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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 15th
day of September, 1998.

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

**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT'S APPLICATION
FOR RECONSIDERATION OR ALTERNATIVELY FOR REHEARING**

The Staff of the Missouri Public Service Commission (Staff) filed a Complaint and a Motion for Leave to File Complaint on June 19, 1998. 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. On June 29, SJLP filed a Response to the Staff Motion for Leave to File Complaint. In that Response, SJLP argued that the Staff may not lawfully bring a complaint before the Commission and that the Commission may not lawfully bring a complaint on its own motion.

On August 12, the Commission issued its order entitled Order Granting Leave to File Complaint, Establishing Notice and Intervention Period, Granting Intervention, and Granting Motion For Additional Time To Respond. This order granted Staff's Motion for Leave to File Complaint, provided that interested parties should receive notice of this

proceeding, established a time for intervention by other interested entities, granted AGP's Application to Intervene and allowed SJLP until September 14 to file its response to Staff's Complaint and Motion to Establish Test Year and Update Period.

On August 24, SJLP filed an Application for Reconsideration or Alternatively for Rehearing. In that motion, SJLP renewed its argument that the Commission could not lawfully bring a complaint on its own motion because the complaint purportedly does not allege that SJLP's rates and charges are in violation of law, rule or commission order. SJLP also argues that Staff is not a "person" within the meaning of Section 386.240, RSMo, and therefore is not authorized to bring a complaint against SJLP. SJLP also points out that the discussion portion of the order states that SJLP will be allowed 30 days to file its response to Staff's complaint (September 24, 1998) but that the actual order requires SJLP to file its response by September 14. Finally, SJLP indicates that it has not been properly served with a copy of the complaint as required by 4 CSR 240-2.070(7).

The first argument raised in the Application for Reconsideration is that the Commission improperly relies on the first provision of Section 386.390.1, RSMo, which provides that a "[c]omplaint 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, . . . in violation, or claimed to be in violation, of any provision of law, or any rule or order or decision of the commission." SJLP correctly points out that the complaint does not allege that SJLP's rates and charges are in violation of law, rule or Commission order. Rather, the complaint concerns the reasonableness of the rates charged

by SJLP. The second provision of Section 386.390.1 permits the Commission to entertain a complaint upon its own motion as to "the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation." Thus, even if the Commission's reliance on the first provision of Section 386.390.1 is misplaced, the second provision of that statute clearly does permit the Commission to bring this complaint against SJLP.

SJLP's second argument asserts that the Staff of the Commission, which brought this complaint is not authorized to do so because the Commission has no authority to authorize "the Staff" to bring a complaint on its behalf because "the Staff" is not a person within the meaning of Section 386.020(29), RSMo (1994). Therefore, SJLP argues, the power of the Commission to bring a complaint cannot be delegated to "the Staff" under Section 386.240, RSMo (1994).

Section 386.240 provides that "[t]he commission may 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" (Emphasis added) SJLP contends that while the Commission is authorized to delegate the authority to bring a complaint to an individual staff member, it does not have the authority to delegate that authority to a collection of individual staff members referred to as "the staff". SJLP's contention is unsupported by the law.

Section 386.020(39), RSMo (1997), provides that as used in Chapter 386, "'Person' includes an individual, and a firm or copartnership." This does not mean that person is defined as a single individual to the exclusion of multiple individuals. Section 1.030.2, RSMo (1994), provides that "[w]hen any subject matter, party or person is described

or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, are included." The Missouri Supreme Court has held that this statute would make possible the prosecution of a female under a statutory rape law which refers to the perpetrator as "he." *State v. Stokely*, 842 S.W.2d 77, 80 (Mo banc 1992) Similarly, it must also require that the definition of person found at Section 386.020(39) be read to include several individuals as well as a single individual. Therefore, Section 386.240, RSMo, must be read as providing that "[t]he commission may authorize any persons employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform" "The Staff" are persons and Section 386.240, RSMo, does permit the Commission to delegate to "the Staff" its authority to bring a complaint against SJLP.

SJLP's final two arguments are less substantive but are better received. SJLP correctly points out that 4 CSR 240-2.070(7) requires that a copy of the complaint is to be served on SJLP as the Respondent. That had not been done when SJLP's Application for Reconsideration was filed on August 24. A Notice of Complaint was issued on September 2 and served on SJLP. That notice provided that SJLP was to respond to the complaint on or before October 2, 1998. SJLP also indicates that the August 12 order contains inconsistent dates regarding when SJLP is to respond to the complaint. This order will correct any confusion by requiring that SJLP file its response to Staff's Complaint and Motion to Establish Test Year and Update Period no later than October 2.

IT IS THEREFORE ORDERED:

1. That the Commission's Order Granting Leave to File Complaint, Establishing Notice and Intervention Period, Granting Intervention, and Granting Motion for Additional Time to Respond is reaffirmed in all respects, and Respondent's Application for Reconsideration or Alternatively for Rehearing is denied in all respects, except that the Commission's order is amended to provide that St. Joseph Power & Light Company shall file its responses to Staff's Complaint and Motion to Establish Test Year and Update Period no later than October 2, 1998.

2. That this order shall be effective on September 25, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Woodruff, Regulatory Law Judge

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COMMUNICATIONS SECTION
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