

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of a Working Case Regarding	)	
Amendments to the Commission's Ex Parte	)	<u>File No. AW-2016-0312</u>
And Extra-Record Communications Rule	)	

INITIAL COMMENTS OF MISSOURI-AMERICAN WATER COMPANY

COMES NOW Missouri-American Water Company ("MAWC") and submits its following comments in the Order Opening a Working Case to Consider Changes to the Commission's Ex Parte and Extra-Record Communications Rule issued June 8, 2016 in the above-captioned docket.

PURPOSE OF THE RULES

The ex parte and extra-record communications rules serve an important purpose to protect the Commission, stakeholders and the public from improper behavior. They are in place for one simple reason: to ensure public trust in the regulatory process while still allowing for a vigorous and robust exchange of ideas and information for the formation of sound public policy in Missouri.

Commissioners' duties require them to be knowledgeable about complicated regulatory matters and have an understanding of the industries and companies they are charged with regulating. Open discussion with all parties on such matters should be encouraged.

Commissioners also need to be informed on a timely basis about developments and trends in the utility industry. In the context of a water and sewer utility, this could mean a water quality issue, billing and service issues, technological advances, and other significant issues affecting the company.

In the context of this proceeding, any rule changes should allow for free communication between the Commissioners, the Commission's Staff, the public, and anyone else, to the extent such communication does not address a pending case.

AUTHORITY FROM THE GENERAL ASSEMBLY

The General Assembly recognizes the importance of a free exchange of information, and therefore mandates that no law should impede such communications.

Specifically, §386.210.1 RSMo. (Supp. 2006) provides:

The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with 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.

Section 386.210.2 RSMo (Supp. 2006) provides:

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.

Similarly, Section 386.210.4 RSMo (Supp. 2006) provides:

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 subsection 3 of this section.

The General Assembly recognized that the timely and free flow of information is critical if the Commission is going to properly discharge its duties. Therefore, the Commission must have input from customer groups, the public and utilities that are directly affected by policy decisions.

APPLICABILITY OF EX PARTE RULES TO ALL PARTIES

The rules should apply equally to everyone – utilities, consumers, and any other stakeholders. Therefore, if the rules are going to restrict a certain type of communication, it should be imposed equally on all parties that appear before the Commission. Under the current rules, there are situations where a utility is prohibited from communicating with the Commission, while other parties are allowed to freely share their views with the Commission. See, 4 CSR 240-2.020 (8) and (9). The proposed rule would address this problem by making the rules applicable to all parties in a more even-handed manner.

SAFE HARBOR PROVISIONS

The proposed rule wisely maintains safe harbor provisions. See, 4 CSR 240-4.040. MAWC applauds the proposed addition of “safety of the general public” as one of the safe harbors¹. As the only utility that is ingested by the general public, it is critical that a water utility be able to communicate freely with the Commissioners relative to matters of water quality and public safety.

THE RULES MUST BE EASY TO UNDERSTAND

The current ex parte rules are confusing. Reasonable people can interpret the rules quite differently. This has led to situations where a utility does not approach the Commissioners out of a concern of an appearance of impropriety. This has a chilling effect on communications, and is in direct contravention of the “free exchange of ideas views and information” contemplated by the Missouri Legislature. §386.210.4 (Supp.

¹ The current rule has a safe harbor for “matters relating to the safety of personnel” but does not include an explicit safe harbor for the health and safety of the general public. See, 4 CSR 240-4.020 (9)(A)(9).

2013). The proposed rules appear to be simpler, better organized and easier for parties to understand.

THE PROPOSED NOTICE PERIOD

The proposed rule extends the period for filing a notice of intention to file a contested case from the current sixty (60) day period to a longer ninety (90) day period. There is no reason articulated for increasing this time period. MAWC welcomes a discussion on this issue.

CONCLUSION

The proposed new rule provides a good starting point for a discussion of changes to the Commission's Code of Conduct rules. Missouri-American Water Company looks forward to discussing these topics with Staff, Public Counsel and other interested parties.

WHEREFORE, Missouri-American Water Company respectfully submits these comments to the Commission for its consideration.

DATED this 22st day of August 2016.

/s Timothy W. Luft
Vice-President – Legal
727 Craig Road
St. Louis, MO 63141
Timothy.Luft@amwater.com
Phone: (314) 996-2279