

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 27th
day of March, 1990.

In the matter of the application of Arkansas Western Gas)
Company, d/b/a Associated Natural Gas Company, for a)
certificate of convenience and necessity authorizing it)
to construct, install, own, operate, control, manage and) Case No. GA-90-36
maintain a certain natural gas pipeline in New Madrid)
County, Missouri.)
)

ORDER DENYING REHEARING

On March 7, 1990, the Commission issued a Report And Order in which it granted Arkansas Western Gas Company, d/b/a Associated Natural Gas Company, (Applicant) a certificate of convenience and necessity to construct and operate a natural gas pipeline between the cities of Portageville and Marston, Missouri. The Commission granted the certificate with the caveat that the granting of the authority was not to be considered as a finding by the Commission of the reasonableness of any expenditures made, nor of the value for ratemaking purposes of any properties constructed, nor as acquiescence in the value placed upon any properties. The Report And Order was based upon evidence filed by Applicant under affidavit pursuant to an alternative proposed by Staff.

On March 20, 1990, the Office of Public Counsel filed an application for rehearing contending that the Commission could not issue its Report And Order based upon Applicant's affidavit since Staff had requested a hearing. Public Counsel contends that *State ex rel. Deffenderfer Enterprises, Inc. v. PSC*, 776 S.W.2d 494 (Mo. App. 1989) is not applicable to this case.

The Commission has determined that Public Counsel's application is not well founded and there is insufficient justification to grant a rehearing. The Commission believes that Public Counsel's interpretation of *Deffenderfer* is too narrow and that

the Commission may issue a Report And Order based upon evidence submitted by affidavit when no party requests a hearing, even if at some previous point in the proceedings a hearing was requested.

In this case Staff requested a hearing and then, when it found itself unable to meet the hearing schedule, proposed the alternative adopted by the Commission. All parties were given an opportunity to request a hearing but each party indicated no hearing was necessary if Staff's alternative was adopted. This situation fits within the holding of *Deffenderfer*.

It is, therefore,

ORDERED: 1. That the Application For Rehearing of the Office of Public Counsel is hereby denied.

ORDERED: 2. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Harvey G. Hubbs", with a stylized flourish at the end.

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch
and McClure, CC., Concur.
Letsch, C., Absent.