

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

Case No. AW-2016-0312

**COMMENTS OF THE MIDWEST ENERGY CONSUMERS GROUP**

COMES NOW, the Midwest Energy Consumers Group and for its Comments to the Commission's proposed change to its ex-parte and extra-record communications rule respectfully states as follows:

1. On May 24, 2016, the Commission opened this docket. On June 8, 2016, the Commission filed its proposed changes to 4 CSR 240-4.020. In that same filing, the Commission requested comments on the proposed changes by July 8, 2016. On June 24, 2016, various customer groups filed a Request for Extension. Recognizing the numerous rate cases and other dockets currently pending as well as the discretionary nature of this docket, the customers asked that the Commission extend the filing date for comments for three months. On June 28, the Commission issued its order extending the deadline for filing comments until August 22.

2. As indicated, there are numerous other dockets currently pending that mandate the full attention of customers. These dockets include pending rate cases for all of the regulated electric utilities as well as a docket to consider the Algonquin acquisition of Empire District Electric. In addition, there is a pending legislative docket at the Commission. Finally, undersigned counsel is scheduled to testify this week at the Senate Committee Hearing on electric utility regulation. Frankly, as indicated in the previous extension request, these other matters preclude a complete consideration of the Commission's proposed rule changes. As such,

MECG will attempt to provide some background comments designed to educate the Commission on the events that necessitated the promulgation of the current rule.

3. In 2008, the Commission was under attack from newspapers and various customers. In several dockets involving KCPL, Commissioners were forced to recuse themselves from participating. These recusals were necessitated by Commissioner meetings and conversations with the utility prior to and during the pendency of the KCPL cases. As a result, public confidence in the Commission was very low.

4. In response, Governor Blunt called on the Commission to make changes to its ex-parte and extra-record communications rule.

"Chairman Davis had only one option: to recuse himself from this case," Blunt said in a statement. "The accusations of contact between him and utility executives raise very serious questions about whether this issue is being decided fairly and impartially. Missourians deserve total trust in the members of the commission, and I am calling on the PSC to immediately examine their policies on conflicts of interest including inappropriate contact with executives in cases before the commission."<sup>1</sup>

5. The General Assembly agreed with the Governor's call for action. During the 2009 Legislative Session, the General Assembly appropriated \$100,000 "for the development of a rule regarding ethics, conduct and conflict of interest, including training for the commission and staff, in consultation with a professional legal organization with expertise in the development and training in such codes."<sup>2</sup>

6. Over the protests of various utility groups,<sup>3</sup> the Commission moved forward with a comprehensive change to its ex-parte rule. In its Notice of Finding of Necessity, the Commission stated that the change to the ex-parte rule "is necessary to set forth the standards for

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<sup>1</sup> See, St. Louis Business Journal, dated December 6, 2007.

<http://www.bizjournals.com/stlouis/stories/2007/12/03/daily60.html>

<sup>2</sup> See, House Bill No. 7, 95<sup>th</sup> General Assembly.

<sup>3</sup> See, Missouri Energy Development Association comments, Case No. AX-2008-0201, dated February 1, 2008; Missouri Telecommunications Industry Association comments, Case No. AX-2008-0201, dated January 31, 2008.

*ensuring the public trust in the Commission with regard to pending filings and cases.*<sup>4</sup> As directed by the General Assembly, the Commission engaged a “professional legal organization with expertise in the development and training” in ethical codes. Finally, on July 30, 2010, the Commission’s new ex-parte rule went into effect. To date, numerous commissioners have apparently found the current rule to be workable. Indeed, since the rule went into effect, there has not been a single request for the recusal of a Commissioner. Clearly, the rule is working.

7. Now, barely six years after spending \$100,000 of public funds to engage a legal organization with expertise in these matters, and after rebuilding its reputation with the public, the Commission deems it appropriate to start tearing down the protections contained in its ex-parte rule. As indicated in its public meetings, such changes are deemed necessary simply because the current Commission finds the current rule to be cumbersome. MECG suggests, given the numerous attorneys in the General Counsel’s office as well as those attorneys employed as Commissioner advisors, that the expertise is in place for the current Commission to better understand the purpose underlying the various provisions of the rule. Once an understanding is developed, the Commissioners may find that the rule is not so cumbersome. As such, MECG asserts that, rather than a rule modification, the proper approach should be to engage in training to attempt to gain a better understanding of the current rule.

8. Recent comments in the St. Louis Post-Dispatch indicate that public confidence may already be eroding simply as a result of the Commission’s announcement to consider rule changes. For instance:

► “These are checks and balances, put there for a very good reason protection for the consumer. They are not "cumbersome" "confusing" what they are intended for is to stop collusion , being in cahoots.”

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<sup>4</sup> Notice of Finding of Necessity, Case No. AX-2010-0128, dated October 29, 2009.

► “Until you get into it and can understand the legal language they use in contriving all the regulations you might come away with some understanding of it. Considering they get their money from we the people, there should be much stricter rules of operation and probably more scrutiny. Not less.”<sup>5</sup>

9. Events in other states may also show the importance of complete transparency regarding Commission communications with utilities. In a recent docket in Nevada, solar interests chastised the Commission for meetings with the utility and complaining that the Commission “was in the back pocket of the utility.”<sup>6</sup> Shortly thereafter, it was announced that the Governor would not appoint the Chairman to another term at the Commission.

10. In the final analysis, MECG suggests that the Commission should be hesitant to start making changes to its ex-parte rule. Public confidence in the Commission has only recently been restored. After a rash of commissioner recusals, the Commission has not seen a single request for a Commissioner recusal since the rule was enacted. Clearly, the rule designed by “a professional legal organization with expertise in the development and training in such ethical codes” is working. Given this, MECG suggests, instead of starting to tear away the protections of the current rule, that the Commission instead retain the professional legal organization responsible for drafting the current rule to engage in training the current Commissioners and Staff. Only after it has a complete and thorough understanding of the current rule should the Commission consider making modifications to that rule.

WHEREFORE, MECG respectfully submits the foregoing comments and encourages the Commission to refrain from making modifications to its current ex-parte rule.

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<sup>5</sup> [http://www.stltoday.com/business/local/missouri-regulators-want-looser-rules-on-meeting-with-utilities/article\\_d2a616a8-3b43-5b97-b62a-cc913695dd06.html?mode=comments](http://www.stltoday.com/business/local/missouri-regulators-want-looser-rules-on-meeting-with-utilities/article_d2a616a8-3b43-5b97-b62a-cc913695dd06.html?mode=comments)

<sup>6</sup> <http://www.utilitydive.com/news/updated-headed-for-the-exits-nevada-puc-commissioner-david-noble-lifts-li/423366/>

Respectfully submitted,



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ATTORNEY FOR THE MIDWEST ENERGY  
CONSUMERS GROUP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



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David L. Woodsmall

Dated: August 22, 2016