

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

In the matter of a Repository File for)	
The Collection and Distribution of)	
Documents Pertaining to the Ethics)	File No. AW-2009-0313
Review at the Missouri Public Service)	
Commission)	

Comments of Chairman Robert M. Clayton III

On September 11, 2009, consultant Michael Downey filed a revised draft of a rule regarding ex parte and extra record communications related to contested matters pending or expected to be filed before the Commission.

After analyzing the draft rule, I have prepared the attached amendments for consideration of the Commission, stakeholders and the public. The amendments were prepared to address the occasions in recent years in which ethical questions have been raised due to communications among parties and Commissioners. Those occasions involved the common circumstances or facts that: (1) the participating parties were large utilities with significant resources engaging in communications with Commissioners; (2) the cases involved were large, highly complex and potentially controversial cases such as rate cases, mergers or acquisitions; and (3) private communications occurred among Commissioners and regulated utilities during times of anticipated cases.

Therefore, in light of previous allegations made against the Commission, specifically referring to case numbers TC-2006-0068, TO-2006-0299, ER-2007-0291, EM-2007-0374, ER-2009-0089, ER-2009-0090, I propose the following concepts which are described in detail as follows:

1. Eliminate all non-de minimis communication between the regulator and the large, regulated utility at the time of filing of large complex cases such as a rate increase request; and
2. Restrict and provide notice of communications which occur in the preceding 60 days to a filing of large, complex cases among the regulator and the large regulated utility.

To accomplish these concepts, I have made the following modifications:

Ex Parte Communication:

- Removes “anticipated party” and “anticipated contested case” from the definition of “Ex Parte Communication” and removes “anticipated party from section (1).
 - o This Change establishes a bright line at the moment a case is filed as to when an extra record versus an ex parte communication occurs.

Sanctions:

- Section (8) has been slightly changed to reflect the statutory lack of authority the Commission has over a Commissioner or Commissioner’s staff.
- Section (8) has been modified to allow sanctions for a violation of the large utility provisions found below.


Large Utility Case:

- Creates a new section that addresses the most controversial cases the Commission addresses. In the past, virtually all of the ethical criticism members of the Commission have faced have been associated with high profile cases of large utilities. I believe additional restrictions are needed with cases involving a utility of 8000 or more customers, regarding a merger or acquisition, certificate of convenience and necessity for any generation or transmission facility, authorization to transfer or pledge an asset for financing, or a general rate case involving a large utility. Therefore, the attached suggested language addresses these types of cases by:
 - o Requires a large utility to file a notice of intent to file such a case with the Commission at least 60 days prior to filing the case;
 - o Once a notice of intent to file a case has been filed by a large utility, any anticipated party must file a notice of any communication with the Commission, a Commissioner, or Personal Advisor;
 - o Once such a case is filed, an almost complete prohibition of communication outside of an official Commission public meeting begins between the utility and the Commission, a Commissioner, or Personal Advisor;

- Defines “De Minimis Communication” to include a communication that does not relate to a subject under the Commission’s jurisdiction or a communication in a public setting which does not relate to a current case.
- Defines “General Rate Case” to include a typical rate case as well as a complaint case alleging over earnings by the utility.
- Defines “Large Utility” as a utility with 8,000 or more customers.
- Provides for sanctions for violations of these rules.

I am eager to hear comments, concerns or recommendations from the interested parties regarding Mr. Downey’s draft and all other proposals. It is my hope that the workshop scheduled on September 22, 2009, will provide an opportunity for the parties to express their thoughts and debate the various ideas regarding the ethics rule. It is crucial this process move forward in a thoughtful but expeditious manner in order to ensure the public trust and fulfill our legislative mandate.

Respectfully submitted,



Robert M. Clayton III, Chairman

Dated in Jefferson City, Missouri
On the 18th of September, 2009.