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Rule: Limit on use and disclosure of non-public information  
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State: Alabama  
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PUBLIC COMMISSION RULE

PSC Rules

Section 37-1-13

Any regular or special employee of the Public Service Commission who divulges any fact or information coming to his knowledge respecting any inspection, examination or investigation of any account, record, memorandum, book or paper, or of the property and facilities of a utility, except insofar as he may be authorized by the commission or a court of competent jurisdiction, or a judge thereof, is guilty of a misdemeanor, and upon conviction shall be fined not more than \$1,000.00.

(Acts 1907, Ex. Sess., No. 15, p. 29; Acts 1920, No. 42, p. 92; Code 1923, §5388; Code 1940, T. 48, §15.)

Section 36-25-8

Use or disclosure of confidential information for private financial gain.

No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.

(Acts 1973, No. 1056, p. 1699, &sect;6; Acts 1975, No. 130, p. 603, &sect;1; Acts 1995, No. 95-194, p. 269, &sect;1.)

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State: Alaska  
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ADMINISTRATIVE CODE

3 AAC 48.040. Confidential records

(a) Except as provided in (b) of this section, the records in the possession of the commission, its advisory staff, or the public advocacy section are open to inspection by the public during regular office hours.

(b) The following records are confidential and are not open to inspection by the public unless they are released under 3 AAC 48.049 or court order or their release is authorized by the person with confidentiality interests:

(1) bids for contracted services received in response to an invitation to bid issued by the commission until after the notice of intent to award a contract is given by the commission;

(2) communications relating to personnel matters and medical or other personal information that, under governing personnel practices and the laws of the state, are not public information;

(3) records filed with the commission that are confidential under AS 42.06.445 (c);

(4) records classified as confidential under a protective order of the commission or the court;

(5) records designated as confidential by written agreement among the parties to adjudicatory matters before the commission for the purpose of conducting discovery;

(6) communications, regarding confidential legal advice or assistance, between legal counsel for the commission and the commission, its advisory staff, or its consultants, and between legal counsel for the public advocacy section and that section or its consultants, and documents prepared by or at the direction of legal counsel that contain investigative conclusions or are created for litigation or adjudicatory matters involving the commission;

(7) preliminary records relating to an investigation by the commission until the investigation is complete or formal proceedings have been initiated by the commission;

(8) records of deliberations on adjudicatory matters before the commission;

(9) notes, drafts, and analyses used to aid the commission in the preparation of any order or finding on adjudicatory matters;

(10) records of a regulated public utility, pipeline carrier, or pipeline submitted to or copied by the commission's advisory staff or the public advocacy section during any audit, review, or investigation in connection with any formal or informal proceeding;

(11) records classified as confidential in accordance with 3 AAC 48.045.

History: Eff. 1/13/73, Register 44; am 6/29/84, Register 90; am 7/12/92, Register 123; am 3/21/2003, Register 165

Authority: AS 40.25.110

3 AAC 48.049. Access to confidential records

(a) A confidential record will not be made public or furnished to any person other than to the commission, its advisory staff, its consultants, and other authorized representatives, or to the public advocacy section, its consultants, and other authorized representatives of the public advocacy section, except under a subpoena duces tecum or as provided under (b) - (h) of this section.

(b) A person may file a written motion requesting access to a record that the commission has designated as confidential. The motion must identify as specifically as possible the record to which access is sought and must set out the reasons access is sought.

(c) The person filing the motion described in (a) of this section shall serve the person with confidentiality interests in the record with a copy of the motion. Within 15 days following service of the motion, the person with confidentiality interests in the record may submit its response.

(d) The commission will, at the earliest possible time, issue its determination to grant or deny the motion requesting access, as follows:

(1) if the commission determines that the record should be made public, the commission will notify the person filing the motion and the person with confidentiality interests in the record of the commission's intent to release the record;

(2) within seven days following service of the notice of the commission's intent to release, the person with confidentiality interests in the record may petition for reconsideration or for withdrawal of the record;

(3) if neither reconsideration nor withdrawal of the record is requested, the record becomes public at the end of the seven-day period prescribed in (2) of this subsection;

(4) if reconsideration or withdrawal of the record is requested under (2) of this subsection and the request is denied, the commission will notify the person with confidentiality interest in the record and the person filing the motion for access and the record becomes public on the date set out in the commission's order denying reconsideration or withdrawal;

(5) if a petition for reconsideration or for withdrawal of the record is granted, the commission will issue an order that reclassifies the record as confidential or restricts access to it.

(e) Disclosure of a record covered by a protective order of the commission or the court that prescribes procedures for disclosure other than those contained in this section will be governed by the terms of the order rather than by this section.

(f) A record designated as confidential by order of the commission and entered into evidence in an adjudicatory matter will be disclosed to the parties in the matter under a protective order unless this requirement is waived by the person with confidentiality interests in the record. Examination of the confidential record will be conducted by the commission in camera, and the portions of the record that are confidential will be placed under seal by the commission.

(g) If a party intends to enter as evidence a record designated as confidential under 3 AAC 48.040(b) (5) or (b)(10), that party shall provide the person with confidentiality interests in the record at least five days' notice of that party's intent. Unless within five days after service of that notice the person with confidentiality interests in the record files a petition for confidential status of the record under 3 AAC 48.045(a), the record becomes public when presented to the commission.

(h) If the confidential record to which access is sought is in the possession of a consultant employed by the commission and if access is granted, the person who requests the record will, in the commission's discretion, be required to reimburse the consultant directly for costs incurred in producing the record.

History: Eff. 6/29/84, Register 90; am 7/12/92 Register 123; am 3/21/2003, Register 165

Authority: AS 42.05.141

§ 44.62.795. Confidentiality of certain records and documents

Notwithstanding AS 40.25.100--40.25.220, records from private persons that are requested or used by a negotiated regulation making committee and working documents prepared by the committee that analyze or incorporate information from the records shall be kept confidential if the records or working documents contain proprietary information and the owner of the records or working documents requests that the records or working documents be kept confidential.

STATE ETHICS LAW

AS 39.52.140. Improper Use or Disclosure of Information.

(a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

(b) A current or former public officer may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law.

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State: Arizona

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## PUBLIC UTILITIES STATUTE

40-204. Reports by public service corporations to commission; duty of corporation to deliver documents to commission; confidential nature of information furnished; exception; classification

A. Every public service corporation shall furnish to the commission, in the form and detail the commission prescribes, tabulations, computations, annual reports, monthly or periodical reports of earnings and expenses, and all other information required by it to carry into effect the provisions of this title and shall make specific answers to all questions submitted by the commission. If a corporation is unable to answer any question, it shall give a good and sufficient reason therefor.

C. No information furnished to the commission by a public service corporation, except matters specifically required to be open to public inspection, shall be open to public inspection or made public except on order of the commission entered after notice to the affected public service corporation, or by the commission or a commissioner in the course of a hearing or proceeding.

D. Any officer or employee of the commission who knowingly divulges any such information is guilty of a class 2 misdemeanor.

## State Ethics Law

### 38-504. Prohibited acts

A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

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State: Arkansas

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## STATE ETHICS LAW

### § 21-8-304. Prohibited activities

(a) No public official or state employee shall use or attempt to use his or her official position to secure special privi-leges or exemptions for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

(b) No public official or state employee shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or regulation to be confidential.

(c) No public official or state employee shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.

### § 21-8-801. Prohibited acts generally

(a) No public servant shall:

(1) Receive a gift or compensation as defined in § 21-8-401 et seq., other than income and benefits from the gov-ernmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position; or

(2) Purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant's official duties, to secure anything of material value or benefit for himself or herself or his or her family.

(b)(1) No person shall confer a gift or compensation as defined in § 21-8- 401 et seq. to any public servant, the re-ceipt of which is prohibited by subdivision (a)(1) of this section.

(2)(A) The first violation of this subsection by any person other than a registered lobbyist shall result in a written warning.

(B) Upon a second violation and subsequent violations by persons other than registered lobbyists and upon a first violation by registered lobbyists, the penalties provided for in § 7-6-218 shall apply.

§ 21-8-1003. Confidential information

No member of a state board or commission or board member of an entity receiving state funds shall disclose confidential information acquired by him or her in the course of the member's official duties or use such information to further his or her personal interests.

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State: California

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State: Colorado

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COMMISSION RULE  
STANDARDS OF CONDUCT  
1465955 1100. Confidentiality

1465956 These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, or a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in a formal docket, requests to restrict public inspection of information outside of a formal docket, or requests for information under the Public Records Law. Eff 05/30/2008

1465957 (a) All documents, data, information, studies, computer programs, and other matters filed with the Commission in any form in a proceeding, or produced in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or produced in response to audit conducted by the Commission or its Staff, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of this rule. All persons accorded access to such confidential information shall treat such information as constituting trade secret or confidential information and shall neither use nor disclose such information except for the purpose of the proceeding in which such information is obtained and in accordance with this rule. Eff 05/30/2008

STATE ETHICS LAW

§ 24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:

(a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or

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State: Connecticut

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PUBLIC UTILITIES LAW  
16-2. Public Utilities Control Authority. Members, appointment, term, qualifications.

(i) No member of the authority or employee of the department shall wilfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment or use any such information for the purpose of pecuniary gain.

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State: Delaware

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COMMISSION RULES

1.11 Submission of Confidential, Proprietary, and Privileged Material

1.11.6 Non-public information shall not be disclosed by the Commission, its Staff, the Division of the Public Advocate, and their consultants and any party to a proprietary agreement and its consultants except as authorized by law.

§ 113. Testimony by member, employee or investigator of Commission.

No member, employee or investigator of the Commission shall be required to give testimony in any court suit to which the Commission is not a party with regard to information obtained by such member or employee in the discharge of official duty.

§ 5805. Prohibitions relating to conflicts of interest.

(e) Unauthorized disclosure of confidential information.

No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807(b) or (d), or § 5810(h) of this title.

#### STATE ETHICS LAW

§ 5806. Code of conduct.

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(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

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State: District of Columbia

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#### DISTRICT ETHICS REGULATION

DC Personnel Regulations, Chapter 18, Part I

1804.3 An employee may engage in teaching activities, writing for publication, consultative activities, and speaking engagements that are not prohibited by law, regulation, or agency standards, only if such activities are conducted outside of regular working hours, or while the employee is on annual leave or leave without pay.

1804.4 The information used by an employee engaging in an activity under § 1804.3 shall not draw on official data or ideas which have not become part of the body of public information, except nonpublic information that has been made available on request for use in such capacity, or unless the agency head gives written authorization for use on the basis that its use is in the public interest.

1804.5 If the employee receives compensation or anything of monetary value for engaging in an activity under § 1804.3, the subject matter shall not be devoted substantially to the responsibilities, programs, or operations of his or her agency, to his or her official duties or responsibilities, or to information obtained from his or her government employment.

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State: Florida

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#### STATE ETHICS LAW

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.--

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(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

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State: Georgia

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#### COMMISSION STATUTE/RULE

§ 46-2-29. Imparting information to others by public service commissioners prohibited

(a) No member or employee of the commission shall, except when legally called upon by a court of competent jurisdiction, disclose or impart to anyone any fact which was obtained in his official capacity from or through any proceeding filed with the commission under Code Section 46-2-28, provided that this Code section shall not apply to any fact or information which is obtained through public hearings or which is not confidential in nature.

(b) Any person who violates this Code section shall be guilty of a misdemeanor.

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State: Hawaii

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#### STATE ETHICS LAW

Hawaii Revised Statutes, Chapter 84: Standards of Conduct  
Part II. Code of Ethics

§84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone.

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State: Idaho

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STATE CRIMINAL LAW

Title 18. Crimes and Punishments

Chapter 13A. Bribery and Corrupt Influence

§ 18-1359. Using public position for personal gain

...

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.

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State: Illinois

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PUBLIC UTILITIES ACT

Chapter 220. Utilities Act

5. Public Utilities Act

Article I. Title and Purpose

5/5-108. Divulging information from inspection, examination or investigation; penalty

§ 5-108. Any officer or employee of the Commission who divulges any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any account, record, memorandum, book or paper of a public utility, except in so far as he may be authorized by the Commission or by a circuit court, shall be guilty of a Class A misdemeanor.

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State: Indiana

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INDIANA ETHICS LAW

Title 4. State Offices and Administration

Article 21.5. Administrative Orders and Procedures (Refs & Annos)

Chapter 6. Ethics and Conflicts of Interest

4-2-6-5.5 State officers and employees; incompatible outside employment; use of position to secure unwarranted privileges

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

...

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

...

(b) A written advisory opinion issued by the commission or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

4-2-6-6 Present or former state officers and employees; special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

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State: Iowa

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State: Kansas

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STATE GOVERNMENT ETHICS LAW

Chapter 46. Legislature

Article 2. State Governmental Ethics

46-241. Disclosure or use of confidential information by state officer or employee

No state officer or employee shall disclose or use confidential information acquired in the course of his or her official duties in order to further his or her own economic interest or those of any other person.

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State: Kentucky

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## STATE ETHICS LAW

### Chapter 11A. Executive Branch Code of Ethics

11A.020 Public servant prohibited from certain conduct; exception; disclosure of personal or private interest

11A.040 Acts prohibited for public servant or officer; exception

(1) A public servant, in order to further his own economic interests, or those of any other person, shall not knowingly disclose or use confidential information acquired in the course of his official duties.

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State: Louisiana

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## LOUISIANA PUBLIC SERVICE COMMISSION

### GENERAL ORDER AMENDING RULES OF PRACTICE AND PROCEDURE (08/31/92)

In Re: Treatment of information designated as Trade Secret, Proprietary, or Confidential.

...

Upon request of regulated entity or any other person, any records received by the Commission which are shown by the company or other person and found by the Commission to be trade secret, proprietary, or confidential information, and not necessary to be disclosed to the public, shall be kept confidential and shall be exempt from public disclosure.

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State: Maine

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## PUBLIC UTILITIES STATUTE

### Maine Statute Chapter 35-A, Chapter 1: Organization, General Powers and Duties

#### Part 1: Public Utilities Commission

#### §112. Power to obtain information

3. Inspection of books and papers; confidentiality. The following provisions apply to inspection of books and papers.

A. The commission or any commissioner or any person employed by it for that purpose, may upon demand inspect and copy the books, accounts, papers, records and memoranda of any public utility in relation to its business and affairs.

B. A person other than a commissioner must produce his authority to make an inspection.

C. A person employed by the commission to inspect utilities documents may not divulge information ascertained by inspection except:

(1) To the commission; or

(2) Under direction of the commission.

D. Any person who violates this subsection is guilty of a Class E crime.

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State: Maryland

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## STATE UTILITIES LAW

### West's Annotated Code of Maryland

#### Public Utility Companies

#### Title 2. Public Service Commission and People's Counsel

#### Subtitle 3. Ethics

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#### § 2-302. Scope of subtitle

This subtitle applies to commissioners, the General Counsel, the People's Counsel, officers and employees of the Office of People's Counsel, and the officers and employees of the Commission.

#### § 2-309. Divulging information

Except as directed by the Commission or a court or as authorized by law, an individual subject to § 2-302 of this subtitle may not divulge information learned while inspecting the plant or examining the records of a public service company.

#### § 2-310. Violating article

An individual subject to § 2-302 of this subtitle may not violate this article.

## STATE ETHICS LAW

### West's Annotated Code of Maryland

State Government  
Title 15. Public Ethics  
Part I. General Provisions

§ 15-507. Disclosure or use of confidential information

Except in the discharge of an official duty, an official or employee may not disclose or use confidential information acquired by reason of the official's or employee's public position and not available to the public:

- (1) for personal economic benefit; or
- (2) for the economic benefit of another.

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State: Massachusetts

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STATE ETHICS LAW

Massachusetts General Laws Chapter 268A

268A:23. Supplemental provisions; standards of conduct.

Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county and municipal employees.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

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State: Michigan

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STATE ETHICS LAW

STATE ETHICS ACT (Act 196 of 1973)

15.342 Public officer or employee; prohibited conduct. [M.S.A. 4.1700(72)]

Sec. 2. (1) A public officer or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.

...

(5) A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with this state.

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State: Minnesota

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STATE ADMINISTRATIVE RULE

MINNESOTA ADMINISTRATIVE RULES

CHAPTER 7845, COMMISSION CONDUCT; COMMUNICATION

7845.0700 PROHIBITED ACTIVITIES.

Subp. 5. Insider information. A commissioner or employee shall not directly or indirectly use, or permit others to use, information not made available to the general public, to advance a private interest.

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State: Mississippi

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STATE ETHICS LAW

§ 25-4-105. Contract restrictions and other prohibited conduct; penalties

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been



communicated to the public or is not public information.

(7) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

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State: Missouri  
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PUBLIC SERVICE COMMISSION RULE  
4 CSR 240-2.135 Confidential Information

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(16) All persons who have access to information under this rule must 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 utility company.

PUBLIC SERVICE COMMISSION STATUTE

386.480. No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.

STATE ETHICS LAW

576.050. 1. A public servant commits the crime of misuse of official information if, in contemplation of official action by himself or herself or by a governmental unit with which he or she is associated, or in reliance on information to which he or she has access in his or her official capacity and which has not been made public, he or she knowingly:

- (1) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or
- (2) Speculates or wagers on the basis of such information or official action; or
- (3) Aids, advises or encourages another to do any of the foregoing with purpose of conferring a pecuniary benefit on any person.

2. A person commits this crime if he or she knowingly obtains or recklessly discloses information from the Missouri uniform law enforcement system (MULES) or the National Crime Information Center System (NCIC) for private or personal use, or for a purpose other than in connection with their official duties and performance of their job.

3. Misuse of official information is a class A misdemeanor.

EXECUTIVE ORDER 92-04

CODE OF CONDUCT

3. Financial compensation of state employment consists of only authorized salaries and fringe benefits.

A. Employees shall not use their public positions in a manner designed to create personal gain.

B. Employees shall not disclose confidential information gained by reason of their public positions, nor shall employees use such information for personal gain or benefit.

C. Employees shall not directly or indirectly attempt to influence agency decisions in matters relating to prospective employers with whom employment has been accepted or is being negotiated.

STATE ETHICS LAW

Prohibited acts by elected and appointed public officials and employees.

105.452. 1. No elected or appointed official or employee of the state or any political subdivision thereof shall:

...(2) Use confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself, his spouse, his dependent child in his custody, or any business with which he is associated;

(3) Disclose confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself or any other person;

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State: Montana  
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STATE ETHICS RULE

2-2-104. Rules of conduct for public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

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State: Nebraska  
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State: Nevada  
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STATE PUBLIC UTILITIES LAW

NRS 703.196 Disclosure and confidentiality of records and other property of public utilities and certain entities.

1. Any books, accounts, records, minutes, papers and property of any public utility, alternative seller, provider of discretionary natural gas service or provider of new electric resources that are subject to examination pursuant to NRS 703.190 or 703.195 and are made available to the Commission, any officer or employee of the Commission, an affected governmental entity, any officer or employee of an affected governmental entity, the Bureau of Consumer Protection in the Office of the Attorney General or any other person under the condition that the disclosure of such information to the public be withheld or otherwise limited, must not be disclosed to the public unless the Commission first determines that the disclosure is justified.

2. The Commission shall take such actions as are necessary to protect the confidentiality of such information, including, without limitation:

- (a) Granting such protective orders as it deems necessary; and
- (b) Holding closed hearings to receive or examine such information.

3. If the Commission closes a hearing to receive or examine such information, it shall:

- (a) Restrict access to the records and transcripts of such hearings without the prior approval of the Commission or an order of a court of competent jurisdiction authorizing access to the records or transcripts; and
- (b) Prohibit any participant at such a hearing from disclosing such information without the prior authorization of the Commission.

4. A representative of the Regulatory Operations Staff of the Commission and the Bureau of Consumer Protection:

- (a) May attend any closed hearing held pursuant to this section; and
- (b) Have access to any records or other information determined to be confidential pursuant to this section.

5. The Commission shall consider in an open meeting whether the information reviewed or examined in a closed hearing may be disclosed without revealing the confidential subject matter of the information. To the extent the Commission determines the information may be disclosed, the information must become a part of the records available to the public. Information which the Commission determines may not be disclosed must be kept under seal.

NAC 703.5282 Disclosure of information designated as confidential; penalties. (NRS 703.025, 703.190, 703.196, 704.210)

1. During the pendency of a proceeding, any person who receives information which has been designated as confidential in accordance with NAC 703.527 to 703.5282, inclusive:

(a) Shall not disclose the information unless the confidentiality of the information is waived. The confidentiality of information shall be deemed to be waived if:

- (1) The person who requested that the information not be disclosed makes the information available to the public or otherwise authorizes its disclosure; or
- (2) The Commission or presiding officer enters an order which authorizes the disclosure of the information.

(b) May request, at any time, that the Commission or presiding officer make a determination that the disclosure of the information is justified. The person may accompany his request with a sealed copy of the unredacted document or information.

2. The person seeking to have the information protected from disclosure has the burden of proof to demonstrate that the information sought to be disclosed is entitled to that protection.

3. Information which is the subject of an agreement or a protective order will be provided only to the Commission's staff, the Consumer's Advocate, the legal counsel of a party of record and any person who is identified by a party of record as his expert for the purposes of reviewing and analyzing the specific matter related to the confidential information.

4. A person, a party, the legal counsel of a party or the expert designated by a party who:

- (a) Violates the procedures of the Commission or presiding officer for protecting information;

(b) Fails to obey a protective order issued by the Commission or the presiding officer;

(c) Violates the terms or conditions of a protective agreement; or

(d) Violates any other prohibition of the disclosure of information designated as confidential in accordance with NAC 703.527 to 703.5282, inclusive,

Ê is subject to the penalties and civil remedies prescribed in NRS 703.380 and 704.630, and, after notice and opportunity for a hearing, may be barred by order of the Commission from appearing before the Commission.

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

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State: New Hampshire

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STATE ETHICS LAW

New Hampshire State Code of Ethics - RSA 21-G: 21

21-G:23 Misuse of Position. No public official and no public employee shall disclose or use confidential or privileged information for personal benefit or for financial gain. Public officials and public employees shall not use their positions with the government to secure privileges or advantages for themselves, which are not generally available to governmental employees, or to secure governmental privileges or advantages for others.

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State: New Jersey

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PUBLIC SERVICE COMMISSION RULE

VI. USE OF OFFICIAL POSITION OR INFORMATION

A. No Commissioner or Board employee shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to a member of the public which he or she receives or acquires in the course and by reason of his or her official duties.

B. No Commissioner or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

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State: New Mexico

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STATE ETHICS LAW

10-16-6. Confidential information.

Governmental Conduct Act 3

No legislator, public officer or employee shall use confidential information acquired by virtue of his state employment or office for his or another's private gain.

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State: New York

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PUBLIC UTILITY STATUTE

§ 15. Certain acts prohibited

Every commissioner, and every person employed or appointed to office in the department is hereby forbidden and prohibited to solicit, suggest, request or recommend, directly or indirectly, to any corporation or person subject to the supervision of the commission, or to any officer, attorney, agent or employee thereof, the appointment of any person to any office, place, position or employment. And every such corporation and person, and every officer, attorney, agent and employee thereof, is hereby forbidden and prohibited to offer to any commissioner or to any person employed by the department any office, place, appointment or position, or to offer or give to any commissioner, or to any officer employed or appointed to office in the department any free pass or transportation or any reduction in fare to which the public generally are not entitled or free carriage for property or any present, gift or gratuity of any kind. If any commissioner or any person employed or appointed to office in the department shall violate any provision of this section he shall be removed from office. Every commissioner and every person employed or appointed to office in the department shall be and be deemed to be a public officer. Any employee or agent of the department who divulges any confidential information which may come to his knowledge during the course of any inspection or examination of the property, accounts, records or memoranda of any person, corporation or municipality subject to the jurisdiction of the commission, except insofar as he may be directed by the commission, or by a court or judge, or authorized by law, shall be guilty of a misdemeanor.

STATE CODE OF ETHICS

Sec. 74. Code of ethics. 1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

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State: North Carolina

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PUBLIC UTILITIES STATUTE

§ 62-316. Disclosure of information by employee of Commission unlawful.

It shall be unlawful for any agent or employees of the Commission knowingly and willfully to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this Chapter, except as he may be directed by the Commission or by a court or judge thereof. (1947, c. 1008, s. 30; 1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957, c. 1152, s. 16; 1961, c. 472, ss. 8, 11; 1963, c. 1165, s. 1; 1971, c. 736, s. 1.)

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State: North Dakota

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STATE ETHICS LAW

§ 12.1-13-01. Disclosure of confidential information provided to government

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

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State: Ohio

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PUBLIC UTILITIES STATUTE.

Title 49 4901.16 Penalty for divulging information.

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.

Effective Date: 10-01-1953

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State: Oklahoma

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## PUBLIC UTILITIES STATUTE

### 257:1-1-12. Disclosure of confidential information

If the Commission, upon a vote of a majority of the members serving, determines that any information or record made confidential by the provisions of this title has been disclosed by a member or employee of the Commission, it shall immediately request that:

- (1) the member voluntarily resign from the Commission, or
- (2) the employee be terminated.

### 257:30-1-6. Public inspection or confidentiality of actions and records relating to alleged violations

(a) The following Commission actions and records are confidential and not open for public inspection:

- (1) information received from any source alleging violations of this title, except as may be filed in district court;
- (2) deliberations which shall include discussion of ethics interpretations, investigations, complaints, settlement ranges or settlement offers, decisions, and recommendations, and discussions on pending litigation, all of which shall be held in executive sessions of the Commission; and
- (3) records and materials obtained or work products prepared by the Commission, its employees or independent contractors in connection with an investigation or complaint; and
- (4) communications between the Executive Director of the Commission and the Chief Justice in writing pertaining to the disqualification of a member of the Commission pursuant to Section 5 of Chapter 1 of this title; and
- (5) private reprimands for inadvertent violations.

(b) Notwithstanding Subsection (a) of this section, the record of a matter that is the subject of an investigation shall be disclosed upon written request to:

(1) a Respondent or the subject of an investigation, or the attorney for a Respondent or subject of an investigation; provided that disclosure of the record to the Respondent or the subject of an investigation or to an attorney for a Respondent or subject of an investigation record shall be limited to a copy of the complaint, a copy of all statements made by the Respondent, a copy of all sworn statements by persons other than the Respondent, and any and all exculpatory evidence; or

(2) a law enforcement commission, officer, or prosecuting authority to fulfill the purposes of this title.

(c) Notwithstanding Subsection (a) and (b) of this section, a record or any part of a record may, in the discretion of the Commission, be disclosed upon written request when necessary in the course of an investigation to such persons as are material to the investigation.

(d) Notwithstanding anything in this section, an employee or independent contractor of the Commission may, when necessary in the course of an

investigation, disclose a record or any part of a record to such persons as are material to the investigation.

(e) Notwithstanding anything in this chapter, a record or any part of a record containing information indicating that a violation of criminal law, whether state or federal, has occurred, may be transmitted to a law enforcement commission, officer, or prosecuting authority.

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State: Oregon

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## PUBLIC UTILITY COMMISSION

### DIVISION 11

860-011-0080

### Confidential Information

(1) Information filed or submitted in confidence with the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 to 192.505. This rule applies to any information filed or submitted under a claim of confidentiality, but does not apply to information designated and protected as confidential pursuant to a protective order in a contested case proceeding.

(2) At the time of filing or submission, a person may designate a document as containing confidential information. Any such designation must be made in good faith and be limited to only those portions of the document that qualify for protection. The person asserting confidentiality must state the legal basis upon which the information is claimed to be confidential.

(3) Settlement offers submitted pursuant to a settlement conference convened under OAR 860-014-0085 are exempt from disclosure to the extent provided in ORS 192.502(4). If a party to a settlement conference submits settlement material on the condition of confidentiality, the Commission obligates itself to protect this information from public disclosure.

(4) Unless otherwise provided by Commission order, any confidential information filed or submitted pursuant to this rule must be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, the provider must place only those portions of the document containing the confidential information in the envelope/container. The envelope/container shall bear the legend: "CONFIDENTIAL."

(5) Any failure to comply with the requirements specified in this rule may result in the filing or submission not being treated as one including

confidential information or its return to the provider for correction and resubmission.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 192.420-192.505, 756.040 & 756.500-756.575

Hist.: PUC 13-1985, f. & ef. 9-26-85 (Order No. 85-886); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-015-0005; PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f. & cert. ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 16-1998, f. & cert. ef. 10-12-98; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 8-2005, f. & cert. ef. 12-21-05; PUC 4-2007, f. & cert. ef. 4-18-07

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State: Pennsylvania

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## PUBLIC UTILITIES STATUTE

### Chapter 11

#### Section 1108 Investigations by Commissions

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(k) Confidentiality.--As a general rule, no person shall disclose or acknowledge, to any other person, any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the commission. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this subsection when the matters pertain to any of the following:

(1) final orders of the commission as provided in subsection (h);

(2) hearings conducted in public pursuant to subsection (g);

(3) for the purpose of seeking advice of legal counsel;

(4) filing an appeal from a commission order;

(5) communicating with the commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the commission;

(6) consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;

(7) testifying under oath before a governmental body or a similar body of the United States of America;

(8) any information, records or proceedings relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which the person is the subject of; or

(9) such other exceptions as the commission by regulation may direct.

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State: Rhode Island

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## STATE CODE OF ETHICS

### R.I. Gen. Laws § 36-14-5 Prohibited Activities.

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(c) No person subject to this Code of Ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment or use any such information for the purpose of pecuniary gain.

(d) No person subject to this Code of Ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.

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State: South Carolina

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## STATE ETHICS LAW

SECTION 8-13-725. Use or disclosure of confidential information by public official, member, or employee for financial gain; examination of private records; penalties.

(A) A public official, public member, or public employee may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with

whom he is associated, or a business with which he is associated.

(B)(1) A public official, public member, or public employee may not wilfully examine, or aid and abet in the wilful examination of, a tax return of a taxpayer, a worker's compensation record, a record in connection with health or medical treatment, social services records, or other records of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.

(2) A person convicted of violating this subsection must be fined not more than five thousand dollars, or imprisoned not more than five years, or both, and shall reimburse the costs of prosecution. Upon conviction, the person also must be discharged immediately from his public capacity as an official, member, or employee.

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State: South Dakota  
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State: Tennessee  
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State: Texas  
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STATE ETHICS LAW  
§ 572.051. Standards of Conduct

A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

§ 39.06. Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he:

- (1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
- (2) speculates or aids another to speculate on the basis of the information; or
- (3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

- (1) he has access to by means of his office or employment; and
- (2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

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State: Utah

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## STATE ETHICS LAW

### Utah Chapter 16 — Utah Public Officers' and Employees' Ethics Act

67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance -- Exceptions.

(1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63-56-1001 or 76-8-105, to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(c) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges or exemptions for himself or others;

(d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(e) accept other employment that he might expect would interfere with the ethical performance of his public duties.

(2) (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

(3) A county legislative body member who does not participate in the process of selecting a mental health or substance abuse service provider does not commit an offense under Subsection (1)(a) or (b) by:

(a) serving also as a member of the governing board of the provider of mental health or substance abuse services under contract with the county; or

(b) discharging, in good faith, the duties and responsibilities of each position.

Amended by Chapter 45, 2005 General Session

Amended by Chapter 25, 2005 General Session

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State: Vermont

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State: Virginia

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## STATE ETHICS LAWS

### Article 2. Generally Prohibited and Unlawful Conduct

#### § 2.2-3102. Application

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

#### § 2.2-3103. Prohibited conduct

No officer or employee of a state or local governmental or advisory agency shall:

...

4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;



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State: Washington  
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STATE ETHICS LAW  
RCW 42.52.050

- (1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.
- (2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.
- (3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.
- (4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.

[2005 c 274 § 292; 1996 c 213 § 4; 1994 c 154 § 105.]

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State: West Virginia  
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STATE ETHICS LAW  
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

...

(e) Confidential information. -- No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

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State: Wisconsin  
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State: Wyoming  
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PUBLIC UTILITIES RULE  
Public Service Commission Rules of Practice and Procedure

Section 120. Confidentiality of Information.

(a) Upon application, and for good cause shown, the Commission shall deem confidential any information filed with the Commission or in the custody of the Commission or staff which is shown to be of such sensitive nature that disclosure of the information would jeopardize the interests of the person filing the application. Such information shall not be disclosed by, or discussed by, the Commission or Commission staff with any other person except upon written notice to the person filing such application, affording that person the right to a hearing prior to any such disclosure and an opportunity to be heard upon the reasons for maintaining the confidentiality of such information.

(b) Procedure for confidential treatment of filed information except that filed pursuant to discovery and investigation.

(i) Any person filing for confidential treatment of information (except as directed by the Commission in investigation and discovery matters) shall file a petition which must include the following information:

(A) Identify the assigned Docket, if applicable.

(B) Title the filing as: Petition for Confidential Treatment of \_\_\_\_\_.

(C) The petition shall include numbered listings and explanations in adequate detail to support why confidentiality should be authorized for each item, category, page, document or testimony. Each item, category or page of proposed confidential information shall be numbered in the right hand margin so that the numbering corresponds with the numbering and detailed explanation(s) in the Petition. If only part of a page, or intermittent parts of pages, are requested to be kept confidential, these should be set off by brackets identified with an item number or numbers. Each page containing information for which confidential treatment is requested shall be marked or stamped at the top in capital letters: CONFIDENTIAL INFORMATION.

(D) The petition may request return or other final disposition of the information.

(ii) All information authorized to be filed under this rule, including information, testimony or evidence permitted by the Commission to be taken in camera, shall be sealed and retained in secure areas in the Commission's offices. All information for which confidential treatment is requested shall be treated as confidential until the Commission rules whether, and to what extent, the information should be given confidential treatment.

(iii) If the person petitioning for confidential treatment of information intends that parties in a case may have access thereto upon signing a statement that the information shall be treated as confidential, the petitioner shall prepare a proposed order for the Commission's approval and

signatures with an attached form to be signed by parties and made part of the Commission's permanent file in that case. (iv) Information in the Commission's confidential files shall be retained for the period of time requested, returned or destroyed, as determined by the Commission, unless otherwise requested by the petitioner and authorized by the Commission. On an appeal of a Commission final order, the confidential information or record shall be sealed and delivered to the court as part of the record file pursuant to W.S. 16-3-107, 16-3-114 and 16-3-115 of the Wyoming Administrative Procedure Act.

1-12

(c) Special procedure for confidential treatment of information filed in the discovery or investigation processes.

(i) The Commission may require or authorize utilities or other persons in the discovery or investigation processes to file information, for which confidential treatment is requested, directly and exclusively with Commission staff (including Consumer Representative Staff) or with other persons who have satisfactorily demonstrated a valid interest to the Commission.

(ii) The Commission may authorize staff (including assigned Consumer Representative Staff) and other persons to enter into agreements to treat

information as confidential under this special procedure. Any filing held by Commission staff or any other authorized person on this expedited confidential basis, shall be treated as confidential unless otherwise ordered by the Commission.

(iii) Information submitted directly to the Commission staff shall be filed by means of a cover letter, with a copy to the Commission, which generally identifies that information in the filing for which confidential treatment is requested. A person seeking to introduce any of this information as evidence in a public hearing record under the confidentiality basis, must then file a petition in the form and detail set forth in subsection (b) of this Rule.

(d) Procedural hearing on protests of confidential treatment of information.

(i) The Commission will set a hearing if any person contests the Commission's authorization or denial of the confidential treatment of any information.

(e) Burden of Proof. The burden of proof is upon the person seeking confidential treatment for information. The original supplier of information (if different than the person petitioning for confidential treatment) may be directed by the Commission to share the burden of proof.

(f) Medical and financial records. The medical and financial records of any utility customer shall be treated as confidential under this rule except as otherwise directed by the Commission.

#### CODE OF ETHICS - Executive Order 1997-4

B. Conduct which constitutes an abuse of authority. [See Section 7G (Allowed Activities) of this Code of Ethics, for a discussion of activities such as fund raising for recognized, organizations which take place on the public employee's own time, which generally do not constitute an abuse of authority.] Conduct which constitutes an abuse of authority include's, but is not necessarily limited to: using or allowing the use by any private party of official information obtained through or in connection with the public employee's employment by the State of Wyoming, unless such information is available to the general public or unless dissemination is permitted by law.

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State: Federal

#### FEDERAL ETHICS STATUTE

18 U.S.C. § 798. Disclosure of classified information

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

- (1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or
- (2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or
- (3) concerning the communication intelligence activities of the United States or any foreign government; or
- (4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined under this title or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

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(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

Information and Communications.txt

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and  
(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1).

(3) Except as provided in paragraph (4), the provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(p)), shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(5) As used in this subsection, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

18 U.S.C. § 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

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State: NARUC

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Rule: Ex Parte Communications  
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State: Alabama  
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PUBLIC COMMISSION RULE

RULE 25

Ex Parte Communications

Parties or their representatives in a contested issue or proceeding which has been the subject of a formal public and open hearing or in a proceeding which has been set for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, issue or proceeding with any Commissioner, Administrative Law Judge or other individual assigned to render a proposed order or final decision or to make findings of fact and conclusions of law in that contested case, issue or proceeding except upon notice and opportunity for all parties to participate and none of the Commissioners or Administrative Law Judges will allow ex parte argument to be made concerning such case, issue or proceeding. (Rules of Practice of the Alabama Public Service Commission, revised 11/12/99)

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State: Alaska  
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ADMINISTRATIVE CODE

3 AAC 48.020. Communications

(a) All correspondence with the commission should be addressed to the commission at its principal office and not to an individual staff member or commissioner unless otherwise specifically authorized or directed by the commission. If a written communication to the commission is in response to correspondence or an order of the commission, the response should make reference to the docket number, informal complaint number or file reference used by the commission.

(b) Repealed 6/29/84.

(c) Each written communication should embrace only one subject and should include the name and return address of the sender, the correct docket number and the commission's file reference, if any, to which the communication relates.

(d) If the writer holds a certificate of public convenience and necessity, the certificate holder should use the name on the certificate and state the certificate number. Correspondence not complying with this subsection may be disregarded at the commission's discretion. The commission will, in its discretion, consider any correspondence as an initiatory pleading and proceed accordingly.

(e) Except as provided in 3 AAC 48.240, a written communication is considered to be officially received when delivered to the commission's office. However, a commissioner, or an employee designated by the commission, may also receive written communications away from the commission's office, under conditions prescribed by the commission.

(f) Correspondence signed by an individual staff member or commissioner does not state an official determination by the commission unless the signature is preceded by the recital "By Direction of the Commission." The presence of this recital constitutes presumptive evidence that the signatory has been delegated specific authority to state the commission's official action in the particular matter. Staff correspondence containing routine interpretations regarding tariffs, accounting, or any other matter under a general delegation of authority will not contain the above recital but will, instead, state that the staff interpretation is subject to direct appeal to the commission by application, petition, or motion.

(g) A commissioner, presiding officer, or commission staff member may not, except upon reasonable notice and opportunity for all parties to participate, communicate with a party, including the audits and investigation staff and other affected persons, about any issue of fact, law, or policy in a pending adjudicatory proceeding.

(h) Communications not prohibited by (g) of this section include communications

(1) to discuss scheduling or procedural matters;

(2) between the presiding officer and parties, designed to produce a settlement; with the consent of all parties, the presiding officer may continue to preside in the same proceeding;

(3) between a regulated entity and the commission staff in a preliminary investigation of a tariff filing before suspension under AS 42.05.421 ;

(4) between the commission staff and an applicant for certification, registration, or another ruling by the commission, if the applicant is the only party to a proceeding; or

(5) during a scheduled meeting between commissioners or commission staff members and a regulated entity to discuss utility and pipeline projects, industry trends, technology, and developments, if those persons do not discuss an issue in a pending adjudicatory proceeding; within two business days after that meeting, a commissioner or commission staff member involved in the communication shall submit, by electronic mail or in writing to the commission staff member who supervises the commission's records and filings section, a statement that includes the following information:

(A) to the extent known, the names and addresses of the persons involved in the scheduled meeting;

(B) the date and time of the scheduled meeting, its duration, and the means and circumstances under which it was made;

(C) a summary of matters discussed.

(i) If a person makes or attempts to make an ex parte communication prohibited by (g) of this section, the commissioner, presiding officer, or commission staff member shall advise the person that the communication is prohibited and shall immediately terminate the prohibited communication.

(j) If an ex parte communication prohibited by (g) of this section occurs, the commissioner, presiding officer, or commission staff member involved in the communication shall submit, within two business days after the prohibited ex parte communication occurs, and either by electronic mail or in writing to the commission staff member who supervises the commission's records and filings section and to all commissioners, a statement that includes the following information:

(1) the name and docket number of the proceeding;

(2) to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties to the proceeding;

(3) the date and time of the communication, its duration, and the means by and circumstances under which it was made;

(4) a summary of the matters discussed;

(5) whether and how the person making the prohibited communication was advised that the communication was prohibited.

(k) Within two business days after receiving a statement under (j) of this section, the commission staff member who supervises the commission's records and filings section shall

(1) place the statement in the commission's public file; and

(2) serve a copy of the statement on the parties on the commission's official service list, within each relevant docket.

(l) The commission staff member who supervises the commission's records and filings section shall maintain a permanent file of any statement filed under (h), (j), and (k) of this section. That statement shall be noticed in the commission's incoming mail report, and the file of statements shall be made available for public inspection at the commission's office during regular business hours.

(m) In this section, "business day" means a day other than Saturday, Sunday, or a state holiday.

History: Eff. 1/13/73, Register 44; am 6/29/84, Register 90; am 4/24/2004, Register 170

Authority: AS 42.05.141, AS 42.05.151, AS 42.06.140

#### § 44.62.630. Impartiality

The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

#### STATE ETHICS LAW

AS 39.52.120. Misuse of Official Position.

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(e) Except for supplying information requested by the hearing officer or the entity with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a public officer may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer or individual, board, or commission with authority to make the final decision in the case assigned to the hearing officer unless the:

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or  
(2) fact and substance of the contact is promptly disclosed by the public officer to all parties to the hearing and the contact is made a part of the record.

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State: Arizona

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#### ARIZONA CORPORATION COMMISSION RULE

R14-3-113. Unauthorized communications

A. Purpose. It is the purpose of this rule to assist the members of the Arizona Corporation Commission and its employees in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission and hearings before the Arizona Power Plant and Transmission Line Siting Committee.

B. Application. The provisions of this rule apply from the time a contested matter is set for public hearing before the Commission and from the time a notice of siting hearing is published pursuant to R14-3-208(A). The provisions of this rule do not apply to rulemaking proceedings.

C. Prohibitions.

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding or siting hearing to a commissioner or commission employee involved in the decision-making process for that proceeding or siting hearing.
2. No commissioner or commission employee involved in the decision-making process of a contested proceeding or siting hearing shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding or siting hearing.
3. The provisions of this rule shall not prohibit:
  - a. Communications regarding procedural matters;
  - b. Communications regarding any other proceedings;
  - c. Intra-agency or non-party communications regarding purely technical and legal matters;
  - d. Comments from the general public;
  - e. Communications among hearing officers, non-party staff and commissioners.

D. Remedy.

1. A commissioner or commission employee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the case or proceeding.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested proceeding or siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding or siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

43. Historical Note

Adopted effective January 3, 1986 (Supp. 86-1). Amended by final rulemaking at 12 A.A.R. 4181, effective December 25, 2006 (Supp. 06-4).

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State: Arkansas

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COMMISSION RULE

Rule 1.06 Ex Parte Communications

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in proceedings pending before the Commission:

(a) No person, with the exceptions of Staff and Staff Counsel, shall submit ex parte, off-the-record communications to any member or the Commission or hearing examiner in such proceeding, reasonably designed to influence a decision on any issue of fact in a contested proceeding. No person with the exception of Staff and Staff Counsel, who is a party to, or his counsel, agent, or other person acting in his behalf, shall submit off-the-record communications to any member of the Commission or the hearing examiner in such proceeding regarding any issue of law in any contested proceeding. No Commissioner or hearing examiner shall request or entertain any ex parte, off-the-record communications herein prohibited.

For the purposes of this Rule, "contested proceeding" means a formal proceeding, other than a rule-making proceeding, required by statute, constitution, published Commission rule or regulation, or order in a particular case, to be decided on the basis of the record of a Commission hearing, and in which a petition or notice to intervene in opposition to requested Commission action has been filed.

(b) A Commissioner or hearing examiner in such proceeding who receives an offer of any communication concerning any matter at issue in a contested proceeding shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he will not consider the communication, and he shall promptly and fully inform the Commission and all other parties to the proceeding of the substance of the communication and circumstances thereof.

(c) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Where the communication contains assertions of fact not a part of the record of which the Commission cannot take official notice, the Commission in lieu of receiving rebuttal material normally will direct that the alleged factual assertion and any proposed rebuttal be disregarded in arriving at a decision.

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State: California

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## PUBLIC UTILITIES CODE

### h. Article 8. Communications with Decisionmakers and Advisors

#### 8.1. (Rule 8.1) Definitions

For purposes of this Article, the following definitions apply:

(a) "Commission staff of record" includes staff from the Division of Ratepayer Advocates assigned to the proceeding, staff from the Consumer Protection and Safety Division assigned to an adjudicatory proceeding or to a ratesetting proceeding initiated by complaint, and any other staff assigned to an adjudicatory proceeding in an advocacy capacity.

"Commission staff of record" does not include the following staff when and to the extent they are acting in an advisory capacity to the Commission with respect to a formal proceeding: (1) staff from any of the industry divisions; or (2) staff from the Consumer Protection and Safety Division in a quasi-legislative proceeding, or in a ratesetting proceeding not initiated by complaint.

(b) "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.

(c) "Ex parte communication" means a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

(1) concerns any substantive issue in a formal proceeding, including categorization of a proceeding, or assignment or reassignment of a proceeding to an Administrative Law Judge,

(2) takes place between an interested person and a decisionmaker, and

(3) does not occur in a public hearing, workshop, or other public forum established in the proceeding, or on the record of the proceeding. Communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such nonsubstantive information are procedural inquiries, not ex parte communications.

(d) "Interested person" means any of the following:

(1) any applicant, protestant, respondent, petitioner, complainant, defendant, interested party who has made a formal appearance, Commission staff of record, or the agents or employees of any of them, including persons receiving consideration to represent any of them;

(2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person; or

(3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

#### 8.2. (Rule 8.2) Ex Parte Requirements

(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.3. In addition, the following restrictions apply:

(1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any party individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days before the meeting or call. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission or electronic mail.

(3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the communication on all other parties on the same day the communication is sent to a decisionmaker.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner, the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.3, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 8.3.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Administrative Law Judge, or reassignment of a proceeding to another Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) The requirements of this rule, and any reporting requirements under Rule 8.3, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.

(h) Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.3, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless (1) no timely response, protest or request

for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(i) Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.3 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(j) When the Commission determines that there has been a violation of this rule or of Rule 8.3, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

(k) The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.3, are not a part of the record of the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

### 8.3. (Rule 8.3) Reporting Ex Parte Communications

(a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. A "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

(1) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(2) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;

(3) A description of the interested person's, but not the decisionmaker's (or the Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) Any party who has consented to e-mail service pursuant to Rule 1.10(d) shall, on the same day that it files the Notice, electronically serve it pursuant to Rule 1.10.

(c) The filing of a Notice will be reported promptly thereafter in the Commission's Daily Calendar.

(d) Parties may obtain a copy of the Notice from the Commission's Central File room or from the filing party, who must provide it to the requesting party without delay.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code.

### 8.4. (Rule 8.4) Ex Parte Requirements Prior to Final Categorization

(a) Applications.

(1) The ex parte requirements applicable to ratesetting proceedings shall apply from the date the application is filed through the date of the Commission's preliminary determination of category pursuant to Rule 7.1(a).

(2) The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(a) shall apply until the date of the assigned Commissioner's scoping memo finalizing the determination of categorization pursuant to Rule 7.3.

(b) Rulemakings. The ex parte requirements applicable to the category preliminarily determined by the Commission pursuant to Rule 7.1(d) shall apply until the date of the assigned Commissioner's ruling on scoping memo finalizing the determination of category pursuant to Rule 7.3.

(c) Complaints. The ex parte requirements applicable to adjudicatory proceedings shall apply until the date of service of the instructions to answer finalizing the determination of category pursuant to Rule 7.1(b).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

### 8.5 (Rule 8.5) Communications with Advisors

Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.2(c)(1) and (2).

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4), Public Utilities Code.

### 8.6 (Rule 8.6) Requirements in Proceedings Filed Before January 1, 1998

The following requirements apply to proceedings filed before January 1, 1998:

(a) In any investigation or complaint where the order instituting investigation or complaint raises the alleged violation of any provision of law or Commission order or rule, ex parte communications and communications with Commissioners' personal advisors are prohibited after the proceeding has been submitted to the Commission.

(b) Ex parte communications and communications with Commissioners' personal advisors are permitted, and shall not be reported, in rulemakings and in investigations consolidated with rulemakings to the extent that the investigation raises the identical issues raised in the rulemaking.

(c) All other ex parte communications and communications with Commissioners' personal advisors are permitted, and are subject to the reporting requirements of Rule 8.3.

(d) The Commission, or the assigned Administrative Law Judge with the approval of the assigned Commissioner, may issue a ruling tailoring these requirements to the needs of any specific proceeding.

Note: Authority cited: Section 1701, Public Utilities Code.

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State: Colorado

### COMMISSION RULE

1105. Prohibited Communications – Generally. [Eff. 03/30/2009]

1648567 (a) Except as provided in paragraph (b) of this rule, ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members that are not specifically assigned as trial advocacy or advisory staff shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly.

1648568 (b) Notwithstanding the provisions of paragraph (a) of this rule, prohibited communications do not include:



Information and Communications.txt

1648569 (I) Procedural, scheduling, or status inquiries, or requests for information that have no bearing on the merits, substance, or outcome of the proceeding;

1648570 (II) Protests or comments made by any customer of a utility, concerning any proposed tariff, price list, or time schedule;

1648571 (III) Communications made in educational programs or conferences, or in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;

1648572 (IV) Communications relating to legislation, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or

1648573 (V) Communications relating to a pending non-adjudicatory proceeding.

1361139 1106. Prohibited Communications - Disclosure.

1361140 (a) Any person communicating with the Commission concerning pending docketed proceedings shall state the party with whom he or she is associated and the number and short title of the docketed proceeding. Eff 08/01/2007

1361141 (b) Any person, party, commissioner, administrative law judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing: Eff 08/01/2007

1361142 (I) The name and docket number of the proceeding; Eff 08/01/2007

1361143 (II) A summary of the matters discussed; Eff 08/01/2007

1361144 (III) The persons involved and their relationship, if any, to the parties; Eff 08/01/2007

1361145 (IV) The date, time, and place of the communication and the circumstances under which it was made; and Eff 08/01/2007

1361146 (V) Any other relevant information concerning the communication. Eff 08/01/2007

1361147 (c) Every commissioner and administrative law judge shall further comply with the disclosure requirements of § 40-6-122, C.R.S. Eff 08/01/2007

1361148 1107. Prohibited Communications - Remedies.

1361149 Upon determining that a party has engaged in prohibited communication, the Commission shall ensure that all parties have the opportunity to respond including, if necessary, calling witnesses and cross-examining witnesses. In addition, the Commission may, upon its own initiative or upon the motion of a party, order any of the following remedial measures: Eff 08/01/2007

1361150 (a) Dismissal of the proceeding, in whole or in part; Eff 08/01/2007

1361151 (b) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication; Eff 08/01/2007

1361152 (c) A public statement of censure by the Commission; or Eff 08/01/2007

1361153 (d) Such alternative or additional sanctions as may be appropriate under the circumstances. Eff 08/01/2007

1361154 1108. Disqualification of Commissioner or Administrative Law Judge.

1361155 (a) Whenever any party has a good faith belief that a commissioner or administrative law judge has engaged in a prohibited communication or may not be impartial, the party may file a motion to disqualify the commissioner or administrative law judge. Such motion shall be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the commissioner or administrative law judge shall rule upon the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the denial of the motion. All commissioners may fully participate in such review. Eff 08/01/2007

1361156 (b) If at any time a commissioner or administrative law judge believes that his or her impartiality may reasonably be questioned, the commissioner or administrative law judge shall withdraw, as provided in § 40-6-124, C.R.S. Eff 08/01/2007

1361157 1109. - 1199. [Reserved].

1107. Prohibited Communications - Remedies.

1361149 Upon determining that a party has engaged in prohibited communication, the Commission shall ensure that all parties have the opportunity to respond including, if necessary, calling witnesses and cross-examining witnesses. In addition, the Commission may, upon its own initiative or upon the motion of a party, order any of the following remedial measures: Eff 08/01/2007

1361150 (a) Dismissal of the proceeding, in whole or in part; Eff 08/01/2007

1361151 (b) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication; Eff 08/01/2007

1361152 (c) A public statement of censure by the Commission; or Eff 08/01/2007

1361153 (d) Such alternative or additional sanctions as may be appropriate under the circumstances. Eff 08/01/2007

1361154 1108. Disqualification of Commissioner or Administrative Law Judge.

1361155 (a) Whenever any party has a good faith belief that a commissioner or administrative law judge has engaged in a prohibited communication or may not be impartial, the party may file a motion to disqualify the commissioner or administrative law judge. Such motion shall be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the commissioner or administrative law judge shall rule upon the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the denial of the motion. All commissioners may fully participate in such review. Eff 08/01/2007

1361156 (b) If at any time a commissioner or administrative law judge believes that his or her impartiality may reasonably be questioned, the commissioner or administrative law judge shall withdraw, as provided in § 40-6-124, C.R.S. Eff 08/01/2007

1361157 1109. - 1199. [Reserved].

#### PUBLIC UTILITIES CODE

##### 40-6-122. Ex parte communications - disclosure

(1) Commissioners and administrative law judges shall file memoranda, in accordance with this section, of all private communications to or from interested persons concerning matters under the commissioners' or judges' jurisdiction.

(2) For purposes of this section, "interested person" means any person or entity, or any agent or representative of a person or entity:

(a) Whose operations are within the jurisdiction of the commission; or

(b) Who has participated in a proceeding before the commission within one year prior to the communication; or

(c) Who anticipates participating in a proceeding before the commission within one year after the communication.

(3) Each memorandum filed pursuant to subsection (1) of this section shall set forth the time and place at which the communication was made, the persons who were present at that time and place, a statement of the subject matter of the communication, other than proprietary information, and a statement that the subject matter of the communication did not relate to any pending adjudicatory proceeding before the commission. It shall not be necessary for the memorandum to be prepared by the commissioner or judge, but it shall be signed or otherwise authenticated by the commissioner or judge, whose signature or authentication shall constitute a certificate by such commissioner or judge that the memorandum is complete and accurate. All such memoranda shall be filed with the director of the commission, who shall keep them on file and available for public inspection for a minimum of three years after their submission.

(4) Any public utility may request that the commission conduct a public meeting at which communications otherwise subject to this section may be made without the necessity of filing memoranda. The commission shall adopt reasonable rules and regulations to govern such requests. In addition, the commission may adopt such other rules as are necessary and proper to govern ex parte communications generally.

(5) As used in this section, an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1. L. 2008: (3) amended and (5) added, p. 1797, § 16, effective July 1.

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State: Connecticut

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#### PUBLIC UTILITIES BOARD STATUTE

##### Sec. 16-1-28 Ex parte communication

Unless required for the disposition of ex parte matters authorized by law, neither the commissioners nor any member of the commission staff designated as a presiding officer shall communicate directly or indirectly with any person or party concerning any issue of fact or law involved in any contested case that has been commenced under these rules, except upon notice and opportunity for all parties to participate. The commission staff member designated as presiding officer and the commissioners may severally communicate with each other ex parte and may have the aid and advice of such members of the commission staff as are designated to assist them in such contested case. This rule shall not be construed to preclude such necessary routine communications as are necessary to permit the commission staff to investigate facts and to audit the applicable records of any party in a contested case at any time before, during and after the hearing thereof. (See Sec. 16-1-27)

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State: Delaware

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#### COMMISSION RULES

RULE 12. Ex Parte Communications

(a) No Commissioner or Commission Staff assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any party or person except upon notice to, and opportunity for, all parties to participate. This rule shall not apply to communications required for the disposition of ex parte matters as authorized by law, or to communications, not prohibited by law, by and among Commission members and Commission Staff.

1.12 Ex Parte Communications

1.12.1 No Commissioner or Commission Staff assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any party or person except upon notice to, and opportunity for, all parties to participate. This rule shall not apply to communications required for the disposition of ex parte matters as authorized by law, or to communications, not prohibited by law, by and among Commission members and Commission Staff.

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State: District of Columbia

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DISTRICT COMMISSION REGULATION

DC Municipal Regulations Title 16

Public Utilities & Cable Television

108 EX PARTE COMMUNICATIONS

108.1 No interested person may, with respect to any case, make (or knowingly cause to be made) to any Commissioner, Hearing Agent, or personal assistant to the Commissioners any ex parte communications while the proceeding is pending before the commission.

108.2 The provisions of §108.1 do not apply to any of the following communications:

(a) Those specifically authorized by law to be made on an ex parte basis.

(b) Those related to a matter of procedure; or

(c) Those made in the course of another proceeding of the Commission to which it primarily relates, and is on the public record.

108.3 Any employee of the Commission or person may apply to the Office of General Counsel for an advisory opinion as to whether any provision of this section is applicable to a communication.

108.4 A proceeding is considered pending before the Commission when it is noticed for hearing, or when a communicator who reasonably believes it will be noticed for hearing obtains such knowledge (but not before the proceeding is docketed).

108.5 A proceeding ends when the Commission's decision becomes final for purposes of judicial review.

108.6 If a proceeding is phased or segmented so that one or more parts of the proceeding constitute informal rulemaking, and on or more parts constitute contested proceedings, the Commission may, by order, provide that each phase or segment shall constitute a separate proceeding for the purposes of this rule.

108.7 Any Commissioner, personal assistant to a Commissioner, hearing agent or person appointed to advise the Commission, who receives an ex parte communication prohibited by this section shall, within forty-eight (48) hours after first having reason to believe that the communication is prohibited, prepare and deliver to the Secretary a written statement setting forth the substance of the communication if it is in oral form, or deliver to the Secretary the actual communication if it is in written form.

108.8 The Secretary shall place any statement or communication in public files associated with the proceeding, but separate from the record upon which the Commission will rely in reaching its decision. The Secretary shall mail to each person on the official service list of the proceeding a copy of any such statement or communication.

108.9 If the Commission determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim of interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

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State: Florida

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COMMISSION STATUTE/RULES

350.042 Ex parte communications.--

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

(2) The provisions of this section shall not prohibit an individual residential ratepayer from communicating with a commissioner, provided that the ratepayer is representing only himself or herself, without compensation.

(3) This section shall not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.

(4) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in subsection (1), to which he or she is assigned, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who

desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.

(5) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of such communication, to include the name of the person making the communication, the name of the commissioner or commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.

(6) Any commissioner who knowingly fails to place on the record any such communications, in violation of the section, within 15 days of the date of such communication is subject to removal and may be assessed a civil penalty not to exceed \$5,000.

(7)(a) It shall be the duty of the Commission on Ethics to receive and investigate sworn complaints of violations of this section pursuant to the procedures contained in ss. 112.322-112.3241.

(b) If the Commission on Ethics finds that there has been a violation of this section by a public service commissioner, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112.

(c) If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to the provisions of this section, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

(d) If, during the course of an investigation by the Commission on Ethics into an alleged violation of this section, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

#### 25-22.033 Communications Between Commission Employees and Parties.

The Commission recognizes that Commission employees must exchange information with parties who have an interest in Commission proceedings. However, the Commission also recognizes that all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications.

(1) This rule shall govern communications between Commission employees and parties to docketed proceedings before the Commission. This rule shall not apply in proceedings under Sections 120.54, 120.565, 367.0814, Florida Statutes, proposed agency action proceedings before the Commission has voted to issue a proposed agency action order, non-rate case tariffs, workshops or internal affairs meetings. Also exempted are docketed and undocketed audits, telephone service evaluations, and electric and gas safety inspections. Nothing in this rule is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable provisions of the Florida Rules of Civil Procedure, or affect communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.

(2) Written Communications – Notice of any written communication between Commission employees and parties shall be transmitted to all other parties at the same time as the written communication, whether by U.S. Mail or other means.

(3) Scheduled Meetings and Conference Calls – All parties to the proceeding shall be given reasonable notice of the time and place of any scheduled meeting or conference call between Commission employees and parties. For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.

(4) Response to Communications – Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

(5) Prohibited Communications – No Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited ex parte communication under Section 350.042, Florida Statutes. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a staff member who testifies in a case shall not discuss the merits of that case with any Commissioner during the pendency of that case.

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State: Georgia

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#### COMMISSION STATUTE/RULE

#### 515-2-1-.14 Open Hearing Process.

(1) As used in this Rule, the term:

(a) 'Commissioner Advisory Staff' means the staff members assigned to serve in a non-Party advisory capacity in a particular proceeding.

(b) 'Party' means a party to a Proceeding pending before the Commission, including any officers, directors, managers, or employees of the party; a representative or agent of a party to a proceeding pending before the Commission; the consumer's utility counsel division; the Public Interest Advocacy Staff; and any person knowingly acting on behalf of or in concert with a party to a proceeding.

(c) 'Proceeding' means a contested case as that term is defined in O.C.G.A. 50-13-2(2).

(d) 'Public Interest Advocacy Staff' means the staff members assigned to participate in a particular proceeding as a Party.

(e) 'Emergency Situation' means a situation in which the public health, welfare or safety are jeopardized due to the utility's inability to safely

and reliably provide public utility services to Georgia customers.

(f) 'As soon as possible after the communication' means as soon as physically practicable, but not later than two (2) business days after the date of the ex parte communication.

(2) Proceedings before the Commission shall be open and transparent to all Parties and to the public. Except for any trade secret information provided pursuant to Commission Rule 515-3-1-.11 or any other statute or rule regarding trade secret filings with the Commission, all communications, directly or indirectly, between a Party and the Commission, an individual Commissioner, a Commission hearing officer, or a member of the Commissioner Advisory Staff relating to a Proceeding shall be made in a public and open manner that allows all other Parties the opportunity to respond to such communication or information. Copies of all written or electronic communications relating to a Proceeding shall

be contemporaneously filed with the Executive Secretary and served on all Parties. All oral communications relating to a Proceeding shall be made at a properly noticed meeting, hearing, or workshop of the Commission.

(3) If, due to an emergency situation, a Party making a communication cannot comply with the notice requirements in subsection (2) of this rule, or if a Party inadvertently makes a communication in violation of this rule, the Party shall file with the Commission the information described below in subsection (4)(a) to (d), as well as a description of the emergency situation or an explanation of how the violation was inadvertent, as soon as possible after the communication.

(4) If a member of the Commission, a Commission hearing officer, or a member of the Commissioner Advisory Staff receives or makes a communication in violation of this rule, he or she shall place the following on the record of the proceeding as soon as possible after the communication:

(a) The substance of the communication;

(b) All written or electronic documentation of the communication;

(c) The identity of each person who participated in the communication; and,

(d) The date and time of the communication.

(5) Nothing in this rule shall prohibit a member of the public who is not a Party to a Proceeding from communicating with the Commission or with an individual Commissioner relating to the Proceeding. Nothing in this rule shall prohibit a Party from providing any information relating to a Proceeding to the Commission, to an individual Commissioner, a Commission hearing officer, or to a member of the Commissioner Advisory Staff, provided that such information is provided openly pursuant to subsections (2) or (3) of this rule. Nothing in this rule shall prohibit a member of the Commission or a member of the Commissioner Advisory Staff from communicating with other members of the Commission and other members of the Commissioner Advisory Staff regarding a Proceeding pending before the Commission. Members of the Commissioner Advisory Staff shall not communicate regarding the Proceeding with any other Party including the Public Interest Advocacy Staff unless such communication is made openly utilizing the procedures set forth in subsection (3) of this rule. A "Chinese Wall" procedure shall be utilized to provide for independence between the Commissioner Advisory Staff and the Public Interest Advocacy Staff. The team leaders of the Commissioner Advisory Staff and

the Public Interest Advocacy Staff shall not be in a career path reporting position to anyone on the other team. In those instances where a team member is in a career path reporting position to someone on the other team, only the team leader, not the career path manager, may direct the team member's participation or positions on the team.

(6) This rule shall apply commencing immediately upon the conclusion of the hearings to receive testimony in the Proceeding and end the day after the official time for filing for reconsideration. Provided, however, that if a motion for reconsideration is made, the rule shall continue to apply until the Commission has rendered its final decision on such motion.

(7) This Rule shall not apply to non-substantive inquiries about procedural and scheduling issues.

(8) Penalties. Failure of a Party to abide by the Commission's rule prohibiting ex parte communications may result in reprimand or exclusion of the Party from the hearing pursuant to O.C.G.A. § 50-13-13(a)(6) and/or penalties under O.C.G.A. § 46-2-91. Authority O.C.G.A. Secs. 46-2-30, 46-2-51, 50-13-3. History. Original Rule entitled "Open Hearing Process" adopted. F. Aug. 21, 2007; eff. Sept. 10, 2007.

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State: Hawaii

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STATE UTILITIES RULES

PUC RULES

§ 269-3. Employment of assistants

(a) The chairperson of the public utilities commission may appoint and employ clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission as the chairperson finds necessary for the performance of the commission's functions and define their powers and duties....

(b) Notwithstanding section 91-13, the commission may consult with its assistants appointed under authority of this section in any contested case or agency hearing concerning any issue of facts. Neither the commission nor any of its assistants shall in such proceeding consult with any other person or party except upon notice and an opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law.

Hawaii Administrative Rules – Title 6, Chapter 61

6-61-29 Ex parte communications. (a) No person, whether or not a party to or participant in an agency hearing, shall consult or communicate with any commissioner or hearings officer or any member of the commission staff on any issue of fact in a contested case proceeding before the commission, except as otherwise authorized in this section or by law.

(b) All written and oral ex parte communications received by any commissioner or hearings officer, containing facts or contentions in a contested case proceeding, which may affect the decision in the proceeding and which are known or believed to be unauthorized at the time of receipt, shall be immediately sent to all interested parties to the proceeding and made an official part of the record.

(c) The following classes of ex parte communications are authorized: 6-61-29 Ex parte communications. (a) No person, whether or not a party to or participant in an agency hearing, shall consult or communicate with any commissioner or hearings officer or any member of the commission staff on any issue of fact in a contested case proceeding before the commission, except as otherwise authorized in this section or

by law.

(b) All written and oral ex parte communications received by any commissioner or hearings officer, containing facts or contentions in a contested case proceeding, which may affect the decision in the proceeding and which are known or believed to be unauthorized at the time of receipt, shall be immediately sent to all interested parties to the proceeding and made an official part of the record.

(c) The following classes of ex parte communications are authorized:

- (1) Communication between the commission and commission staff;
- (2) Communication that relates solely to matters which a commissioner or hearings officer is authorized to dispose of on an ex parte basis;
- (3) Communication with counsel or staff for the commission relating solely to matters of practice and procedure; and
- (4) Communication had after adequate notice and opportunity for all parties to participate. [Eff ] (Auth: HRS "91-2, 269-6, 271-9, 271G-7) (Imp: HRS "91-13, 269-3, 269-6)

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State: Idaho  
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#### STATE ADMIN PROCEDURE ACT

#### TITLE 67 STATE GOVERNMENT AND STATE AFFAIRS CHAPTER 52 IDAHO ADMINISTRATIVE PROCEDURE ACT

67-5253. EX PARTE COMMUNICATIONS. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

#### STATE CRIMINAL LAW Title 18. CRIMINAL LAW Chapter 13A. Bribery and Corrupt Influence § 18-1353. Threats and other improper influence in official and political matters

(1) Offenses defined. A person commits an offense if he:

(a) threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with purpose to influence him to violate his known legal duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) Grading. An offense under this section is a misdemeanor unless the actor threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a felony.

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State: Illinois  
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#### PUBLIC UTILITIES ACT Chapter 220. Utilities / Act 5. Public Utilities Act

5/10-103. Decisions to be based on record; ex parte communications

§ 10-103. In all proceedings, investigations or hearings conducted by the Commission, except in the disposition of matters which the Commission is authorized to entertain or dispose of on an ex parte basis, any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case, which shall include only the transcript of testimony and exhibits together with all papers and requests filed in the proceeding, including, in contested cases, the documents and information described in Section 10-35 of the Illinois Administrative Procedure Act.

The provisions of Section 10-60 of the Illinois Administrative Procedure Act [FN2] shall apply in full to Commission proceedings, including ratemaking cases, any provision of the Illinois Administrative Procedure Act [FN3] to the contrary notwithstanding. The provisions of Section 10-60 shall not apply, however, to communications between Commission employees who are engaged in investigatory, prosecutorial or advocacy functions and other parties to the proceeding, provided that such Commission employees are still prohibited from communicating on an ex parte basis, as designated in Section 10-60 , directly or indirectly, with members of the Commission, any hearing examiner in the proceeding, or any Commission employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

Any commissioner, hearing examiner, or other Commission employee who is or may reasonably be expected to be involved in the decisional process of a proceeding, who receives, or who makes or knowingly causes to be made, a communication prohibited by Section 10-60 of the Illinois Administrative Procedure Act as modified by this Section, shall place on the public record of the proceeding (1) any and all such written communications; (2) memoranda stating the substance of any and all such oral communications; and (3) any and all written responses and memoranda stating the substance of any and all oral responses to the materials described in clauses (1) and (2).

The Commission, or any commissioner or hearing examiner presiding over the proceeding, shall in the event of a violation of this Section, take whatever action is necessary to ensure that such violation does not prejudice any party or adversely affect the fairness of the proceedings.

ILLINOIS TITLE 83: PUBLIC UTILITIES  
PART 200 RULES OF PRACTICE  
Section 200.710 Ex Parte Communications

a) Unless waived by written stipulation of the parties in the proceeding as provided by Section 10-70 of the Illinois Administrative Procedure Act [5 ILCS 100/10-70], once notice of hearing has been given in a contested case or licensing proceeding, Commissioners, Commission employees and Hearing Examiners shall not communicate directly or indirectly with:

- 1) Any party to the proceeding on any issue in the proceeding; or
- 2) A party's representative on any issue in the proceeding; or
- 3) Any other person concerning an issue of fact in the proceeding; without notice and opportunity for all parties to participate.

b) The following communications are not subject to subsection (a) of this Section:

- 1) Communications between Commission employees who are engaged in investigatory, prosecutorial or advocacy functions and other parties to the proceeding, provided that such Commission employees are still prohibited from communicating on an ex parte basis, as designated in subsection (a), directly or indirectly, with members of the Commission, any Hearing Examiner in the proceeding, or any Commission employee who is or may reasonably be expected to be involved in the decisional process of the proceeding (this language derived from Section 10-103 of the Public Utilities Act [220 ILCS 5/10-103] and applies only to proceedings under that Act);
- 2) Communications between a Commissioner and other Commissioners, and between a Commissioner or hearing examiner and one or more personal assistants. [5 ILCS 100/10-60]

c) Any Commissioner, Hearing Examiner, or other Commission employee who is or may reasonably be expected to be involved in the decisional process of a proceeding, who receives, or who makes or knowingly causes to be made, a communication prohibited by Section 10-60 of the Illinois Administrative Procedure Act as modified by Section 10-103 of the Public Utilities Act [220 ILCS 5/10-103] shall place on the public record of the proceeding:

- 1) All such written communications;
- 2) Memoranda stating the substance of all such oral communications; and
- 3) All written responses and memoranda stating the substance of all oral responses to the materials described in subsections (c)(1) and (2). [220 ILCS 5/10-103]

d) The material specified in subsection (c) shall be disclosed to the parties of record by:

- 1) service on the parties at the next hearing; or
- 2) if no hearing is scheduled within the next seven days, service by mail on all parties of record.

ILLINOIS ADMINISTRATIVE PROCEDURE ACT (5 ILCS 100/)

Sec. 5-165. Ex parte communications in rulemaking; special government agents.

(a) Notwithstanding any law to the contrary, this Section applies to ex parte communications made during the rulemaking process.

(b) "Ex parte communication" means any written or oral communication by any person during the rulemaking period that imparts or requests material information or makes a material argument regarding potential action concerning an agency's general, emergency, or peremptory rulemaking under this Act and that is communicated to that agency, the head of that agency, or any other employee of that agency. For purposes of this Section, the rulemaking period begins upon the commencement of the first notice period with respect to general rulemaking under Section 5-40, upon the filing of a notice of emergency rulemaking under Section 5-45, or upon the filing of a notice of rulemaking with respect to peremptory rulemaking under Section 5-50. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as the format of public comments, the number of copies required, the manner of filing such comments, and the status of a rulemaking proceeding; and (iii) statements made by a State employee of that agency to the agency head or other employee of that agency.

(c) An ex parte communication received by any agency, agency head, or other agency employee shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication promptly be made a part of the record of the rulemaking proceeding. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

(d) Failure to take certain actions under this Section may constitute a violation as provided in Section 5-50 of the State Officials and Employees Ethics Act.

Sec. 10 60. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.

(b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

ILLINOIS STATE OFFICIALS AND EMPLOYEES ETHICS ACT (5 ILCS 430/)

Sec. 5-165. Ex parte communications in rulemaking; special government agents.

(a) Notwithstanding any law to the contrary, this Section applies to ex parte communications made during the rulemaking process.

(b) "Ex parte communication" means any written or oral communication by any person during the rulemaking period that imparts or requests material information or makes a material argument regarding potential action concerning an agency's general, emergency, or peremptory rulemaking under this Act and that is communicated to that agency, the head of that agency, or any other employee of that agency. For purposes of this Section, the rulemaking period begins upon the commencement of the first notice period with respect to general rulemaking under Section 5-40, upon the filing of a notice of emergency rulemaking under Section 5-45, or upon the filing of a notice of rulemaking with respect to peremptory rulemaking under Section 5-50. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as the format of public comments, the number of copies required, the manner of filing such comments, and the status of a rulemaking proceeding; and (iii) statements made by a State employee of that agency to the agency head or other employee of that agency.

(c) An ex parte communication received by any agency, agency head, or other agency employee shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication promptly be made a part of the record of the rulemaking proceeding. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

(d) Failure to take certain actions under this Section may constitute a violation as provided in Section 5-50 of the State Officials and Employees Ethics Act.

ILLINOIS STATE OFFICIALS AND EMPLOYEES ETHICS ACT (5 ILCS 430/)

Sec. 5 50. Ex parte communications; special government agents.

(a) This Section applies to ex parte communications made to any agency listed in subsection (e).

(b) "Ex parte communication" means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi adjudicatory, investment, or licensing matters pending before or under consideration by the agency. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and (iii) statements made by a State employee of the agency to the agency head or other employees of that agency.

(b 5) An ex parte communication received by an agency, agency head, or other agency employee from an interested party or his or her official representative or attorney shall promptly be memorialized and made a part of the record.

(c) An ex parte communication received by any agency, agency head, or other agency employee, other than an ex parte communication described in subsection (b 5), shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication be promptly made a part of the record. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

(d) "Interested party" means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi adjudicatory, investment, or licensing matter.

(e) This Section applies to the following agencies:

...  
Illinois Commerce Commission  
...

(f) Any person who fails to (i) report an ex parte communication to an ethics officer, (ii) make information part of the record, or (iii) make a



filing with the Executive Ethics Commission as required by this Section or as required by Section 5 165 of the Illinois Administrative Procedure Act violates this Act.

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State: Indiana

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## STATE UTILITIES LAW

### TITLE 8. UTILITIES AND TRANSPORTATION

#### ARTICLE 1. UTILITIES GENERALLY

IC 8-1-1-5 Impartiality of commission; evidence; record; utility consumer counselor; ex parte communications; executive sessions; violations  
Sec. 5. (a) The commission shall in all controversial proceedings heard by it be an impartial fact-finding body and shall make its orders in such cases upon the facts impartially found by it. The commission shall in no such proceeding, during the hearing, act in the role either of a proponent or opponent on any issue to be decided by it. All evidence given in any such proceeding shall be offered on behalf of the respective parties to, or appearing in, the proceeding and not in the name or behalf of the commission itself.

(b) Any report, audit, examination, or analysis prepared by the commission staff at the request or direction of the commission may be made a part of the record of the proceeding, subject to cross-examination by any party of the person who performed or directed the preparation of the report, audit, examination, or analysis.

(c) If in any such proceeding the public interest is not otherwise adequately represented by counsel, in the opinion of the commission, it shall be the duty of the utility consumer counselor, if requested by the commission, to make adequate preparation for the presentation of the interests of the public in such proceeding and the utility consumer counselor shall at the hearing represent the public interests therein involved.

(d) However, nothing in this section prevents the commission from instituting, prosecuting, hearing, or determining any investigation or proceeding which it is authorized to do, or make, on its own motion by any law with the administration of which it is charged.

(e) Except as otherwise provided in this chapter, no member or employee of the commission assigned to make findings of fact and conclusions of law in a formally docketed evidentiary proceeding may communicate in connection with any issue of fact or law disputed in that proceeding with any party or any party's representative, except on notice and with opportunity for all parties to participate.

(f) In addition to holding an executive session in the instances described in IC 5-14-1.5-6.1(b), the commission may hold an executive session to deliberate on a proposed order if all the following are satisfied:

(1) All evidence on the matter has been received by the commission.

(2) The deliberations are preparatory to taking final action on an order subject to judicial review.

(3) Only the following are permitted to participate in the executive session:

(A) Commission members.

(B) Commission employees who are formally assigned to advise or assist in preparing the order, including the commission's technical staff and attorneys.

IC 5-14-1.5-5, IC 5-14-1.5-6.1, and IC 5-14-1.5-7 apply to an executive session held under this subsection.

(g) A person who violates this section commits a Class C infraction.

## TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

### ARTICLE 1. GENERAL PROVISIONS

#### Rule 1.5. Ex Parte Contacts

##### 170 IAC 1-1.5-1 Definitions

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5; IC 8-1-2-42; IC 8-1-2-61.5; IC 8-1-34

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Commission" refers to the Indiana utility regulatory commission.

(c) "To file a report" means written testimony filed by or oral testimony presented by, or both, a technical employee in a pending proceeding.

(d) "Proceeding" means a formally docketed proceeding before the commission. The term does not include any of the following:

(1) A rulemaking.

(2) A thirty (30) day filing under IC 8-1-2-42(a).

(3) A filing under IC 8-1-2-61.5(a).

(4) A petition under 170 IAC 7-4.

(5) An informal investigation.

(6) An investigation and disposition by the consumer affairs division of the commission.

(7) An application or notice of change form filed under IC 8-1-34.

(e) "Technical employee" means an employee within one (1) of the commission's technical divisions.

170 IAC 1-1.5-2 Pending proceeding

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 2. For purposes of this rule, a proceeding is considered pending from thirty (30) days before the date of filing until the date the commission issues a final order in the proceeding and until:

(1) all petitions for rehearing or reconsideration and all appeals to a court of appellate jurisdiction have been determined or decided;

(2) any opportunity for a further appeal has been exhausted; and

(3) no further action is required by the commission.

170 IAC 1-1.5-3 Violations

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 3. (a) Unless required for the disposition of ex parte matters specifically authorized by statute, rule, or order of the commission, all members of the commission, an attorney assigned to a particular proceeding as an administrative law judge, and a technical employee assigned to advise the commission in a particular proceeding may not communicate, directly or indirectly, regarding any issue in a proceeding while the proceeding is pending with any:

- (1) party;
- (2) party's employee, attorney, or representative;
- (3) entity known to act on behalf of a party;
- (4) person who has:
  - (A) a direct interest in the outcome of the proceeding; or
  - (B) served as an investigator or advocate in the proceeding or in its preadjudicative stage;
- (5) attorney assigned as a settlement judge in a particular proceeding; or
- (6) technical employee directed to file a report in the proceeding; without notice and opportunity for all parties to participate in the communication.

(b) Unless required for the disposition of ex parte matters specifically authorized by statute, rule, or order of the commission, a person described in subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) may not communicate, directly or indirectly, regarding any issue in a proceeding while the proceeding is pending with any:

- (1) member of the commission;
- (2) attorney assigned to a particular proceeding as an administrative law judge; or
- (3) technical employee assigned to advise the commission in a particular proceeding; without notice and opportunity for all parties to participate in the communication.

(c) This section does not prohibit any person from communicating ex parte with any member or employee of the commission with respect to undisputed administrative or procedural matters in connection with a proceeding.

(d) Only to the extent not otherwise inconsistent with this rule, any person may make educational or informational communications that are not intended to persuade or advocate a position on an issue in a particular proceeding while the proceeding is pending.

170 IAC 1-1.5-4 Communication within the commission

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 4. Members of the commission, its attorneys, and technical employees may communicate with each other regarding a particular proceeding pending before the commission. However, an attorney assigned as a settlement judge or a technical employee directed to file a report in a particular proceeding may not communicate regarding the particular proceeding with members of the commission, attorneys not assigned as settlement judges, or technical employees not assigned to file a report in that particular proceeding.

170 IAC 1-1.5-6 Disclosure

Authority: IC 8-1-1-3

Affected: IC 8-1-1-5

Sec. 6. (a) A member of the commission, an attorney, or a technical employee who receives a communication, which that person reasonably believes violates this rule shall:

- (1) tender to the record of the proceeding:
  - (A) all written communications received;
  - (B) all written responses to the communication; and
  - (C) a memorandum stating:
    - (i) the substance of all oral communications received;
    - (ii) all oral responses made; and
    - (iii) the identity of each person from whom an ex parte communication was received; and
- (2) advise all parties that the items in subdivision (1) have been tendered to the record. The presiding officer shall admit into the record all items tendered under this section.

(b) Any party shall be permitted an opportunity to respond on the record of the affected proceeding within ten (10) days after notice of the disclosed communication.

(c) In any proceeding in which a communication has been disclosed in accordance with subsection (a), the commission may determine whether any additional action is necessary in order to maintain a fair and impartial proceeding.

PUBLIC UTILITIES LAW

Title 8. Utilities and Transportation

Article 1. Utilities Generally

Chapter 1.1. Office of the Utility Consumer Counselor

8-1-1.1-2 Creation; administration

Sec. 2. There is created the office of utility consumer counselor. The office shall be administered by the consumer counselor appointed under section 3 of this chapter.

8-1-1.1-3 Consumer counselor

Sec. 3. The governor shall appoint a consumer counselor, for a term of four (4) years at a salary to be fixed by the governor. The counselor shall serve at the will and pleasure of the governor. The counselor shall be a practicing attorney, and qualified by knowledge and experience to practice in utility regulatory agency proceedings. The counselor shall apply the counselor's full efforts to the duties of the office and may not

engage in any occupation, practice, profession or business that would conflict with the duties of the office.

#### 8-1-1.1-4.1 Powers and duties

Sec. 4.1. (a) The consumer counselor may appear on behalf of ratepayers, consumers, and the public in:

(1) hearings before the commission, the department of state revenue, or the Indiana department of transportation;  
(2) appeals from the orders of the commission, the department of state revenue, or the Indiana department of transportation; and  
(3) suits and actions in a court that may involve rates for service, services, extensions, and contracts for service, valuations of utilities, applications of utilities for authority to issue securities, applications for mergers and sales, and in all other proceedings, including proceedings before federal agencies, and suits and actions in which the subject matter of the action affects the consumers of a utility, motor carrier, or railroad doing business in Indiana.

(b) The counselor shall decide whether to appeal an order of the commission, the department of state revenue, or the Indiana department of transportation and may on the counselor's own motion initiate an appeal.

#### 8-1-1.1-5.1 Proceedings before commission, department, or court; powers and duties of consumer counselor

Sec. 5.1. (a) The commission, the department of state revenue, or the Indiana department of transportation shall immediately notify the counselor of the institution of any proceeding before the commission, the department of state revenue, or the Indiana department of transportation in which the counselor is authorized to appear and shall transmit to the counselor a copy of the petition or complaint filed.

(b) The commission, the department of state revenue, or the Indiana department of transportation may not proceed to hear a petition, complaint, or proceeding in which the counselor is entitled to appear until the counselor has been given at least ten (10) days notice, unless the counselor waived the notice.

(c) The consumer counselor may call the counselor's own witnesses to testify before a proceeding or hearing in which the counselor makes an appearance, and may require the production for examination of books and papers relating to a matter under investigation and in question before the commission, another agency, or a court.

(d) The consumer counselor has the right, with the consent of the petitioners or complainants, whenever a petition is filed on behalf of the ratepayers, consumers, or the public, to make amendments to the petition or complaint that the counselor considers advisable.

(e) In all proceedings before the commission, the department of state revenue, or the Indiana department of transportation and in a court in which the consumer counselor shall appear, the consumer counselor shall have charge of the interests of the ratepayers and consumers of the utility, motor carrier, or railroad involved. The counselor may give notice of the hearings to all municipalities, corporations, or organizations and persons that are parties to the proceedings, suit, or action other than the utility, motor carrier, or railroad.

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State: Iowa

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#### IOWA ADMINISTRATIVE PROCEDURES ACT

Title I. State Sovereignty and Management / Subtitle 6. Administrative Procedure

#### 17A.17. Ex parte communications and separation of functions

1. a. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

b. However, without such notice and opportunity for all parties to participate, a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

4. A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all such written communications received, all written responses to the communications, and a memorandum stating the substance of all such oral and other communications received, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication.
5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.
6. The agency and any party may report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule shall provide for appropriate sanctions, including default, suspending or revoking a privilege to practice before the agency, and censuring, suspending, or dismissing agency personnel, for any violations of this section.
7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.
8. An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. In addition, such an individual shall not be subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

#### IOWA UTILITIES BOARD RULES

##### Chapter 7:

199-7.22(17A,476) Ex Parte communications - Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives shall not communicate directly or indirectly with the board or presiding officer in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The board or presiding officer shall not communicate directly or indirectly with parties or their representatives in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate.

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State: Kansas

#### ADMINISTRATIVE PROCEDURE ACT

##### Kansas Article 5. — ADMINISTRATIVE PROCEDURE ACT

77-545. State corporation commission; adjudicative proceedings; ex parte communications; file and docket, contents; technical staff, not party to proceedings. (a) This section applies to adjudicative proceedings before the state corporation commission.

(b) (1) After the commission has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commission has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are directed to the presiding officer shall be mailed to all parties of record and proof of service shall be furnished to the commission. Communications requested by members of the commission staff from any party and any written communications received by members of the commission staff from any party shall be made a part of the file and the docket and shall be made available to all persons who desire to use them, provided that all commission requests for information from a party shall be mailed to all parties of record.

(3) The person or persons to whom any ex parte communication has been made shall promptly and fully inform the full commission of the substance of the communication, and the circumstances thereof, to enable the commission to take appropriate action.

(c) For purposes of this section, no member of the technical staff shall be considered a party to any proceeding before the commission, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of the staff is to aid the commission in the proper discharge of commission duties, the presiding officers shall be free at all times to confer with any staff member with respect to any proceeding. However, no facts that are outside the record, and that reasonably could be expected to influence the decision in any matter pending before the commission, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply to staff counsel in regard to any adjudicatory proceeding before the commission.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of ex parte communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.

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State: Kentucky

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ADMINISTRATIVE PROCEDURES ACT

KRS Chapter 013B00 Administrative Hearings

13B.100 Prohibited communications.

(1) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the proceeding is pending.

(2) The prohibition stated in subsection (1) shall not apply to:

(a) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(b) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(3) If an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and he shall place in the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

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State: Louisiana

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LOUISIANA ADMINISTRATIVE PROCEDURE ACT

Title 49. State Administration

Chapter 13. Administrative Procedure

§960. Ex parte consultations and recusations

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

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State: Maine

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COMMISSION RULE

65-407 PUBLIC UTILITIES COMMISSION

Chapter 110: RULES OF PRACTICE AND PROCEDURE

Subpart 6 - EX PARTE COMMUNICATIONS

760 Ex Parte Communications Prohibited

(a) Throughout any adjudicatory proceeding:

(1) no commissioner, presiding officer, or other advisory staff member in a proceeding shall communicate, directly or indirectly with any party, including a proposed intervenor, or any other person legally interested in the outcome of the proceeding; and

(2) no party, including a proposed intervenor or person legally interested in the outcome of a proceeding shall communicate, directly or indirectly, with any commissioner, presiding officer, or other advisory staff member

in connection with any potential decision in the case or any issue of fact, law or procedure, except upon notice and opportunity for all parties to participate as provided in these rules or pursuant to order of the presiding officer.

(b) Any Commissioner, presiding officer, other advisory staff member, party or representative of a party making or receiving an ex parte communication prohibited by this section shall, within 48 hours after first having reason to believe the communication was prohibited, prepare and deliver to the Administrative Director and all parties a written statement setting forth the substance of the communication if it was in oral form, or the actual communication if it was in written form.

760-A Prohibited Communications After Issuance of Presiding Officer's Report

(a) In an adjudicatory proceeding, after the issuance of the presiding officer's report or proposed findings, no person shall make any direct or

indirect communication to any commissioner, presiding officer, or other advisory staff member in connection with any potential or proposed decision in the proceeding or any issue of fact, law or procedure, except for the filing by a party of a response or exceptions to the report or proposed findings as permitted by section 752(b), or except as permitted by order or prior approval of the Commission or presiding officer, or except as by motion pursuant to section 1004. The prohibition stated in this subsection shall continue until the deadline for filing of a motion for rehearing, reopening, reconsideration, or clarification pursuant to section 1004, and, if such a motion is filed, until after final action by the Commission on the motion.

(b) In the event that the Commission receives a communication that, if delivered to a commissioner, presiding officer, or other advisory staff member, would violate the prohibition contained in subsection (a), the communication shall not be provided to or received or read by any commissioner, the presiding officer, and other advisory staff members. Any such communications shall be made available for inspection by parties and members of the public. The Administrative Director shall notify a person providing such communication prohibited by this section that the communication is not permitted by our rules, that it will not be delivered to the commissioners, the presiding officer, or other members of the advisory staff, and that there are established procedures for timely public participation in adjudicatory proceedings.

(c) Notwithstanding the provisions of subsection (b), if a commissioner, presiding officer, or other advisory staff member receives a communication that is prohibited by subsection (a), the recipient shall deliver a copy of any written communication, or a brief summary of any oral communication, to the Administrative Director for action as required under subsection (b). If the communication was made directly or indirectly by a party or by a person legally interested in the outcome of the proceeding, the recipient of the communication, or the Administrative Director, within 48 hours after first having reason to believe the communication was prohibited, shall send to the parties a written statement setting forth the substance of the communication, if it was in oral form, or a copy of the actual communication if it was in written form.

(d) No party in a proceeding shall request, encourage, suggest, or provide any assistance to any other person to make a communication that would violate subsection (a) of this section.

(e) The actions that this section requires shall be taken by commissioners, presiding officers, other advisory staff members and the Administrative Director are not exclusive and shall not preclude any other action or sanction against a party or person legally interested in the outcome of a proceeding who violates subsections (a) or (b) any provision of this section.

#### 761 Communications Permitted

This subpart shall not prohibit:

(a) Any commissioner or presiding officer from communicating in any respect with commissioners or presiding officers; or

(b) Any commissioner or presiding officer from having the aid or advice of those members of the Commission staff, counsel or consultants retained by the Commission who have not participated and will not participate in the Commission proceeding in an advocate capacity; or

(c) Inquiry by a party, a commissioner, a presiding officer, or other advisory staff member concerning the status of any event contained in the procedural schedule, any filing, or any order.

(d) Individual communications between any party and members of the Commission's advocacy staff or between any party and any staff members in a non-adjudicatory proceeding.

#### 762 Proposed Findings or Decisions

No party or representative of any party shall prepare and forward proposed or draft findings or final decisions of any matter pending before the Commission to any Commissioner, presiding officer or advisory staff member unless such party or representative has been requested to do so by the Commissioner or presiding officer. Any party making a procedural motion to the Commission or presiding officer may append a proposed procedural order to the motion.

### Title 5, Chapter 375: MAINE ADMINISTRATIVE PROCEDURE ACT

#### Subchapter 4: ADJUDICATORY PROCEEDINGS

##### §5 9055. Ex parte communications; separation of functions

1. Communication prohibited. In any adjudicatory proceeding, no agency members authorized to take final action or presiding officers designated by the agency to make findings of fact and conclusions of law may communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.

2. Communication permitted. This section shall not prohibit any agency member or other presiding officer described in subsection 1 from:

A. Communicating in any respect with other members of the agency or other presiding officers; or

B. Having the aid or advice of those members of his own agency staff, counsel or consultants retained by the agency who have not participated and will not participate in the adjudicatory proceeding in an advocate capacity.

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State: Maryland

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PUBLIC UTILITIES STATUTE

Title 3. Administrative and Judicial Procedure  
Subtitle 1. Procedure Before Commission

§ 3-108. Ex parte contact

Unless notice is provided to each other party in a case before the Commission, a party or person acting on behalf of a party may not contact ex parte a commissioner or a hearing examiner regarding the merits of the case.

ADMINISTRATIVE PROCEDURES ACT

§ 10-219. Ex parte communications

Generally prohibited

(a)(1) Except as provided in paragraph (2) of this subsection, a presiding officer may not communicate ex parte directly or indirectly regarding the merits of any issue in the case, while the case is pending, with:

- (i) any party to the case or the party's representative or attorney; or
- (ii) any person who presided at a previous stage of the case.

(2) An agency head, board, or commission presiding over a contested case may communicate with members of an advisory staff of, or any counsel for, the agency, board, or commission who otherwise does not participate in the contested case.

Pre-hearing communications

(b) If, before hearing a contested case, a person receives an ex parte communication of a type that would violate subsection (a) of this section if received while conducting a hearing, the person, promptly after commencing the hearing, shall disclose the communication in the manner prescribed in subsection (c) of this section.

Disclosure

(c) An individual who is involved in the decision making process and who is personally aware of an ex parte communication shall:

- (1) give notice to all parties;
- (2) include in the record of the contested case:
  - (i) each written communication received;
  - (ii) a memorandum that states the substance of each oral communication received;
  - (iii) each written response to a communication; and
  - (iv) a memorandum that states the substance of each oral response to the communication; and
- (3) send to each party a copy of each communication, memorandum, and response.

Rebuttal

(d) A party may rebut an ex parte communication if the party requests the opportunity to rebut within 10 days after notice of the communication.

Remedial action

(e)(1) To eliminate the effect of an ex parte communication that is made in violation of this section, the presiding officer or, if the presiding officer is a multimember body, the individual board or commission member, may:

- (i) withdraw from the proceeding; or
- (ii) terminate the proceeding without prejudice.

(2) An order to terminate the proceeding without prejudice shall state the last date by which a party may reinstitute the proceeding.

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State: Massachusetts  
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COMMISSION RULE  
220 CMR: DEPARTMENT OF PUBLIC UTILITIES  
PROCEDURAL RULES

(9) Ex Parte Communications in Adjudicatory Proceedings

(a) From the initial filing in an adjudicatory proceeding until the rendering of a final decision, a Commissioner, presiding officer, or staff member

of the Department may not communicate with a party or interested person about any substantive issue of fact, law, or policy except upon reasonable notice and opportunity for all parties to participate.

(b) Communications not prohibited by 220 CMR 1.02(9)(a) include:

1. Communications concerning scheduling, administrative, and other procedural matters; and

2. Communications between a party and assigned settlement intervention staff for the purpose of producing a settlement, or communications between a party and staff assigned to conduct alternative dispute resolution or mediation proceedings.

(c) If a person makes or attempts to make an ex parte communication prohibited by 220 CMR 1.02(9)(a), the Commissioner, presiding officer, or staff member shall advise the person that the communication is prohibited and shall immediately terminate the prohibited communication.

(d) If a Commissioner, presiding officer, or staff member violates the ex parte rule, he or she shall, no later than two business days after determining that the communication was prohibited, serve on each party and place in the docket file the following:

1. A written statement including the substance and circumstances surrounding the communication; the identity of each person who participated in the communication; the time, date, and duration of the communication; and whether, in his or her opinion, the receipt of the ex parte communication disqualifies him or her from further participation in the adjudicatory proceeding; and

2. Any written or electronic documentation of the communication. The above documents to be placed in the docket file shall not be made a part of the evidentiary record.

(e) The Department may, upon the motion of any party or on its own motion, accept or require the submission of additional evidence of the substance of a communication prohibited by 220 CMR 1.02(9)(a).

(f) Upon receipt of a communication made or caused to be made by a party in violation of 220 CMR 1.02(9)(a), the Department may, to the extent consistent with the interests of justice, require the party to show cause why his or her claim or interest in the adjudicatory proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(g) Where a party has violated this rule, the Department or presiding officer may take such action as is deemed appropriate within the circumstances.

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State: Michigan

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#### STATE COMMISSION RULE

#### MICHIGAN ADMINISTRATIVE PROCEDURES ACT

24.282 Communications by agency staff; limitations; exceptions.

Sec. 82.

Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in a contested case before the financial institutions bureau, the insurance bureau or the public service commission insofar as the case involves rate-making or financial practices or conditions.

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State: Minnesota

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#### STATE COMMISSION RULE

#### MINNESOTA ADMINISTRATIVE RULES

#### CHAPTER 7845, COMMISSION CONDUCT; COMMUNICATION

#### EX PARTE COMMUNICATION

#### 7845.7000 DEFINITIONS.

Subpart 1.Scope.The terms used in parts 7845.7000 o 7845.7600 have the meanings given them in this part.

Subp. 2.Decision-making personnel."Decision-making personnel" means the commission's executive secretary and professional staff, and consultants to the commission.

Subp. 3.Disputed formal petition.A "disputed formal petition" refers to a formal petition (1) filed with the commission, (2) for which a hearing is not automatically required, (3) for which the commission has received a written statement disputing the action or relief sought in the petition,



and (4) on which the commission has ordered comments, written responses to comments, oral argument, negotiations, settlement conferences, a formal hearing, or other procedures it considers necessary or helpful to enable it to decide the petition. A petition ceases to be a "disputed formal petition" when the notice of dispute is withdrawn in writing or when the commission resolves the dispute by written order.

Subp. 4. Ex parte communication. "Ex parte communication" means an oral or written, off-the-record communication made to or by commissioners or commission decision-making personnel, without notice to parties, that is directed to the merits or outcome of an on-the-record proceeding. This term does not include procedural, scheduling, and status inquiries or other inquiries or requests for information that have no bearing on the merits or the outcome of the proceeding.

Subp. 5. Material issue. "Material issue" means an issue that may affect the merits or outcome of an on-the-record proceeding.

Subp. 6. Party. "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives.

#### 7845.7100 PERMISSIBLE EX PARTE COMMUNICATIONS.

An ex parte communication is permissible except as prohibited in part 7845.7200.

#### 7845.7200 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. Communications with commissioners. An ex parte communication, either direct or indirect, must not be made or attempted to be made between a commissioner and a party concerning:

A. a material issue during a pending contested case proceeding, from the date the matter is referred to the Office of Administrative Hearings until the commission issues its final order and the time to petition for reconsideration expires, or until the commission issues a final order responding to the petition for reconsideration, whichever is later;

B. a material issue in a rulemaking proceeding after the beginning of commission deliberations, from the date the commission posts notice of its deliberations for adoption of rules on the open meeting calendar until the order adopting the rules is issued;

C. a material issue in a disputed formal petition; or

D. other communications prohibited by law such as:

(1) offers of employment to commissioners, as described in Minnesota Statutes, section 216A.036, and in parts 7845.0700 and 7845.0800;

(2) discussions with commissioners concerning past or future benefits or compensation, as described in Minnesota Statutes, section 216A.037, subdivision 2, and in parts 7845.0700 and 7845.0800; or

(3) offers to commissioners of compensation, gifts, gratuities, favors, entertainment, meals, beverages, loans, or other things of monetary value, as described in part 7845.0700.

Subp. 2. Communications with staff. Ex parte communications with decision-making personnel are not prohibited under Minnesota Statutes, section 216A.037.

#### 7845.7300 HANDLING PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. Written communication. When possible, a commissioner who receives a prohibited written ex parte communication shall forward the communication, without reading it, to the commission's executive secretary.

A commissioner who receives and reads a prohibited written ex parte communication shall forward the communication to the commission's executive secretary within 48 hours, along with a signed statement of the source of and circumstances under which the communication was received and read.

Subp. 2. Oral communication. If a party makes or attempts to make a prohibited oral ex parte communication to a commissioner, the commissioner shall advise the party who makes or attempts to make the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited oral ex parte communication takes place, the commissioner who receives the communication shall forward to the commission's executive secretary, within 48 hours, a signed and dated statement that includes the following information:

A. the name and docket number of the proceeding;

B. to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties to the proceeding;

C. the date and time of the communication, its duration, and the means by and circumstances under which it was made;

D. a summary of the matters discussed; and

E. whether the party making the prohibited communication persisted after being advised that the communication was prohibited.

Subp. 3. Notice to parties. The commission's executive secretary shall place the statement in the commission's public file within 48 hours, but

shall not make the statement part of the record of the pending proceeding. The executive secretary shall serve a copy of the statement on the parties on the commission's official service list. If the statement is voluminous, the executive secretary may serve notice to the parties on the official service list that the statement is available for public inspection at the commission's offices during regular business hours.

#### 7845.7400 HANDLING PERMISSIBLE EX PARTE COMMUNICATIONS.

Subpart 1. Documentation. Documentation is not needed for permissible ex parte communications with commissioners and decision-making personnel except as provided in subparts 2 to 4.

Subp. 2. Written communications with staff. Decision-making personnel who receive or generate a permissible written ex parte communication that is prohibited for commissioners under part 7845.7200 shall file a copy of the communication in the commission's public file with a notation of the sender and recipient within 48 hours after the communication is received or generated.

Subp. 3. Oral communications with staff. Decision-making personnel who receive or generate a permissible oral ex parte communication that is prohibited for commissioners under part 7845.7200 shall ensure that the substance of the communication and the name of the maker or recipient of the communication is recorded in a signed memorandum to the commission's public file within 48 hours. If a proceeding has been assigned to an administrative law judge, a copy of the memorandum must be sent to the judge.

Subp. 4. Interim rate proceedings; compliance filings. Commissioners and decision-making personnel may receive or generate written or oral ex parte communications with a party in the setting of interim rates or the review of compliance filings following the issuance of a final order or order after reconsideration. Commissioners and decision-making personnel who receive or generate written or oral ex parte communications in these situations shall place a signed note in the commission's public file containing the name of the party, date, docket number of proceeding, and topic as soon as practicable, but no later than the issuance of the interim rate order or the compliance filing order.

Subp. 5. Informing the public. The commission shall make information regarding ex parte communications that occur in these situations available to the public upon reasonable request at its office during regular business hours.

#### 7845.7500 SANCTIONS.

Subject to notice and hearing, a party who makes a prohibited ex parte communication to a commissioner or who encourages or solicits others to make a prohibited ex parte communication to a commissioner is subject to the following sanctions:

A. dismissal of the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider it impartially;

B. an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication, when other parties are prejudiced by the prohibited ex parte communication;

C. the striking of evidence or pleadings when the evidence or pleadings are tainted by the prohibited ex parte communication; or

D. a public statement of censure by the commission, when the prohibited ex parte communication is determined to be part of a continuing pattern of improper ex parte communication or when a single prohibited communication takes place and mitigating circumstances exist that:

(1) negate the need for a more severe sanction;

(2) do not prejudice the proceeding to the extent that the commission is unable to consider it impartially;

(3) do not prejudice other parties to the proceeding; and

(4) do not taint the evidence or pleadings.

#### 7845.7600 VIOLATIONS BY COMMISSION AND STAFF.

A commissioner who intentionally violates parts 7845.7000 to 7845.7500 shall recuse himself or herself and shall not participate, offer advice, or vote in the commission's decision-making process in the pending on-the-record proceeding.

Decision-making personnel who intentionally violate parts 7845.7000 to 7845.7500 must be removed from participating in a staff support capacity or prohibited from offering advice on the affected case if the violation has substantially interfered with due process in the proceeding.

### CHAPTER 216A PUBLIC UTILITIES

#### 216A.03 PUBLIC UTILITIES COMMISSION.

##### 216A.037 EX PARTE COMMUNICATIONS; CODE OF CONDUCT; RULES.

Subdivision 1. Ex parte communications prohibitions; rules. (a) The commission shall adopt rules under chapter 14 prescribing permissible and impermissible ex parte communications. The ex parte rules may prohibit only ex parte communications, directly or indirectly, between a commissioner and a participant or party under the commission's rules of practice and procedure relating to:

(1) a material issue during a pending contested case proceeding;

(2) a material issue in a rulemaking proceeding after the beginning of commission deliberations;

(3) a material issue in a disputed formal petition; and

(4) any other communication impermissible by law.

(b) The commission may apply ex parte prohibitions, prospectively and after notice to affected parties, to other commission proceedings as the commission deems necessary.

(c) A contested case is pending from the time the commission refers the matter to the Office of Administrative Hearings until the commission has issued its final order, and the time to petition for reconsideration has expired or the commission has issued an order finally disposing an application for reconsideration, whichever is later.

Subd. 2. Conflict-of-interest communications prohibited. A commissioner shall not communicate, directly or indirectly, with a person or entity who is a party to a pending proceeding before the commission regarding past or future benefits or compensation to be received from that person or entity. The commission may dismiss a proceeding if an applicant, petitioner, or complainant violates this subdivision.

Subd. 3. Code of conduct rules. Except as limited by subdivision 1, the commission shall adopt rules prescribing a code of conduct for commissioners and employees of the commission. The code of conduct must include standards to preserve the quasi-judicial function of the commission.

Subd. 4. Complaint procedure; hearing; sanctions. (a) Any person seeking sanctions for alleged violations of the rules adopted under this section may file a complaint with the commission.

(b) A complaint seeking sanctions must include the following information: the name and address of the complainant; the name and address of complainant's counsel, if any; the name and address of each person alleged to have violated the ex parte prohibition (respondents); the name and address of each respondent's counsel, if known; the facts constituting the alleged violation; and the sanctions sought by the complainant.

(c) A complaint filed under this section must be filed with the commission and mailed to each respondent, the department, the Office of the Attorney General, and all persons on the commission's service list for the proceeding.

(d) Within seven days of service of the complaint, a respondent shall file an answer with the commission and serve it on the complainant, the department, the Office of the Attorney General, and all persons on the commission's service list for the proceeding.

(e) The commission shall refer the complaint and any reply to the Office of Administrative Hearings.

(f) The administrative law judge assigned to the ex parte complaint proceeding by the Office of Administrative Hearings shall conduct a hearing investigation and shall issue a report within 30 days after the matter is referred. If the administrative law judge determines that the report cannot be properly completed within that time period, the judge shall report that fact to the commission within the 30-day period and shall file a final report within a reasonable time thereafter, no later than 60 days after the referral to the Office of Administrative Hearings.

(g) The report of the administrative law judge shall describe the relevant facts of the case and shall set forth the judge's findings as to whether ex parte violations occurred. The findings and decisions of the judge as to whether ex parte violations have occurred are binding on the commission. The judge shall also discuss and make recommendations regarding the imposition of sanctions in accordance with paragraph (h). The judge shall include in the report a discussion of the recusal of any commissioner or the removal of decision-making personnel from this case.

(h) In the report under paragraph (g), the administrative law judge may only recommend that the commission impose one of the following sanctions if the judge finds that the condition specified for the sanction is met:

(1) dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider it impartially;

(2) issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication if other parties are prejudiced by the prohibited ex parte communication;

(3) strike evidence or pleadings if the evidence or pleadings are tainted by the prohibited ex parte communication; or

(4) issue a public statement of censure, if the prohibited ex parte communication is determined to be part of a continuing pattern of improper ex parte communication or if the prohibited ex parte violation consists of a single prohibited communication and mitigating circumstances exist that:

(i) negate the need for a more severe sanction;

(ii) do not prejudice the proceeding to the extent that the commission is unable to consider it impartially;

(iii) do not prejudice other parties; or

(iv) do not taint the evidence or pleadings.

(i) If the administrative law judge finds the complainant's allegation of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceeding, the judge may recommend that the commission issue an appropriate sanction against the complainant.

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State: Mississippi

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PUBLIC SERVICE COMMISSION STATUTE

§ 77-2-13. Issues in contested proceedings; communication; exceptions; violations; punishment

(1) A public service commissioner, commission or public utilities staff employee, or consultant assisting the commission in investigating, compiling, evaluating and analyzing the record shall not communicate, directly or indirectly, regarding any issue in a contested proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any commission employee or consultant who has participated in the proceeding in a public advocacy or prosecutorial capacity, any party, his agent or other person acting on his behalf who has a direct or indirect pecuniary interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(2) A commission or public utilities staff employee, or consultant who has participated in investigating, compiling, evaluating and analyzing the record in a public advocacy or prosecutorial capacity; any party, his agent or other person acting on his behalf who has a direct or indirect pecuniary interest shall not communicate, directly or indirectly, regarding any issue in a contested proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any commissioner, employee or consultant assisting the commissioners in investigating, compiling, evaluating and analyzing the record, or any person who is or may reasonably be expected to be involved in the decisional process of the proceeding, without notice and opportunity for all parties to participate.

(3) The provisions of this section shall not apply to the following:

(a) Commissioners may communicate with one another regarding any proceeding;

(b) Commissioners, either individually or as a group, may receive aid in investigating, compiling, evaluating and analyzing the record from legal counsel, other employees or consultants of the commission or public utilities staff who have not participated in the proceeding in a public advocacy or prosecutorial capacity; and

(c) Commissioners may communicate, either individually or as a group, with the general public about matters not regarding a contested proceeding.

(4) The commission shall, in the event of a violation of this section, take whatever action is necessary to ensure that such violation does not prejudice any party or adversely affect the fairness of the proceedings to include but is not limited to the following:

(a) A public service commissioner, consultant, or employee of the commission or public utilities staff who is or may reasonably be expected to be involved in the investigation, compilation, evaluation, analysis or decisional process of a contested proceeding who receives an ex parte communication in violation of this section shall place on the public record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the ex parte communication was received. The chairman of the commission shall advise all parties that these matters have been placed on the record. Upon request made within ten (10) days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of that portion of the record for purposes of establishing a fact at issue and that portion of the record is so admitted.

(b) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a commissioner who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(c) The commission may, in its discretion, require, to the extent consistent with the interests of justice and the policy of underlying statutes, the communicator to show cause why his claim in the contested case should not be dismissed, denied, disregarded or otherwise adversely affected as a result of such violation.

(d) Any person found guilty of violating any provision of this section shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed six (6) months or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

(5) A proceeding shall be considered contested in the following:

(a) Upon the initiation of any proceedings requiring a party to show cause why any action by the commission should not be taken;

(b) In a rate change proceeding when a rate filing is suspended; and

(c) In any adversarial proceeding, when any objection or contest is filed by any party.

A contested proceeding remains pending until the commission has issued its final order, and the time to petition for reconsideration has expired or the commission has issued an order finally disposing of an application for reconsideration, whichever is later.

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State: Missouri

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PUBLIC SERVICE COMMISSION STATUTE

386.210. 1. The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of the public, any public utility or similar commission of this and other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.

2. Such communications may address any issue that at the time of such communication is not the subject of a case that has been filed with the commission.

3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:

(1) Is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;

(2) Is made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present; or

(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:

(a) If the communication is written, the person or party making the communication shall no later than the next business day following the communication file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record;

(b) If the communication is oral, the party making the oral communication shall no later than the next business day following the communication file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing of the subjects covered.

4. Nothing in this section or any other provision of law 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 the merits of the specific facts, evidence, claims, or positions presented or taken in a pending case unless such communications comply with the provisions of subsection 3 of this section.

5. The commission and any commissioner may also advise any member of the general assembly or other governmental official of the issues or factual allegations that are the subject of a pending case, provided that the commission or commissioner does not express an opinion as to the merits of such issues or allegations, and may discuss in a public agenda meeting with parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in such case or any matter relating to a unanimous stipulation or agreement resolving all of the issues in such case.

6. The commission may enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof, or any public utility or similar commission of other states, that are proper, expedient, fair and equitable and in the interest of the state of Missouri and the citizens thereof, for the purpose of carrying out its duties pursuant to section 386.250 as limited and supplemented by section 386.030 and to that end the commission may receive and disburse any contributions, grants or other financial assistance as a result of or pursuant to such agreements or contracts. Any contributions, grants or other financial assistance so received shall be deposited in the public service commission utility fund or the state highway commission fund depending upon the purposes for which they are received.

7. The commission may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any railroad, public utility or similar commission, of other states or the United States of America, or any official, agency or any instrumentality thereof, except that in the holding of such investigations or hearings, or in the making of such orders, the commission shall function under agreements or contracts between states or under the concurrent power of states to regulate interstate commerce, or as an agent of the United States of America, or any official, agency or instrumentality thereof, or otherwise.

PUBLIC SERVICE COMMISSION STATUTE

(2) In all proceedings before the commission, no attorney shall communicate, or cause another to communicate, as to the merits of the cause with any commissioner or examiner before whom proceedings are pending except:

(A) In the course of official proceedings in the cause; and

(B) In writing directed to the secretary of the commission with copies served upon all other counsel of record and participants without intervention.

(4) It is improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission, its staff or the presiding officer assigned to the proceeding.

(5) Requests for expeditious treatment of matters pending with the commission are improper except when filed with the secretary and copies served upon all other parties.

(6) No member of the commission, presiding officer or employee of the commission shall invite or knowingly entertain any prohibited ex parte communication, or make any such communication to any party or counsel or agent of a party, or any other person who s/he has reason to know may transmit that communication to a party or party's agent.

(7) These prohibitions apply from the time an on-the-record proceeding is set for hearing by the commission until the proceeding is terminated by final order of the commission. An on-the-record proceeding means a proceeding where a hearing is set and to be decided solely upon the record made in a commission hearing.

(8) As ex parte communications (either oral or written) may occur inadvertently, any member of the commission, hearing examiner or employee of the commission who receives that communication shall immediately prepare a written report concerning the communication and submit it to the chairman and each member of the commission. The report shall identify the employee and the person(s) who participated in the ex parte communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the commission. (4 CSR 240-4.020 )

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State: Montana

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PUBLIC UTILITIES STATUTE

38.2.3905 CONTACT BETWEEN PARTIES AND COMMISSION

(1) The commission declares its policy to be that after the giving of notice on a complaint, petition or application in a contested formal proceeding, or after notice of a tariff filing has been given and prior to the issuance of a final order thereon, no parties to the proceeding, or their counsel, shall discuss the merits of such matter or proceeding with the commissioners, or with the examiner involved, unless reasonable notice is given to all parties who have appeared therein, to enable such parties to be present at the conference.

(2) When, after notice and prior to the issuance of a final order, letters from parties are directed to the commission, or any member of its staff, regarding a formal proceeding, copies of such letters shall be mailed to all parties of record and proof of such service furnished to the commission.

COMMISSION RULE

Montana Administrative Procedures Act

2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

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State: Nebraska  
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PUBLIC SERVICE COMMISSION RULE

75-130.01 Contested case; ex parte communication prohibited; applicability of section. With respect to any matter of fact or law at issue in a contested case and notwithstanding any other provision of law, a member, staff, or agent of the Public Service Commission shall not during the pendency of any contested case heard before the commission have any ex parte communication with any party having an interest in the outcome of the contested case. For purposes of this section, the definitions in section 84-901 shall apply. Notwithstanding subdivision (4)(c) of section 84-901, this section applies to all communications by a party in contested cases under the State Natural Gas Regulation Act, including, but not limited to, general rate filings under section 66-1838.

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State: Nevada  
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STATE UTILITIES STATUTE

NAC 703.481 Restrictions on certain communications with Commissioner or hearing officer while contested case is pending. (NRS 703.025, 704.210)

1. In any contested case pending before the Commission, a party or commenter or an authorized representative or attorney of a party or commenter shall not communicate, directly or indirectly, with a Commissioner or a hearing officer regarding any substantive issues of fact or law that relate to the contested case, unless the communication:

- (a) Is part of a pleading filed and served in accordance with the provisions of this chapter; or
- (b) Occurs during a formal hearing before the Commissioner or the hearing officer.

2. The provisions of this section apply from the date on which the pleading or other document that commences the contested case is filed with the Secretary until 15 calendar days after the date on which the Commission issues a final order in the contested case or, if a petition for reconsideration is filed, until the date on which the Commission issues the order on reconsideration.

3. As used in this section, "contested case" means every proceeding pending before the Commission except:

- (a) A rule-making proceeding conducted pursuant to NRS 233B.0395 to 233B.115, inclusive, whether the proceeding is commenced pursuant to NAC 703.546 or otherwise;
- (b) A proceeding involving a petition for a declaratory order or an advisory opinion pursuant to NRS 233B.120 and NAC 703.825; or
- (c) Any proceeding in which the Commission is not required by law to conduct a hearing before determining any issue of fact or law, or both.

NRS 233B.126 Limitations on communications of agency's members or employees rendering decision or making findings of fact and conclusions of law. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity to all parties to participate. An agency member may, subject to the provisions of NRS 233B.123:

1. Communicate with other members of the agency.
2. Have the aid and advice of one or more personal assistants.

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State: New Hampshire

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#### PUBLIC SERVICE COMMISSION RULE

##### 363:32 Designation of Employees. –

I. (a) Whenever the commission conducts an adjudicative proceeding in accordance with the provisions of RSA 541-A:31 through RSA 541-A:35, the commission shall designate members of its staff as staff advocates and decisional employees, if requested by a party with full rights of participation in the proceeding, when:

(1) It appears that staff members have committed or are likely to commit to a highly adversarial position in the proceeding and may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding;

(2) The docket concerns an issue or matter which is particularly contentious or controversial and which is significant in consequence;

(3) The issues in the docket are so contested as to create reasonable concern on the part of any party about the staff's role in commission decision making; or

(4) It appears reasonable that such designations may increase the likelihood of a stipulated agreement of the parties.

(b) Unless the commission provides otherwise, any such designations shall only be applicable to a specified adjudicative proceeding. The commission shall make a list of all current designations available to the public.

(c) Although any party who is a full intervenor may make a motion to designate pursuant to paragraph I at any point during the proceeding, if the motion is made later than 20 days after staff members have filed testimony, the commission may deny the motion solely on the grounds that it is administratively unworkable because such motion has been filed so late in the proceeding.

II. The commission may, on its own initiative, designate members of its staff as staff advocates and decisional employees.

363:34 Ex Parte Communications in Adjudicative Proceedings. – Unless required for the disposition of ex parte matters authorized by law, in an adjudicative proceeding, decisional employees shall not communicate with any person or party, directly or indirectly, in connection with any issue in that proceeding, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to communications between or among commissioners, decisional employees, and personal assistants, including legal counsel, who have not been assigned as staff advocates in the adjudicative proceeding in question.

363:35 Separation of Function. – No employee designated as a staff advocate in an adjudicative proceeding may advise the commission, its presiding officer, individual commissioners, or any decisional employee designated as such in the same proceeding, with respect to matters at issue in the contested case.

#### New Hampshire Administrative Procedure Act

541-A:36 Ex Parte Communications. – Unless required for the disposition of ex parte matters authorized by law, officials or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue before the agency, with any person or party, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to:

I. Communications between or among agency personnel, or between the agency and legal counsel.

II. Communications between or among the presiding officer and one or more personal assistants.

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State: New Jersey

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#### ADMIN PROCEDURE RULES

##### § 1:1-14.5 Ex parte communications

(a) Except as specifically permitted by law or this chapter, a judge may not initiate or consider ex parte any evidence or communications concerning issues of fact or law in a pending or impending proceeding. Where ex parte communications are unavoidable, the judge shall advise all parties of the communications as soon as possible thereafter.

(b) The ex parte communications preclusion shall not encompass scheduling discussions or other practical administrative matters.

(c) Ex parte discussions relating to possible settlement may be conducted in the course of settlement conferences or mediations when all parties agree in advance.

(d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or as necessary to keep the agency head as a client informed of the status of the case, provided that no information may be disclosed ex parte if it would compromise the agency head's ability to adjudicate the case impartially. In no event may the legal representative participate in making or preparing the final decision in the case.

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State: New Mexico  
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ADMIN PROCEDURE ACT  
12-8-13. Ex-parte consultations.

No party or representative of a party or any other person shall communicate off the record about the case with any agency member who participates in making the decision in any adjudicatory proceeding unless a copy of the communication is sent to all parties to the proceeding. No agency member or representative of the agency shall communicate off the record about the adjudicatory proceedings with any party or representative of a party or any other person unless a copy of the communication is sent to all parties in the proceeding.

Rules of Procedure -1.2.2.29

D. Duties of hearing examiner: Hearing examiners shall have the following duties:

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(5) except as to ex parte matters authorized by law and commission rules, no hearing examiner shall, in any proceeding to which they have been assigned, consult with any party on any substantive issue unless notice is given and an opportunity afforded all parties and staff to participate and respond.

[1.2.2.29 NMAC - Rp, 17 NMAC 1.2.32, 9-1-08]

PUBLIC UTILITY STATUTE  
§ 8-8-12. Utility division

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

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E. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner as-signed to a utility case, except as expressly permitted pursuant to Section 8-8-17 NMSA 1978.

§ 8-8-17. Ex parte communications

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rule-making or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the public regulation commission's rulemaking authority a party to a proceeding may consult with the commission's advisory staff. By July 1, 2004, the commission shall establish such rules.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

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State: New York

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State: North Carolina

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# PUBLIC UTILITIES STATUTE

## § 62-70. Ex parte communications.

(a) In all matters and proceedings pending on the Commission's formal docket, with adversary parties of record, all communications or contact of any nature whatsoever between any party and the Commission or any of its members, or any hearing examiner assigned to such docket, whether verbal or written, formal or informal, which pertains to the merits of such matter or proceeding, shall be made only with full knowledge of, or notice to, all other parties of record. All parties shall have an opportunity to be informed fully as to the nature of such communication and to be present and heard with respect thereto. In all matters and proceedings which are judicial in nature, it is the specific intent of this section that all members of the Commission shall conduct all trials, hearings and proceedings before them in the manner and in accordance with the judicial standards applicable to judges of the General Court of Justice, as provided in Chapter 7A of the General Statutes, and upon the initiation of any such proceedings, and particularly during the trial or hearing thereof, there shall be no communications or contacts of any nature, including telephone communications, written correspondence, or direct office conferences, between any party or such party's attorney and any member of the Commission or any hearing examiner, without all other parties to such proceeding having full notice and opportunity to be present and heard with respect to any such contact or communication.

Any commissioner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General, or who otherwise violates any of the provisions of this subsection shall be liable to impeachment. Any examiner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General or who otherwise violates any of the provisions of this subsection shall be subject to dismissal from employment for cause.

(b) In the event any such communication or contact shall be received by the Commission or any commissioner or any hearing examiner assigned to such docket without such knowledge or notice to all other parties, the Commission shall immediately cause a formal record of such violation to be made in its docket and thereafter no ruling or decision shall be made in favor of such violating party until the aggrieved party shall waive such violation or the Commission shall find as a fact that such party was not prejudiced thereby or that any such prejudice, if present, has been removed.

(c) Any contacts or communications made in violation of this section which are not recorded by the Commission may be recorded by notice to the Commission by any aggrieved party and, unless the Commission shall find that such violation did not in fact occur, such recording shall have the same effect as if done by the Commission.

(d) In matters not under this section, the Commission may secure information and receive communications ex parte, it being the purpose of this section to protect adversary interests where they exist but not otherwise to restrict unduly the administrative and legislative functions of the Commission.

(e) This section shall not modify any notice required in the case of pleadings and proceedings which are subject to other requirements of notice to parties of record, whether by statute or by rule of the Commission, and the Commission may adopt reasonable rules to coordinate this section with such other requirements.

(f) In addition to the foregoing provisions regarding contacts with members of the Commission and hearing examiners, if any party of record, including the assistant attorney general when he is a party, confers with or otherwise contacts any staff personnel employed by the Commission regarding the merits of a pending proceeding, the staff employee shall promptly forward by regular mail a memorandum of the date and general subject matter of such contact to all other parties of record to the proceeding.

(g) Notwithstanding the foregoing, no communication by a public utility or by the public staff regarding the level of rates specifically proposed to be charged by a public utility shall be made or directed to the Commission, a member of the Commission, or hearing examiner, except in the form of written tariff, petition, application, pleading, written response, written recommendation, recorded conference, intervention, answer, pleading, sworn testimony and related exhibits, oral argument on the record, or brief. Willful violations of the provisions of this section on the part of any public utility shall subject such public utility to the penalties provided in G.S. 62-310(a). Willful violations of the provisions of this section by a member of the public staff shall subject such person to dismissal for cause. (1963, c. 1165, s. 1; 1977, c. 468, s. 14; 1979, c. 332, s. 2.)

## ADMINISTRATIVE PROCEDURES ACT

### § 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

### § 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting

functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

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State: North Dakota

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#### PUBLIC UTILITIES RULE

##### CENTURY CODE

69-02-05-11. Ex parte communications. Ex parte communications, as defined in North Dakota Century Code section 28-32-12.1, are strictly prohibited. Any ex parte written communication to the commission must be filed with the executive secretary of the commission who shall disclose the communications to the parties and place the communication in a public file associated with the pending proceeding, but separate from the record material upon which the commission can rely in reaching its decision.

History: Effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-12.1, 49-01-07

#### ADMINISTRATIVE PROCEDURE ACT

##### § 28-32-37. Ex parte communications

1. Except as provided in subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued, except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.
5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 6.
6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

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State: Ohio

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PUBLIC UTILITIES STATUTE

Title 49 4901-1-09 Ex parte discussion of cases.

After a case has been assigned a formal docket number, no commissioner or attorney examiner assigned to the case shall discuss the merits of the case with any party to the proceeding or a representative of a party, unless all parties have been notified and given the opportunity to be present or to participate by telephone, or a full disclosure of the communication insofar as it pertains to the subject matter of the case is made. When an ex parte discussion occurs, a representative of the party or parties participating in the discussion shall prepare a document identifying all the participants and the location of the discussion, and fully disclosing the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the commission's legal director or his designee or to an attorney examiner present at the discussion for review. Upon completion of the review, the final document shall be filed with the commission's docketing division within two business days and the filer shall serve a copy upon the parties to the case and to each participant in the discussion. The document filed and served shall include the following language: Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed shall prepare a letter explaining the participant's disagreement with the document and shall file the letter with the commission and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.

Effective: 05/07/2007

R.C. 119.032 review dates: 02/20/2007 and 09/30/2010

Promulgated Under: 111.15

Statutory Authority: 4901.13

Rule Amplifies: 4901.13, 4903.081

Prior Effective Dates: 3/1/81, 4/4/96, 4/20/01

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State: Oklahoma

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ADMINISTRATIVE PROCEDURES ACT

75 O.S. 313. Agency members not to communicate.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member (1) may communicate with other members of the agency, and (2) may have the aid and advice of one or more personal assistants. Laws 1963, c. 371, § 13.

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State: Oregon

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PUBLIC UTILITY COMMISSION

DIVISION 12

860-012-0015

Ex Parte Communications

(1) Ex parte communications are discouraged and, if made, must be disclosed to ensure an open and impartial decision-making process.

(2) Except as provided in this rule, an ex parte communication is any oral or written communication that:

(a) Is made by any person directly to a Commissioner or presiding Administrative Law Judge (ALJ) outside the presence of any or all parties of record in a contested case proceeding, as defined in ORS 183.310(2), without notice to, or opportunity for rebuttal by, all such parties; and

(b) Relates to the merits of an issue in the pending contested case proceeding.

(3) For purposes of this rule, a contested case proceeding is pending:

(a) When any filing is made that initiates a proceeding between identified parties or a "major proceeding" as defined in OAR 860-014-0023; or

(b) After the Commission initiates a process similar to that described in OAR chapter 860, division 014, including but not limited to, an order suspending a tariff for investigation or the holding of a prehearing conference.

(4) A person who has an ex parte communication with a Commissioner must promptly notify the presiding ALJ that such communication has occurred.

(5) Upon notice of or receipt of an ex parte communication, the presiding ALJ shall promptly notify the parties of record of the communication and place in the record:

- (a) The name of each person who made the communication and that person's relationship, if any, to a party in the case;
- (b) The date and time of the communication;
- (c) The circumstances under which the communication was made;
- (d) A summary of the matters discussed;
- (e) A copy of any written communication; and
- (f) Any other relevant information concerning the communication.

(6) The presiding ALJ may require the person responsible for the ex parte communication to provide the disclosure and notice of the communication required by this rule.

(7) Within 10 days of receiving notice, a party may file a written rebuttal of any facts or contentions contained in the ex parte communication, with service on the parties of record in the proceeding.

(8) The provisions of this rule do not apply to communications that:

- (a) Address procedural issues, such as scheduling or status inquiries, or requests for information having no bearing on the merits of the case;
- (b) Are made to a Commissioner or presiding ALJ by a member of the Commission staff who is not a witness in the proceeding;
- (c) Are made to a Commissioner or presiding ALJ by an Assistant Attorney General who is not representing the Commission staff in the proceeding;
- (d) Are made in a rulemaking proceeding conducted pursuant to ORS 183.325 through 183.410; or
- (e) The presiding ALJ determines should not be subject to this rule, including but not limited to communications from members of the public that are made part of the administrative file or communications that are the subject of in camera proceedings.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 183.462, 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 17-2004, f. & cert. ef. 12-28-04

#### CHAPTER 183 Administrative Procedure Act

183.685 Ex parte communications. (1) An administrative law judge assigned from the Office of Administrative Hearings who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

- (a) The name of each person from whom the administrative law judge received an ex parte communication;
- (b) A copy of any ex parte written communication received by the administrative law judge;
- (c) A copy of any written response to the communication made by the administrative law judge;
- (d) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge; and
- (e) A memorandum reflecting the substance of any oral response made by the administrative law judge to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, an administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

- (a) Relate to a legal or factual issue in a contested case proceeding;
- (b) Are made directly or indirectly to an administrative law judge while the proceeding is pending; and
- (c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to an administrative law judge, or to any agent of an administrative law judge, by:

- (a) A party;
- (b) A party's representative or legal adviser;
- (c) Any other person who has a direct or indirect interest in the outcome of the proceeding;
- (d) Any other person with personal knowledge of the facts relevant to the proceeding; or
- (e) Any officer, employee or agent of the agency that is using the administrative law judge to conduct the hearing.

(5) The provisions of this section do not apply to:

- (a) Communications made to an administrative law judge by other administrative law judges;
- (b) Communications made to an administrative law judge by any person employed by the office to assist the administrative law judge; or

(c) Communications made to an administrative law judge by an assistant attorney general if the communications are made in response to a request from the administrative law judge and the assistant attorney general is not advising the agency that is conducting the hearing. [1999 c.849 §20; 2003 c.75 §18]

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State: Pennsylvania

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#### PUBLIC UTILITY STATUTE

Title 66, Section 334

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(c) Ex parte communications.--Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any member of the commission, administrative law judge, or employee of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding. Contested on-the-record proceeding means a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be decided on the basis of the record of a commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested commission action has been filed. This subsection does not prohibit off-the-record communications to or by any employee of the commission prior to the actual beginning of hearings in a contested on-the-record proceeding when such communications are solely for the purpose of seeking clarification of or corrections in evidentiary materials intended for use in the subsequent hearings.

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State: Rhode Island

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#### COMMISSION RULE

Commission Rule 1.2 (h) Ex Parte Communications.

(1) Except as permitted below, no person who is a party to or a participant in any proceeding pending before the Commission, or the person's counsel, employee, agent, or any other individual acting on the person's behalf, shall communicate ex parte with any Commissioner about or in any way related to the proceeding, and no Commissioner shall request or entertain any such ex parte communications.

(2) The prohibitions contained above do not apply to a communication from a party or participant or counsel, agent or other individual acting on the person's behalf, if the communication relates solely to general matters of procedure or scheduling and is directed to the Clerk or the Commission Counsel.

#### Division of Public Utilities

Rule 3 (e) Ex Parte Communications.

(1) Except as permitted below, no person who is a party to or a participant in any proceeding pending before the Division, or the person's counsel, employee, agent, or any other individual acting on the person's behalf, shall communicate ex parte with the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer about or in any way related to the proceeding, and the Administrator, Administration and Operations Officer, Associate Administrator(s) and Hearing Officer shall not request or entertain any such ex parte communications.

(2) The prohibitions contained above do not apply to a communication from a party or participant or counsel, agent or other individual acting on the person's behalf, if the communication relates solely to general matters of procedure or scheduling and is directed to the Clerk, the Division counsel, representative or Hearing Officer.

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State: South Carolina

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#### RULES OF PROCEDURE

Communications between commission and parties prohibited; exempt communications; disclosure of improper communications; penalties.

(A) For purposes of this section:

- (1) "Proceeding" means a contested case, generic proceeding, or other matter to be adjudicated, decided, or arbitrated by the commission.
- (2) "Person" means a party to a proceeding pending before the commission, a member of the Office of Regulatory Staff, a representative of a party to a proceeding pending before the commission, individuals, corporations, partnerships, limited liability companies, elected officials of state government, and other public and elected officials.
- (3) "Communication" means the transmitting of information by any mode including, but not limited to, oral, written, or electronic.
- (4) "Allowable ex parte communication briefing" means any communication that is conducted pursuant to the procedure outlined in subsection (C)(6) of this section.
- (5) "Communication of supplemental legal citation" means the submission, subsequent to the submission of post-hearing briefs or proposed orders in a proceeding, of statutes, regulations, judicial or administrative decisions that are enacted, promulgated, or determined after the submission of post-hearing briefs or proposed orders.
- (B) Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication.
- (C) The following communications are exempt from the prohibitions of subsection (B) of this section:
- (1) a communication concerning compliance with procedural requirements if the procedural matter is not an area of controversy in a proceeding;
- (2) statements made by a commission employee who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding, where the statements are limited to providing publicly available information about pending proceedings;
- (3) inquiries relating solely to the status of a proceeding, unless the inquiry: (a) states or implies a view as to the merits or outcome of the proceeding; (b) states or implies a preference for a particular party or which states why timing is important to a particular party; (c) indicates a view as to the date by which a proceeding should be resolved; or (d) is otherwise intended to address the merits or outcome or to influence the timing of a proceeding;
- (4) a communication made by or to commission employees that concerns judicial review of a matter that has been decided by the commission and is no longer within the commission's jurisdiction; however, if the matter is remanded to the commission for further action, the provisions of this section shall apply during the period of the remand;
- (5) where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized provided:
- (a) the commissioner, hearing officer, or commission employee reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and
- (b) the commissioner, hearing officer, or commission employee makes provision promptly to notify all other parties of the substance of the ex parte communication and, where possible, allows an opportunity to respond;
- (6)(a) subject to the provisions of Chapter 4 of Title 30, communications, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding for the purposes of an allowable ex parte communication briefing if:
- (i) the Executive Director of the Office of Regulatory Staff or his designee attends the briefing and files a written certification, within seventy-two hours of the briefing, attaching copies of all statements and all other matters filed by all persons pursuant to subsubitems (ii), (iii), and (iv) of this subsection, with the chief clerk of the commission that such briefing was conducted in compliance with the provisions of this section and that each party, person, commissioner, or commission employee present has complied with the reporting and certification requirements of subsubitems (ii), (iii), and (iv); and within twenty-four hours of the submission by the executive director, the commission posts on its web site the written certification, statements, and other matters filed by the executive director;
- (ii) each party, person, commissioner, and commission employee present files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing accurately summarizing the discussions in full and attaching copies of any written materials utilized, referenced, or distributed;
- (iii) each party, person, commissioner, and commission employee present, within forty-eight hours of the briefing, files a certification with the Executive Director of the Office of Regulatory Staff that no commitment, predetermination, or prediction of any commissioner's action as to any ultimate or penultimate issue or any commission employee's opinion or recommendation as to any ultimate or penultimate issue in any proceeding was requested by any person or party nor any commitment, predetermination, or prediction was given by any commissioner or commission employee as to any commission action or commission employee opinion or recommendation on any ultimate or penultimate issue;

(iv) each commissioner or commission employee present at the allowable ex parte communication briefing grants to every other party or person requesting an allowable ex parte communication briefing on the same or similar matter that is or can reasonably be expected to become an issue in a proceeding, similar access and a reasonable opportunity to communicate, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding under the provisions of subsection (C)(6) of this section and files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing stating that the commissioner or commission employee will comply with this provision;

(v) the commission posts on its web site, at least five business days prior to the proposed briefing, a notice of each request for an allowable ex parte communication briefing that includes the date and time of the proposed briefing, the name of the person or party who requested the briefing, the name of each commissioner and commission employee whom the person or party has requested to brief, and the subject matter to be discussed at the briefing;

(vi) the person or party initially seeking the briefing requests the briefing with sufficient notice, as required in subsubitem (v), to allow the initial briefing to be held at least twenty business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and the initial briefing must be held at least twenty business days prior to the hearing in the proceeding; and

(vii) any person or party desiring to have a briefing on the same or similar matter as provided for in subsubitem (vi) requests a briefing with sufficient notice, as required in subsubitem (v), to allow the briefing to be held at least ten business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and any such briefing must be held at least ten business days prior to the hearing in the proceeding;

(b) any person or party may object to the attendance of the Executive Director of the Office of Regulatory Staff at an allowable ex parte communication briefing on the grounds of bias or a conflict of interest on the part of the executive director. Any such objection must be made in writing and must be filed with the executive director no later than twenty-four hours prior to the scheduled briefing. If the objecting person or party and the executive director agree upon a neutral person, that person shall serve in the executive director's stead and shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). The costs of such person's services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings. If the objecting person or party and the executive director cannot agree upon a neutral person, the objecting person or party shall petition the Administrative Law Judge Division for the appointment of a neutral person to serve in the executive director's stead, and the petition shall be given priority over all other matters within the jurisdiction of the Administrative Law Judge Division. In the petition, the objecting party shall set forth the specific grounds supporting the objecting person's or party's allegation of bias or conflict on the part of the executive director and shall generally describe the matters to be discussed at the briefing. It shall not be sufficient grounds that the executive director is or is likely to be a party to a proceeding. The executive director shall be given an opportunity to respond. Part of the executive director's response shall include recommendations as to the experience required of the person to act in his stead. Upon a showing of actual bias or conflict of interest, the administrative law judge shall designate a person to act in the executive director's stead and that person shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). Such person must have the expertise to act in the executive director's stead. The decision of the administrative law judge shall be considered interlocutory and not immediately appealable and may be appealed with the final order of the commission. The costs of such person's services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings;

(c) should the Executive Director of the Office of Regulatory Staff desire to conduct an allowable ex parte communication briefing, the chief clerk of the commission shall appoint a neutral person who shall serve in the executive director's stead and that person shall comply with the reporting and certification requirements of the Executive Director of the Office of Regulatory Staff contained in subsubitem (i). The Executive Director of the Office of Regulatory Staff shall comply with the requirements contained in subsubitems (ii) and (iii);

(d) nothing in subsection (C)(6) of this section requires any commissioner or commission employee to grant a request for an allowable ex parte communication briefing, except as provided in subsection (C)(6)(a)(iv) of this section;

(7) a communication of supplemental legal citation if the party files copies of such documents, without comment or argument, with the chief clerk of the commission and simultaneously provides copies to all parties of record;

(8) subject to the provisions of Chapter 4 of Title 30, communications between and among commissioners regarding matters pending before the commission; provided, further, that any commissioner, hearing officer, or commission employee may receive aid from commission employees if the commission employees providing aid do not:

(a) receive ex parte communications of a type that the commissioner, hearing officer, or commission employee would be prohibited from receiving; or

(b) furnish, augment, diminish, or modify the evidence in the record.

(D) If before serving in a proceeding, a commissioner, hearing officer, or commission employee receives an ex parte communication of a type that may not properly be received while serving, the commissioner, hearing officer, or commission employee must disclose the communication in the following manner: a commissioner, hearing officer, or a commission employee who receives an ex parte communication in violation of this section must promptly after receipt of the communication or, in the case of a communication prior to a filing, as soon as it is known to relate to a filing, place on the record of the matter all written and electronic communications received, all written and electronic responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the commissioner, hearing officer, or commission employee, as appropriate, received an ex parte communication and must advise all parties that these matters have been placed on the record. Within ten days after receipt of notice of the ex parte

communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. Parties affected by a violation may agree to a resolution of any claim regarding such violation, including the waiver of a hearing and the waiver of the obligation to report violations under subsection (I) of this section.

(E) Any person who makes an inadvertent ex parte communication must, as soon as it is known to relate to an issue in a proceeding, disclose the communication by placing on the record of the matter the communication made, if written or electronic, or a memorandum stating the substance of an inadvertent oral communication, and the identity of each person to whom the inadvertent ex parte communication was made or given. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. If no party rebuts the inadvertence of the ex parte communication within ten days after notice of the ex parte communication, the ex parte communication shall be presumed inadvertent. Parties affected by a violation may agree to a resolution of any claim regarding such violation, and the provisions of subsection (J) of this section shall not apply.

(F) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a commissioner, hearing officer, or commission employee who receives the communication may be disqualified by the commission, and the portions of the record pertaining to the communication may be sealed by protective order.

(G) Nothing in this section alters or amends Section 1-23-320(i).

(H) Nothing in this section prevents a commissioner, hearing officer, or commission employee from attending educational seminars sponsored by state, regional, or national organizations and seminars not affiliated with any utility regulated by the commission; however, the provisions of this section shall apply to any communications that take place outside any formal sessions.

(I) Subject to any privilege under Rule 501 of the South Carolina Rules of Evidence, any commissioner, hearing officer, commission employee, party, or any other person must report any wilful violation of this section on the part of a commissioner, hearing officer, or commission employee to the review committee.

(J) Any commissioner, hearing officer, commission employee, or person who wilfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars or imprisoned for not more than six months. If a commissioner wilfully communicates with any party or person or if any person or party wilfully communicates with a commissioner regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten business days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the commissioner shall be removed from office. If a hearing officer or commission employee wilfully communicates with any party or person or any party or person wilfully communicates with a hearing officer or commission employee regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the hearing officer or commission employee shall be terminated from employment by the commission. For purposes of this section: (1) "wilful" means an act done voluntarily and intentionally with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or disregard the law, and (2) a violation of the provisions of this section must be proved by clear and convincing evidence before a commissioner, hearing officer, or commission employee can be removed from office or terminated from employment.

SECTION 58-3-270. Obtaining remedial relief from violation of prohibited communications; hearing before administrative law judge.

(A) Any party seeking remedial relief from alleged violations of Section 58-3-260 may file a complaint with the Administrative Law Judge Division.

(B) A complaint seeking sanctions must include the following:

- (1) the name and address of the complainant;
- (2) the name and address of complainant's counsel, if any;
- (3) the name and address of each person alleged to have violated the ex parte prohibition, hereinafter referred to as respondent;
- (4) the name and address of each respondent's counsel, if known;
- (5) the facts constituting the alleged violation; and
- (6) the sanctions sought by the complainant.

(C) A complaint filed under this section must be served on the commission, each respondent, respondent's counsel, if known, and all persons on the commission's service list for the proceeding that is the subject of the ex parte complaint.

(D) Within seven days of service of the complaint, a respondent must file an answer with the Administrative Law Judge Division and serve it on the complainant, the commission, and all persons on the commission's service list for the proceeding that is the subject of the ex parte complaint.

(E) The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Judge Division may issue an order tolling any deadlines imposed by any state statute for a decision by the commission on the proceeding that is the subject of the



ex parte communication complaint. The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Judge Division must conduct a hearing and must issue a decision within sixty days after the complaint is filed.

(F) The decision of the administrative law judge must describe the relevant facts of the case and must set forth the judge's findings as to whether the ex parte communication was in violation of Section 58-3-260. The judge also must impose sanctions in accordance with subsection (G) of this section. In imposing these sanctions, the judge, as a matter of equity, must protect: (1) the rights and interests of parties who are not alleged to have violated Section 58-3-260, and (2) the public interest in general.

(G) In his decision, the administrative law judge may impose the following sanctions:

- (1) dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider the matter impartially;
- (2) issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication if other parties are prejudiced by the prohibited ex parte communication;
- (3) strike evidence or pleadings if the evidence or pleadings are tainted by the prohibited ex parte communication;
- (4) issue a public statement of censure or explanation, if it is determined that the prohibited ex parte communication occurred but mitigating circumstances exist that:
  - (a) negate the need for a more severe sanction;
  - (b) indicate that the proceeding was not prejudiced to the extent that the commission is unable to consider the matter in the proceeding impartially;
  - (c) indicate that the ex parte communication did not prejudice other parties; or
  - (d) indicate that the ex parte communication did not taint the evidence or pleadings.

(H) If the administrative law judge finds the complainant's allegation of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or increase the cost of the proceeding, the administrative law judge may issue an appropriate sanction against the complainant.

(I) Any decision of an administrative law judge pursuant to this section shall be considered interlocutory in nature and is not immediately appealable until a final order of the commission has been issued. Any appeal of a decision of an administrative law judge pursuant to this section must be included in and made in the same manner as an appeal of the final order of the commission in the subject proceeding.

#### ADMINISTRATIVE PROCEDURES ACT

SECTION 1-23-360. Communication by members or employees of agency assigned to decide contested case.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

(1) May communicate with other members of the agency; and

(2) May have the aid and advice of one or more personal assistants.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.

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State: South Dakota

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#### ADMINISTRATIVE PROCEDURES ACT

1-26-26. Ex parte consultations by agency personnel--Investigating officer disqualified from decision on hearing--Authorized communications.

Unless required for the disposition of ex parte matters authorized by law, members of the governing board or officers or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. If one or more members of a board or commission or a member or employee of an agency, who is assigned to render a decision in a contested case, took part in an investigation upon which the contested case is based, he shall not participate in the conduct of the hearing nor take part in rendering the decision thereon, but he may appear as a witness and give advice as to procedure. If, because of such disqualification, there is no person assigned to conduct the hearing or render the decision, the agency shall appoint someone pursuant to § 1-26-18.1 to fulfill those duties. A person assigned to render a decision:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.

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State: Tennessee

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#### ADMINISTRATIVE PROCEDURES ACT

4-5-304. Ex parte communications.

Information and Communications.txt

- (a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.
- (b) Notwithstanding subsection (a), an administrative judge, hearing officer or agency member may communicate with agency members regarding a matter pending before the agency or may receive aid from staff assistants, members of the staff of the attorney general and reporter, or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative judge, hearing officer or agency members would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.
- (c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative judge, hearing officer or agency member without notice and opportunity for all parties to participate in the communication.
- (d) If, before serving as an administrative judge, hearing officer or agency member in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).
- (e) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.
- (f) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section may be disqualified if necessary to eliminate the effect of the communication.
- (g) The agency shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section. [Acts 1982, ch. 874, § 41.]

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State: Texas

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RULES AND PROCEDURES

§22.3. Standards of Conduct.

(a) Standards of Conduct for Parties.

- (1) Every person appearing in any proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, the presiding officer and all other persons participating in the proceeding. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions.
- (2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding officer from any proceeding for such period and upon such conditions as are just, or may be subject to other just, reasonable, and lawful disciplinary action as the commission may prescribe.

(b) Communications.

(1) Personal Communications. Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by the APA, §2001.061. Records shall be kept of all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:

(A) name and address of the person contacting the commission;

(B) name and address of the party or business entity represented;

(C) case, proceeding, or application, if available;

(D) subject matter of communication;

(E) the date of the communication;

(F) the action, if any, requested of the commission; and,

(G) whether the person has received, or expects to receive, a financial benefit in return for making the communication.

(2) Ex parte communications. Unless required for the disposition of ex parte matters authorized by law, members of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.

(3) Communications with SOAH administrative law judges. Communications between SOAH administrative law judges and employees of the commission who have not participated in any hearing in the case shall be in writing or be recorded. Written communication should be the primary and preferred format. All oral communications shall be recorded, and a table of contents maintained for each recording. All such communication submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued. Number running procedures conducted pursuant to written commission policy by employees of the commission who have participated in any hearing in the case do not constitute impermissible ex parte communications, provided memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.

#### ADMINISTRATIVE PROCEDURE ACT

Sec. 2001.061. EX PARTE CONSULTATIONS. (a) Unless required for the disposition of an ex parte matter authorized by law, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.

(b) A state agency member may communicate ex parte with another member of the agency unless prohibited by other law.

(c) Under Section 2001.090, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with an agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

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State: Utah

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#### PUBLIC UTILITIES STATUTE

54-7-1.5. Communications between commission personnel and parties restricted.

No member of the Public Service Commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, shall make or knowingly cause to be made to any party any communication relevant to the merits of any matter under adjudication unless notice and an opportunity to be heard are afforded to all parties. No party shall make or knowingly cause to be made to any member of the commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, an ex parte communication relevant to the merits of any matter under adjudication. Any member of the commission, administrative law judge or commission employee who receives an ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.

#### COMMISSION RULES OF PROCEDURE

R746-100-13. Ex Parte Communications.

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, presiding officer, or any other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process regarding a matter pending before the Commission. No commissioner, administrative law judge, presiding officer, or other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process shall request or entertain ex parte communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;
2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;
3. from a person when otherwise authorized by law;
4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission;
5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;
6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents or other evidence filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon

which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

E. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, presiding officer, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

F. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

G. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

H. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.

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State: Vermont

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#### ADMINISTRATIVE PROCEDURES ACT

##### § 813. Ex parte consultations

Unless required for the disposition of ex parte matters authorized by law, members or employees of any agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

- (1) May communicate with other members or employees of the agency, and
- (2) May have the aid and advice of one or more personal assistants.

#### RULES AND PROCEDURES

##### 2.201 Practice Before the Board

##### (E) Ex parte communications

- (1) Prohibited communications. Unless required for the disposition of ex parte matters authorized by law, upon the filing of a complaint, petition, application or other filing which the Board has treated as the same, no member, employee or agent of the Board may communicate, directly or indirectly, in connection with any issue of fact, with any party or any interested person, or, in connection with any issue of law, with any party or any employee, agent or representative of any party, except with the consent of all parties or upon notice and opportunity for all parties to participate.
- (2) Participation in decision. Unless required for disposition of ex parte matters authorized by law, any member, employee or agent of the Board who has, in connection with a pending, contested case, except with the consent of all parties or upon notice and opportunity for all parties to participate, communicated in connection with any issue of fact with any party or interested person or, in connection with any issue of law, with any party or any employee, agent or representative of any party, shall not participate or advise in the decision, recommended decision or Board review except as a witness or as counsel in public proceedings.
- (3) Improper communications by parties. Any person or party who, directly or through an employee, agent or representative, communicates or attempts to communicate with any member, employee or agent of the Board on any subject so as to cause, or with the intent to cause, the disqualification of such member, employee or agent from participating in any manner in any proceeding, may be disqualified from subsequent participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Board and/or may be deemed to have waived any objection to the subsequent decision by the Board with respect to any matter which is the subject of such communication.
- (4) Exception Notwithstanding any provision of subparagraph (1) or (2), above, members, employees and agents of the Board may communicate with other members, employees or agents, provided that none of the latter has engaged in communications prohibited by (A) above.

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State: Virginia

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#### PUBLIC UTILITY STATUTE

##### Title 12.1. State Corporation Commission

Chapter 5. Procedure Before the Commission and Appeals

§ 12.1-25. Rules of practice and procedure

§ 12.1-30.1. Meetings and communications between commissioners and parties or staff

The Commission shall after public hearing, promulgate rules of practice and procedure pursuant to § 12.1-25 controlling meetings and communications between commissioners and any party, or between commissioners and staff concerning any fact or issue arising out of a proceeding involving the regulation of rates, charges, services or facilities of railroad, telephone, gas or electric companies. The rules shall provide, among other provisions, that no commissioner shall consult with any party or any person acting on behalf of any party with respect to such proceeding without giving adequate notice and opportunity for all parties to participate.

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State: Washington

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PUBLIC UTILITIES STATUTE

WAC 480-07-310 Ex parte communication. (1) General. RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final determination, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy, investigative, or prosecutorial staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge, or the commissioners' staff assistants, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding, so that they may participate in, or respond to, the communication.

(2) Communications not considered ex parte for purposes of this section. The following communications are not considered ex parte:

(a) Procedural aspects. Communications necessary to procedural aspects of maintaining an orderly process, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) Commissioners. The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.

(c) Commission employees and consultants. A presiding officer may receive legal counsel, or consult with staff assistants or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(3) Communication prior to service as presiding officer. If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the presiding officer must disclose the communication as prescribed in subsection (4) of this section promptly after starting to serve.

(4) What is required if an ex parte communication occurs. A presiding officer who receives any communication that appears to violate RCW 34.05.455, or this section, will place on the record of the pending matter any such written communication received, any written response to the communication, and a memorandum stating the substance of any such oral communication received, any response made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer will advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(5) Sanctions. The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission will, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

Title 34

RCW 34.05.455

Ex parte communications.

(1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate

under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

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State: West Virginia  
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State: Wisconsin  
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ADMINISTRATIVE PROCEDURES ACT  
227.50. Ex parte communications in contested cases

(1)(a) In a contested case, no ex parte communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the agency who is involved in the decision-making process, by:

1. An official of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; or
2. A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.

(b) Paragraph (a)1 does not apply to an advisory staff which does not participate in the proceeding.

(c) This subsection does not apply to an ex parte communication which is authorized or required by statute.

(d) This subsection does not apply to an ex parte communication by an official or employee of an agency which is conducting a class 1 proceeding.

(e) This subsection does not apply to any communication made to an agency in response to a request by the agency for information required in the ordinary course of its regulatory functions by rule of the agency.

(2) A hearing examiner or other agency official or employee involved in the decision-making process who receives an ex parte communication in violation of sub. (1) shall place on the record of the pending matter the communication, if written, a memorandum stating the substance of the communication, if oral, all written responses to the communication and a memorandum stating the substance of all oral responses made, and also shall advise all parties that the material has been placed on the record; however, any writing or memorandum which would not be admissible into the record if presented at the hearing shall not be placed in the record, but notice of the substance or nature of the communication shall be given to all parties. Any party desiring to rebut the communication shall be allowed to do so, if the party requests the opportunity for rebuttal within 10 days after notice of the communication. The hearing examiner or agency official or employee may, if deeming it necessary to eliminate the effect of an ex parte communication received, withdraw from the proceeding, in which case a successor shall be assigned.

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State: Wyoming  
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ADMINISTRATIVE PROCEDURES ACT  
Title 16 Chapter 3

16-3-111. Contested cases; limitations on consultations and participations.

Unless required for the disposition of ex parte matters authorized by law, members of the agency, employees presiding at a hearing in a contested case and employees assisting the foregoing persons in compiling, evaluating and analyzing the record in a contested case or in writing a decision in a contested case shall not directly or indirectly in connection with any issue in the case consult with any person other than an agency member, officer, contract consultant or employee or other state or federal employee, any party other than the agency or with any agency employee, contract consultant or other state or federal employee who was engaged in the investigation, preparation, presentation or prosecution of the case except upon notice and opportunity for all parties to participate. Nothing herein contained precludes any agency member from consulting with other members of the agency. No officer, employee, contract consultant, federal employee or agent who has participated in the investigation, preparation, presentation or prosecution of a contested case shall be in that or a factually related case participate or advise in the decision, recommended decision or agency review of the decision, or be consulted in connection therewith except as witness or counsel in public proceedings. A staff member is not disqualified from participating or advising in the decision, recommended decision or agency review because he has participated in the presentation of the case in the event the staff member does not assert or have an adversary position.

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State: Federal

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FEDERAL ETHICS LAW

5 U.S.C. § 557(d). Ex Parte Communication

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

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State: NARUC

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