

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Proposed Revision to
4 CSR 240-4.020

)
)

Case No. AX-2008-0201

NOTICE OF CORRECTION, REVISION AND ADDITIONS TO RESPONSE TO NOTICE OF OPPORTUNITY TO COMMENT

COMES NOW Harold Stearley, attorney and Regulatory Law Judge for the Missouri Public Service Commission, and for this Notice of Correction, Revision and Additions to Response to the Notice of Opportunity to Comment to the Motion for Proposed Rulemaking filed herein by the Office of the Public Counsel and several others, states as follows:

1. On January 29, 2008, I filed a pleading with the Commission in response to the Office of the Public Counsel's a Motion for Proposed Rulemaking to amend the Commission's rule concerning *ex parte* communications, specifically Commission Rule 4 CSR 240-4.020, Conduct During Proceedings.¹

2. Upon further review, I discovered two errors/revisions for the original filing and this pleading now corrects or revises the particular sections to the proposed rules as follows (corrections are shaded):

¹ Joining Public Counsel are the Midwest Gas Users Association, the Sedalia Industrial Energy Users Association, the Missouri Industrial Energy Consumers, the Missouri Energy Group, AG Processing, Inc., Praxair, Inc., AARP, and the Consumers Council of Missouri. The several members of the first four associations are enumerated on the first page of Public Counsel's Motion for Rulemaking.

Proposed Amendments to Rule 4 CSR 240-4.020:

4 CSR 240-4.020 Code of Conduct During Proceedings

(17) In addition to any direct violation of any subsection of this rule, any proper party to an on-going action before the commission or any of the party's officers, agents or employees, or any attorney or law firm representing any proper party to an on-going action before the commission, or any non-party participant or the law firm or attorney representing that participant to an on-going action before the commission, who is found to have invoked this rule, or any subdivision of this rule, in any written pleading or filing, or in any oral motion, request, demand, contention, objection or argument, of any kind, for any improper purpose, including, but not limited to, to harass, cause unreasonable delay, gain tactical advantage or otherwise impair or interfere with the proceeding, shall be deemed to be in violation of this rule. The term "on-going action," as used in this subsection includes not only contested cases, but also non-contested actions or proceeding before the commission.

Newly Proposed Rule 4 CSR 240-2.121:

4 CSR 240-2.121 Commissioners as Administrative Decisionmakers

(8) Any party filing a motion for disqualification or recusal shall state, with particularity: (a) the specific legal theory that is the basis for the motion; (b) the appropriate standard(s) that are applicable as delineated in subsection (7); and, (c) the substantial and competent evidence being offered to satisfy the appropriate legal standard(s) that would require disqualification or recusal.

3. Additionally, in case number AO-2008-0192, Commission Jarrett filed several excellent suggestions, one of which in particular, I recommend be incorporated into this process. Commissioner Jarrett proposed that the Commission add an additional screen in the current Electronic Filing and Information System ("EFIS") that would require, prior to any electronic filing, acknowledgment by the submitting person that they are acting in compliance with all Commission *ex parte* communication and conflict of interest rules in

making their filing. I recommend this requirement should be incorporated in Commission Rule 4 CSR 240-2.060 in the following manner:

4 CSR 240-2.060 Applications

PURPOSE: Applications to the commission requesting relief under statutory or other authority must meet the requirements set forth in this rule.

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(M) All applications and petitions for relief of any kind shall include written acknowledgment, in a separately numbered paragraph, from the Applicant(s) or Petitioner(s) that they have read, and are acting in compliance with, all commission *ex parte* communication and conflict of interest rules in making their filing(s) and that the Applicant(s) or Petitioner(s) shall continue to act in compliance with these rules throughout the duration of their pending action before the commission.

(N) (M) All applications shall be subscribed and verified by affidavit under oath by one (1) of the following methods: if an individual, by that individual; if a partnership, by an authorized member of the partnership; if a corporation, by an authorized officer of the corporation; if a municipality or political subdivision, by an authorized officer of the municipality or political subdivision; or by the attorney for the applicant if the application includes or is accompanied by a verified statement that the attorney is so authorized.

4. In order to bring the Commission's procedural rule on complaints into compliance, i.e. Commission Rule 4 CSR 240-2.070, I also recommend the following change/addition to section (7) of the rule:

4 CSR 240-2.070 Complaints

PURPOSE: This rule establishes the procedures for filing formal and informal complaints with the commission.

~~(7) Upon the filing of a complaint in compliance with these rules, the secretary of the commission shall serve by certified mail, postage prepaid, a~~

~~copy of the complaint upon the person, corporation or public utility against whom the complaint has been filed, which shall be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice.~~

(7) Upon the filing of a complaint in compliance with these rules, the secretary of the commission shall:

(A) serve by certified mail, postage prepaid, a copy of the complaint upon the person, corporation or public utility against whom the complaint has been filed, which shall be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice;

(B) serve by certified mail, postage prepaid, a copy of the Commission's *ex parte* communication and conflict of interest rules upon Complainant(s) and Respondent(s); and,

(C) the Complainant(s) and Respondent(s) shall be required to file a statement with the Commission acknowledging that they have read, and are acting in compliance with, all Commission *ex parte* communication and conflict of interest rules and will continue to act in compliance throughout the duration of the complaint proceeding.

WHEREFORE, on account of all the foregoing, Harold Stearley prays that: (1) the Commission will consider the recommended changes, revisions and additions proposed herein this pleading in conjunction with his prior filing on January 29, 2008; and (2) the Commission will grant such other and further relief as is just in the circumstances.

Respectfully submitted,
/s/ Harold Stearley
Harold Stearley
Missouri Bar No. 49900

P. O. Box 360
Jefferson City, MO 65102
(573) 522-8459 (Telephone)
(573) 526-6010 (Facsimile)
harold.stearley@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been electronically mailed to all counsel of record on this **31st day of January, 2008**.

/s/ Harold Stearley