

**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 240-4.020

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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Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

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Interagency mailing address Public Service Commission, 9<sup>th</sup> 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), and (4)

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 240-4.020 Ex Parte Communications

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:

Michael Bushmann, Senior Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4393  
[Michael.bushmann@psc.mo.gov](mailto: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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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 240-4.020 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 19). 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 subsection (1)(A) the words "make a reasonable effort to" should be removed, as such improper communications should be terminated immediately.

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

**COMMENT #2:** In section (2), Ameren Missouri suggests that two business days should be permitted to make the required filing, as there could be circumstances where personnel needed to provide the information for the filing are not available in sufficient time to prepare the filing just one business day after the communication occurs.

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**RESPONSE:** The Commission disagrees with the comment because Section 386.210.3, RSMo, requires such filings be made “no later than the next business day following the communication”. No changes have been made to the rule as a result of this comment.

**COMMENT #3:** OPC states that subsection (2)(A) as written permits parties guilty of violating ex parte rules to self-select where the notice is filed. The notice should be filed in “all noticed and pending cases” and not just for each discussed case.

**RESPONSE:** The Commission disagrees with the comment and finds that the appropriate location for filing is in each discussed case. No changes have been made to the rule as a result of this comment.

**COMMENT #4:** OPC comments that in section (3), rather than just saying that the filing must be made as soon as practicable, the time to make the filing should be specifically defined, such as by adding the phrase “but no later than three days later”.

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

**COMMENT #5:** OPC proposes to add a new section substantially reflecting the wording in the current rule 4 CSR 240-4.020(15) to enable the Commission to inquire of parties why sanctions should not be issued for a violation of the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission agrees that the section should be added, but will change the language of the rule to remove reference to an “anticipated party”, as that term is not used in the proposed rules.

#### **4 CSR 240-4.020 Ex Parte Communications**

(1) Neither any party nor any member of the office of the commission shall initiate, participate in, or undertake, directly or indirectly, an ex parte communication.

(A) If such a communication occurs, the party and the member of the office of the commission involved in the communication should immediately terminate the communication.

(3) If an ex parte communication occurs and the initiating party fails to file a notice in the manner set forth in section (2), any other party or member of the office of the commission involved in the communication, upon learning of the person's failure to file such notice, shall give notice of the ex parte communication in the manner set forth in section (2) as soon as practicable but no later than three days later.

(4) The commission may issue an order to show cause why sanctions should not be ordered against any party engaging in an *ex parte* communication.