

## Missouri Utility regulators may repeal ethics rule

JEFFERSON CITY • One of Missouri's utility regulators caused a furor in 2007 after he met secretly with utility executives. So last year, after a study of their ethics policy, the regulators agreed to bar such meetings.

Now, the staff of the Missouri Public Service Commission says the rule has proved to be overbroad and impractical. The commission will hold a hearing today on a proposal to repeal the ban, a move that is drawing fire from consumer groups.

The five-member commission sets rates and policies for investor-owned utilities.

Commission Chairman Kevin Gunn of Webster Groves said the current rule prohibits informal discussions of "any potential issue in any potential case that could potentially be contested. Our general counsel came to us and said, 'It's unenforceable.' "

The rule even precludes discussions on general matters such as bills before the Legislature or transmission of power, Gunn said. If the change is adopted, commissioners could meet with utility executives on such subjects, so long as they disclosed the meeting in advance and filed a report afterward detailing what was discussed.

Consumer advocates are fighting the change, which they say would undermine the fairness of the regulatory process and damage public confidence in the commission.

"There is no reason that commissioners need to get information in secret about issues that are likely to come before them for decision," Public Counsel Lewis Mills, who represents consumers in utility matters, said in written comments filed with the commission.

Taking a different approach, St. Louis-based Ameren Missouri contends that the proposed rule change doesn't go far enough.

The utility said that with the revision, its private meetings with regulators would still have to be disclosed by being posted on commissioners' public calendars. But other groups, such as manufacturers that band together as large electricity users to fight Ameren's rate hikes, could meet with commissioners without any public notice.

If there's a potential for "undue influence," it exists no matter who's having the secret meeting, wrote Ameren's attorney, James B. Lowery of Columbia.

The issue arose in 2007 after the commission's then-chairman, Jeff Davis, held a private meeting with a utility executive three months before the utility proposed a merger with another power company.

The deal involved Aquila Inc., and Kansas City Power & Light Co. A day after meeting with Davis, Aquila's chief executive wrote an email to his board members indicating Davis was on board with moving the merger through quickly.

Davis denied that he gave any such assurance, but he removed himself from considering the case and called for a new code of ethics, with mandated public disclosure of such meetings.

Davis also had been criticized for meeting in the governor's office with a lawyer for Ameren in 2006 while the commission was considering a rate increase proposal by the company. Davis said they talked about the Taum Sauk reservoir collapse, not the rate case.

When months passed without the commission adopting a new ethics policy, then-Sen. Joan Bray, D-University City, prodded the agency by including \$100,000 in the 2009 state budget for an ethics study and training. The commission adopted the new rule barring private meetings in mid-2010.

Bray, who now works with the Consumers Council of Missouri, said she is disappointed the rule is already on the chopping block.

"It's really outrageous," she said. "We finally got something. It protects the commissioners from misbehaving, or appearing to misbehave, by entertaining the ideas of one side over the other. I just can't imagine why they'd want to take away their own self-protection."

Bray said she hopes to attend today's hearing, which will be run by the commission's chief regulatory law judge, Morris Woodruff.

In written comments filed with the commission, the Consumers Council of Missouri and the AARP called the rule "a balanced and appropriate rule which was crafted with the goal of ensuring the private 'backroom' discussions do not undermine" the regulatory process.

Others filing objections to the change include the Missouri Retailers Association and the Missouri Industrial Energy Consumers, a group of large manufacturers.

"The rule is essential to protect the impartiality and fairness of the commission process," wrote Diana Vuylsteke, an attorney for the industrial consumers.

The exact wording that would be repealed reads:

"No person who is likely to be a party to a future case before the commission shall attempt to communicate with any commissioner or member of the technical advisory staff regarding any substantive issue that is likely to be an issue within a future contested case, unless otherwise allowed under this rule."

Gunn, who was appointed commission chairman by Gov. Jay Nixon, played down the controversy.

All disclosure requirements would be maintained, and the commission would still have a "blackout" period barring meetings that deal with rate cases. The blackout period starts running 60 days before a case is filed.

"I want to emphasize that these are incredibly minor tweaks to this rule," Gunn said. "There really should not be any substantive change to how we operate with one of the toughest ethics rules in the country."

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