

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 28th day
of March, 2002.

In the Matter of Missouri-American Water Company's)
Tariff Sheets Designed to Implement General Rate)
Increases for Water and Sewer Service Provided to)
Customers in the Missouri Service Area of the Company.)
Case No. WR-2000-281

ORDER DENYING REHEARING

Following decisions by the Circuit Court of Cole County and the Missouri Court of Appeals, this matter now comes before the Commission on remand. On March 7, 2002, the Commission set a prehearing conference for March 28 and directed the parties to make a filing. Thereafter, on March 15, a group of intervenors¹ moved for rehearing of the Commission's March 7 order. On March 18, the City of St. Joseph responded, stating that it intended merely to "monitor" this case as the issue of interest to it had been affirmed by the Circuit Court. On March 25, the Commission's Staff responded in opposition to the Industrial Intervenors.

The Industrial Intervenors assert that the Commission's order of March 7 is "unlawful and . . . void" because the Regulatory Law Judge who issued the order also presided over the original proceedings before the Commission. The Industrial Intervenors

¹AG Processing, Inc., a Cooperative; Friskies Petcare, a Division of Nestle USA; Wire Rope Corporation of America; Gilster Mary-Lee Corporation; and the City of Riverside, Missouri. For convenience, the Commission shall refer to these five intervenors as the "Industrial Intervenors."

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rely upon Section 536.083, RSMo 2000, which provides for a mandatory change of hearing officer in certain circumstances:²

Notwithstanding any other provision of law to the contrary, in any administrative hearing conducted under the procedures established in this chapter, and in any other administrative hearing conducted under authority granted any state agency, no person who acted as a hearing officer or who otherwise conducted the first administrative hearing involving any single issue shall conduct any subsequent administrative rehearing or appeal involving the same issue and same parties.

In its response filed on March 25, the Commission's Staff takes the position that Section 536.083 does not apply in this case because no rehearing or appeal is, as yet, contemplated. Staff also suggests that Section 536.083 might not apply to the Commission in any respect.³

The Commission has no doubt that Section 536.083 applies to it, but concludes that the provision applies in a different manner than that contemplated by the Industrial Intervenors.

The statute states that it applies "in any administrative hearing conducted under the procedures established in this chapter [*i.e.*, Chapter 536], and in any other administrative hearing conducted under authority granted any state agency[.]"⁴ This language is very broad and is intended to reach every administrative proceeding in the state of Missouri, whether conducted pursuant to Chapter 536 or any other statutory grant of authority. The scope of this statute extends to proceedings under Chapters 386, 392 and 393.

² All statutory references herein, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

³ Relying upon *St. ex rel. Noranda Aluminum, Inc. v. Public Service Commission*, 24 S.W.3d 243, 245 (Mo. App., W.D. 2000).

⁴ Section 536.083.

There are no reported cases interpreting or applying this statute. However, the Commission may determine its meaning by the normal rules of statutory construction. The primary rule is to determine the intent of the legislature from the language used, applying the language in its plain and ordinary sense.⁵ The legislature is presumed to have intended what a statute says and, if the language is clear and unambiguous, there is no room for construction.⁶ The only portion of this statute that requires construction is the final clause: "any subsequent administrative rehearing or appeal involving the same issue and same parties."

The phrase "administrative rehearing or appeal" is instructive because it refers to an administrative structure of two tiers in which the agency has an opportunity to correct its mistakes prior to judicial review. While the word "appeal" is not applicable to practice before the Missouri Public Service Commission, the word "rehearing" is. Section 386.500 provides for rehearings by the Commission:

1. After an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear; if a rehearing shall be granted the same shall be determined by the commission within thirty days after the same shall be finally submitted.

A "rehearing" in the context of practice before the Missouri Public Service Commission is a reconsideration by the Commission itself, prior to submission to any court for review.

⁵ *City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 445 (Mo. banc 1980); *O'Dell v. Division of Employment Security*, 376 S.W.2d 137, 142 (Mo. 1964).

⁶ *Missouri Division of Employment Security v. Labor and Industrial Relations Commission of Missouri*, 637 S.W.2d 315, 318 (Mo. App., W.D. 1982).

"[W]hen a rehearing is granted the case stands as if it had not been previously heard."⁷ In this context, Section 536.083 makes perfect sense: it is a fresh start; a new hearing with a new presiding officer, the better to avoid any mistakes made previously.

In the present case, various parties sought rehearing before the Commission after it issued the original Report and Order. The Commission denied these applications on September 19, 2000. The present proceedings after judicial remand are not within the ambit of Section 386.500. Therefore, the prohibition set out in that statute simply does not apply. For this reason, the Commission will deny the Industrial Intervenors' Application for Rehearing.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing filed by AG Processing, Inc., a Cooperative, Friskies Petcare, a Division of Nestle USA, Wire Rope Corporation of America, the City of Riverside, and Gilster Mary-Lee Corporation on March 15, 2002, is denied.

⁷ *State ex rel. State Highway Commission v. Public Service Commission*, 459 S.W.2d 736, 739 (Mo. App., K.C.D. 1970).

2. That this order shall become effective on April 7, 2002.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Murray, Lumpe,
and Forbis, CC., concur.
Gaw, C., absent.

Thompson, Deputy Chief Regulatory Law Judge