

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of December, 1990.

In the matter of the proposed amendment)
to 4 CSR 240-10.010.)
CASE NO. AX-91-223

ORDER DENYING PETITION TO PUBLIC
SERVICE COMMISSION FOR AMENDMENT OF RULE

On November 29, 1990, the Office of the Public Counsel filed with this Commission its Petition To Public Service Commission For Amendment Of Rule. The petition seeks an amendment to 4 CSR 240-10.010(3)(F) which would require payment by utilities of the cost incurred by the Office of the Public Counsel's inspection of books and records maintained out of state. The rule presently requires utilities to pay the reasonable and necessary expenses incurred by employees of the Public Service Commission examining the utility's books maintained out of state.

Upon consideration of the petition, the Commission is of the opinion that it should be denied. Section 536.021.2(2), RSMo 1986, requires this Commission to include in any notice of proposed rulemaking published in the *Missouri Register* the legal authority pursuant to which the rule is proposed to be made. The petition of the Office of the Public Counsel does not cite any statutory authority for enactment of the proposed amendment, and the Commission is unaware of any such authority. As such, we are of the opinion that it is improper to attempt, by rule, to create power or authority on behalf of another state agency. To do so would be an unwarranted intrusion into the legislative process and should not be attempted.

IT IS THEREFORE ORDERED:

1. That the Petition To Public Service Commission For Amendment Of Rule, proposing an amendment to 4 CSR 240-10.010(3)(F), filed herein on November 29, 1990, be denied.

2. That this Order shall become effective on the date hereof.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Interim Executive Secretary

(S E A L)

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