

utility representatives can lobby Commissioners up to and even after a contested case is filed. The Commission now has the opportunity – and the fervent pleas of consumer representatives – to address this loophole. Judging by the Commission’s draft rule, it is more interested in maintaining its close relationship with utilities than it is in open and accountable government.

3. Public Counsel does not suggest cutting the Commission off from useful sources of information. The Commission should be able to freely meet and confer with anyone, including utility representatives, about any issues whenever there is no pending case concerning those issues, but **these meetings should not be held in secret**. The public should be able to attend and have access to a recording or a verbatim transcript of all such meetings. A written disclosure statement filed after-the-fact by a utility representative is woefully insufficient; it will not protect the public interest in knowing what is communicated to government decision-makers, nor will it protect those decision-makers if disagreements arise about specific communications made in private meetings.

4. In Case No. AO-2008-0192, the Commission brought in Scott Hempling to discuss issues relating to Commissioners meeting in private with utility representatives. Mr. Hempling was able to offer only two reasons why Commissioners should meet with utility representatives in private rather than in public: 1) public meetings can be longer than private meetings if members of the public are allowed to participate and ask questions; and 2) Commissioners may be afraid that their lack of understanding of utility issues would be revealed if they ask questions in public. Neither of these reasons is the least bit convincing. First, Public Counsel has never suggested that the public should actively participate in Commissioner meetings with utilities, but

only that the public be allowed to attend and observe. Second, Commissioners are public officials tasked with protecting the public interest; the possibility that some Commissioner may someday suffer embarrassment over appearing ignorant does not justify secret private meetings with utility representatives.

5. Public Counsel and the other consumer representatives offered the Commission the opportunity to restore a measure of the public trust by making its processes more fair and open, but the Commission appears more interested in continuing secret meetings with utilities than it is in fostering open and accountable government. The Commission should discard its current utility-oriented draft rule and instead propose a public-oriented rule (like the one proposed by consumer representatives in this case) for comment.

6. If the Commission nonetheless decides to stay with its proposed draft rule, the rule could be substantially improved by making the changes set out in the attached revised draft rule.

WHEREFORE, Public Counsel, Praxair, Inc., AG Processing, Inc., the Midwest Gas Users Association, and the Sedalia Energy Users Association respectfully request that the Commission institute a rulemaking for the purpose of making the originally-suggested modifications to Commission Rule 4 CSR 240-4.020 (filed on December 19, 2007 and modified on January 31, 2008).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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