

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 24<sup>th</sup> day of June, 2020.

In the Matter of a Working Case to Consider )  
Best Practices for Recovery of Past-Due Utility )  
Customer Payments After the COVID-19 )  
Pandemic Emergency )

**File No. AW-2020-0356**

**NOTICE OF EX PARTE AND EXTRA-RECORD COMMUNICATIONS  
CONCERNS AND ORDER DIRECTING RESPONSES**

Issue Date: June 24, 2020

Effective Date: June 24, 2020

The Commission opened this working file on May 13, 2020, to consider best practices for Missouri utilities to use when moving to recover past-due amounts from customers following the COVID-19 pandemic emergency. The Commission's Staff was directed to investigate and to file a report by August 3. On June 16, Staff filed a motion asking the Commission to either terminate the investigation or to issue an order bringing this investigation within the limitations of the Commission's ex parte and extra-record communications rules, 20 CSR 4240-4, specifically sections 4.020 and 4.030.

Staff notes that two contested cases<sup>1</sup> have been opened in which Missouri utilities have asked the Commission to issue an accounting authority order (AAO) regarding costs and other financial impacts related to the pandemic. Staff is concerned that there will be overlapping issues between those cases and this investigation. Consequently, Staff fears it

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<sup>1</sup> The cases are EU-2020-0350 filed by Evergy Missouri Metro and Evergy Missouri West, and GU-2020-0376 filed by Spire Missouri, Inc. d/b/a Spire.

will be confusing or difficult for parties to comply with the Commission's ex parte and extra-record communications rules. Further, Staff is concerned that the overlap of issues and possible solutions might lead the Commission to make a decision in the contested AAO cases that is not supported by the record in those cases. The Commission does not wish to terminate this important investigation, so it will consider Staff's alternative suggestion to issue an order bringing the investigation within the limitations of the ex parte and extra-record communications rules.

Parties to the two contested AAO cases are already subject to the restrictions of the ex parte communications rule (20 CSR 4240-4.020). Similarly, all persons initiating an extra-record communication are subject to restrictions on discussion of substantive issues<sup>2</sup> in those AAO cases by the extra-record communications rule (20 CSR 4240-4.030). Those rules do not contain any exception for otherwise improper communications made in the course of an investigation, so an improper communication in the course of this investigation would be a rule violation in the AAO cases regardless of whether the restrictions also apply directly in the investigation. In other words, the parties and other persons interested in the AAO cases cannot "get around" the rules by making a communication in the investigation. There could be some concern that parties and other persons interested in the AAO cases would be hesitant to provide information in the investigation because they fear violating the ex parte or extra-record communications rules, but that concern would not be alleviated by expanding the application of the rules to the investigation.

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<sup>2</sup> The definition of "substantive issue" in 20 CSR 4240-4.015(14) is limited to the "merits of specific facts, evidence, claims, or positions specific to a case or noticed case that have been or are likely to be presented or taken in that case." This investigation is not defined as a "case" or a "noticed case" within the meaning of the regulation.

Furthermore, the Commission is aware of its obligation to decide the contested AAO cases on the record developed in those particular cases. Suggested solutions put forward in this investigation, but not proposed in the AAO cases, will not lead the Commission to stray from that obligation.

That leaves the question of application of the rules to those stakeholders interested in the investigation but who are not parties to, or interested in, the AAO cases. Attempting to expand the reach of the ex parte and extra-record communications rules to encompass those stakeholders in this investigation is unnecessary. The definitions of ex parte communication in 20 CSR 4240-4.015(6) and extra record communication in 4.015(7) specifically do not include communications regarding general regulatory policy, which would be the type of communications sought in the investigation. For that reason, simply saying that ex parte communications and extra record communications are not allowed in the investigation would be meaningless at best, and, at worst, could discourage permitted communications. The Commission will not terminate this investigation and does not believe that an order to apply the Commission's ex parte and extra-record communications rule to this investigation is necessary or appropriate.

Staff also requested that if the investigation proceeds, various stakeholder should be asked to answer specified questions to assist Staff in its investigation. The Commission will do so.

**THE COMMISSION ORDERS THAT:**

1. The utilities listed in Appendix A shall answer the questions contained in that Appendix no later July 15, 2020.
2. Persons and entities not listed in Appendix A who would like to be heard may

answer the questions listed in Appendix B not later than July 15, 2020

3. The Commission's Data Center shall provide a copy of this order to all persons and entities listed in Appendix A and Appendix B.

4. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and  
Holsman CC., concur.

Woodruff, Chief Regulatory  
Law Judge