



State of Missouri

John Ashcroft, Governor

Office of the Public Counsel

Harry S Truman Building - Ste. 250

P.O. Box 7800

Jefferson City, Missouri 65102

Telephone: 314-751-4857

Facsimile: 314-751-5562

October 31, 1991

Martha S. Hogerty

Public Counsel

Mr. Brent Stewart

Secretary

Missouri Public Service Commission

P.O. Box 360

Jefferson City, Missouri 65102

Re: Case No. ER-91-356

Dear Mr. Stewart:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of Public Counsel's Application For Hearing. I have on this date mailed or hand-delivered copies to all parties of record. Please file stamp the enclosed extra copy and return to this office.

Thank you for your attention in this matter.

Very truly yours,


John B. Coffman
Assistant Public Counsel

JBC/bh

Enc.

cc: Parties of Record

FILED
OCT 31 1991
PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Union Electric)
Company's tariff proposing Rider)
P-PowerStat Program Rider.) Case No. ER-91-356

FILED
OCT 31 1991
PUBLIC SERVICE COMMISSION

APPLICATION FOR REHEARING

Comes now the Office of the Public Counsel (Public Counsel) and pursuant to Section 386.500 RSMo. 1986 and 4 CSR 240-2.160 applies for a rehearing of the May 22, 1991, Order issued by the Missouri Public Service Commission (Commission) in the above-captioned case. In support of its Application, Public Counsel states as follow:

1. That the Commission issued an Order Denying Motion to Suspend Tariff in the above-captioned matter on May 22, 1991, wherein the Commission ordered:

(1) That the Motion to Suspend Tariff filed herein on May 9, 1991, by the Office of the Public Counsel be and is, denied.

(2) That the following tariff sheets filed herein on May 8, 1991, describing Union Electric Company's PowerStat Program, are approved to be effective on the date of this Order:

Original Sheet No. 117.5
Original Sheet No. 117.6
Original Sheet No. 117.7
Original Sheet No. 117.8

(3) That this order shall become effective on the date hereof.

2. That pursuant to the directions of the Cole County Circuit Court's Judgement of Peremptory Mandamus and Prohibition in Case No. CV191-692cc, dated October 11, 1991, the Commission issued its Amended Order dated October 22, 1991, vacating the May 22nd, Order

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by extending its effective date to November 1, 1991, thus allowing this Application to be filed.

3. That the May 22, 1991, Order of the Commission issued in this case is unlawful, unjust, unreasonable, arbitrary and capricious in the following respects:

a. Public Counsel's Motion to Suspend Tariff raises substantial questions of law and fact upon which a hearing should have been held. The Commission ruling on Public Counsel's Motion which was issued without affording Public Counsel an opportunity to present evidence in support of its Motion, and which was issued without good cause shown and without the thirty day notice required by Section 393.140(11) RSMo., violates Public Counsel's constitutional right to due process. U.S. Const. Amend. V and XIV; Missouri Const. Article I, Section 10; State ex rel. Fischer v. Public Service Commission, 645 S.W.2d 39 (Mo. App. 1982).

b. The filing of Public Counsel's Motion constituted the commencement of a contested case within the meaning of Sections 536.010(2) and 536.063, RSMo. 1986. Therefore, an evidentiary hearing on the issues raised in Public Counsel's Motion should have been scheduled by the Commission pursuant to Section 536.063(3).

c. The Commission's Order is not based on competent and substantial evidence and is thereby invalid as a matter of law. Missouri Const. Article V, Section 18; State ex rel. Utility Consumers' Council of Missouri v. Public Service Commission, 585

S.W.2d 41, 47 (Mo banc 1979); State ex rel. DePaul Hospital S. of N. v. Public Service Commission, 464 S.W.2d 737, 740 (Mo. App. 1970).

Neither impulse nor expediency can be substituted for the requirement that Commission orders be supported by competent and substantial evidence. State ex rel. Missouri Water Company v. Public Service Commission, 308 S.W.2d 704, 719 (Mo. 1957). The Commission did not, at any time, take evidence in this case and, therefore, its Order is not supported by any evidence, much less competent and substantial evidence.

d. The approval of the PowerStat Program is unlawful, unreasonable, arbitrary and capricious in that said program violates Section 393.130.3 RSMo. 1986 which provides as follows:

No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(1) The PowerStat Program is discriminatory because Union Electric Company (UE) is permitted to charge participating customers for electricity in advance, in contrast to UE's treatment of customers with standard metering, who receive a bill for past electrical consumption, and thus receive a benefit due to the time value of money.

(2) The PowerStat Program also discriminates during the Cold Weather Period because it states that all participating PowerStat customers with a negative balance are required to pay a minimum of \$75 each month to avoid total disconnection of service, while some UE customers with standard metering may potentially avoid disconnection of service through monthly payments of less than \$75 after their initial payment is made pursuant to Commission Rule 4 CSR 240-13.055(8)(A). Therefore, contrary to the contention of UE and the Commission, the PowerStat Program provisions are not "less stringent" than the provisions of the Cold Weather Rule regarding payment arrangements required to avoid disconnection for nonpayment of a delinquent bill.

(3) Furthermore, the PowerStat Program discriminates against participating customers in that it permits UE to set a load limiter upon PowerStat meters (but not standard meters) which will limit service and may intermittently interrupt electrical consumption during the Cold Weather Period even if a participating PowerStat customer is making monthly payments that are sufficient to avoid disconnection of service.

e. The Commission's Order is invalid in that it lacks appropriate and complete findings of fact in violation of Section 386.420 RSMo. 1986.

f. The Commission failed to comply with its own duly promulgated rules when it approved the PowerStat Program in the following respects.

(1) The PowerStat Program permits UE to seek payment for electrical service before that service is rendered -- a method not permitted anywhere within Chapter 13 of Commission Rules, "Utility Billing Practices," 4 CSR 240-13.010 et seq.

(2) The PowerStat Program violates the spirit and the letter of the Commission's "Cold Weather Rule," 4 CSR 240-13.055, by allowing UE to circumvent the protections therein which are afforded to consumers who are unable to pay for heat-related energy service during the winter months. Since the Cold Weather Rule only contemplates protection from disconnection of service for such consumers who have not paid certain bills, UE may ignore the Cold Weather Rule requirements with respect to PowerStat consumers who are not ever billed, but instead must purchase electricity in advance.

(3) The Commission did not grant a variance from the provisions of Chapter 13 of Commission Rules as Contemplated at 4 CSR 240-13.010(6), (7) or a specific variance from the "Cold Weather Rule" as contemplated at 4 CSR 240-13.055(11). In the Appendix of the Response of Union Electric Company to the Motion to Suspend Tariff, filed on April 23, 1991, UE admitted that the PowerStat

Program departs from Chapter 13 and requested a variance pursuant to 4 CSR 240-13.055(11) if necessary.

g. The approved PowerStat Program is unreasonable in that it does not guarantee absolute voluntariness on the part of PowerStat participants because prospective or existing occupants of a dwelling will not necessarily be made fully aware of their right to choose standard metering in place of PowerStat metering, and thus may not be able to make an informed decision concerning their participation. Furthermore, the PowerStat Program contains no specific guarantee that applicants for public housing will have the right to refuse participation without detrimentally affecting their ability to obtain housing at any particular time or at any particular location.

h. The approved PowerStat Program is unreasonable in that it contains no specific criteria for determining the cost effectiveness of the PowerStat program.

4. That the May 22, 1991, Order of the Commission is unlawful because it approved UE's PowerStat Program less than thirty days after said tariff was filed, and without good cause shown, in violation of Section 393.140(11) RSMo. 1986. The Commission's May 22nd, Order states merely:

Since the substance of the tariffs have been before the Commission since April 5, 1991, the Commission is of the opinion that good cause is shown for granting UE's request to allow the proposed tariffs to go into effect on less than the 30-day effective date of June 8, 1991.

Apparently, the "good cause" mentioned in that sentence refers to a similar PowerStat proposal filed on April 5, 1991, but which was

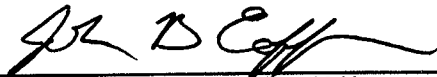
withdrawn on May 7, 1991, becoming a legal nullity and thus cannot constitute good cause in this case. The Commission's Order does not mention any circumstance regarding the PowerStat Program that justifies the "good cause" legally necessary before the Commission may dispense with the thirty day notice and publication requirement of Section 393.140(11).

WHEREFORE for the foregoing reasons, Public Counsel respectfully requests that the Commission grant a rehearing to reconsider the matters raised therein.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By


John B. Coffman (#36591)
Assistant Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102
314/751-4857

I hereby certify that a copy of the foregoing has been mailed or hand-delivered to all counsel of record on this 31st day of October, 1991.

