

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
June, 2016.

In the Matter of a Working Case Regarding
Amendments to the Commission's Ex Parte
and Extra-Record Communications Rule

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File No. AW-2016-0312

**ORDER OPENING A WORKING CASE TO CONSIDER CHANGES TO THE
COMMISSION'S EX PARTE AND EXTRA-RECORD COMMUNICATIONS RULE**

Issue Date: June 8, 2016

Effective Date: June 8, 2016

The Missouri Public Service Commission is creating this working file to determine whether the Commission's ex parte and extra-record communications rule should be amended. The Commission's goals are to: (1) comply with Section 386.210.4, RSMo., which mandates that the Commission's rules not impose "any limitation on the free exchange of ideas, views and information between any person and the commission or any commissioner"; (2) simplify compliance with the rule; and (3) promote consistency and fairness. Attached to this order as Appendix A are proposed amendments to Chapter 4 of the Commission's rules, which are designed to achieve these goals.

As part of its review, the Commission will seek input in the next thirty days from the utilities, consumer and business organizations, and other individuals and entities affected by the rule. The Commission may also conduct one or more workshop meetings in the future.

This file will serve as a repository for documents and comments. Using this file, any person with an interest in this matter may view documents and may submit

comments or documents. As this is not a contested case, anyone may file a comment without legal counsel and without *ex parte* constraints. Intervention requests are not necessary to submit comments or view documents.

The public is welcome to submit comments by forwarding electronic communications through the Commission's electronic filing and information system (EFIS) or by mailing written comments. In addition, anyone may submit electronic comments at the Commission's website at <http://www.psc.mo.gov>. (Click on the EFIS link on the left side of the page. Scroll down and click on the public comment link. Please refer to File No. AW-2016-0312.) Written comments in hard copy should be addressed to the Commission at P.O. Box 360, Jefferson City, Missouri 65102 and should also reference File No. AW-2016-0312. The public can view the contents of the file by following the link at <http://www.psc.mo.gov>.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall provide a copy of this order, including Appendix A, to all Commission-certificated electric, natural gas, steam/heat, water, sewer, and telecommunications utilities, providers of video service or interconnected voice over Internet protocol service, and manufactured housing dealers, manufacturers and installers, in the State of Missouri.
2. The Commission's Public Policy and Outreach Department shall make notice of this order available to the news media and to the members of the General Assembly.

3. Any person or entity wishing to comment or respond to the proposed rule amendments in Appendix A shall do so as described in the body of this order no later than July 8, 2016.

4. This order shall become effective when issued.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

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

4 CSR 240-4.015 General Definitions

PURPOSE: This rule sets forth the definitions of certain terms used in rules 4 CSR 240-4.020 through 4 CSR 240-4.050.

(1) Central repository – A repository in the commission’s electronic filing information system established by the commission’s secretary to maintain a copy of all ex parte and extra-record communications occurring in pending contested cases or noticed contested cases.

(2) Contested case – Shall have the same meaning as in section 536.010(4), RSMo.

(3) Commission – Means the Missouri Public Service Commission as created by Chapter 386, RSMo.

(4) Commissioner – Means one (1) of the members of the Missouri Public Service Commission.

(5) Discussed case – A contested case or noticed contested case that includes or will likely include substantive issues that are the subject of an ex parte or extra-record communication regulated under this rule.

(6) Ex parte communication – Any communication outside of the case process between a member of the office of the commission and any party, or the agent or representative of a party, regarding any substantive issue in or expected to be in a pending or noticed contested case. Ex parte communications shall not include a communication regarding general regulatory policy allowed under section 386.210.4, RSMo, communications listed in 4 CSR 240-4.040, or communications that are de minimis or immaterial.

(7) Extra-record communication – Any communication outside of the case process between a member of the office of the commission and any person not a party to a pending contested case or noticed contested case regarding any substantive issue in or expected to be in that pending or noticed contested case. Extra record communications shall not include communications regarding general regulatory policy allowed under section 386.210.4, RSMo, communications with members of the general assembly or other government official allowed under section 386.210.5, RSMo, communications listed in 4 CSR 240-4.040, or communications that are de minimis or immaterial.

(8) Final determination – A decision of the commission that resolves a contested case, including all applications for rehearing and reconsideration.

(9) Noticed contested case – Any case for which a notice of contested case has been filed in compliance with 4 CSR 240-4.017(2).

(10) Noticed Public Meeting – Any forum, event or meeting, open to the public that is posted on the Commission’s public calendar.

(11) Office of the commission – Commissioners, a commissioner, a member of the technical advisory staff, or the commission’s regulatory law judges.

(12) Party – Any applicant, complainant, petitioner, respondent, intervenor, or person with an application to intervene pending in a contested case or noticed contested case before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate in the relevant proceeding within the period of time established for interventions by commission rule or order.

(13) Person – Any individual, partnership, company, corporation, cooperative, association, political subdivision, entity regulated by the commission, party, or other entity or body that could become a party to a contested case.

(14) Public counsel – Shall have the same meaning as in section 386.700, RSMo.

(15) Substantive issue – The merits, specific facts, evidence, claims, or positions which have been or are likely to be presented or taken in a contested case. The term substantive issue does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case.

(16) Technical advisory staff – Shall have the same meaning as in section 386.135, RSMo.

4 CSR 240-4.017 General Provisions

PURPOSE: This rule sets forth provisions that are applicable to both ex parte and extra-record communications.

(1) The secretary of the commission shall create a central repository accessible through the commission's electronic filing information system for any notice of ex parte or extra-record communications filed in any case.

(2) Any person that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of ninety (90) days but no more than one hundred eighty (180) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission. The filing of such notice shall initiate a new noticed contested case and be assigned an appropriate case designation and number. If the expected contested case filing is subsequently made, it shall be filed in and become a part of the noticed contested case. If the expected contested case filing is not made within one hundred eighty (180) days, the noticed contested case shall close.

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

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

(C) A party may request a waiver of this section for good cause. Good cause for waiver may include a certification from the filing party that it has had no discussion with the office of the commission of any substantive issue expected to be in the case within the ninety (90) day period before the filing.

(3) Unless properly admitted into evidence in subsequent proceedings, no ex parte or extra-record communication shall be considered as part of the record on which the commission reaches a decision in a contested case.

(4) Notwithstanding any provision of this rule to the contrary, thirty (30) days after the commission has reached a final determination in a contested case, the office of the commission may communicate with any person regarding any procedural or substantive issue related to such case, unless the same regulated entity has a contested case or noticed contested case pending before the commission which includes or is expected to include such issue.

(5) Nothing in this rule shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address substantive issues in or expected to be in a pending or noticed contested case.

(6) A utility offering a tour of its facilities to the office of the commission shall also offer the office of the public counsel an opportunity to participate in that tour.

4 CSR 240-4.020 Ex Parte Communications.

PURPOSE: To set forth the standards to promote the public trust in the commission with regard to pending filings and cases. This rule regulates communication between members of the office of the commission and parties and agents of parties regarding substantive issues that are not part of the evidentiary record.

(1) No party shall initiate, participate in, or undertake, directly or indirectly, an ex parte communication.

(2) The office of the commission shall not initiate, participate in, or undertake, directly or indirectly, an ex parte communication regarding a contested case or noticed contested case. However, it shall not constitute participation in or undertaking an ex parte communication if the office of the commission —

(A) Does not initiate the communication; and

(B) Immediately terminates the communication, or immediately alerts the initiating party that the communication is not proper outside the hearing process and makes a reasonable effort to terminate the communication.

(3) A party or member of the office of the commission who initiates an ex parte communication shall within three (3) business days following such communication give notice of that communication as follows:

(A) If the communication is written, the initiating party shall file a copy of the written communication in the official case file for the discussed case and in the central repository; or

(B) If the communication is not written, the initiating party shall file a memorandum disclosing the communication in the official case file for each discussed case and in the central repository. The memorandum must contain a list of all participants in the communication; the date, time, and location of the communication; the means by which the communication took place; and a summary of the substance of the communication and not merely a listing of the subjects covered. Alternatively, a recording or transcription of the communication may be filed, as long as that recording or transcription indicates all participants and the date, time, location, and means of communication.

(4) If an ex parte communication regarding a pending or noticed contested case occurs and the initiating party fails to file a notice in the manner set forth in subsections 3(A) and (B), any other party or member of the office of the commission involved in the communication shall give notice of the ex parte communication in the manner set forth in subsections (3)(A) and (B) as soon as practicable after learning of the party's failure to file such notice.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Rescinded and readopted: Filed Nov. 4, 2009, effective July 30, 2010.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-4.030 Extra-Record Communications

PURPOSE: To set forth the standards to promote the public trust in the commission with regard to pending filings and cases. This rule regulates communication between members of the office of the commission and persons not parties to a case regarding substantive issues that are not part of the evidentiary record.

(1) If any person initiates an extra-record communication, the member of the office of the commission that is a participant in such communication shall, within three (3) business days following such communication give notice of that communication as follows:

(A) If the communication is written, file a copy of the written communication in the official case file for the discussed case and in the central repository; or

(B) If the communication is not written, file a memorandum summarizing the communication in the official case file for each discussed case and in the central repository. Alternatively, a recording or transcription of the communication may be filed, as long as that recording or transcription indicates the date, time, location, and means of communication.

4 CSR 240-4.040 Communications that are not Ex Parte or Extra-Record Communications

PURPOSE: To identify examples of communications that are not ex parte or extra record communications.

(1) The following communications shall not be prohibited by or subject to the disclosure and notice requirements of section 4 CSR 240-4.020(3) or .030(1), even if such communication would otherwise be an ex parte or extra-record communication:

(A) Communications between the office of the commission and 1) a party to a contested case or 2) a person interested in a pending or noticed contested case—

1. Regarding interruption or loss of service and efforts to restore service;
2. Regarding damage to or operational problems at a utility's facility and efforts to repair that damage or address those operational problems;
3. Regarding a utility's physical or cyber security and any other matters related to the safety of personnel, the safety of facilities, and the safety of the general public; or
4. Made during noticed public meetings of the commission.

4 CSR 240-4.050 Limitation on Appearance before Commission

PURPOSE: To set forth the standards of conduct to promote the public trust and maintain public confidence in the commission's integrity and impartiality with regard to pending filings and cases.

No person who has served as a member of the office of the commission shall, after termination of service with the office of the commission, appear before the commission in relation to any contested case that existed while that person served with the office of the commission.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8th day of June 2016.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

June 8, 2016

File/Case No. AW-2016-0312

**Missouri Public Service
Commission**

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Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Distributed to all certificated Electric, Natural Gas, Steam/Heat, Water, Sewer, and Telecommunications Utilities, Providers of Video Service or Interconnected Voice Over Internet Protocol Service, and Manufactured Housing Dealers, Manufacturers and Installers, in the State of Missouri.

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