

**PEPER, MARTIN, JENSEN, MAICHEL AND HETLAGE**

**ATTORNEYS AT LAW**

**TWENTY-FOURTH FLOOR**

**720 OLIVE STREET**

**St. LOUIS, MISSOURI 63101-2396**

**(314) 421-3850**

**TELEX: 434257**

**TELECOPIER: (314) 621-4834**

**WRITER'S DIRECT DIAL NUMBER**

**(314) 444-6445**

**April 9, 1987**

**P.O. Box 1686**

**FORT MYERS, FLORIDA 33902-1686**

**(813) 337-3850**

**TELECOPIER: (813) 337-0970**

**SUITE 2**

**1025 WEST MARION AVENUE**

**PUNTA GORDA, FLORIDA 33950-5295**

**(813) 637-1955**

**TWX: 8108480139**

**SUITE 400**  
**1730 PENNSYLVANIA AVENUE, N.W.**  
**WASHINGTON, D.C. 20006-4708**  
**(202) 628-4040**  
**TELECOPIER: (202) 628-2372**

**200 N. WOOD RIVER AVENUE**  
**WOOD RIVER, ILLINOIS 62095-1889**  
**(318) 251-4983**

*Slattery*

Mr. Harvey G. Hubbs  
Secretary  
Missouri Public Service Commission  
5th Floor  
Truman State Office Building  
301 West High Street  
Jefferson City, MO 65102

Re: Case No. AO-87-48

Dear Mr. Hubbs:

I enclose herewith for filing the original and fourteen (14) copies of the Application of Intervenors Monsanto Company, et al. and Anheuser-Busch, Inc. for Rehearing of the Order entered by the Commission in the above docket on April 3, 1987. I would appreciate your bringing this filing to the attention of the Commission.

Also enclosed is an additional copy of the Application and I would appreciate your file stamping the same and returning it to the undersigned.

Very truly yours,

*Alphonse McMahon*

Alphonse McMahon

AM/lh

Enclosures

cc: Parties on attached service list.

**FILED**

**APR 10 1987**

**PUBLIC SERVICE COMMISSION**

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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

APPLICATION OF INTERVENORS MONSANTO CO., ET AL.  
AND INTERVENOR ANHEUSER-BUSCH, INC. FOR REHEARING

Intervenors American-National Can Company, The Doe Run Company, Dundee Cement Company, Emerson Electric Company, Ford Motor Company, General Motors Corporation, Mallinckrodt, Inc., McDonnell Douglas Corporation, Monsanto Company, Nooter Corporation, Pea Ridge Iron Ore Company, PPG Industries, Inc., Procter & Gamble Manufacturing Company, and River Cement Company ("Monsanto Co., et al.") and Intervenor Anheuser-Busch, Inc. (all herein together called "Intervenors") hereby request a rehearing of the Order of the Public Service Commission of Missouri ("Commission") dated April 3, 1987 ("the Order"), pursuant to Mo. Rev. Stat. §386.500 (1986).

In support of their Application, Intervenors state as follows:

BACKGROUND

On March 29, 1985, the Commission issued a Report and Order in Case Nos. EO-85-17 and ER-85-160 approving new rates for Union Electric reflecting the inclusion in rate

**FILED**

APR 10 1987

PUBLIC SERVICE COMMISSION

119.

X

base of a portion of Union Electric's \$3 billion investment in the Callaway nuclear generating station, approving an automatic phase-in of the rates over an 8-year period, and adopting the time-of-use/average and peak ("TOU/AP") method of rate design. The use of the TOU/AP rate design method resulted in a rate increase to industrial customers of Union Electric, including the Intervenor, that is significantly above system average.

On April 8, 1985, Intervenor filed separate Applications for Rehearing, Reconsideration, and Oral Argument, challenging the rate design decisions of the Commission as set forth in the March 29, 1985 Report and Order.

On April 10, 1985, the Commission denied the Intervenor's Application for Rehearing and, on May 9, 1985, the Intervenor filed a Petition for Writ of Review in the Circuit Court of Cole County (Case No. CV185-493cc), which Writ was granted on May 13, 1985. That case has been briefed, argued, and submitted to Judge Lawrence Davis, whose decision is pending.

On March 24, 1987, Union Electric filed in Case No. A0-87-48 its Motion to Revise Rate Phase-in Plan, and to Allow Tariffs to Become Effective on Less Than 30 Days Notice ("Union Electric Motion") and concurrently filed new tariffs containing proposed new reduced rates (the "new

tariffs"). Once effective, the new tariffs will supersede the rate schedules (the "old tariffs") that Union Electric filed in compliance with the Commission's March 29, 1985 Report and Order in Case Nos. EO-85-17 and ER-85-160.

On March 30, 1987, Intervenors filed their Protest and Motion to Suspend the Operation of Union Electric Company's Tariffs ("Protest and Motion"). In it, Intervenors sought to suspend the implementation of Union Electric's new tariffs on the ground that the rate design reflected in the new tariffs was substantially the same as that in the old tariffs, and would perpetuate the errors in rate design that are the subject of their appeal of the March 29, 1985 Report and Order concerning the old tariffs.

On April 3, 1987, the Commission issued its Order, effective immediately, granting Union Electric's Motion and allowing the new tariffs for the third year of the phase-in to go into effect on less than 30 days notice (on April 9, 1987). The Order did not expressly rule on Intervenors' Protest and Motion.

#### SPECIFICATIONS OF ERROR

The Commission's Order is unreasonable, unjust, and unlawful for the following reasons:

##### I.

The Commission erred in making its Order effective upon issuance because it failed to allow the parties, including

Intervenors, a reasonable time in which to prepare and file an Application for Rehearing.

By statute, an order of the Commission takes effect 30 days after service unless the Commission provides otherwise. Rev. Stat. Mo. §386.490.3 (1986). Here, the Commission so provided -- the Order became effective on the day it was issued, April 3, 1987. (Order, ¶5).

The Commission, however, can make the effective date of an order less than 30 days after service thereof only if it can be done "reasonably and properly." State ex rel. Kansas City, Independence & Fairmount Stage Lines Co. v. Public Service Commission, 63 S.W.2d 88, 93 (Mo. 1933); see also State ex rel. Alton R. Co. v. Public Service Commission, 155 S.W.2d 149, 154 (Mo. 1941) (a "reasonable time" must run between the time the order is served and its effective date).

In addition, it has been held that a period of one day between the date the Report and Order was filed and its effective date is unlawful because it deprived those interested of a reasonable opportunity to prepare and file motions for rehearing. State ex rel. St. Louis County v. Public Service Commission, 228 S.W.2d 1, 2 (Mo. 1950).

Therefore, it is unreasonable and improper, and unlawful, for the Commission to allow an order to become effective upon issuance and thereby deny the parties all

opportunity for judicial review. In addition to contravening the above-cited case law, this action constitutes a denial of due process under both the Missouri and United States Constitutions. Mo. Const., Article I, §10; U.S. Const., Amendment XIV.

## II.

The Commission erred in granting the Union Electric Motion and approving the new tariffs.

The rate design in the new tariffs is the same or substantially the same as that reflected in the old tariffs. No new evidence has been offered to support this unreasonable, unjust, and unlawful rate design in this proceeding. Thus, the new tariffs would perpetuate the rate design that is the subject of the Intervenor's pending appeal in Cole County Circuit Court and the same errors challenged therein.

Intervenor's assert that the approval of the new tariffs (and the rate design reflected therein) by the Commission was unreasonable, unjust, and unlawful for the same reasons and on the same grounds as specifically set forth in their Applications for Rehearing filed in Case Nos. EO-85-17 and ER-85-160 and the Petition for Review filed in Cole County Circuit Court Docket No. CV185-493cc. Copies of said Applications for Rehearing and said Petition for Writ of Review are attached to the Protest and Motion as Exhibits A, B, and C, respectively, and are incorporated herein by

reference.

III.

The Commission erred in failing to grant Intervenor's Protest and Motion because Intervenor was thereby denied the opportunity to present evidence that the new tariffs are unreasonable, unjust, and unlawful.

IV.

The Commission erred in failing to make specific findings of basic fact in support of its decisions in the Order. The Order is devoid of any findings of basic fact which would support perpetuation of this unreasonable, unjust, and unlawful rate design and therefore fails to satisfy the requirements of Missouri law with respect to findings of fact.

V.

The Commission erred in failing to base its Order upon competent or substantial evidence on the whole record.

VI.

The Commission erred in approving the new tariffs in the Order because the rate design utilized therein results in clear and unlawful discrimination against the Intervenor in violation of Missouri law, including Mo. Rev. Stat. §393.130 (1986), and their rights to due process of law and equal protection under the Missouri Constitution, Article I, §§2 and 10, and under the United States Constitution, Amendment XIV, §1.

VII.

The Commission erred in approving the new tariffs because no party had sustained the burden of proof required to support and justify the Commission's decisions.

In addition, Intervenors respectfully point out that the style of the Order includes two earlier cases, Case Nos. EO-85-17 and ER-85-160, that are currently on appeal to the Cole County Circuit Court. Because the circuit court issued a writ of review in these two cases, the Commission lacks jurisdiction over them and does not have the power to issue an order in those cases. State ex rel. Campbell Iron Co. v. Public Service Commission of Missouri, 296 S.W. 998 (Mo. banc 1927). Thus, the Order is only effective in Case No. AO-87-48.

RELIEF REQUESTED

WHEREFORE, Intervenors pray that the Commission grant rehearing and reverse its decision on the matters raised herein.



Respectfully submitted,

PEPER, MARTIN, JENSEN, MAICHEL  
and HETLAGE

By Robert C. Johnson  
Robert C. Johnson #15755  
Alphonse McMahon #32870  
720 Olive Street, 24th Floor  
St. Louis, Missouri 63101  
(314) 421-3850

Attorneys for Intervenors  
Monsanto Co., et al.

Francis J. Hruby *et al*  
Francis J. Hruby #27426  
Anheuser-Busch, Inc.  
One Busch Place  
St. Louis, Missouri 63118  
(314) 577-3203

Attorney for Intervenor  
Anheuser-Busch, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on each person on the attached service list by first-class United States mail, postage prepaid, this 9th day of April, 1987.

Robert C. Johnson

3838z

## Service List

Paul Agathen  
Counsel  
Union Electric Co.  
P.O. Box 149  
St. Louis, MO 63166

Boyd J. Springer & Sarah J. Read  
Attorneys  
3 First National Plaza  
Suite 5200  
Chicago, IL 60602

Dean A. Park  
1031 Executive Parkway Dr.  
St. Louis, MO 63141

Michael Madsen  
Attorney  
P.O. Box 235  
Jefferson City, MO 65102

Kenneth J. Neises  
Attorney  
Laclede Gas Co.  
720 Olive Street  
Room 1513  
St. Louis, MO 63101

Gerald T. McNeive, Sr.  
Laclede Gas Co.  
720 Olive  
Room 1528  
St. Louis, MO 63101

Robert C. McNicholas  
Assoc. City Counsel  
314 City Hall  
St. Louis, MO 63103

Sam Overfelt  
Attorney  
P.O. Box 1336  
Jefferson City, MO 65102

Tom Ryan  
Counsel  
4144 Lindell  
Suite 219  
St. Louis, MO 63108

Wm. Clark Kelly  
Asst. Attorney General  
P.O. Box 899  
Jefferson City, MO 65102

Gary Mayes  
Attorney  
Mercantile Center  
St. Louis, MO 63101

Willard C. Reine  
Attorney  
314 E. High St.  
Jefferson City, MO 65101

Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

## Service List

Paul Agathen  
Counsel  
Union Electric Co.  
P.O. Box 149  
St. Louis, MO 63166

Boyd J. Springer & Sarah J. Read  
Attorneys  
3 First National Plaza  
Suite 5200  
Chicago, IL 60602

Dean A. Park  
1031 Executive Parkway Dr.  
St. Louis, MO 63141

Michael Madsen  
Attorney  
P.O. Box 235  
Jefferson City, MO 65102

Kenneth J. Neises  
Attorney  
Laclede Gas Co.  
720 Olive Street  
Room 1513  
St. Louis, MO 63101

Gerald T. McNeive, Sr.  
Laclede Gas Co.  
720 Olive  
Room 1528  
St. Louis, MO 63101

Robert C. McNicholas  
Assoc. City Counsel  
314 City Hall  
St. Louis, MO 63103

Sam Overfelt  
Attorney  
P.O. Box 1336  
Jefferson City, MO 65102

Tom Ryan  
Counsel  
4144 Lindell  
Suite 219  
St. Louis, MO 63108

Wm. Clark Kelly  
Asst. Attorney General  
P.O. Box 899  
Jefferson City, MO 65102

Gary Mayes  
Attorney  
Mercantile Center  
St. Louis, MO 63101

Willard C. Reine  
Attorney  
314 E. High St.  
Jefferson City, MO 65101

Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102