State of Missouri

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January 9, 1987

Mr. Daniel J. Redel, Acting Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Re: Tax Reform Act of 1986
Case No. AO-87-48

Dear Mr. Redel:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of the Comments of the Office of the Public Counsel. Please "file" stamp the extra enclosed copy and return it to this office. I have on this date mailed or hand-delivered copies to all parties of record.

Thank you for your attention to this matter.

Very truly yours,

Richard W. French
First Assistant Public Counsel

RWF:kl
Enclosures

cc: Parties of record

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PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the investigation of the revenue effects upon Missouri utilities of the Tax Reform Act of 1986.	))))	Case No. AO-87-48

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

I. INTRODUCTION

By its order dated November 3, 1986, this Commission established Docket No. AO-87-48 to investigate the revenue effects upon Missouri utilities of the Tax Reform Act of 1986. In that order the Commission stated that the Staff and the Office of the Public Counsel could file comments regarding the various procedural alternatives for recognizing the effects of the change in the tax law through the ratemaking or regulatory process.

Before presenting its comments on the procedural alternatives available to the Commission, Public Counsel would like to comment on some of the assertions made in certain of the utilities' filings to this Commission on or about December 15, 1986. In these filings many utilities complained of factors which would operate to reduce or eliminate any rate reductions apparent from the changes in the new tax law. Particularly, some telephone utilities spoke of issues such as the implementation of the revised FCC Uniform System of Accounts, the deregulation of embedded customer premise equipment, the recovery of non-traffic sensitive costs, the need for greater capital recovery associated with existing telephone plant, the rising specter of competition in all telephone services as well as other FCC-mandated actions as requiring additional revenues in the near future. Public Counsel would mention that there are also countervailing advantages for telephone companies such as the deregulation of inside wiring which will allow telephone companies to charge significant fees for maintenance and repair by previously underutilized personnel. Other factors include better than expected toll revenue levels and the less than expected reduction of revenues caused by competition. These and other factors have led to the withdrawal of rate proceedings by Missouri telephone utilities in 1986 and the filing of a complaint for a

rate reduction by the Staff against General Telephone Company of the Midwest.

Similarly, generic complaints by utilities of decreased cash flow and decreased coverage ratios must be addressed in the context that these decreases in cash flow and coverage ratios will take place uniformly throughout the corporate world. Thus, on a relative basis, utilities will not lose ground in the eyes of the financial community. In fact, it could be argued that utilities' coverage ratios will be less affected than other businesses since utilities have comparatively higher debt ratios. This will lead to a smaller part of utilities' total pretax return being taxed since interest on debt is not taxable. Therefore, while utility interest coverages might decline, this decline will be less than for other businesses with larger equity ratios. Further, in addition to the lower tax rate, utilities were given the bonus of not being required to immediately flow back the excess deferred taxes they have been collecting from ratepayers at the 46% rate which now have to be paid back, if ever, at only a 34% rate. The U.S. Government has allowed utilities to flow this excess deferred tax back on a normalized basis which provides a significant cash flow advantage to utilities. Finally, the elimination of the capital gains tax advantages for investors could mean that investors will place greater economic value on income producing securities such as utility stocks.

Public Counsel's procedural comments are divided into four sections. The first section discusses the traditional statutory methods by which this Commission could change the rates charged by utilities in recognition of the changes in the tax law. The second section will discuss the possibility of the Commission affecting utilities' rates on an interim basis in order to more quickly reflect the tax law change pending further consideration of the matter. The third section will discuss the possibility of instituting a tax adjustment clause similar to the clauses currently in place for the automatic adjustment of changes in gross receipts taxes for many utilities. Finally, Public Counsel will offer its suggestions regarding the procedure to be followed by the Commission.

II. TRADITIONAL METHODS OF IMPLEMENTATION

The courts of this State have recognized two principal statutory methods by which this Commission may affect the rates of utilities under its jurisdiction. These methods are the "file and suspend" method and the "complaint" method.

The "file and suspend" method derives its statutory authority primarily from Sections 393.140 and 393.150, RSMo (1978). Section 393.140(11) gives the Missouri Public Service Commission the power to require utilities under its jurisdiction to keep on file schedules showing the rates and charges currently in effect. The statute goes on to state that no change in those rates and charges can be made by a utility except after thirty days' notice to the Commission and publication for thirty days of the proposed changes to be made in the schedules then in force. Section 393.140(11) also contains an exception where "for good cause shown" the Commission may allow changes in the rate schecules of the utility without the thirty days notice or publication usually required. Section 393.150 states that any schedules stating a new rate or charge may be suspended by the Commission for a total of approximately ten months during which time a hearing concerning the propriety of the change would be held.

Under the "file and suspend" method, utilities which wish to flow back to ratepayers the effects of the changes in the tax law could file new tariff schedules with the Commission reflecting those changes. Due to the fact that this investigatory docket has allowed interested parties to examine the utilities' calculations of the effect of the new tax law on the utilities' rates and charges, the proposed tariff schedules could reflect not only the calculations made by the utilities but also comments by interested parties so as to expedite the review and approval of such schedules by the Commission.

If a utility refuses to file new schedules which would flow through the benefits of the new tax law to its ratepayers, which unfortunately seems to be the case in a majority of the comments filed by the utilities on December 15, 1986, a complaint could be filed against the utilities asserting that their rates and charges were unreasonable due to the failure of the utilities to properly account for the changes in the tax law. The primary statutory authorization for the

"complaint" method of changing utility rates is found in Sections 386.390, 393.260, and 393.270 RSMo (1978). Section 386.390 states that complaints as to the reasonableness of any rates or charges of a utility may be brought by the Public Counsel, representatives of local governments within the affected utility's service area, or at least twenty-five consumers or purchasers of the utility's service.

In Public Counsel's opinion, a complaint based solely on the failure of a utility to recognize the reduction in its tax liability in the rates it charges for its utility service would be a sufficient basis on which to file and maintain a complaint. However, it is clear that once the complaint is filed the Commission must consider all other relevant factors which would bear on the determination of the just and reasonable rates to be charged by the utility in question. This is mandated by Section 393.270(4) which has been construed by the Missouri Supreme Court to require the Commission to consider all relevant factors in determining the reasonableness of a utility's rates. State ex rel. Missouri Water Company v. Public Service Commission, 308 S.W.2d 704, 718-20 (Mo. 1957). In so doing this Commission must weigh the interests of a utility and its ratepayers so that a utility's rate is reasonable to both parties. Therefore, issues such as the proper rate of return to be allowed a utility and the proper level of other revenues and expenses would be relevant matters for discussion and consideration.

This matter was discussed by the Missouri Supreme Court in the case of State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41 (Mo. 1979) (hereinafter "UCCM"). In that case the Court stated:

> Although no hearing by the commission is required before a new rate goes into effect under the file and suspend method, the commission is nonetheless required, in determining whether or not to suspend the proposed rate, to consider all factors relevant to the proper maximum price to be charged. Section 393.270(4) states that the commission:
>
> > may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return . . . .
>
> This court has interpreted that provision, in a case addressing the method of valuation of property in determining the utility's proper rate of return: "[T]he

phrase 'among other things' clearly denotes that 'proper determination' of such charges is based upon all relevant factors." (State ex rel. Missouri Water Company v. Public Service Commission, 308 S.W.2d 704, 719 (Mo. 1957)), and that:

> However difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse nor expediency can be substituted for the requirement that such rates be "authorized by law" and "supported by competent and substantial evidence upon the whole record." Article V, Section 22, Constitution of Missouri, V.A.M.S. Missouri Water Company, 308 S.W.2d at 720.

Id. at 56. (emphasis added)

Although UCCM dealt with a proceeding brought under the "file and suspend" statute, its holding applies equally to "complaint" cases since 393.270(4) is part of the statutory authorization for complaints.

Of course, consideration of other factors will not necessarily negate any reductions in rates indicated by the new tax law. Decreasing rates of return on equity as well as lower interest rates should significantly lower the required rates of return of utilities who have not had rate proceedings before this Commission in the recent past. Further, lower fossil fuel prices as well as lower inflation in general may result in a reduction of a utility's cost of service.

III. MAY THE COMMISSION UTILIZE INTERIM RATES TO REFLECT THE CHANGES IN THE TAX LAW?

The Commission may want to explore alternatives which would result in more expeditious treatment of the tax law changes than could be expected by conducting full evidentiary hearings considering all relevant factors which would be required under the "file and suspend" or "complaint" methods unless all interested parties agree otherwise. One method would be to hold interim hearings addressing only the effect of the tax law changes on a utility's revenue requirement and making a portion of a utility's current rates equal to the dollar effect of the tax law subject to refund on an interim basis pending a full hearing on all issues. As discussed above, unless the utility is willing to file new tariff schedules, this would have to be accomplished under a "complaint" proceeding.

The Commission's authority to make permanent rates interim and subject to refund prior to a full hearing is not directly found in any of its enabling statutes. The courts have addressed this Commission's

authority to issue interim rates in two major cases, State ex rel. Laclede Gas Company v. Public Service Commission, 535 S.W.2d 561 (Mo.App. 1976); and State ex rel. Fischer v. Public Service Commission, 670 S.W.2d 24 (Mo.App. 1984). The court in Laclede ruled that although there is no specific authority for interim proceedings in the Missouri Public Service Commission's enabling statutes, such authority can be implied from the Missouri "file and suspend" statutes and from the practical requirements of utility regulation. State ex rel. Laclede Gas Company v. Public Service Commission, 535 S.W.2d 561 at 567 (Mo.App. 1976). The court found that the Public Service Commission's ability to approve tariff filings without a hearing at the end of the thirty day period following the filing of tariffs under the "file and suspend" statutes was the basis for the Commission's implied authority to grant interim relief prior to a full and fair hearing on the merits of the case which considered all relevant factors. In so finding the court stated:

> [2-4] The 'file and suspend' provisions of the statutory sections quoted above lead inexorably to the conclusion that the Commission does have discretionary power to allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate. This indeed is the intended purpose of the file and suspend procedure. Simply by non-action, the Commission can permit a requested rate to go into effect. Since no standard is specified to control the Commission in whether or not to order a suspension, the determination as to whether or not to do so necessarily rests in its sound discretion.

Id. at 566.

Laclede Gas Company asserted that it was not proceeding under the "file and suspend" procedures set out in RSMo Sections 393.140 and 393.150 but rather under a variant procedure. The court stated that the assumption that Laclede was proceeding within the general scope of the "file and suspend" procedures was a favorable assumption to Laclede since "otherwise its entire proceeding for interim rate increase would have been of very doubtful effectiveness". Id. at 568. From the foregoing, it is evident that the Western District Court of Appeals believed that proceedings outside of the "file and suspend" statutes could not support an interim proceeding.

This interpretation is buttressed by the Fischer case cited above. In that case the Western District Court of Appeals reaffirmed its ruling that the Commission's authority to grant interim rate requests was

implied from the "file and suspend" sections of Sections 393.140 and 393.150, RSMo (1978). The court went on to hold that interim proceedings are merely ancillary to a permanent rate request and do not stand on their own as entirely separate and distinct proceedings. Id. at 26-27.

Under the holdings in the Laclede and Fischer cases discussed above, the ability to grant interim relief in a proceeding brought under the "complaint" method of ratemaking is dubious. In "complaint" proceedings under Sections 393.260 and 393.270, RSMo (1978), the complainants file a pleading with the Public Service Commission claiming that current rates are unreasonable. Under these statutes, the Commission may then conduct an investigation as to the validity of the complaint under Section 393.260.2. Section 393.270 requires the Commission to publish notice of the complaint and allow the affected utility an opportunity to be heard in respect to the matters complained of at a time and place to be specified in the notice. The statute goes on to state that after a hearing the Commission will determine the maximum charge to be fixed for that utility's service. Section 393.270.2. Furthermore, in determining that price, the Commission must consider all relevant factors which have any bearing upon the proper determination of the question presented. Section 393.270.4; State ex rel. Missouri Water Company v. Public Service Commission, 308 S.W.2d 704 (Mo. 1957). Thus, under the "complaint" procedure the Missouri Public Service Commission does not have the right to determine the proper rates to be charged prior to and absent a full hearing on the merits. Therefore, the powers accorded the Commission in the "file and suspend" statutes, which form the basis of the decision by the Missouri courts that the Commission has the authority to grant interim relief, do not exist under the "complaint" procedures.

An argument could be made that there is wording in Section 393.150, RSMo (1978) which could extend the powers possessed by the Commission under the "file and suspend" procedures to "complaint" procedures. That wording gives the Commission authority to operate under the "file and suspend" procedures "either upon complaint or upon its own initiative without complaint". However, to imbue this phrase with the meaning that the Commission's powers under the "file

and suspend" statutes are thereby extended also to "complaint" proceedings despite the absence of any such language in the "complaint" statutes, Sections 386.390, 393.260, or 393.270, is of doubtful logic.

Even if one leaps the hurdle of the Commission's statutory authority to grant interim relief in "complaint" proceedings, the question would remain as to whether the granting of interim relief would be proper under Commission precedent. The Commission has traditionally considered the granting of interim rate relief to be "an extraordinary remedy appropriate only for extraordinary circumstances". Re Missouri Public Service Company, Case No. ER-81-154, Report and Order, page 4. In Case No. ER-81-154, the Commission articulated those "extraordinary circumstances" under which such relief is justified:

> The Commission has generally used interim rate relief to prevent emergency or near emergency financial conditions from jeopardizing a company's ability to continue to render adequate service during the period of time in which a permanent rate request is being considered. (Report and Order, p. 3).

Moreover, the Commission has placed the burden on the utility seeking the interim rate relief to demonstrate that its particular circumstances bring it within the emergency standard noticed above. In order to meet this threshold requirement, the utility must demonstrate conclusively that because of changed circumstances, "(1) it needs the additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief". Re Missouri Public Service Company, Case No. 18,502, Report and Order, page 8.

In State ex rel. Laclede Gas Company v. Public Service Commission, 535 S.W.2d 561 (Mo.App. 1976), the Missouri Court of Appeals clearly affirmed the emergency standard as proper in interim rate cases. The Missouri Supreme Court in State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41, 48, 57 (Mo. 1979), also endorsed the traditional emergency standard:

> . . . An interim rate increase may be requested where an emergency need exists. State ex rel. Laclede Gas Company v. Public Service Commission, 535 S.W.2d 561, 568 (Mo.App. 1976); Section 393.150.
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> . . .
>
> . . . If the electric companies are faced with an 'emergency' situation because of rising fuel costs, they can take

advantage of the method set up by the legislature to deal with such situations and file for an interim rate increase on the basis of an abbreviated hearing.

Absent a clear showing that an emergency condition exists, this Commission has consistently held that the regulatory process as established by the legislature must run its intended course. In Public Counsel's opinion, this position merely recognizes that the essential features of that regulatory process must be preserved in order to insure the protection of the public interest and that such features would be imperiled by a policy which permitted the granting of interim relief on a non-emergency basis.

The most significant feature of this regulatory process is the role played in it by the Commission itself. In creating the Commission, the legislature sought to establish a regulatory body whose primary responsibility would be to fix and establish reasonable rates based on an exacting and equitable consideration of all relevant factors and policy concerns. Shortly after the Public Service Commission law was enacted, the Missouri Supreme Court eloquently described the nature, purpose, and scope of the Commission's role in the regulatory process created by that law:

> That act is an elaborate law bottomed on the police power. It evidences a public policy hammered out on the anvil of public discussion. It apparently recognizes certain generally accepted economic principles and conditions, to-wit: That a public utility (like gas, water, car service, etc.) is in its nature a monopoly; that competition is inadequate to protect the public, and, if it exists, is likely to become an economic waste, that state regulation takes the place of and stands for competition; that such regulation, to command respect from patron or utility owner, must be in the name of the overlord, the state, and to be effective, must possess the power of intelligent visitation and the plenary supervision of every business feature to be finally (however invisible) reflected in rates and quality of service. It recognizes that every expenditure, every dereliction, every share of stock or bond, or note issued as surety is finally reflected in rates and quality of service to the public, as does the moisture which arises in the atmosphere finally descend in rain upon the just and unjust willy nilly.

State ex rel. Barker v. Kansas City Gas Company, 163 S.W. 854, 857-58 (Mo.1913).

The legislature, the courts, and the Commission have all recognized that the exacting consideration of all relevant factors to be finally reflected in rates can best be made in the full and fair hearing provided by a permanent rate case proceeding. By providing interested parties with an array of procedural hearing rights, the

legislature has also attempted to design the hearing process in such a way that it will be the most effective mechanism possible for ensuring that all evidence and information relevant to the setting of just and reasonable rates will be made available to the Commission. The right of parties to present evidence on any issue, Section 536.063(3), to engage in cross-examination, Section 536.070(2), to submit briefs or orally argue their positions, Section 536.080(1), are all rights which, when exercised properly, make the permanent rate case hearing an invaluable forum for determining what rates are indeed just and reasonable.

Affording interim rate relief on a non-emergency basis is inconsistent with this legislative scheme in that it permits rates to go into effect without a full and complete examination by the Commission of the evidence which is normally elicited by the procedural devices inherent in a full hearing. Providing such relief on a non-emergency basis is also inconsistent with the regulatory process established by the legislature in that it requires a diminution of or complete denial of those procedural rights specifically granted to parties in permanent rate case proceedings.

In light of the above, the holding of an interim proceeding and the setting of interim rates solely related to the effect of the new tax law on a company's revenue requirement would not be proper or desirable even if it was legally permissible. Interim proceedings must be severely limited to situations where sufficient emergency exists so as to justify a departure from the regulatory scheme so carefully set out by the legislature, the courts, and the Commission. As much as it might be desirable to speedily secure rate decreases for the ratepayers of the Missouri utilities under this Commission's jurisdiction, Public Counsel cannot in good faith suggest that the speedy flow through of the revenue effects of the new tax law represents such an emergency situation.

IV. THE VIABILITY OF A FEDERAL INCOME TAX ADJUSTMENT CLAUSE

Another possible approach is raised by the Supreme Court case of State ex rel. Hotel Continental v. Burton, 334 S.W.2d 75 (Mo. 1960). That case involved the establishment of an automatic adjustment clause to capture changing levels in the amount of gross receipts taxes paid by a utility. This clause automatically adjusts the amount paid by a ratepayer for these gross receipts taxes as the taxes are raised and lowered by local governments. An argument could be made that federal income taxes represent a similar charge to a utility which could be adjusted automatically upward or downward through a tax adjustment clause on the utility's rate schedule.

A relevant case in this area is the case of State ex rel. Utility Consumer Council of Missouri v. Public Service Commission, 585 S.W.2d 41 (Mo. 1979); where the Missouri Supreme Court ruled that the tax adjustment clause approved in the Hotel Continental case did not justify the adoption of a fuel adjustment clause in the State of Missouri. In UCCM, the Supreme Court found that the tax adjustment clause approved in Hotel Continental was permitted to be adjusted automatically without the need for a full hearing on the merits because of the unique nature of the expense associated with gross receipts taxes. In making its judgment the court in Hotel Continental stated that:

> The Commission does not lose supervisory control over a company's operation because of the automatic tax adjustment clause contained in the present order. The company's rates are still subject to the Commission's supervision. Those rates, however, are not and cannot be affected one iota by the amount of, or any change in the amount of, the money company must collect with which to pay its gross receipts tax, except in the exact amount by which that tax is increased or decreased.

State ex rel. Hotel Continental v. Burton, 334 S.W.2d at 82.

The court in UCCM interpreted the above quotation as stating that the gross receipts tax was a direct charge, which was exactly proportioned to the customer's bill since the amount of the charge was directly determined by the amount of that bill. Thus, any change in any cost factors of the utility would not change this direct relationship. This allowed the change in the tax rate to be taken into consideration without regard to changes in the other costs of the

utility. Therefore, a commission could allow automatic changes in the amount charged for gross receipts taxes without taking into consideration other changes in the utility's cost of service and still not violate the requirement that changes in rates should not occur without the consideration of all relevant factors. State ex rel. Utility Consumer Council of Missouri v. Public Service Commission, 585 S.W.2d at 52. The court ruled in UCCM that this was not the case with the fuel adjustment clause which must be determined by estimating the amount of sales in a given month and by allocation to each kilowatt-hour sale percentage of the increase in fuel costs incurred during a prior month. Id. at 53.

Similarly, a federal income tax adjustment clause would arguably not be comparable to the tax adjustment clause currently allowed for gross receipts taxes. The amount of federal income tax included in the company's revenue requirement is perhaps one of the most complicated calculations made in determining the proper rates to be charged by a utility. This amount is dependent on virtually every operating expense of the company and is subject to change because of variations in these other expenses. It would be hard to imagine another charge which would be more dependent on "other relevant factors" for its proper determination. Further, the increase or decrease of a company's revenue requirement due to changes in the federal tax law would directly affect the company's rate of return which, under the present statutory scheme, must be considered along with all other relevant factors so that just and reasonable rates may be set for a utility. On the other hand, since gross receipts taxes are merely passed through to local governments by a utility, the increase or decrease of the gross receipts tax does nothing to the rate of return earned by a utility.

For these reasons, an automatic federal income tax adjustment clause probably would not be permissible under the holding in Hotel Continental. Therefore, such a clause would be unlawful under the holding in UCCM since it would not take into consideration all relevant factors which might also have a bearing on whether the rates charged by the utility were just and reasonable.

V. CONCLUSION

In light of the above discussion, Public Counsel has reached the opinion that, under the current statutory scheme, it appears that it is necessary that the Commission hold full hearings considering all relevant factors affecting the utility's revenue requirement when determining the effect of the new tax law on the utility's operations. To avoid the necessity of going through this process, Public Counsel would recommend the holding of informal meetings in this docket between interested parties and the affected utilities. At these meetings the parties could discuss ways in which the effects of the tax law could be voluntarily recognized by the utilities without the need for adversarial hearings.

Even if it is necessary to follow the "complaint" procedure in those cases where utilities are unwilling to voluntarily flow through the effects of the new tax law to its ratepayers, the Commission could take steps to expedite the hearing process while maintaining the due process rights of all parties to these hearings. In coming up with proposed procedures to be followed, it is important to start with the foundation of what rights parties have in the holding of full and adequate hearings. Article V, Section 18 of the Missouri Constitution states in part that:

> All final decisions, findings, rules and orders of any administrative officer or body existing under the Constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination of whether the same are authorized by law, and in cases where a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record . . .

RSMo Section 536.070, part of the Administrative Procedure Act, addresses what evidentiary requirements exist in contested cases. The statute requires: (1) that oral evidence be taken on oath or affirmation; (2) that all parties may call and cross-examine witnesses and introduce exhibits; (3) that all proceedings shall be suitably recorded and preserved; and (4) that records and documents of the agency which are considered should be offered into evidence in the same manner as any other evidence.

Due process requirements of the Federal Constitution of a trial type hearing are set out in the cases of Goldberg v. Kelly, 397 U.S.

254 (1970) and Morrissey v. Brewer, 408 U.S. 471 (1972). These cases hold that in order to meet minimum due process requirements a hearing must have notice, the disclosure of evidence, an opportunity to be heard and present witness and documentary evidence, a right to cross-examination of adverse witnesses, an impartial hearing body and a written decision stating the evidence relied on and the reasons for the decision.

Public Counsel believes that the Commission can act to expedite the "complaint" hearing process so as to provide a determination of just and reasonable rates in a timely manner while still meeting the Constitutional and statutory requirements set out above. After the complaint is filed, the Commission could require the affected utility to file its answer setting out its position as to the matters alleged in the complaint as well as any countervailing factors which should be considered by the Commission. This answer should be made on an expeditious basis, possibly within the thirty day period set out in Commission Rule 4 CSR 240-2.070(7). Intervenors to the case should file their answer and identify issues shortly thereafter so as to permit an early prehearing conference where issues may be discussed and negotiated so as to limit the issues to be pursued through discovery and to be heard at hearing. Hopefully a document setting out the issues to be heard could be executed. The scheduling of testimony should be done in a manner which requires the parties to expend a maximum effort to efficiently and expeditiously present the matters to be argued to the Commission. Audit times will necessarily be shorter than normal but this can be at least partly overcome by dedication on the part of all parties concerned.

As the ultimate scheduler of all proceedings, this Commission will be responsible for ensuring that all matters can be brought to a conclusion in a timely manner. These proceedings will bring the Commission an opportunity to design and achieve an efficient hearing process which will be helpful in this new era of regulation where rate reductions may be as common as requests for rate increases. Public Counsel pledges its support of this Commission's efforts to fairly and expeditiously accomplish the reflection in the utilities' revenues of these income tax effects under the present law.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By _____
Richard W. French
First Assistant Public Counsel
P. O. Box 7800
Jefferson City, Missouri 65102

I hereby certify that a copy of the foregoing has been mailed or hand-delivered to all parties of record on this 9th day of January, 1987.

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