

John R. Ashcroft

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

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**SECRETARY OF STATE
ADMINISTRATIVE RULES**

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Rule Number 4 CSR 240-4.040

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

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TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Request for Non-Substantive Change

☐ Statement of Actual Cost

☒ Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Section (1)

**Small Business Regulatory
Fairness Board (DED) Stamp**

JCAR Stamp

JOINT COMMITTEE ON

APR 06 2017

ADMINISTRATIVE RULES



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

March 29, 2017


Daniel Hall
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

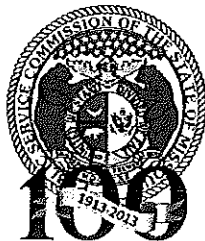
Dear Daniel:

This office has received your rulemaking for ex parte / extra-record communications: 4 CSR 240-4.015; 4 CSR 240-4.017; 4 CSR 240-4.020; 4 CSR 240-4.030; 4 CSR 240-4.040; and 4 CSR 240-4.050.

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations. After our review of this rulemaking, we approve the rules' submission to JCAR and the Secretary of State.

Sincerely,


Justin D. Smith
Deputy Counsel



Commissioners

DANIEL Y. HALL
Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

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Missouri Public Service Commission

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John R. Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-4.040 Communications that are not Ex Parte or Extra-Record Communications

Dear Secretary Ashcroft,


CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.410, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

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Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 4 – Standards of Conduct**

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ADMINISTRATIVE RULES

ORDER OF RULEMAKING

COPY

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-4.040 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2017 (42 MoReg 20). Those sections with changes are reprinted here. The proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended February 2, 2017, and on February 16, 2017, the commission held a public hearing on the proposed rescission. Timely written comments were received from the Office of the Public Counsel (OPC), the Missouri Energy Development Association (MEDA), the Missouri Cable Telecommunications Association (MCTA), Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), Missouri Industrial Energy Consumers (MIEC), Midwest Energy Consumers Group (MECG), and Consumers Council of Missouri. In addition to those entities, the commission's staff, Missouri American Water Company, Laclede Gas Company, Kansas City Power & Light Company, Empower Missouri, and AARP all offered comments at the hearing. The comments of regulated utilities and utility associations generally supported the proposed rule, with modifications. The Office of the Public Counsel and other organizations representing consumers all strongly opposed adopting the proposed rule.

COMMENT #1: OPC comments that in the title of the proposed rule, the words "Public Disclosure of" should be added to reflect OPC's position that the rule should be focused on public disclosure and not a prohibition on communication.

RESPONSE: The Commission disagrees with the comment because the title does not imply that communications are prohibited and the rule will include no provisions related to disclosure. No changes have been made to the rule as a result of this comment.

COMMENT #2: In section (1), OPC proposes to replace "pursuant to" with "in accordance with" to more accurately reflect the law because nothing in section

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386.210.3 prohibits restrictions on ex parte communications or enforcement of the current public notice and disclosure provisions.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees and will make the suggested change.

COMMENT #3: OPC proposes the following changes to the text of section (1): a) the phrase “on substantive or procedural matters that are the subject of a pending filing in a case in which no evidentiary hearing has been scheduled are permitted and need not be disclosed” should be added in the first sentence of section (1) after “communication” (and delete the preceding word “no”) to make clear that communications made in accordance with 386.210.3 have been deemed adequately disclosed to the public and need no further process to disclose; b) the phrase “shall be prohibited by, or subject to, the disclosure and notice requirements of rule 4 CSR 240-4.020 or 4 CSR 240-4.030” should be deleted because it does not reflect an accurate reading of the law and would permit communication that should be publicly disclosed to remain secret thus eroding the public trust in the Commission; c) the word “only” should be inserted to indicate that communications that do not require public disclosure under the rules are limited to the processes specifically identified in the statute indicating when communications are deemed to be sufficiently disclosed to the public; and d) the phrase “made before an evidentiary hearing has been scheduled in the case and are” should be deleted because OPC includes it in a different location in the sentence.

RESPONSE: The Commission disagrees with the comment because the suggested changes are inconsistent with the language in this proposed rule and similar related proposed rules. No changes have been made to the rule as a result of this comment.

COMMENT #4: OPC proposed that a new subsection be added substantially similar to the existing Commission rule 4 CSR 240-4.020(8) to ensure that communications between the Commission and representatives of regulated utilities are disclosed to the public. OPC and MEDA propose that language be added to identify specific situations where communications between the Commission and a representative of a regulated utility need not be disclosed. This is similar to the wording of some of the current rule provisions at 4 CSR 240-4.020(10). MEDA agrees that the specific “safe harbor” provisions in the current rule 4.020(10) should be included in the new rules. MIEC stated an opinion at the hearing that the existing safe harbor provisions are not contrary to section 386.210.

RESPONSE: The Commission disagrees with the comment because the Commission finds the suggested changes to be inconsistent with the language in this proposed rule, similar related proposed rules, and section 386.210, RSMo. No changes have been made to the rule as a result of this comment.

4 CSR 240-4.040 Communications that are not Ex Parte or Extra-Record Communications

(1) In accordance with section 386.210.3, RSMo, no communication shall be prohibited by, or subject to, the disclosure and notice requirements of rule 4 CSR 240-4.020 or 4 CSR 240-4.030, if those communications are made before an evidentiary hearing has been scheduled in the case and are—

(A) Made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision; or

(B) Made at a forum where representatives of the public utility affected thereby, the Office of the Public Counsel, and any other party to the case are present.