (1) the word "any" should be removed and substituted with the word "all" in order to encompass the entirety of communications and not just a select few.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees and will make the requested change.

COMMENT #2: Staff cautioned that the proposed 60-day notice provision of section (1) does not appear in the statute and so may not be authorized by law. Ameren Missouri is concerned about this requirement and states that the proposed rule, as written, effectively transforms all tariff filings into 90-day tariffs, rather than in 30 days as contemplated by Section 393.140(11), RSMo. MEDA

JOINT COMMITTEE ON

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ADMINISTRATIVE RULES

and Laclede recommend that subsection (1) be deleted because it is unfair and unlawful and instead require a filing party to submit a declaration stating that it has not discussed the matter with any commissioner during a reasonable period (30 or 60 days) prior to the filing.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that section (1) does not unlawfully limit access to the Commission because of the ability of a party to request waivers, which are routinely granted. The Commission has made this provision apply to all cases, not just contested cases, as it has done throughout the six proposed rules at the request of several commenters to avoid confusion regarding to what cases the provision applies. Finally, while nothing in the statute specifically authorizes a 60-day notice, such a notice does not conflict with any principle or provision of the statute and strikes an appropriate balance between transparency and the free exchange of information regarding general regulatory policy.

COMMENT #3: OPC states that the Commission should replace the word "may" in subsection (1)(A) with the mandatory language "shall".

RESPONSE: The Commission disagrees with the comment and finds that the word "may" is appropriate to maintain Commission discretion in responding to non-compliant filings. No changes have been made to the rule as a result of this comment.

COMMENT #4: OPC comments that the proposed rule cannot limit complaints filed under Section 386.390, so the words "section 386.390 RSMo or" in subsection (1)(C) should be added before citing the rule 2.070.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees and will make the suggested change.

COMMENT #5: OPC states that the filing requirement in subsection (1)(C) is an unnecessary burden on OPC when it brings an action to protect the public. The information the Commission seeks to require is more appropriate in the complaint filing requirements of rule 2.070(4).

RESPONSE: The Commission disagrees that the filing requirement is an unnecessary burden on OPC and determines that all parties should be treated equally with regard to the filing requirements. If any party wishes to argue harm will result from complying with the notice requirement in any particular case, that party may do so in a waiver request, as provided for in the rule. No changes have been made to the rule as a result of this comment.

COMMENT #6: Ameren Missouri proposes the following alternative language in subsection (1)(D) about what a party should file to demonstrate good cause for a waiver of the 60-day notice: Good cause for waiver may include..."that

circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm, or stating facts demonstrating that making a tariff effect on less than sixty-day's notice would not result in any harm, notwithstanding that a sixty-day notice has not been given". OPC states that the entire sentence about filing a declaration to show good cause should be deleted because the declaration cannot be independently verified and would not protect against ex parte communications about issues raised by intervening parties.

RESPONSE: The Commission disagrees with the comments that the language regarding good cause should be amended. It is not necessary to specify all circumstances that would qualify as good cause. The Commission also disagrees that the good cause language should be deleted. The opportunity to request a waiver is important to protect against potential harms of waiting 60 days to file a case, and it is necessary to argue good cause in order to receive a waiver. No changes have been made to the rule as a result of this comment.

COMMENT #7: OPC comments that in section (3) additional documentation of each tour should be made in all open case files. OPC suggests adding the following sentence to the subsection: "After each tour a summary shall be disclosed in each open case file for the sponsoring utility. The summary shall be in accordance with the requirements of 4 CSR 240-4.020(2)."

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the section should be amended, but the suggested language would require filings in cases that are not related to the subject matter disclosed. The Commission will instead change the language of the rule to provide that if a commissioner chooses to participate in a tour, the tour shall be posted to that commissioner's calendar at least forty-eight (48) hours in advance.

COMMENT #8: OPC and Ameren Missouri state that Section (4) of the rule refers to Section 386.210.4, RSMo, but does not quote it entirely. OPC and Ameren Missouri 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: These comments were accommodated by revising the definition of "substantive issue" in proposed rule 4 CSR 240-4.015(14). No changes have been made to this rule as a result of this comment.

COMMENT #9: OPC proposes to add a new section substantially reflecting the wording in the current rule 4 CSR 240-4.020(9) to ensure that Commissioners keep calendars available to the public displaying the notices and other disclosures required by other sections of the rules.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the section should be amended, but the suggested language is inconsistent with this proposed rule and proposed rule 4 CSR 240-4.015. The Commission will

instead change the language of the rule to provide that each Commissioner shall maintain a public calendar on the Commission's website to which the Commissioners' regulatory activities may be posted.

COMMENT #10: OPC proposes to add a new section substantially reflecting the wording in the current rule 4 CSR 240-4.020(11) to prevent future parties from attempting to unduly influence the Commission and provide a method to publicly disclose the communication once a case is filed.

RESPONSE: The Commission disagrees with the suggested language because it is unnecessary and inconsistent with the definitions in this proposed rule and proposed rule 4 CSR 240-4.015. However, the change made in response to Comment #11 below addresses the portion of the comment that expresses concerns about influencing future cases.

COMMENT #11: OPC proposes to add a new section substantially reflecting the wording in the current rule 4 CSR 240-4.020(12) as a policy statement that it is improper for interested persons and parties to attempt to sway the judgment of the Commission outside of the hearing process.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that such a section should be added, but will change the suggested language to better reflect the definitions applicable to this rule and to include a prohibition on eliciting representations from the Commission regarding future rulings or positions in future deliberations.

4 CSR 240-4.017 General Provisions

(1) Any person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission and shall include a summary of all communication regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the ninety (90) days prior to filing the notice. The filing of such notice shall initiate a new noticed case and be assigned an appropriate case designation and number. If the expected case filing is subsequently made, it shall be filed in the noticed case. If the expected case filing is not made within one hundred eighty (180) days, the noticed case shall close.

(A) The commission may reject any filing not in compliance with this section.

(B) This section shall not apply to small formal complaints under commission rule 4 CSR 240-2.070 or small utility rate cases under commission rule 4 CSR 240-3.050.

(C) This section shall not apply to formal complaints under section 386.390, RSMo, or Commission rule 4 CSR 240-2.070. However, formal complaints shall include, contemporaneous with the filing initiating the complaint, a summary of any communication regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the sixty (60) days prior to filing the complaint.

(D) A party may request a waiver of this section for good cause. Good cause for waiver may include, among other things, a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case or that circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.

(3) A utility regulated by the commission that offers a tour of its facilities to the office of the commission shall also offer the Office of the Public Counsel an opportunity to participate in that tour. If a commissioner chooses to participate in a tour, the tour shall be posted to that commissioner's calendar at least forty-eight (48) hours in advance.

(4) Each commissioner shall maintain a public calendar on the commission's website to which the commissioners' regulatory activities may be posted.

(5) It is improper for any person interested in a case or noticed case to—

(A) Attempt to influence the judgment of the commission by bringing pressure to bear upon the office of the commission outside of the case process, or

(B) Seek to elicit representations from the office of the commission before a case or noticed case is filed regarding the commission's future rulings or any commissioner's positions in future deliberations.

(6) Pursuant to section 386.210.4, RSMo, nothing in this rule shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address substantive issues in or likely to be in a case or noticed case.