

## **APPLICABLE MISSOURI STATUTES AND SELECTED CASE LAW**

**386.520. 1.** The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but **during the pendency of such writ, the circuit court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order or decision.** No order so staying or suspending an order or decision of the commission shall be made by any circuit court otherwise than on three days' notice and after hearing, and **if the order or decision of the commission is suspended the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.** In case the order or decision of the commission is stayed or suspended, the order or judgment of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by, the circuit court, payable to the state of Missouri, and sufficient in amount and security to secure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the commission, in case such order or decision is sustained.

**386.310. 1.** The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every person, corporation, municipal gas system and public utility to **maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public,** and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to **require the performance of any other act which the health or safety of its employees, customers or the public may demand,** including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules. **The commission may waive the requirements for notice and hearing and provide for expeditious issuance of an order in any case in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property, provided that the commission shall include in such an order an opportunity for hearing as soon as practicable after the issuance of such order.**

**386.610.** A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. **The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities** and substantial justice between patrons and public utilities.

**393.290. All provisions of chapters 386, 387, 390, 392 and 393, RSMo, in reference to railroad corporations, street railroad corporations, common carriers, gas corporations, electrical corporations, water corporations, telephone and telegraph corporations, and sewer corporations, in reference to hearings, summoning witnesses, taking of testimony, reports, approval of incorporation and certificates of franchises, the approval of issues of stocks, bonds, notes and other evidence of indebtedness, consolidation, lease, transfer of franchises, valuation of property, grants and franchises, keeping of accounts, complaints as to quality, price, facilities furnished, the fixing of just and reasonable rates and adequacy of service, forfeitures of all descriptions, forfeitures for noncompliance with the orders, summary proceedings under chapters 386, 387, 390, 392 and 393, RSMo, excessive charges for product, service or facilities, proceedings before the commission, and proceedings in any court mentioned in chapters 386, 387, 390, 392 and 393, RSMo, and in all other sections, paragraphs, provisions and parts of chapters 386, 387, 390, 392 and 393, RSMo, in reference to any other corporations subject to any of the provisions of chapters 386, 387, 390, 392 and 393, RSMo, so far as the same shall be practically, legally or necessarily applicable to heating companies in this state, are hereby made applicable to such heating companies as designated in said chapters, and shall have full application thereto.**

393.130. 1. Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.

**393.140(2) Investigate and ascertain, from time to time, the quality of gas or water supplied and sewer service furnished by persons and corporations, examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and in supplying and distributing water for any purpose whatsoever, and in furnishing a sewer system, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas, electricity, water, or sewer system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations, water corporations, and sewer corporations.**

**393.140(5)** Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just

and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, **the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.**

**Judicial affirmation of the Commission's emergency standard for interim rate relief** is found in *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 568-69, 574 (Mo.App. 1976): "A majority of the Commission follows the principle that the purpose of a special hearing concerning interim rates is to **ascertain whether emergency conditions exist which call for especially speedy relief**, and the Report and Order expresses the view that an interim increase should be granted only 'where a showing has been made that the rate of return being earned is so unreasonably low as to show such a **deteriorating financial condition that would impair a utility's ability to render adequate service** or render it unable to maintain its financial integrity.' . . ."

It may be theoretically possible even in a purposefully shortened interim rate hearing for the evidence to show beyond reasonable debate that the applicant's rate structure has become unjustly low, without any emergency as defined by the Commission having as yet resulted. Although some future applicant on some extraordinary fact situation may be able to succeed in so proving, Laclede has singularly failed in this case to carry the very heavy burden of proof necessary to do so.

**Respecting the police powers of the states in utility regulation, the Supreme Court recently stated:** The regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Arkansas Electric Coop v. Arkansas Public Service Comm'n*, 461 U.S. 375, 377 (1983).