

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
April 22, 1999**

CASE NO: TM-99-261

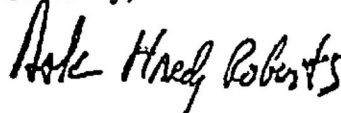
Michael F. Dandino
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P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Byron E. Francis
Armstrong, Teasdale, Schlafly & Davis
One Metropolitan Square, Suite 2600
St. Louis, MO 63102

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy:

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 22nd
day of April, 1999.

ORDER DENYING MOTION TO RECONSIDER ORDER CLOSING CASE

On December 31, the Commission notified Public Counsel that it could respond to GTE Midwest Incorporated's response no later than January 7, 1999. The Commission expressly stated that the response should explain the reasons why Public Counsel believes the Commission's decision in this

case should be different than the one it reached in Case No. TM-99-76 just two months earlier. Public Counsel chose not to file a response.

On April 9, 1999, the Commission issued an order dismissing this case for failure to prosecute pursuant to 4 CSR 240-2.116(2). On April 12, 1999, Public Counsel filed a motion asking the Commission to reconsider that order. Public Counsel asserts that it was not required to respond to the Commission's December 31, 1998 order, but it does not explain why it declined to respond to that order, nor does it explain why the question of the Commission's jurisdiction should be resolved any differently in this case than it was in Case No. TM-99-76. Public Counsel states that it believed that the case awaited the Commission's decision.

On April 16, GTE filed a memorandum in opposition to Public Counsel's motion for reconsideration. GTE notes that ". . . Public Counsel continues to ignore this Commission's request for an explanation why the decision in this case should be different than the one reached in Case No. TM-99-76."

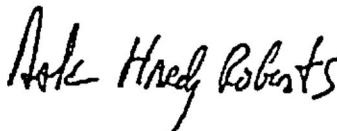
Public Counsel is technically correct that it was not expressly "required" to file a responsive pleading by the terms of the Commission's December 31, 1998, order. Section 386.710, RSMo 1994, gives Public Counsel virtually unlimited discretion in choosing which proceedings to actively pursue. As a result, the Commission cannot require Public Counsel to prosecute an action that it has filed. Nonetheless, when

Public Counsel is given an opportunity to prosecute its case and declines to do so, it is subject to dismissal for failure to prosecute.

IT IS THEREFORE ORDERED:

1. That the Motion to Reconsider Order Closing Case filed on April 12, 1999, by the Office of the Public Counsel is denied.
2. That this order shall become effective on April 22, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Mills, Deputy Chief Regulatory Law Judge

Atty/Sec'y:

Mills/Bryce

Date Circulated

4-19 TM-99-261
CASE NO.

Lumpke, Chair

Went
Crumpton, Commissioner

Murray, Commissioner

AS
Schemmeyer, Commissioner

Drainer, Vice-Chair

4-22
Agenda Date

Action taken:

4-c AS

Must Vote Not Later Than

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,

Missouri, this 22ND day of APRIL, 1999.

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge