

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of a Working Case to	)	
Address Legislative Concerns Regarding	)	Case No. EW-2013-0425
Proposals to Modify Ratemaking	)	
Procedures for Electric Utilities	)	

**COMMENTS OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS  
REGARDING COMMISSION STATUTORY AUTHORITY**

Comes now the Missouri Industrial Energy Consumers (“MIEC”) and provides the following comments regarding the Commission’s statutory authority in this case.

1. On March 20, the Commission issued its order (“Order”) opening this case to facilitate its response to a legislator’s request pursuant to Section 386.380 RSMo to develop analysis and information on the following matters:

- The safety, adequacy and reliability of Missouri’s current electric infrastructure;
- Identification of electric infrastructure problems, costs and needs;
- Rate impact of the implementation of Senate Bill 207;
- Electric utilities’ financial need for legislation;
- Due process and appropriate procedure in respect to the new rate mechanisms proposed by Senate Bill 207;

The Order further provides that in addition to the information the legislator requested, the Commission intends to address the following matters:

- A comparison of the provisions of Senate Bill 207 and House Bill 398, and the various versions thereof, including the provision of House Committee Substitute for House Bill 398 that allows for a 45-day prefiling requirement to allow additional time for review, and any other differences the commenter deems relevant;

- An evaluation of the cost tracking mechanism contained in the proposed legislation that is not directly related to infrastructure investments

2. On March 25, the Commission received a letter directed to Chairman Kenney by Senate President Pro Tem Tom Dempsey requesting that the Commission reconsider the decision to hold a hearing. Senator Dempsey's letter expresses the concern that Section 386.380 does not authorize the Commission to hold a public hearing and take testimony upon request of a legislator, except perhaps in the case of a request from the speaker of the house or the president pro tem of the senate acting in their capacity as elected presiding officers of their respective branches. Senator Dempsey's letter also expresses the concern that conducting a hearing at a legislator's request would establish a new precedent which would limit the Commission's discretion on many hearings it will hold.

3. The Commission has clear statutory authority to investigate, conduct a hearing, and issue a Commission report regarding the matters in this case. This authority is provided not only under Section 386.380, but also separately and independently under Missouri statutes including Sections 386.040, 386.250 and 393.140.

4. The Order implicitly recognizes the Commission's authority extends beyond Section 386.380. The Order expressly provides that "[i]n addition to the information specifically requested, the Commission intends to address . . . additional matters". The inclusion of additional issues not set forth in the legislator's request reflects the Commission's recognition that that its Order is based its general statutory powers and is not limited to Section 386.380.

5. It is necessary, appropriate and in the public interest for the Commission to investigate, conduct a hearing, and issue a Commission report regarding the matters specified in the Order. Senate Bill 207 and House Bill 398 would fundamentally change the law governing

ratemaking procedures for electric utilities, and would dramatically alter the Missouri Public Service Commission's statutory authority. The legislation is highly technical and complex, and several legislators have asked the Commission for data, policy, and legal guidance. Given the public importance of this legislation and the legislators' expressed need for information within the unique expertise of the Commission, it is in the public interest for the Commission to open this case.

6. The Commission is both a quasi-judicial and quasi-legislative agency. Missouri statutes contemplate the Commission's involvement in the legislative process by authorizing the Commission to establish proceedings for investigation, hearings, and reports whether requested by a legislator<sup>1</sup> or upon the Commission's own motion pursuant to its broad general statutory authority.

7. The Commission is authorized to provide recommendations regarding legislation pursuant to Section 386.380, which provides:

The "[C]ommission may also recommend the enactment of such legislation with respect to any matter within its jurisdiction as it deems wise or necessary in the public interest." The legislation addressed in this case certainly meets that standard.

8. The Commission's authority in this case is separately established by Section 386.040, which provides:

A 'Public Service Commission' is hereby created and established, which said public service commission shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter.

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<sup>1</sup> For example, the Commission opened Case No. TW-2010-0362 at the request of Senator Brad Lager and the Senate Committee on Commerce, Consumer Protection, Energy and the Environment regarding the availability of broadband telephone service. A copy of this legislative request and the resulting Commission Order are attached.

9. The Commission's broad power and jurisdiction over electric utilities and the matters sought to be addressed in this case is likewise granted by Section 386.250, which provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same

9. The Commission's authority to investigate matters of the proper operation and regulation of electric utilities is also found in Section 393.140;

The commission shall:

(1) Have general supervision of all gas corporations, electrical corporations, water corporations and sewer corporations having authority under any special or general law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of furnishing or distributing water or gas or of furnishing or transmitting electricity for light, heat or power[.]

(2) Investigate and ascertain, from time to time, the quality of gas or water supplied and sewer service furnished by persons and corporations, examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same[.]

Under subdivision (3) the Commission has authority to:

prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished by the persons or corporations generating and selling electric current, and to fix from time to time standards for the measurement of the purity or pressure of water to be distributed or sold by persons or

corporations for any purpose whatsoever ... the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying gas, electricity or water, and the collecting, carrying, treating and disposing of sewage, and shall have access, through its members or persons employed and authorized by it, to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture, transmission or distribution of gas or electricity by any such person or corporation, and to all parts of the systems owned, used or operated for the supplying and distribution of water[.]

Under subdivision (5) the Commission has the duty to ensure that:

just and reasonable acts and regulations be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters[.]

Further, broad authority is granted under subdivision (7) "[t]o such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly."

WHEREFORE, the MIEC requests that the Commission consider these comments regarding its authority this case.

Respectfully submitted,

BRYAN CAVE, LLP

By: /s/ Diana Vuylsteke

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Attorney for The Missouri Industrial  
Energy Consumers

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 26<sup>th</sup> day of March, 2013, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke



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PHONE: 573-751-1415  
FAX: 573-751-8342

**MISSOURI SENATE**  
**BRAD LAGER**  
DISTRICT 12

P.O. Box 316  
SAVANNAH, MO 64485

BRAD.LAGER@SENATE.MO.GOV

May 13<sup>th</sup>, 2010

Missouri Public Service Commission  
Governor Office Building  
200 Madison Street  
PO Box 360  
Jefferson City, MO 65102-0360

Dear Commissioners,

As the members of the Missouri State Senate Committee on Commerce, Consumer Protection, Energy and the Environment, we acknowledge the need for a responsible public policy that facilitates accessible and reliable broadband services throughout our state. Therefore, we are respectfully requesting that the Public Service Commission engage in a fact finding process that will end with a report and recommendations to the General Assembly no later than December 1, 2011. Specifically, we ask that your process and report include the following:

1. A review of the Federal Communications Commission's National Broadband Plan and recommendations to the General Assembly on how to maximize broadband development in Missouri.
2. Solicitation of input from the public and all providers of broadband services regardless of technology.
3. An assessment of the current level of high-speed internet access available in Missouri, and the speeds and rates at which such access is available. This assessment shall include speeds advertised as available versus the speeds that are actually achievable by consumers.
4. An identification of unserved and underserved areas in our state and the barriers to deployment in these areas including economic, geographic, regulatory, and market barriers. For purposes of this request, "unserved" shall mean an area where a consumer's only access to internet service is through a dial-up connection and "underserved" shall mean an area where a consumer's only access to high-speed internet service is at a speed less than three megabits per second.

5. Recommendations and potential public policy decisions that should be considered to increase the deployment and availability of broadband services in both unserved and underserved areas, within a period of five years, at various speeds and rates that are affordable to Missouri's consumers.

If you have any questions regarding this request, please feel free to contact any of the members of the committee.

Sincerely,

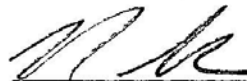


Brad Lager  
Chairman

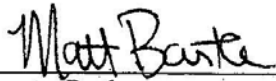
Senate Committee on Commerce, Consumer Protection, Energy, and the Environment



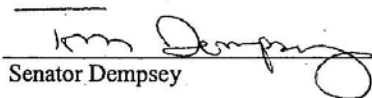
Senator Lager, Chairman




Senator Schaefer, Vice-Chairman



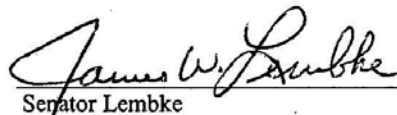
Senator Bartle



Senator Dempsey

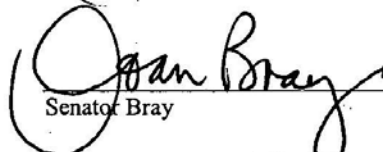


Senator Griesheimer



Senator Lembke

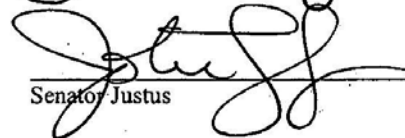
Senator Ridgeway



Senator Bray



Senator Green



Senator Justus



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 30<sup>th</sup> day of  
June, 2010.

In the Matter of a Repository File in which to	)	
Gather Information and Assess the Availability of	)	<b><u>File No. TW-2010-0362</u></b>
Broadband Services in the State of Missouri	)	

**ORDER OPENING A CASE TO GATHER INFORMATION AND ASSESS  
THE AVAILABILITY OF BROADBAND SERVICES**

Issue Date: June 30, 2010

Effective Date: June 30, 2010

On June 11, 2010, the Staff of the Commission filed a motion asking the Commission to open a case in which to gather information and assess the availability of broadband services in Missouri. Staff's motion indicates it has received a letter from State Senator Brad Lager, Chairman, on behalf of the State Senate's Committee on Commerce, Consumer Protection, Energy and the Environment. Senator Lager's letter asks the Commission to engage in a fact-finding process that will result in the Commission providing a report and recommendation to the General Assembly no later than December 1, 2011. Specifically, the letter asks the Commission to address the following:

1. A review of the Federal Communications Commission's National Broadband Plan and recommendations to the General Assembly on how to maximize broadband development in Missouri.
2. Solicitation of input from the public and all providers of broadband services regardless of technology.

3. An assessment of the current level of high-speed internet access available in Missouri, and the speeds and rates at which access is available. This assessment shall include speeds advertised as available versus the speeds that are actually achievable by consumers.
4. An identification of unserved and underserved areas in our state and the barriers to deployment in these areas including economic, geographic, regulatory, and market barriers. For purposes of this request, "unserved" shall mean an area where a consumer's only access to internet service is through a dial-up connection and "underserved" shall mean an area where a consumer's only access to high-speed internet service is at a speed less than three megabits per second.
5. Recommendations and potential public policy decisions that should be considered to increase the deployment and availability of broadband services in both unserved and underserved areas, within a period of five years at various speeds and rates that are affordable to Missouri's consumers.

The Commission is opening this working case to help it address the matters raised by the Senator's letter. Initially, the Commission will invite the public and interested broadband service providers to submit written comments offering guidance and insight on how the Commission can best proceed with its investigation. After those comments are collected, the Commission will schedule a conference at which interested entities and persons can gather to discuss these matters.

This file will serve as a repository for documents and comments. Using this file, any person with an interest in this matter may view documents pertaining to the investigation

and may submit any pertinent responsive comments or documents. As this is not a contested case, any person may file a comment without counsel and without *ex parte* constraints (arising from this matter). Intervention requests are not necessary to submit comments or view documents.

The public is welcome to file comments by forwarding electronic communications through the Commission's electronic filing and information system (EFIS) or by mailing written comments. You may submit electronic comments by visiting the Commission's website at <http://www.psc.mo.gov>. (Click on the EFIS/Case filings link on the left side of the page. Scroll down and click on the public comment link. Please reference case number TW-2010-0362.) Written comments in hard copy should be addressed to the Commission at P.O. Box 360, Jefferson City, Missouri 65102 and should reference File No. TW-2010-0362. You can view the contents of the file by following the link at <http://www.psc.mo.gov>.

**THE COMMISSION ORDERS THAT :**

1. This case is established to gather information and assess the availability of broadband services in Missouri.
2. The Commission invites the public and interested broadband service providers to submit initial written comments by July 23, 2010.
3. The Commission's data center shall mail a copy of this notice to those potentially interested person or organizations listed in Appendix A.
4. The Commission's Public Information Office shall make this notice available to the news media of this state and to the members of the General Assembly.

5. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

**Steven C. Reed**  
**Secretary**

( S E A L )

Clayton, Chm., Davis, Jarrett, Gunn,  
and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge