

John R. Ashcroft

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-4.020 Rescission

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Michael Bushmann Phone 573-751-4393 FAX 573-526-6010

Email address Michael.bushmann@psc.mo.gov

Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address Christine.koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Fl., Gov. Ofc. Bldg., JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☐ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☒ Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☒ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

APR 06 2017

ADMINISTRATIVE RULES



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

March 29, 2017


Daniel Hall
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

Dear Daniel:

This office has received your rulemaking for ex parte / extra-record communications: 4 CSR 240-4.015; 4 CSR 240-4.017; 4 CSR 240-4.020; 4 CSR 240-4.030; 4 CSR 240-4.040; and 4 CSR 240-4.050.

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations. After our review of this rulemaking, we approve the rules' submission to JCAR and the Secretary of State.

Sincerely,


Justin D. Smith
Deputy Counsel



Commissioners
DANIEL Y. HALL
Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY
SCOTT T. RUPP
MAIDA J. COLEMAN

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

SHELLEY BRUEGGEMANN
General Counsel
MORRIS WOODRUFF
Secretary
WESS A. HENDERSON
Director of Administration
NATELLE DIETRICH
Staff Director

John R. Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-4.020 Ex Parte and Extra-Record Communications

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.410, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

Michael Bushmann, Senior Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4393
Michael.bushmann@psc.mo.gov

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

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

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission rescinds a rule as follows:

4 CSR 240-4.020 Ex Parte and Extra-Record Communications is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on January 3, 2017 (42 MoReg 18-19). No changes have been made in the proposed rescission, so it is not reprinted here. The proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended February 2, 2017, and on February 16, 2017, the commission held a public hearing on the proposed rescission. Timely written comments were received from the Office of the Public Counsel (OPC), the Missouri Energy Development Association (MEDA), the Missouri Cable Telecommunications Association, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), Missouri Industrial Energy Consumers (MIEC), Midwest Energy Consumers Group (MECG), and Consumers Council of Missouri. In addition to those entities, the commission's staff, Missouri American Water Company, Laclede Gas Company, Kansas City Power & Light Company, Empower Missouri, and AARP all offered comments at the hearing. The comments of regulated utilities and utility associations generally supported rescinding the existing rule and replacing it with six new rules. The Office of the Public Counsel and other organizations representing consumers all strongly opposed rescinding the existing rule.

COMMENT #1: MEDA, the Missouri Cable Telecommunications Association, Missouri American Water Company, Laclede Gas Company, Kansas City Power & Light Company, and Ameren Missouri submitted written or oral comments that are generally supportive of the Commission's proposal to rescind the existing rule 4.020 and replace it with six new rules. These organizations state that the proposal (1) better encourages the free exchange of information; (2) more fairly imposes requirements on all litigants, not just the utilities; and (3) replaces rule language that is unduly complex and difficult to apply in practice. Staff testified at the hearing that it mostly supports rescinding the existing rule and replacing it with the proposed new rules which are, compared to the existing rule, more in accordance with Section 386.210, RSMo.



RESPONSE: The Commission agrees that rescinding the existing rule 4.020 and replacing it with six new rules furthers the Commission's goals to comply with Section 386.210.4, RSMo; simplify compliance with the rule; and promote consistency and fairness.

COMMENT #2: Consumers Council of Missouri, MIEC, MIEG, Empower Missouri, AARP, and OPC all strongly oppose rescinding the existing rule 4.020, stating that changing the circumstances under which disclosure and notice of non-public meetings between a Commissioner and a utility representative are required will create an appearance of impropriety. OPC provides additional criticism of the rescission and replacement rules, stating that the Commission already has sufficient mechanisms in place to obtain information from stakeholders and interested persons, and removing disclosure and notice requirements will impair the detection and enforcement of any violations.

RESPONSE: The Commission disagrees with the comment that rescinding the existing rule and replacing it with six new rules will, by itself, lead to either actual impropriety or an appearance of impropriety. Rescission and replacement will better facilitate free communication between any person and Commissioners regarding general regulatory policy not related to a pending case; will more fairly and equally impose restrictions on communications between Commissioners and participants in the regulatory process; and will properly exclude participants in proceedings other than pending cases, such as rulemakings, working proceedings, and investigations, from those notice and disclosure requirements. The Commission has improved and strengthened the prior notice and disclosure requirements for persons filing cases before the Commission