

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

In the Matter of Missouri Utilities Company)
Small Company Rate Increase) **File No. WR-2009-0150**

In the Matter of Missouri Utilities Company)
Small Company Rate Increase) **File No. SR-2009-0153**

DISSENTING OPINION OF
COMMISSIONER TERRY M. JARRETT

I dissent from the May 6, 2009, Order Regarding the Office of the Public Counsel's Request for Local Public Hearing ("Order"). The Office of the Public Counsel's ("OPC") motion did not comply with the rules promulgated by the Missouri Public Service Commission ("Commission") regarding the setting of local public hearings in small company rate increase proceedings. As such, the motion should not have been granted by the Commission.

The policy of this Commission is embodied in its rules. Here, the rules provide very detailed and specific guidance as to when and how a local public hearing shall be set by the Commission. My adherence to the rule here does not mean that I do not support local public hearings. To the contrary, I support following the standards which have been established by this Commission. The Commission's deviation from the rules in this case, disguised as "policy", disregards the properly promulgated and adopted rules of the Commission in favor of an *ad hoc* approach to regulation.

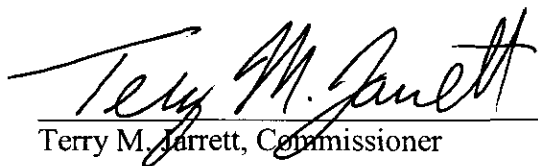
I would note that waiver of this Commission's rules is possible in some instances, but not here. Waiver is permitted in Chapter 2, Practice and Procedure, 4 CSR 240.2.015(1) which states that "A rule in *this chapter* may be waived by the Commission for good cause[.]" The OPC's motion here was brought pursuant to Chapter 3, not Chapter 2. Chapter 3, Filing and Reporting Requirements, and specifically 4 CSR 240-3.050(1)-(25), contain no waiver provision

like the one described in Chapter 2, 4 CSR 240.2.1015(1). Accordingly, the rule cannot be waived and the Commission's grant of the motion is not supported by the Commission's rules.

I have openly called for this Commission to revisit the small company rate increase procedures set out at 4 CSR 240-3.050(1)-(25), and that alternatively these procedures be abandoned all together.¹ I have raised concerns about tactical maneuvers by OPC in these matters and how OPC's maneuvering calls into question the very foundation upon which the small company rate increase procedures were set, which was to encourage utilities to timely file for rate increases, streamline the process for seeking such an increase, as well as decreasing the expenses associated with the process, all while preserving due process rights.

I agree that is important to follow good policy, but when that policy is embodied in this Commission's rules, taking steps which disregard the rules is inappropriate. As a Commission we expect those we regulate, as well as their representatives, to follow our rules. But when the regulator ignores its rules on an *ad hoc* basis, it makes it hard to imagine that the regulator has any right to expect the regulated community to follow them.

Respectfully Submitted,


Terry M. Jarrett, Commissioner

Dated at Jefferson City, Missouri,
on this 11th day of May, 2009.

¹ See FN7, Dissenting Opinion of Commissioner Terry M. Jarrett, File No. SR-2008-0388.