

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
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PUBLIC SERVICE COMMISSION

In the matter of Arkansas Power & Light Company of Little Rock, Arkansas, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company.)

Case No. ER-85-265

In the matter of the investigation of the revenue effects upon Missouri utilities of the Tax Reform Act of 1986.)

Case No. AO-87-48

RESPONSE TO MOTION TO SUSPEND PHASE-IN TARIFFS

Comes now the Staff of the Missouri Public Service Commission (Staff) and states as follows:

1. In accordance with orders issued by the Commission in Case No. ER-85-265, Arkansas Power & Light Company (AP&L) has filed tariffs designed to implement Year 2 of its phase-in, effective March 21, 1987.

2. On March 5, 1987, Doe Run Company and ASARCO, Inc. (Mines) filed a Motion to suspend said phase-in tariffs. The Mines also requested that the Commission establish a hearing schedule to determine the impact of the Tax Reform Act of 1986 (TRA) on AP&L's revenue requirement, and requested that the Commission adjust AP&L's phase-in to reflect its findings.

The Mines filed their motion in Case Nos. ER-85-265 and AO-87-48. The Staff does not believe either of these dockets is the proper forum for the Commission to address the issues raised by the Mines' motion, but since there is not an appropriate docket in existence, Staff is filing its response in these dockets. Nonetheless, the Staff will not waste resources by serving a copy of this pleading on the myriad of disinterested parties in Case No. AO-87-48.

3. The Staff agrees with the Mines' position that it is legally permissible for the Commission to suspend AP&L's phase-in

tariffs before they take effect. Section 393.150 RSMo 1986 provides that the Commission may suspend any schedule filed by an electrical corporation stating a new rate or charge.

Section 393.155 RSMo 1986 (the phase-in statute) permits the Commission to pre-approve phase-in tariffs applicable to future periods, but in this case the Commission has explicitly declined to pre-approve tariffs applicable to years two through six of the AP&L phase-in. Absent such pre-approval, the Commission clearly retains its authority to suspend any or all of the phase-in tariffs.

4. Despite the fact that the Commission has the authority to suspend AP&L's tariffs, the Staff does not believe that the Commission should exercise that authority in this instance. State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 585 S.W.2d 41 (Mo. 1979) dictates that the Commission must consider "all relevant factors" in adjusting the rates of a public utility. As a result, suspension of AP&L's phase-in tariffs would precipitate a full-scale rate case for AP&L.

Despite the fact that the TRA will provide additional revenues for AP&L, Staff does not know if AP&L's earnings will be excessive when all relevant factors are considered.

In Staff's opinion, it would be inadvisable for the Commission to presently allocate a large amount of its resources to a full-scale AP&L rate case, merely because of the existence of the phase-in.

5. In prior pleadings filed in Case No. ER-85-265, the Mines have suggested an alternative for reflecting the effects of the TRA in AP&L's rates. The Mines have pointed out that AP&L's existing tariffs permit an automatic increase or decrease in rates to reflect any changes in tax rates. As a result, the Mines contend that the Commission could decrease AP&L's rates to reflect the TRA without considering all relevant factors in accordance with the UCCM decision.

In the Staff's view, this is an attractive alternative since it avoids the resource commitment which would be necessary in a

full-scale rate case. Also, it seems fundamentally fair since AP&L authored the tariffs which would be the basis for the Commission's action. Furthermore, it would permit the Commission to effectuate a rate reduction on July 1, 1987, the date that the new tax rates take effect.

However, there are serious legal risks inherent in this procedure. The UCCM case could reasonably be interpreted to hold that the Commission lacks the statutory authority to adjust rates without considering all relevant factors. If this is true, the existence of AP&L's tariff language cannot serve to increase the powers of the Commission beyond those explicitly or implicitly granted by statute. Despite the fact that AP&L has apparently agreed to allow the Commission to decrease its rates to reflect decreased taxes, the Commission is powerless to act unless the authority has been granted to it by the legislature.

WHEREFORE, for the aforementioned reasons, the Staff respectfully recommends that the Commission deny the Mines' Motion to Suspend Phase-In Tariffs, and that the Commission approve AP&L's phase-in tariffs for year 2.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all parties of record in Case No. ER-85-265 on this 12th day of March, 1987.

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