

FILED

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of Proposed Amendments)
to the Commission's Ex Parte) Case No. AX-2017-0128
and Extra-Record Communications Rule)

EX PARTE COMMUNICATION RESTRICTIONS IN OTHER STATES

Submitted by Laclede Gas Company and Missouri Gas Energy

States:

1. Alabama
2. Arkansas
3. Illinois
4. Oklahoma
5. Iowa
6. Kansas
7. Tennessee
8. Texas
9. New York
10. California

Summary: Every state included herein regulates ex parte communications only during some type of proceeding, except New York, in which ex parte rules do not apply to proceedings involving public utilities.

1. Alabama

Ala. Admin. Code r. 770-X-4-.25
Ex Parte Communications.

Parties or their representatives in a contested issue or proceeding which has been the subject of a formal public and open hearing or in a proceeding which has been set for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, issue or proceeding with any Commissioner, Administrative Law Judge or other individual assigned to render a proposed order or final decision or to make findings of fact and conclusions of law in that contested case, issue or proceeding except upon notice and opportunity for all parties to participate and none of the Commissioners or Administrative Law Judges will allow ex parte argument to be made concerning such case, issue or proceeding.

2. Arkansas

Laclede/MGE Exhibit No. 1
Date 2-16-17 Reporter KF
File No. AX-2017-0128

Ex Parte Communication (Rules of Practice and Procedure)

Rule 1.06 Ex Parte Communication

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and Persons involved in proceedings pending before the Commission:

(a) No Person shall submit Ex Parte Communications to any Commissioner or Presiding Officer in such proceeding, reasonably designed to influence a decision on any issue of law or fact in any such proceeding. Independent advice and counsel rendered by the Commissioners' Staff to the Commission or Presiding Office is not Ex Parte Communication, nor is attendance by the Commissioners or a Presiding Officer at public conferences and other educational events. No Commissioner or Presiding Officer shall request or entertain any Ex Parte Communication herein prohibited.

(b) A Commissioner or Presiding Officer in such proceeding who receives an offer of any Ex Parte Communication concerning any issue of law or fact in any such proceeding shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he/she will not consider the communication, and he/she shall promptly and fully inform the Commission and all other Parties to the proceeding of the substance of the communication and circumstances thereof.

(c) A Party may request an opportunity to rebut, on the record, any facts or contentions contained in any prohibited Ex Parte Communication. The Commission or Presiding Officer shall grant such requests only where fairness so requires. If the Commission or Presiding Officer declines to grant such request, the requesting party may proffer its rebuttal for the record. Where the Ex Parte Communication contains assertions of fact not a part of the record of which the Commission or Presiding Officer cannot take official notice, the Commission or Presiding Officer in lieu of receiving rebuttal material normally will direct that the alleged factual assertion in the Ex Parte Communication and any proposed rebuttal be disregarded in arriving at a decision.

3. Illinois

Illinois Compiled Statutes; Illinois Administrative Procedures Act

5 ILCS 100/10-60

Formerly cited as IL ST CH 127 ¶ 1010-60

§ 10-60. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall

not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.

(b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

Sec. 10-103.

In all proceedings, investigations or hearings conducted by the Commission, except in the disposition of matters which the Commission is authorized to entertain or dispose of on an ex parte basis, any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case, which shall include only the transcript of testimony and exhibits together with all papers and requests filed in the proceeding, including, in contested cases, the documents and information described in Section 10-35 of the Illinois Administrative Procedure Act.

The provisions of Section 10-60 of the Illinois Administrative Procedure Act shall apply in full to Commission proceedings, including ratemaking cases, any provision of the Illinois Administrative Procedure Act to the contrary notwithstanding.

The provisions of Section 10-60 shall not apply, however, to communications between Commission employees who are engaged in investigatory, prosecutorial or advocacy functions and other parties to the proceeding, provided that such Commission employees are still prohibited from communicating on an ex parte basis, as designated in Section 10-60, directly or indirectly, with members of the Commission, any hearing examiner in the proceeding, or any Commission employee who is or may reasonably be expected to be involved in the decisional process of the proceeding. Any commissioner, hearing examiner, or other person who is or may reasonably be expected to be involved in the decisional process of a proceeding, who receives, or who makes or knowingly causes to be made, a communication prohibited by this Section or Section 10-60 of the Illinois Administrative Procedure Act as modified by this Section, shall

place on the public record of the proceeding (1) any and all such written communications; (2) memoranda stating the substance of any and all such oral communications; and (3) any and all written responses and memoranda stating the substance of any and all oral responses to the materials described in clauses (1) and (2).

The Commission, or any commissioner or hearing examiner presiding over the proceeding, shall in the event of a violation of this Section, take whatever action is necessary to ensure that such violation does not prejudice any party or adversely affect the fairness of the proceedings, including dismissing the affected matter.

4. Oklahoma

Okla. Admin. Code 150:1-11-17

150:1-11-17. Ex parte communications

No ex parte communications concerning individual proceedings shall be made to the Director or the hearing examiner during the pendency of the administrative proceedings or judicial review.

Current through rules published in Volume 32, Number 17 of the Oklahoma Register dated May 15, 2015

5. Iowa

I.C.A. § 17A.17

17A.17. Ex parte communications and separation of functions

Effective: July 1, 2008

1. a. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

b. However, without such notice and opportunity for all parties to participate, a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

4. A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all such written communications received, all written responses to the communications, and a memorandum stating the substance of all such oral and other communications received, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication.

5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

6. The agency and any party may report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule shall provide for appropriate sanctions, including default, suspending or revoking a privilege to practice before the agency, and censuring, suspending, or dismissing agency personnel, for any violations of this section.

7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

8. An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. In addition, such an individual shall not be subject to the authority, direction, or

discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

6. Kansas

K.S.A. 77-545

(a) This section applies to adjudicative proceedings before the state corporation commission.

(b)(1) After the commission has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commission has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are directed to the presiding officer shall be mailed to all parties of record and proof of service shall be furnished to the commission. Communications requested by members of the commission staff from any party and any written communications received by members of the commission staff from any party shall be made a part of the file and the docket and shall be made available to all persons who desire to use them, provided that all commission requests for information from a party shall be mailed to all parties of record.

(3) The person or persons to whom any ex parte communication has been made shall promptly and fully inform the full commission of the substance of the communication, and the circumstances thereof, to enable the commission to take appropriate action.

(c) For purposes of this section, no member of the technical staff shall be considered a party to any proceeding before the commission, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of the staff is to aid the commission in the proper discharge of commission duties, the presiding officers shall be free at all times to confer with any staff member with respect to any proceeding. However, no facts that are outside the record, and that reasonably could be expected to influence the decision in any matter pending before the commission, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply to staff counsel in regard to any adjudicatory proceeding before the commission.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of ex parte communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.

7. Tennessee

2010 Tennessee Code

Title 4 - State Government

Chapter 5 - Uniform Administrative Procedures Act

Part 3 - Contested Cases

§ 4-5-304. Ex parte communications

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative judge, hearing officer or agency member may communicate with agency members regarding a matter pending before the agency or may receive aid from staff assistants, members of the staff of the attorney general and reporter, or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative judge, hearing officer or agency members would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative judge, hearing officer or agency member without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative judge, hearing officer or agency member in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a

memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

(f) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section may be disqualified if necessary to eliminate the effect of the communication.

(g) The agency shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

RULES OF TENNESSEE REGULATORY AUTHORITY CHAPTER 1220-1-2 PRACTICE AND PROCEDURE - CONTESTED CASES

1220-01-02-.21. STAFF PARTICIPATION AS A PARTY.

(1) In any show cause proceeding, designated staff members, represented by the general counsel or other counsel employed by the Authority, shall participate as a party.

(2) In any contested case commenced by the Authority, designated staff members, represented by the general counsel or other counsel employed by the Authority, may participate as a party.

(3) In any other contested case proceeding, designated staff members, represented by the general counsel or other counsel employed by the Authority, may participate as a party.

(4) Staff members who participate as a party shall be bound to follow the same requirements as any other party.

(5) As soon as practicable after the commencement of any proceeding in which the staff will participate as a party, the Chair of the Authority shall identify those staff members to all interested parties and staff so as to prevent ex parte communications.

8. Texas

Texas Administrative Code, Title 16, Part 2, Chapter 22, Subchapter A, Rule Section 22.3(b)(2).

Ex parte communications. Unless required for the disposition of ex parte matters authorized by law, members of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions

of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.

9. New York

New York Administrative Procedure Act § 307(2).

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) *to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.*

10. California

California Code of Regulations
20 CCR § 8.3

(Rule 8.3) Ex Parte Requirements.

(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, the following restrictions apply:

(1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the

meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.

(3) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(Rule 8.4) Reporting Ex Parte Communications.

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of ex parte communications shall be filed within three working days of the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

- (a) The date, time, and location of the communication, and whether it was oral, written, or a combination;
- (b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;

(c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

Respectfully submitted,

/s/ Rick E. Zucker

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