



Missouri Public Service Commission

Area Code 314
751-3234

March 19, 1987

P.O. BOX 360
JEFFERSON CITY
MISSOURI 65102

FILED

MAR 19 1987

PUBLIC SERVICE COMMISSION

Mr. Harvey G. Hubbs
Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Case No. AO-87-48 - In the matter of the investigation of
the revenue effects upon Missouri utilities of the Tax
Reform Act of 1986.

Dear Mr. Hubbs:

Enclosed for filing in the above-captioned case is an
original and fourteen (14) conformed copies of Staff's Reply
Comments. Copies have been sent this date to all parties of
record.

Thank you for your cooperation in this matter.

Sincerely,

Douglas C. Walther

Douglas C. Walther
Assistant General Counsel

DCW:nsh

Enclosures

cc: All parties of record

Commissioners:

WILLIAM D. STEINMEIER

Chairman

CHARLOTTE MUSGRAVE

ALLAN G. MUELLER

CONNIE B. HENDREN

JAMES M. FISCHER

ROBERT J. SCRIBNER

Staff Director

HARVEY G. HUBBS

Secretary

WILLIAM C. HARRELSON

General Counsel

FILED

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

In the matter of the investigation)
of the revenue effects upon) Case No. AO-87-48
Missouri utilities of the Tax)
Reform Act of 1986.)

REPLY COMMENTS OF THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

I. Introduction

It is not Staff's intent to address in detail the comments submitted by the various parties to this docket on March 2, 1987. However, Staff will respond to specific comments to the extent necessary to correct misstatements of fact or supplement the record. By not addressing specific comments Staff is not expressing either concurrence or disagreement with them. Staff will address these comments informally on an ongoing basis at the informal meetings scheduled with the companies subject to this docket and otherwise in pleadings or testimony in any future proceedings involving individual companies which may arise from this investigation.

II. Response to Specific Comments

As noted in the introduction, Staff believes that it is necessary to respond to some of the comments filed on March 2 in order to supplement the record or correct misstatements of fact.

AT&T stated in its comments that its January, 1987 rate reduction of approximately \$3 million included a voluntary flow-through of approximately \$618,000 of revenue requirement attributable to tax savings resulting from the Tax Reform Act. Staff cannot comment further without additional information from AT&T respecting how the \$618,000 reduction represents the full effect of the Tax Reform Act (TRA) on AT&T's Missouri intrastate operation. However, AT&T's January, 1987 rate reduction was voluntary and was the result of an informal agreement between Company and Staff. By agreeing to delay further investigation into AT&T's earnings in return

for a \$3 million rate reduction, Staff did not agree that any part of the rate reduction was related to the Tax Reform Act. Therefore, it is the position of Staff that AT&T should continue to be a party to this docket.

On page 17 of its filing, Missouri Public Service (MoPub) stated that it was requesting that it be relieved of any further requirements of Case No. AO-87-48 following the filing of its 1986 TRA related information. Staff believes that MoPub should remain a party to this docket for the purpose of participating in the scheduled informal meeting and because of the possibility that additional information may be requested of the parties by the Commission.

The United States Department of Energy (DOE) filed comments suggesting a procedure whereby the Commission could make rates interim subject to refund. DOE noted that while Missouri courts have held that the Commission may adopt interim rates, the authority is based on the "file and suspend" procedure which permits the Commission to adopt rates by not suspending them for the entire suspension period. State ex rel. Laclede Gas Company v. Public Service Commission, 535 S.W.2d 561 (Mo. Ct. App. 1976). DOE further stated that since the procedure advocated by Staff in this proceeding assumes that it will be necessary to file complaints to implement rate reductions, the "file and suspend" provisions would not be directly applicable.

However, DOE goes on to note that because the "file and suspend" and complaint procedures complement each other, the Commission can adopt a form of interim rates upon the filing of a Complaint where there is a prima facie showing that current rates are excessive, as in the case of a rate fixed under the old tax act where the tax rate has been much higher than it is under the TRA.

DOE asserts that if such a prima facie case is made by complainant, the Commission has enough information to fix interim rates subject to refund.

Staff believes that the comments of DOE have some merit and warrant further consideration and analysis. However, Staff perceives

a problem with DOE's proposal that may make it inapplicable to the present situation. The standard articulated by Missouri courts for interim relief is that the Company's financial integrity is threatened. It is not sufficient to simply show that existing rates are prima facie inadequate. Thus, it may be difficult to apply the holding in the Laclede case to complaints filed against utilities who are experiencing a tax windfall. Staff will give consideration to alternative procedures in individual cases as appropriate.

Finally, Staff wishes to respond to certain statements made by Arkansas Power & Light Company (APL) in its Application for Rehearing in this docket filed on February 27, 1987. Staff is of the position that APL should make its filing based upon 1986 operating results with a one CP allocator. APL has proposed to file the information on Friday, April 24 and a meeting with APL is presently scheduled for Monday, April 27. Staff urges the Company to file the information no later than April 22 to allow Staff sufficient time to review it prior to the meeting.

III. Interim Rates Subject to Refund

In its comments filed in this docket on January 9, 1987, Staff asked the Commission to order the companies subject to this docket to file comments as to appropriateness and lawfulness of a procedure whereby the Commission would require all companies within its jurisdiction to file a tariff or schedule, superseding all other filed tariffs and schedules, which would indicate that all tariffed rates and charges in effect as of July 1, 1987 are interim and subject to refund. This request by Staff was repeatedly characterized by the companies in their March 2 comments as "Staff's proposal." Staff wishes to make it clear that it did not intend for this request to be misconstrued as a proposal, but was simply seeking to obtain input from the parties to this docket as to the legality and appropriateness of such an approach.

Staff concurs with the conclusion reached by most of the parties that pursuing such a course of action poses serious legal problems and should not be pursued.

Before concluding, Staff notes that Southwestern Bell took the opportunity in its March 2 comments to gratuitously address the constitutionality of a bill currently pending in the Missouri legislature that would allow the Commission to reflect the revenue requirement effect of the TRA on Missouri utilities outside the context of a rate case or complaint proceeding. Staff does not believe that this docket is the appropriate forum for Southwestern Bell to be expressing these concerns and wishes to make it clear that by not specifically addressing these comments it is not concurring with them.

In light of the comments of the companies concerning possible alternative ratemaking procedures and the fact that Staff generally concurs with respect to those comments, Staff intends to proceed with informal meetings as scheduled and, if no voluntary rate reduction is forthcoming, consider the filing of complaints on a company by company basis.

Respectfully submitted,

William C. Harrelson by DCW

William C. Harrelson
General Counsel

Douglas C. Walther

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Assistant General Counsel

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CERTIFICATE OF SERVICE

I hereby certify that
copies of the foregoing
have been mailed or hand-
delivered to all parties of

record on this 19 day of

March 19 87

Douglas C. Walther