

# NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW  
MONROE BLUFF EXECUTIVE CENTER  
601 MONROE STREET, SUITE 301  
P.O. BOX 537  
JEFFERSON CITY, MISSOURI 65102-0537  
www.ncrpc.com

TELEPHONE: (573) 634-2266  
FACSIMILE: (573) 636-3306

ROBERT K. ANGSTEAD  
ROBERT J. BRUNDAGE  
MARK W. COMLEY  
CATHLEEN A. MARTIN  
STEPHEN G. NEWMAN  
JOHN A. RUTH

May 5, 2004

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

FILED

MAY 9 5 2004

Missouri Public  
Service Commission

Re: Secured Technologies, L.C.  
Case No. TC-2004-0310

Dear Judge Roberts:

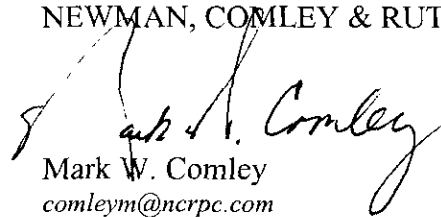
Please find enclosed for filing in the referenced matter the original and five copies of an Application for Rehearing of Order Setting procedural Schedule or Alternatively, Motion for Continuance; and Motion for Leave to Amend Answer. The Application for Rehearing of Order is being filed with a facsimile affidavit attachment. The original affidavit will be provided to the Commission as soon as it is received.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel  
Bob Berlin  
Mark S. Michael

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED  
MAY 05 2004

Missouri Public  
Service Commission

The Staff of the Missouri Public Service )  
Commission, )  
Complainant, )  
v. )  
Secured Technologies, L.C., )  
Respondent. )

Case No. TC-2004-0310

**APPLICATION FOR REHEARING OF ORDER SETTING PROCEDURAL SCHEDULE OR  
ALTERNATIVELY, MOTION FOR CONTINUANCE**

Comes now Respondent, Secured Technologies, L.C. (hereinafter Respondent or STLCL) and submits the following to the Commission:

1. On April 30, 2004, the Commission entered an order setting the procedural schedule (the Order) in the referenced matter in which among other things, it dispensed with the filing of written testimony<sup>1</sup> and rejected the date jointly proposed by Staff and Respondent for an evidentiary hearing. The Commission made the effective date of the order the same date as its issuance. This notwithstanding, Respondent has filed its application for rehearing of the Order in trust that the Commission will vacate so much of its order which renders meaningless Respondent's rights of review and appeal under Section 386.500 RSMo, 2000.

2. In their proposed procedural schedule, Staff and Respondent proposed July 15, 2004 as a date to submit a list of issues and position statements, and proposed July 27, 2004 as a date for hearing. In the Order, the Commission directed the parties to submit witness lists on

May 6, 2004 and set May 12, 2004 as the date for hearing. The Commission should set aside the date set for hearing and continue the matter to another date certain, preferably the date proposed by Staff and Respondent .

3. This case is not yet ready for hearing. The issues have not been fully joined. Filed along with this pleading, Respondent has moved to amend its answer to include as a matter of defense facts and circumstances supporting a retroactive exemption from filing an annual report for 2002 pursuant to Section 392.241.1, RSMo 2000.

4. Neither Staff nor Respondent has engaged in discovery. Respondent anticipated its discovery would commence after review of Staff's written direct testimony.

5. Respondent's chief witnesses will be Mr. Jerry Jacobs, Vice-President and Mark Michael, General Counsel for the company. These witnesses are expected to testify regarding: 1) communications with the Staff concerning the filing of 2002 revenue reports for the company; 2) the company's filing of a revenue report and issuance of its assessment on the basis of that report; 3) the merits of exempting it from filing a 2002 annual report retroactively, including the financial impact fines of the nature set out in Section 392.245.1, RSMo 2002 may have on the company's Missouri operations and its competitive forecasts. Respondent submits that these subjects are material to its defenses.

6. Mr. Jacobs' and Mr. Michael's offices are located in Irving, Texas. As the affidavit of Mr. Michael (attached) will confirm, this week, Mr. Jacobs is unavailable to prepare for hearing. It is not know whether his schedule will permit him to be at hearing next week. On May 12, 2004, Mr. Michael is scheduled to be in or traveling to Denver, Colorado to attend a major business meeting involving the company. Furthermore, Mr. Michael, and other witnesses

---

<sup>1</sup> Rule 4 CSR 240-2.015 provides that the Commission's procedural rules may be waived for good cause. The Commission's order did not recite the cause behind its decision to waive 4 CSR 240.2.130 regarding written

Respondent may decide to have ready in rebuttal, all of which are located in Irving, Texas or the vicinity, have not made travel arrangements to be present in Jefferson City soon, let alone next week. Each would pay a high premium for flights to this state arriving some time next week. Both of Respondent's chief witnesses have scheduling conflicts which either impair Respondent's ability to prepare for hearing, or render those witnesses unavailable for the date set for hearing.

7. Given that the issues have not been fully joined, that discovery has not yet been initiated, and Respondent's chief witnesses and other rebuttal witnesses will not be available for hearing on May 12, Respondent will be unable to meaningfully or adequately prepare for and present its defense of the complaint. Unless the matter is continued, Respondent will be deprived of its rights of due process protected by the 14<sup>th</sup> Amendment of the U.S. Constitution and Art 1 Section 109 Mo. Constitution (as amended 1945).

8. If the Commission does not decide to continue the matter to the date for hearing Staff and Respondent jointly proposed, Respondent suggests that the Commission set the matter for hearing in early June. Based on counsel's information and belief, the Commission's hearing calendar is clear for June 8, 2004. A hearing in early June reconciles with the schedules of the witnesses and also provides a sufficient length of time for preparation.

9. Although Respondent intends to file its list of witnesses by May 6, 2004, Respondent suggests that the Commission revise its procedural schedule to also include the submission of exhibit lists by the parties. Having notice of the exhibits each party may seek to admit will assist the progress of the hearing and eliminate the prospect of surprise. Respondent proposes that exhibit lists be exchanged and filed on or before June 1, 2004.

---

testimony, but Respondent has no objection to the waiver.

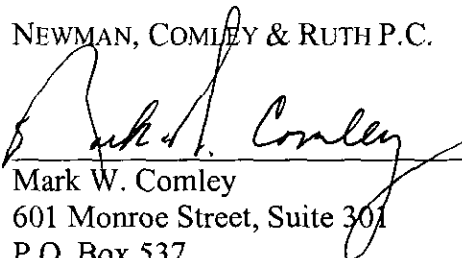
10. Finally, Staff and Respondent filed their proposed procedural schedule pursuant to the Commission's order. Caution was taken to insure that no conflicts existed on the schedules for potential witnesses, counsel or the Commission. Respondent's preparation for hearing in this case has been conducted in good faith on the likelihood that the Commission would approve the parties' jointly proposed procedural schedule, or a schedule that would have similarly spaced deadlines. Neither party to this case was given any notice in advance that the Commission intended to abbreviate the procedures it normally requires in a procedural schedule and to waive rules on the preparation and filing of written testimony. In the interest of justice and fairness, the Commission's procedural schedule should be set aside and the date for hearing continued.

WHEREFORE, Respondent prays that the Commission set aside its order approving procedural schedule of April 30, 2004 and continue the date for hearing to July 27, 2004, or alternatively, set the matter for hearing on June 8, 2004, including in its revised procedural schedule a deadline by which the parties will exchange and file exhibit lists.

Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

By:



#28847

Mark W. Comley  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537  
(573) 634-2266  
(573) 636-3306 FAX

Attorneys for Respondent

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, to bob.berlin@psc.mo.gov, and Office of Public Counsel at opcservice@ded.state.mo.us, on this 5th day of May, 2004.

A handwritten signature in cursive script, reading "Robert H. Cornley", is written over a horizontal line.

May-05-04 00:56

P.02

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service  
Commission, )

Complainant, )

v. )

Secured Technologies, L.C., )

Respondent. )

**Case No. TC-2004-0310**

**AFFIDAVIT**

I, Mark Michael, having been first duly sworn upon my oath, state and affirm as follows:

1. I am General Counsel of Secured Technologies, L.C.

2. I am personally acquainted with the facts and circumstances involved in the above proceeding.

3. This affidavit is being prepared in support of Secured Technologies, L.C.'s motion for continuance of the May 12, 2004 hearing date.

4. Jerry Jacobs, Vice President of Secured Technologies, L.C., and I have direct knowledge of the facts and circumstances that are involved in the complaint.

5. Mr. Jacobs is attending a meeting out of the company's offices this week and therefore is unable to participate in preparation for the Missouri Public Service Commission hearing as scheduled. Mr. Jacobs is also scheduled for a meeting next week and it is possible that he will not be able to attend the hearing. There is no one on Secured Technologies, L.C.'s staff who could fill in as a replacement for Mr. Jacobs.

6. From May 12 to 14, I will be preparing for and attending a meeting in Denver, Colorado. The following week I will be involved in an arbitration hearing. I will not be available to testify at the hearing scheduled on May 12, 2004 because of these prior commitments. Cancellation of the meeting for purposes of the hearing would mean cancellation

May-05-04 00:56

P.03

of travel and flight arrangements on a nonrefundable basis not only for me but also for others attending the meeting.

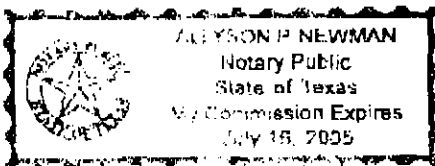
Further affiant saith not.

STATE OF Texas )  
COUNTY OF Dallas ) ss.

  
Mark Michael

On this 5<sup>th</sup> day of May, 2004, before me personally appeared Mark Michael, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said county the day and year first above written



  
Notary Public