

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

BRETT FELBER,

Complainant,

v.

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI,

Respondent.

Case No. EC-2026-0004

**MEMORANDUM IN REBUTTAL TO SHOW CAUSE ORDER – EX
PARTE COMMUNICATIONS ISSUE**

I. INTRODUCTION

This memorandum specifically rebuts the assertions of 'ex parte communications' contained in the Commission's Show Cause Order dated October 23, 2025. The order's characterization of communications between the Complainant and the Regulatory Law Judge (RLJ) misapplies the definition of 'ex parte' under 20 CSR 4240-2.090, §386.510 RSMo, and fundamental due-process standards. The record shows that these communications were service copies, procedural clarifications, or filings directed to all required parties—and not confidential attempts to influence any pending ruling.

II. LEGAL STANDARD GOVERNING EX PARTE COMMUNICATIONS

Under 20 CSR 4240-2.090(1), an ex parte communication is one made to any Commissioner or presiding officer concerning any fact in issue or law applicable to the merits of the proceeding, without notice to all parties. Subsection (2) expressly exempts communications regarding procedure, scheduling, or filing logistics. §386.510 RSMo and §536.063 RSMo guarantee that each party may communicate with the Commission clerk or presiding officer for procedural matters and service of filings.

The key legal elements of an improper ex parte communication are: (1) substantive influence on the merits, and (2) absence of notice or service to other parties.

III. ANALYSIS OF THE SHOW CAUSE ORDER'S ASSERTIONS

1. Mischaracterization of Emails as Improper Communications

The order alleges that Complainant sent emails and service copies to the RLJ and labels all such transmissions as ex parte. However, most communications were filed or served on all

parties, clearly marked as service copies for the record, and related to filings such as writs, subpoenas, and procedural clarifications. Such communications do not constitute ex parte contact under 20 CSR 4240-2.090(2) because they involved no undisclosed substantive argument.

2. Failure to Distinguish Administrative vs. Judicial Contact

The Commission conflates procedural correspondence with substantive persuasion. When the Complainant transmitted copies of motions, discovery objections, or notices of judicial filings, those were administrative filings—not unilateral advocacy. Service copies directed to the RLJ for docket entry cannot constitute prohibited ex parte contact. See *State ex rel. City of St. Louis v. PSC*, 73 S.W.3d 606 (Mo. App. 2002).

3. Due-Process Concerns and Notice Requirements

The order imposes sanctions based on alleged ex parte conduct without evidentiary hearing or ten-day notice required by 20 CSR 4240-2.116(3). No record exists that any email contained undisclosed evidence or argument. A dismissal on such grounds would violate §536.067 RSMo and U.S. Const. amend. XIV. See *State ex rel. Deffenbaugh Indus. v. PSC*, 894 S.W.2d 268 (Mo. App. 1995).

4. Commission's Own Communications and Delegation Issues

The order was issued by delegation under §386.240 RSMo, which authorizes only ministerial acts. Issuing an order alleging ex parte misconduct is a quasi-judicial act requiring full Commission approval. The lack of a full-Commission vote before the issuance of a punitive order may itself constitute an internal ex parte act contrary to §386.510 RSMo.

5. Chilling Effect and EFIS Access

Blocking EFIS access after the alleged communications deprived Complainant of the statutory means of service. When EFIS was unavailable, direct service by email to the presiding officer and parties was the only alternative. The PSC's own technical restrictions precipitated the very communications now labeled 'ex parte.'

IV. CONCLUSION

The Show Cause Order misapplies the law and overextends the concept of ex parte communication to procedural service and correspondence. The record fails to demonstrate any substantive, undisclosed influence attempt as required by 20 CSR 4240-2.090. Accordingly, sanctions or dismissal on this ground would be arbitrary and capricious under §536.140.2 RSMo and violate due-process protections guaranteed by Mo. Const. art. I, §10 and U.S. Const. amend. XIV.

V. RELIEF REQUESTED

Complainant respectfully requests that the Commission:

1. Vacate the October 23, 2025 Show Cause Order as procedurally defective;
2. Acknowledge that communications served on all parties do not constitute prohibited ex parte contact under 20 CSR 4240-2.090(2);
3. Restore EFIS access and permit Complainant to file through proper channels; and
4. Grant Full Commission Review under 20 CSR 4240-2.160(1).

Respectfully submitted,

/s/ Brett Felber

Complainant

[REDACTED]

[REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

Dated: October 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Rebuttal to the Show Cause Order – Ex Parte Communications Issue was served on October 23, 2025, via electronic mail and/or U.S. Mail upon:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]