



Missouri Public Service Commission

Area Code 314
751-3234

January 9, 1986

P.O. BOX 360
JEFFERSON CITY
MISSOURI 65102

Commissioners:
WILLIAM D. STEINMEIER
Chairman

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ROBERT J. SCRIBNER
Staff Director

HARVEY G. HUBBS
Secretary

WILLIAM C. HARRELSON
General Counsel

Daniel J. Redel
Acting Secretary to the Commission
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. Redel:

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

Thank you for your cooperation in this matter.

Sincerely,

Douglas C. Walther
Assistant General Counsel

DCW:nsh

Enclosures

cc: All parties of record

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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.)	

COMMENTS OF THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

On November 3, 1986, the Missouri Public Service Commission issued an Order Establishing Docket for the purpose of investigating the revenue effects upon Missouri utilities of the Tax Reform Act of 1986 (hereinafter "TRA"). In that Order, the Commission stated that it is considering various procedural alternatives for recognizing the effects of the change in the tax law in the ratemaking or regulatory process. The Commission's Order afforded Staff the opportunity to file comments suggesting appropriate procedures designed to recognize the revenue effect of the tax change. Staff's comments are contained herein.

In State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979) (hereinafter "UCCM"), the Missouri Supreme Court stated that the Commission must consider "all relevant factors" in setting a utility's rates. The case involved the issue of whether Missouri law grants the Commission power to authorize the use of a fuel adjustment clause for recovery of a utility's fuel cost as part of a residential rate structure. In explaining its holding that the authorization of a fuel adjustment clause is beyond the Commission's statutory authority, the Court noted:

[A fuel adjustment clause] is a radical departure from the usual practice of approval or disapproval of, filed rates, in the context of a general rate case. Even under the file and suspend method by which a utility's rates may be increased without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return in determining that no hearing is

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required and that the filed rate should not be suspended. Id. at 49.

As a result of UCCM, the Commission is precluded from basing a Company's rates on a single, isolated expense item.¹

As the Commission is aware, Missouri law provides two procedures whereby the Commission can change a utility's rates. First, a utility may file a schedule stating a new rate or charge which shall become valid unless suspended by the Commission on its own motion or upon complaint of interested parties as authorized by statute. Second, the Commission has the power to change a utility's rates through the complaint process. It is the position of Staff that the only procedural alternative available to address the effects of the TRA is to file complaints against individual companies.

There are a number of statutory provisions relevant to the Commission's authority to bring complaints. Section 392.200(1) RSMo 1978 states in relevant part:

. . . All charges made and demanded by any . . . telephone corporation for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the Commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the Commission is prohibited and declared to be unlawful.

Section 393.130(1) RSMo 1978 similarly states:

Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electrical corporation, water corporation, or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas,

¹The Staff is not suggesting that this restriction necessarily applies in the case of Arkansas Power and Light Company (AP&L). The unique situation applicable to AP&L is to be addressed in separate pleadings in Case Nos. ER-85-265 and AO-87-48. See Staff's Response to Intervenor's Motion filed in that proceeding dated January 2, 1987.

electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the Commission is prohibited.

Thus, Missouri statutes are explicit in stating that telephone, gas, electric, water and sewer corporations are prohibited from imposing charges in excess of that allowed by order or decision of the Commission. Staff has observed through its surveillance mechanism that some companies that filed comments in response to the Commission's Order Establishing Docket are earning more than the amount authorized by the Commission. With the effect of the TRA, this trend will be reinforced and additional companies may be in an overearning position.

Section 386.330(1) RSMo 1978 grants the Commission's power to conduct investigations concerning the rates or charges of a telephone corporation. It states in relevant part:

The Commission may, of its own motion, investigate or make inquiry, in a manner to be determined by it, as to any act or thing done or omitted to be done by any . . . telephone corporation, subject to its supervision, and the Commission shall make such inquiry in regard to any act or thing done or omitted to be done by any such public utility, person or corporation in violation of any provision of law or in violation of any order or decision of the Commission.

Section 393.270(1) RSMo 1978 provides the Commission with authority to institute an investigation "as to any matter of which complaint may be made as provided in sections 393.110 to 393.285, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it."

Section 386.290(1) RSMo 1978 provides that the Commission may by its own motion make a complaint. It states:

Complaint may be made by the Commission of its own motion . . . setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission. . . .

That section goes on to make it clear that the Commission may, upon its own motion, file a complaint concerning rates.

Section 386.240 RSMo 1978 empowers the Commission to "authorize any person employed by it to do or perform any act, matter or thing which the Commission is authorized by this chapter to do or perform." Therefore, the Commission may authorize Staff to file complaints concerning rates.

In light of existing Missouri law, Staff believes that the following procedure is appropriate. First, Staff suggests it would be useful for Staff and Public Counsel to conduct a series of informal meetings with the individual companies who filed comments in response to the Commission's November 3, 1986 Order to discuss the possibility of voluntary rate decreases reflecting the revenue requirement effects of the TRA. If this course of action were followed, Staff would establish an internal priority list stating which companies it would meet with first. The surveillance reports prepared for each company by the Commission's Financial Analysis Department, along with other criteria, would assist Staff in establishing its priority list.

These informal meetings would be necessary since, with one exception, the comments filed by the companies indicate a lack of willingness to share the benefits of the TRA with ratepayers.

Second, if an agreement to reflect the revenue requirement effect of the Tax Reform Act cannot be reached with a particular company through informal channels and submitted for Commission approval, the Staff would file a complaint against that company. As noted, Missouri law requires the Commission to look at all relevant factors in establishing a utility's rates. Therefore, it would be necessary for Staff to conduct an audit of every company it files a complaint against. As a practical matter, this would demand a great deal of Staff time and resources meaning that it could be several years before all of the benefits of the TRA are passed on to ratepayers. Therefore, the Commission may wish to consider the possibility of supplementing Staff resources with consultants to

expedite the process of passing on to Missouri ratepayers the benefits of the TRA.

As the Commission is aware, on December 22, 1986, the Staff filed a complaint against General Telephone Company of the Midwest (General Telephone) wherein Staff alleged that General Telephone's rates are unreasonable and should be reduced. The case has been numbered Case No. TC-87-57. On December 24, 1986, the Commission ordered Staff to file comments on or before January 13, 1987 in support of its request that the information requested of General Telephone in Re: Investigation of the Revenue Effects Upon Missouri Utilities of the Tax Reform Act of 1986, Case No. AO-87-46 also be filed in Case No. TC-87-57. Staff intends to file these comments on January 13, 1987 and its suggestions concerning the appropriate treatment of the revenue effect of the TRA on General Telephone will be contained therein.

One extreme disadvantage of the time-consuming complaint process is that all potentially justifiable rate decreases could not be implemented concurrent with the reduction in revenue requirement resulting from the TRA. The inequity of this situation can in large part be rectified if the Commission were to 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.

Another distinct alternative is to make such tariffs subject to refund only to the extent that there has been a reduction in revenue requirement due to the TRA. For example, Company "X" has estimated in its comments in this docket that the revenue requirement impact of the TRA is a reduction of \$1,000,000. As of July 1, 1987, \$2,000,000 of tariffed rates (the \$1,000,000 estimate is increased for possible estimate error by 100%) then in effect would become interim and subject to refund. The tax effect is subsequently calculated to be precisely \$1,000,000 as estimated. Should the Commission determine

in a complainr proceeding that Company "X's" rates were excessive by \$500,000, the Company could then be required to refund \$500,000. Should the Commission determine that the rates were excessive by \$1,500,000, the Company could be required to refund \$1,000,000. If rates are not found to be excessive, no refund would be required. These are simple examples. The actual refund procedure would, of course, take into consideration the actual effect of the TRA and the best estimate of actual overcollection in rates.

The Staff would request that the Commission order the companies to file comments as to the appropriateness and lawfulness of these alternative procedures on or before February 15, 1987. Staff would request that it then be allowed to respond to the companies' comments on or before March 15, 1987.

Finally, the Staff requests that the Commission issue an Order requiring that companies subject to this docket file comments which detail the offsetting cost increases or other factors which cause the companies to believe that their rates are not excessive in spite of the impact of the TRA. Such comments should be as specific as possible. Staff requests that these comments also be filed by the companies on or before February 15, 1987.

Respectfully submitted,

William C. Harrelson
William C. Harrelson
General Counsel

Douglas C. Walther
Douglas C. Walther
Assistant General Counsel

Attorneys for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
(314)751-2481

CERTIFICATE OF SERVICE

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

record on this 9 day of

January 19 87

Douglas C. Walther