

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. TR-82-199

In the matter of the filing by
SOUTHWESTERN BELL TELEPHONE COMPANY
of new intrastate rates, tolls, and
charges applicable to intrastate
telecommunication services furnished
within the state of Missouri.

REPLY BRIEF OF THE STAFF OF THE
PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Kent M. Ragsdale
General Counsel

Steven Dottheim
Deputy General Counsel

William C. Harrelson
Deputy General Counsel

Mary Ann Garr
Assistant General Counsel

Martin C. Rothfelder
Assistant General Counsel

Edward J. Cadieux
Assistant General Counsel

TELEPHONE PLANT UNDER CONSTRUCTION

Company's Initial Brief at pages 127-28 raises two points Staff feels compelled to reply to, even though Staff's Initial Brief dealt with these two arguments at length. (pp. 56-63)

Company first points out that its proposal is "entirely consistent with the FCC's recent change in the USOA" (Uniform System of Accounts). (Co. Brief at p. 127) The second argument is that the matching principle should not be rigidly applied to this issue. (Co. Brief at 127) Both arguments raised by Company here were discussed by the Missouri Court of Appeals in its recent opinion upholding the Commission's refusal to allow short-term TPUC in rate base in Company's 1979 rate case. State ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, et al. (Case No. WD32967, November 9, 1982) The full text of this opinion is attached hereto as an Appendix.

In its decision, the Court discussed the Commission's decision to exclude short-term construction work in progress from rate base and require capitalization thereof. The Court summarized the two approaches to the general question of CWIP in rate base, then stated the question before it.

In this case the Commission has adopted and applied an approach widely used and approved with respect to CWIP generally. The special question for consideration here is whether any reason exists to mandate different treatment where the work in progress will be completed within a short time (here within a period of four and one-half months from the date of the hearing). Even though that span of time be short and the facility may be expected to be in use before the commencement of the new period for which rates are being set, nevertheless there is good reason not to include the short term construction in rate base. (Slip opinion at 16)

Regarding the test year matching principle, the Court held:

The accepted way in which to establish future rates is to select a test year upon the basis of which past costs and revenues can be ascertained as a starting point for future projection. In the case of construction work in progress, whether long term or short term, the facility has not been in use during the test year and hence no revenues from the use of that facility or reduction in expenses accruing from that facility has been reflected in the test year figures. Thus, to put into the equation the cost of those facilities without consideration of counterbalancing benefits would warp the projections. (Slip opinion at 17)

It is clear from the record that the Company did not even attempt to respond to the matching principle problem in this case, but merely resorted to feeble comments that the matching principle would hold the Company "to an unattainable standard of proof". (Initial Brief of Company, p. 127)

This omission by the Company is especially interesting in light of the standard applied by the Commission in Company's most recent rate case (TR-81-208) in which the Commission clearly informed the Company that solution of the matching principle problem was a prerequisite to inclusion of TPUC in rate base. (See Initial Brief of Staff, p. 59)

Company also stated in its Initial Brief:

Neither Staff nor Company has made an attempt to quantify the alleged increased revenues or incremental expense savings associated with the "short term" plant which the Company had under construction as of the end of the test period. (Tr. 1464) It seems clear that neither Company nor Staff presently know how to develop credible evidence to meet the standard of proof created." (Brief of Company, pp. 127-128)

Staff would remind the Commission and the Company that the Staff does not bear the burden of proving the Company's case for it, and this implicit attempt to shift that burden should be ignored. Company's inability or unwillingness to apply its abundant resources to this task should not relieve it from application of the sound ratemaking principle of matching test year revenues, expenses, rate base, etc. It should likewise not result in any shifting of the burden of proof of Company's case to the Staff.

Regarding the argument raised by the Company for consistency with the FCC's Uniform System of Accounts, the Court of Appeals held as follows:

Nor is Bell entitled to include the short term construction in the rate base by reason of the operation of the FCC-ordered accounting rules. Those federal rules do permit rate base inclusion of the cost of projects to be completed within one year or less. 47 C.F.R. Sec. 31.100:2. Missouri Section 392.210-2 provides that "[t]he system of accounts required [to be established and used by telephone corporations] shall follow, as nearly as may be, the system prescribed by the interstate commerce commission." Missouri Regulation 4 C.S.R 240-30.040(3) provides that "[t]he adoption by telephone companies in Missouri of the uniform system of accounts issued by the Federal Communications Commission . . . shall in nowise bind the commission to the approval or acceptance of any item or account for the purpose of fixing rates or in

determining any other matter that may come before the commission."

Under similar regulatory provisions, the Supreme Judicial Court of Maine in *New England Tel. & Tel. Co. v. Public Utilities Commission*, supra, held that the state regulatory agency was not bound to include short term plant under construction in the rate base. We agree with and adopt the ruling which appears at page 294 of that opinion:

"The Commission observes that the FCC, in making the change in the Uniform System of Accounts, expressly noted that the change was not intended to influence the intrastate rate-making decisions of state utility commissions or to impinge on their ratemaking prerogatives. FCC Report and Order, 43 Fed.Reg. 21330, 21332 (May 17, 1978). The Commission further argues that it may disregard the method by which a utility keeps its books of account, even though it may have prescribed that method, if not going beyond those books of account would result in an improper determination of rate base under the test-year concept.

Generally speaking, the Commission is not bound by a utility's books of account in setting rates . . . Although 47 C.F.R. Sec. 31.100:2, as incorporated in the Commission's regulations, may be read as requiring NET to carry short-term CWIP in rate base for accounting purposes, the Commission was justified in this case in not regarding that accounting treatment as creating an absolute substantive limitation on its determination of NET's rate base and test-year income statement.

. . . .

That NET included short-term CWIP in a rate-base account pursuant to an accounting regulation is not dispositive. As the FCC stated in its 1978 Report and Order, the change in treatment of short-term CWIP was not intended to influence the ratemaking decisions of state commissions. There is much to be said for coordinating the accounting techniques used by NET and the FCC with those employed by the Commission for ratemaking purposes, especially where the Commission prescribes those accounting methods, and it would have been wise for the Commission, at the time of adopting its Regulation 21(1)(A), to signal to telephone companies its intention with respect to future treatment of TPUC in the ratemaking process. Nevertheless, we cannot hold that the Commission arbitrarily or capriciously disregarded NET's books of account in this case." (Supra at 17-19)

Company has clearly not met its burden of proof on this issue and the Commission should not allow short-term TPUC in Company's rate base.