

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Proposed Amendments to)
the Commission's Ex Parte and) File No. AX-2017-0128
Extra-Record Communications Rule.)

COMMENTS OF AMEREN MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and, pursuant to the *Notice to Submit Comments* in this docket published in the *Missouri Register*, hereby submits these comments on the proposed rescission of 4 CSR-4.020, and on the proposed adoption of 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, as follows:

1. In the workshop docket that preceded the initiation of the rulemaking process taking place in this docket, the Commission indicated its goals for making changes to its existing ex parte and extra-record rules¹ were to: (1) comply with Section 386.210.4, RSMo., which mandates the Commission’s rules not impose “any limitation on the free exchange of ideas, views and information between any person and the commission or any commissioner” if certain conditions exist; (2) simplify compliance with the rule; and (3) promote consistency and fairness. The Company supports those goals, as it did in earlier communication rules proceedings, in which it was an active participant. *See* File No. AX-2010-0128 (which led to the adoption of the current communication rules); AX-2010-0128 (where amendments were considered, but later withdrawn by the Commission); AW-2016-0312 (the most recent workshop to address these issues). These goals are appropriate because the current communication rules are in some respects inconsistent with each of those goals.

¹ Hereinafter, the Company will refer to these rules as the “communication rules.”

2. While the Company is offering a few suggestions in these comments, the Company is largely supportive of the rescission of current 4 CSR 240-4.020 (the “existing rules”) and of the proposed communication rules because the proposed language substantially supports each of the goals identified above. The Company is particularly encouraged by the changes that address some of the most troublesome aspects of the existing rules, which were the subject of Ameren Missouri (and other party) comments in prior dockets. For example, a consistent theme advanced by Ameren Missouri in all the prior dockets referenced above was that the existing rules should at all times maintain a level playing field for utilities under the Commission’s jurisdiction, and for other persons or entities who are or may be parties in Commission cases. This is because a key shortcoming of the existing rules is that the playing field is not level. *See e.g.*, existing 4 CSR 240-4.020(8), which imposes requirements on utilities that simply do not apply to non-utility litigants. Another key shortcoming of the existing rule, which Ameren Missouri has also previously identified, is that it is unduly complex and in practice, is frankly difficult to apply. Consistent with the Commission’s goals, the proposed communications rules are fairer and are far more straightforward in their application.

3. The remainder of these comments provide specific suggestions and supporting commentary for further improving the proposed communications rules.

4 CSR 240-4.015

4. Subsection (5) – Definition of “ex parte”. The phrase “thirty (30) days” in subsection (5) should read “thirty (30) days or more.” The subsection of the rule is attempting to exclude communications that would otherwise meet the definition of an “ex parte communication” from that definition if they occur on or after a set period (here, 30 days) has passed since the Commission has fully disposed of a case. As written, the language could be

read to exclude such communications from the definition of “ex parte communications” only if the communication takes place *on* the 30th day.

5. Subsection (6) – Definition of “extra-record”. The “thirty (30) days” provision in this subsection should also read “thirty (30) days or more” for the reasons just given.

The only other issue in subsection (6) that should be further clarified deals with the phrase “communications between the office of the commission and the commission’s non-party employees.” As written, it is arguably unclear what that phrase means.

Ameren Missouri assumes the phrase is an attempt to exclude from the definition of “extra-record” communications the office of the commission has with Commission employees that are *not* part of the “Commission Staff Division” or “Administrative Division.” This would leave the office of the commission free to engage in what would otherwise be “extra-record” communications with the Executive, Administration and General Counsel Divisions. Such an exclusion would be appropriate because only employees that are part of the Commission Staff Division participate as parties to the cases in front of the Commission. While those familiar with Commission operations can, as the Company believes it has done, discern that this is what is intended by the phrase “communications between the office of the commission and the commission’s non-party employees,” it is important that the rule itself be clear to avoid confusion or disputes later, particularly given the existence of other rules that define the “Commission staff” to include every single employee working for the Commission (except the Commissioners themselves). *See* 4 CSR 240-2.010(5). Even if that other definition did not exist, it is important that the rules be clear to avoid confusion/disputes.

Ameren Missouri suggests that the phrase “communications between the office of the commission and the commission’s non-party employees” be modified to read as follows:

communications between the office of the commission and commission employees within the commission's executive or administration divisions.

4 CSR 240-40.17

6. Subsection (1) – Notice. The proposed rule changes the existing pre-filing notification for contested cases so that it creates a 60-day window instead of allowing notices given under the existing rule to effectively “live” forever.

The Company had previously expressed concerns about requiring a filing 60 days in advance for certain kinds of cases. This is because while a utility will generally know sufficiently in advance for major cases (like a general rate case or a certificate of convenience and necessity case for a major, long lead time project) to give the 60-day notice, there are cases, including many tariff filings, which can arise such that the case needs to be filed in a significantly shorter time frame and where there is no harm in doing so. 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).

The Company acknowledges that the proposed communications rule attempts to address these concerns in part by indicating that “good cause” for a waiver may include, “among other things,” a verified declaration “that circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.” The Company suggests expanding this language so that it reads “among other things,” a verified declaration “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 effective on less than sixty-day notice would not result in any harm, notwithstanding that a sixty-day notice has not been given.”

7. Subsection (4) – 386.210. The subsection conflicts with Section 386.210.4. The statute provides that nothing in the statute or “any other provision of law” shall limit information exchanges with the Commission if (a) the matter relates to “general regulatory policy” and (b) if it does not address the “*merits of the specific facts, evidence, claims, or positions . . .*” (emphasis added). The proposed communication rule’s definition of “substantive issue,” which is referred to in this Subsection (4), does not limit the definition of “substantive issue” to the *merits of the facts or evidence*. It only limits the definition of “substantive issue” to “*the*” facts that are specific to the case at issue. So that it does not conflict with the statute, Subsection (4) must therefore be revised to read:

Pursuant to section 386.210.4, nothing in this rule shall be construed as imposing any limitation on the free exchange of ideas . . . between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address the *merits of the specific facts, . . .* (emphasis added).

4 CSR 240-4.020 and 4.030

8. Subsection (1) [4.020] and (2) [4.030]. The Company recommends the Commission consider providing two (2) business days to make the required filing. While the Company fully understands and appreciates the reason for requiring a prompt filing, there could be circumstances where personnel needed to provide the information the proposed rule requires are not available in sufficient time to make the filing just one business day after the communication occurs.

The Company also notes that given the very appropriate change between the existing rule and the proposed communication rules to limit the filing of the notice to the case(s) that is discussed, changes will need to be made in the Commission’s Electronic Filing and Information System (“EFIS”) so that filings do not populate the dockets of all the utility’s cases. This is a

significant improvement insofar as populating all dockets with notices has historically created confusion for parties to the non-discussed case dockets, particularly dockets involving individual consumer complainants.

The Company appreciates the opportunity to submit these Comments.

Respectfully submitted,

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