

FILED

NOV 5 2008



**Supreme Court of Missouri  
en banc**

Missouri Public  
Service Commission

DUPLICATE  
OF FILING ON

OCT 14 2008

IN OFFICE OF  
CLERK SUPREME COURT

STATE ex rel OFFICE OF PUBLIC COUNSEL, )  
Relator, )  
v )  
PUBLIC SERVICE COMMISSION of the )  
State of Missouri, et al , )  
Respondents )

No SC89176

ORIGINAL PROCEEDING IN MANDAMUS

**PER CURIAM**

This proceeding is the second action filed by the public counsel to contest a rate increase sought by the Empire District Electric Company. As with the first action, the public service commission again is directed to vacate its order.

**Facts**

The public service commission first purported to approve an increase for Empire Electric on December 29, 2006, to be effective January 1, 2007. The public counsel sought a writ of mandamus. This Court noted that the law specifies 30 days for applying for rehearing but allows the commission the discretion to set a shorter time as long as the time is reasonable. The Court concluded that by issuing the December 29 order with an effective date of January 1, 2007, the commission abused its discretion to provide public counsel with a reasonable period of time in which to appeal the order. The Court ordered

the commission "to vacate its order granting expedited treatment and approving tariffs issued on December 29, 2006, and allow public counsel reasonable time to prepare and file an application for rehearing on the tariffs " *Public Counsel v Public Service Com'n*, 236 S W 3d 632, 637 (Mo banc 2007)

In response, the commission entered an order on December 4, 2007, stating that it vacated its previous order of December 29, 2006, but also again approving the tariffs it previously approved in its December 29, 2006, order. The commission also declared that "if Empire charged the rates as approved in the December 29, 2007, [sic] order, it charged the correct rates. And further, those rates remain 'in effect at the time' until the order is vacated "

#### **Discussion**

The parties essentially agree that the disposition of the moneys collected by Empire during the pendency of this action is not an issue for this Court at this time. All that is disputed is whether the commission, in fact, vacated its December 2006 order as directed by this Court. The commission did not

The general rule is that when an order or judgment is vacated, the previously existing status is restored and the situation is the same as though the order or judgment had never been made. The matters in controversy are left open for future determination. *Buchanan v Cabiness*, 245 S W 2d 868, 873 (Mo banc 1951). In this case, the commission sought to do more than restore the existing status but also to determine the effect on those moneys collected under the tariffs the commission had previously approved. Such action exceeds this Court's mandate.


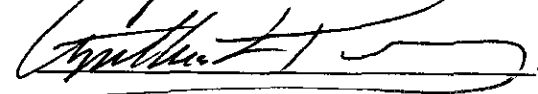
The Court makes the alternative writ of mandamus issued in this case permanent  
The commission is directed to comply completely with this Court's previous mandate and  
opinion The Court takes no position on the effect such action has on any tariffs the  
commission has approved

Stith, C J , Price, Teitelman, Russell, Wolff and Breckenridge, JJ , concur

**STATE OF MISSOURI-SCT.:**

*I, THOMAS F. SIMON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true  
copy of the opinion of said court, delivered in the foregoing entitled cause, on the 14th day of  
October, 2008, as fully as the same appears on file in my office.*

**IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the  
seal of said Supreme Court. Done at office in the City of Jefferson, State  
aforesaid, this 14th day of October, 2008**

  
\_\_\_\_\_, Clerk  
  
\_\_\_\_\_, D.C.

No SC89176  
Public Service Commission Case No. ER-2006-0315  
In the Supreme Court of Missouri

September Session, 2008

State ex rel Office of Public Counsel,  
Relator,

v MANDAMUS

Public Service Commission of the State of Missouri, et al ,  
Respondents

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here now being sufficiently advised of and concerning the premises doth consider and adjudge that the alternative writ of mandamus previously issued herein is hereby made permanent in conformity with the opinion of this Court herein delivered


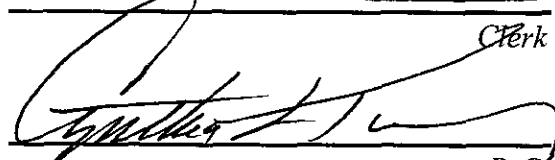
(Opinion filed)

**STATE OF MISSOURI-Sct.**

*I, THOMAS F SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 2008, and on the 14<sup>th</sup> day of October 2008, in the above entitled cause*

*Given under my hand and seal of said Court, at the City of*

*Jefferson, this 30<sup>th</sup> day of October 2008*

  
\_\_\_\_\_  
Clerk  
  
\_\_\_\_\_  
D.C.