

For the purposes of this rule the following terms mean:

Anticipated Contested Case – Any case that a person anticipates, knows or should know will be filed before the commission within 30 days and such person anticipates or should anticipate that such case will become a contested case.

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Deleted: Anticipated Party – A person who anticipates, knows or should know that such person will be a party to an anticipated contested case.

Contested Case - Any proceeding before the commission in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.

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Ex Parte Communication - Any communication outside of the hearing process or outside a properly noticed meeting of the commission between (a) the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and (b) a party to a contested case or the party's agent or representative, regarding the merits, specific facts, evidence, claims, or positions that have arisen or are reasonably likely to arise in the contested case at issue. Ex parte communications shall not include communications regarding general regulatory policy or that do not address the merits, specific facts, evidence, claims or positions presented or taken or that are reasonably likely to be presented or taken in the contested case at issue.

Deleted: Discussed Case – Any contested case or anticipated contested case the merits, facts, evidence, claims, or positions of which are the subject of an extra record communication regulated under this rule.

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Extra Record Communication – Any communication outside of the hearing process or outside a properly noticed meeting of the commission, including but not limited to an ex parte communication, between (a) the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and (b) any person interested in a contested case or anticipated contested case regarding the merits, specific facts, evidence, claims, or positions that have arisen or are reasonably likely to arise in the contested case or anticipated contested case at issue. Extra record communications shall not include communications regarding general regulatory policy or that do not address the merits, specific facts, evidence, claims or positions presented or taken or that are reasonably likely to be presented or taken in the contested case or anticipated contested case at issue.

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Party - Any applicant, complainant, petitioner, respondent, or intervenor in a contested case before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate in the relevant proceeding within the period of time established for interventions by commission rule or order.

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Person - Any individual, partnership, company, corporation, cooperative, association, political subdivision, public utility, party, or other entity or body that could become a party to a contested case.

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(1) **Prohibition on Ex Parte Communications Regarding Contested or Anticipated**

Contested Cases – No party shall undertake, directly or indirectly, or participate in an ex parte communication.

(2) **Ex Parte Communications by Commission** – A commissioner, technical advisory staff, or the presiding officer assigned to a proceeding shall not undertake, directly or indirectly, or participate in an ex parte communication regarding a contested case. However, it shall not constitute participation in an ex parte communication if such person:

- a. Does not initiate the ex parte communication;
- b. Immediately withdraws from or ends the ex parte communication, or immediately alerts the initiating person that the communication is not proper outside the hearing process and makes a reasonable effort to withdraw from or end the communication; and
- c. Files notice in accordance with sections (4) and (5) of this Rule, as applicable.

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(3) **Exclusions from Ex Parte and Extra Record Communications.** Any other provision of this rule notwithstanding, the following communications may occur without violating Sections (1) or (2) and without complying with the notice provisions of Sections (5) through (7):

- a. A communication between (a) the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and (b) a member of the general assembly or other governmental official allowed under Missouri Revised Statute § 386.210.5;
- b. A communication between (a) the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to a proceeding and (b) a person, regarding
 - i. an anticipated or actual interruption or loss of service or damage to or operational problems or incidents at a utility's facilities;
 - ii. updates regarding efforts to restore service after an interruption or loss of service or regarding damage, operational problems or incidents at a utility's facilities;
 - iii. the security or reliability of utility facilities;
 - iv. information regarding Federal Energy Regulatory Commission matters, including regional transmission organization-related matters or regional reliability organization-related matters;
 - v. labor matters; and
 - vi. general information regarding utility operations, such as the status of utility programs, billing issues, security issuances, and publically available information about the utility's finances.

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Deleted: (3) Exclusions from Ex Parte Communications – The following communications shall not violate sections (1) or (2) of this rule. However, communications governed by subsections (3)(a) and (3)(b) still must be disclosed as an extra record communication in accordance with sections (5), (6), and (7) as applicable: ¶
 <#>a. A communication between (a) the commission, a commissioner, the technical advisory staff, or the presiding officer assigned to the proceeding and (b) a member of the general assembly or other governmental official allowed under Missouri Revised Statute § 386.210.5; or ¶
 <#>b. A communication between (a) the commission, a commissioner, the technical advisory staff, or the presiding officer assigned to a proceeding and (b) a public utility who is a party to a contested case, or an anticipated part to an anticipated contested case, notifying the commission, commissioner, technical staff, or presiding officer of an anticipated or actual interruption or loss of service or providing an update regarding efforts to restore service after such an interruption or loss of service; or ¶
 <#>c. A communications between staff and the commission, a commissioner, or technical advisory staff relating to exercise of the commission's investigative powers including as recognized under Missouri Revised Statute §§ 386.210.7, 386.330, 386.390, or 386.762. ¶

c. Communications between a party and the assigned law judge regarding a contested case or anticipated contested case if those communications deal with purely procedural matters and do not involve matters of commission scheduling that are of a time-sensitive nature or that could materially affect the interests of other parties; and

d. Communications between staff and the commission, a commissioner, or a member of the technical advisory staff relating to exercise of the commission's investigative powers, including as recognized under Missouri Revised Statute §§ 386.210.7, 386.330, 386.390, or 386.762; provided, that this rule is intended to regulate communications between staff and the commission, a commissioner, or members of the technical advisory staff to the extent those communications are would be extra-record communications regarding an over-earnings complaint case, actual cost adjustment case, or other case, whether filed or not yet filed, where the financial interests of the subject of the investigation could be materially affected as a result of the investigation or any proceedings potentially arising from such investigation. (4) **No Consideration for Extra Record Communications** – An extra record communication shall not be considered as part of the record on which a decision is reached by the commission, a commissioner, or presiding officer in a contested case unless it is admitted into evidence

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in the contested case at issue.

(5) **Notice of Ex Parte Communications in Contested Cases** – If, despite the prohibition in section (1) of this rule, a person initiates an ex parte communication regarding a pending contested case, such person shall, on the next business day following such communication give notice of that communication as follows:

a. If the communication is written, the initiating person or party shall file a copy of the written communication in the official case file for that case, and serve the copy of the written communication upon all parties of record in that case; or

b. If the communication is not written, the initiating person shall file a memorandum disclosing the communication in the official case file of that case, and serve such memorandum on all parties of record in that case. The memorandum must contain a detailed summary of the substance of the communication, a listing of all participants to the communication, the date, time, location and duration of the communication, and a specification of the means by which the communication took place.

(6) **Notice of Extra Record Communications in Anticipated Contested Cases** – A person who initiates an extra record communication regarding an anticipated contested case shall within five business days of the latter of (a) becoming a party to the contested case or (b) the conversion of the case to a contested case, give notice of the extra record communication. The notice shall be made in the manner set forth in subsections (5) a and b, and shall include all information required in a filing made under subsections (5) a and b.

(7) **Notice by Commission** – In addition to sections (5) or (6) of this Rule, if an extra record communication regarding a pending case is initiated by a person not a party to the discussed case, the commissioner, the technical advisory staff, or the presiding officer assigned to the discussed case shall give notice of the extra record communication in the manner set forth in subsections (5) a and b.

(8) **Sanctions** -The commission may issue an order to show cause why sanctions should not be ordered against any party or agent or representative of a party, engaging in an ex parte communication in violation of subsection (1) of this rule or a failure to file notice and to otherwise comply with the requirements of sections (5) or (6) of this rule. The commission may also issue an order to show cause why sanctions should not be ordered against any attorney who violates section (10) of this rule.

(9) **Collection of Pre-Case Notice Filings** – The secretary of the commission shall create a repository for any extra record communication filed in advance of an anticipated contested case. Once such a case has been filed, the secretary shall promptly file any such notices in the official case file for each discussed case.

(10) **Attorney Duties** – An attorney appearing before the commission shall:

- a. Make reasonable efforts to ensure that the attorney and any person whom the attorney represents avoid initiating or participating in an ex parte communication prohibited by section (1);
- b. Make reasonable efforts to ensure that the attorney and any person whom the attorney represents gives notice of any extra record communication as directed in sections (5) and (6);
- c. Prepare a notice in accordance with sections (5) or (6) when requested to do so by the commission, a commissioner, technical advisory staff, or the presiding officer assigned to a contested case;
- d. Make reasonable efforts to notify the secretary when a notice of pre-filing extra record communication is not transferred to a case file as set forth in section (9); and
- e. Shall comply with all the Missouri Rules of Professional Conduct.

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