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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of August, 1998.

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-98-573</u>
)	
St. Joseph Light & Power Company,)	
)	
Respondent.)	
)	

ORDER GRANTING LEAVE TO FILE COMPLAINT,
ESTABLISHING NOTICE AND INTERVENTION PERIOD,
GRANTING INTERVENTION,
AND GRANTING MOTION FOR ADDITIONAL TIME TO RESPOND

The Staff of the Missouri Public Service Commission (Staff) filed a Motion for Leave to File Complaint and a Complaint on June 19, 1998. As a result of Staff's inadvertent filing into the Official Case File of highly confidential materials, the Motion for Leave to File Complaint was corrected and a substitute motion in both nonproprietary and highly confidential versions was filed on June 23. Staff's Complaint alleges that St. Joseph Light & Power Company (SJLP), an electric service provider subject to Commission jurisdiction, is overearning and that its rates are therefore not just and reasonable. SJLP filed a Notice on June 22 advising the Commission that it intended to respond to the Motion for Leave to File Complaint within the ten-day time period allowed by 4 CSR 240-2.080(12).

SJLP filed its Response to Staff's motion on June 29, arguing that the Staff may not lawfully bring a complaint before the Commission, nor may the Commission lawfully bring a complaint on its own motion. Staff filed a Reply on July 7 and SJLP responded to Staff's Reply on July 17.

Staff filed a Motion to Establish Test Year and Update Period on July 27 asking the Commission to establish a test year for purposes of this case of the 12 months ending December 31, 1997, with an update period through June 30, 1998. SJLP filed a Motion for Additional Time to Respond on July 31.

Ag Processing, Inc. (AGP) filed an Application to Intervene on July 6 and filed a Request for Ruling on August 4.

Motion for Leave to File Complaint

SJLP filed a Response to Staff's Motion for Leave to File Complaint arguing that the Staff of the Commission may not lawfully file a complaint against it. SJLP argues that the Commission Staff is not specifically mentioned in Sections 386.390 and 386.400, RSMo 1994¹, as an entity authorized to bring a complaint. SJLP also argues that Staff does not constitute a "person" for purposes of those sections. Section 386.390 provides that complaints as to the reasonableness of rates or charges such as Staff wishes to bring may be filed by the Commission on its own motion. Although the Commission has, in the past, authorized Staff to bring complaints, SJLP argues that the procedure is not lawful because it results in the Commission sitting in judgment over its own cause. SJLP cited as support the United States Constitution, Article XIV, the

¹ All references are to the Revised Statutes of Missouri, 1994, unless otherwise indicated.

Missouri Constitution, Article I, Section 10, and Union Electric Co. v. P.S.C., 591 S.W.2d 134 (Mo. App. 1979).

Staff filed a Reply to SJLP's Response arguing that the Commission may lawfully authorize Staff to bring a complaint regarding the reasonableness of rates pursuant to 386.390.1. Staff reasons that the Commission has jurisdiction to determine whether SJLP's rates are just and reasonable pursuant to Sections 386.240 and 393.130.1. See also Re St. Joseph Light & Power Co., 2 Mo. P.S.C. (N.S.) 248, 276-277 (1993). Section 386.390.1 authorizes the Commission to make a complaint on its own motion alleging that any action of a public utility is claimed to be in violation of any provision of law, rule, or Commission order. The Commission may authorize "any person employed by it" to do anything the Commission is authorized to do on its own motion under Section 386.240. Staff argues that it qualifies as a person employed by the Commission, citing to 4 CSR 240-2.010 and § 1.030.2. Therefore, Staff is an appropriate entity to file a complaint regarding the reasonableness of SJLP's rates as though it were filed by the Commission on its own motion.

Staff argues that the Commission has not prejudged the case merely by authorizing a complaint and audit, citing to Re Southwestern Bell Telephone Co., 29 Mo. P.S.C. (N.S.) 194, 196 (1987). Staff points out that the question of whether an administrative agency may bring a complaint before itself has been addressed by the Missouri Supreme Court in Rose v. State Board of Registration for the Healing Arts, 397 S.W.2d 570 (Mo. 1965). The Supreme Court in Rose held that due process is satisfied where judicial review is provided. Commission decisions are subject to judicial review under Sections 386.500 et seq.

and, therefore, SJLP will be accorded due process even if Staff is authorized to file this complaint case before the Commission.

SJLP filed a Response arguing that, because the scope and standard of review under Section 386.510 is not as broad as the scope of review permitted under Chapter 536, SJLP would not have an opportunity for meaningful judicial review.

The Commission has reviewed the pleadings of the parties and the statutes, rules, Commission orders and case law cited. The Commission concludes that it has jurisdiction to determine the reasonableness of SJLP's rates pursuant to Section 386.250(1) and 393.130. The Commission is authorized by Section 386.390.1 to bring a complaint on its own motion when there is a possibility that any act or charge of a public utility may be in violation of law, rule, or Commission order. The Commission concludes that Section 386.240 permits it to authorize any person in its employ to do anything the Commission has the power to do, and that the Commission Staff satisfies the definition of a person employed by the Commission. § 1.030.2. The Commission is not persuaded that the review process established by the legislature in Section 386.510 is not meaningful or fails to provide due process because the scope of review and ability to introduce new evidence differs from the procedures authorized by Chapter 536. Finally, in authorizing the filing of a complaint, the Commission does not prejudge the issues.

Notice and Intervention Period, Time for Response

The Commission finds that interested parties should receive notice of this proceeding and have an opportunity to intervene. The Records Department of the Commission shall serve a copy of this order upon the mayor of each city and the county commission of each county in

SJLP's service area. In addition, the Information Office shall send notice of this order to the publisher of each newspaper located in the counties in which SJLP provides service, as listed in the newspaper directory of the current Official Manual of the State of Missouri, and to the members of the General Assembly representing the Missouri area served by SJLP.

Any city, county, or other proper entity desiring to intervene in this proceeding shall file its application to intervene no later than September 14, 1998, and shall serve a copy of the application on SJLP's attorneys:

Gary L. Myers
Vice President - General Counsel
St. Joseph Light & Power Company
520 Francis Street
Post Office Box 998
St. Joseph, Missouri 64502

James C. Swearengen
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
Post Office Box 456
Jefferson City, Missouri 65102

SJLP will be allowed 30 days to file its response to Staff's Complaint.

Motion to Establish Test Year and Update Period

SJLP filed a motion asking the Commission to permit it to respond to Staff's Motion to Establish Test Year and Update Period at the same time a response is due to Staff's Complaint, should the Commission grant Staff's Motion for Leave to File Complaint. SJLP argues that Staff's motion regarding test year is premature because the Commission has not yet authorized it to file a complaint. In support of its motion, SJLP cited to the March 12, 1997 Order of the Commission in EC-97-362.

The Commission has reviewed SJLP's motion and finds the request reasonable. SJLP will be allowed to file its response to Staff's Motion to Establish Test Year and Update Period concurrently with its response to Staff's Complaint.

Application to Intervene

AGP filed an Application to Intervene stating that it is an agricultural cooperative and a major manufacturer and processor of soybeans and soy-related food and grain products. AGP operates a processing facility in St. Joseph, Missouri, and is an electrical supply customer of SJLP. AGP states that it is vitally interested in SJLP's rates and their reasonableness and may be adversely affected by the Commission's decision in this case. Finally, AGP stated that no other party can adequately represent its interests because AGP is served under separate rate schedules from other customers.

The Commission has reviewed the application and finds it is in substantial compliance with Commission rules regarding intervention and that AGP has an interest in this matter which is different from that of the general public. The application for intervention will be granted.

IT IS THEREFORE ORDERED:

1. That the Motion for Leave to File Complaint filed by the Commission Staff on June 19, 1998 and refiled on June 23, 1998, is granted.

2. That the Records Department and Information Office of the Commission shall serve a copy of this order and provide notice as described in this order.

3. That anyone wishing to intervene shall file an application to intervene with the Secretary, Missouri Public Service Commission, Post

Office Box 360, Jefferson City, Missouri 65102, and serve a copy upon St. Joseph Light & Power Company's attorneys, no later than September 14, 1998.

4. That Ag Processing, Inc. is granted intervention in accordance with 4 CSR 240-2.075.

5. That St. Joseph Light & Power Company's Motion for Additional Time to Respond is granted, and shall file its responses to Staff's Complaint and Motion to Establish Test Year and Update Period no later than September 14, 1998.

6. That this Order shall become effective on August 25, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Schemenauer and Drainer, CC., concur.
Lumpe, Ch., and Murray, CC., absent.

Wickliffe, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION