

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

In the Matter of a Repository File for the	)	
Collection and Distribution of Documents	)	<b><u>Case No. AW-2009-0313</u></b>
Pertaining to the Ethics Review at the	)	
Missouri Public Service Commission	)	

**RESPONSE TO NOTICE SOLICITING RESPONSES  
TO REPORT OF POTENTIAL CONFLICTS OF INTEREST**

COMES NOW the Office of the Public Counsel and for its Response to Notice Soliciting Responses to Report of Potential Conflicts of Interest states as follows:

1. On December 19, 2007, Public Counsel, along with virtually all of the groups that regularly represent consumers before the Commission, filed a petition asking the Commission to consider changes to 4 CSR 240-4.020, along with proposed amendments to the current 4 CSR 240-4.020. The request was docketed as Case No. AX-2008-0201. In response to concerns raised by others, on January 31, 2008, Public Counsel, once again with the other consumer representatives, filed several suggested revisions to the proposed amendments.

2. On January 15, 2008, then-Chairman Davis issued his report in Case No. AO-2008-0192. Although the proposed amendments to 4 CSR 240-4.020 offered by Public Counsel and the other consumer representatives are significantly different from then-Chairman Davis' recommendations, both recognize a need for changes to current Commission practice.

3. The Commission solicited and received comments from a number of entities in Case No. AX-2008-0201, with the last of these being filed in April of 2008. Also in April 2008, more than four months after filing their initial request, Public Counsel and the other utility ratepayer representatives filed a motion urging the Commission to take action on the proposed rule revisions. In that request for action, Public Counsel and the others stated:

In the interval since the Petitioners filed suggested rules and the Chairman issued his report, the Commission has docketed a hundred new cases, including two major rate cases. But in that same interval, the Commission has taken no action to either grant or deny Petitioners' request for rulemaking or to adopt any of the Chairman's recommendations. Neither has the Commission made any changes in response to Governor Blunt's call for the Commission "to immediately examine their policies on conflicts of interest including inappropriate contact with executives in cases before the commission."

The need for action is clear and the Commission's delay only further undermines the public's confidence in the Commission's processes. The Commission may not agree with all of Petitioners' proposed amendments, but it should propose a rule for public comment that – at a minimum – makes it clear that utilities or other parties cannot lobby Commissioners before filing cases for Commission decision, and that meetings with parties or prospective parties about issues that are before the Commission or will come to the Commission for decision must be open to all interested entities and must be transcribed or recorded.

4. Since Public Counsel and the other ratepayer representatives last urged the Commission to take action, a year has passed with no concrete action to amend the Commission's rules. The Commission has instead chosen to engage in a lengthy process of issuing a Request for Proposals (RFP), evaluating the responses to that RFP, and finally contracting with an eminently qualified ethics expert, Hinshaw & Culbertson. Although the hiring of an ethics expert has much to recommend it, the process should not have been used to delay the implementation of common-sense changes to the Commission's *ex parte* rules. The proposed schedule that Hinshaw & Culbertson has filed in this case would result in proposed new rules – if the Commission decides to make changes – going to the Secretary of State nearly two years after the consumer groups called for them, and becoming effective more than two years after the initial request.

5. Now it appears that there is the potential for even further delay. Hinshaw & Culbertson<sup>1</sup> filed a “Notice of Potential Conflicts of Interest” in this case on March 26, 2009. Although the Commission discussed these potential conflicts of interest in detail and at length in its March 25 Agenda session, which was webcast to the world, no entity filed any suggestions that Hinshaw & Culbertson was in any way disqualified or should be removed. On April 9, the Commission solicited responses to the “Notice of Potential Conflicts of Interest” and set a deadline of April 21 for those responses.

6. With respect to the potential conflicts of interest, Public Counsel states that the risk of harm from the extraordinarily attenuated potential conflicts noted by Hinshaw & Culbertson is dwarfed by the risk of harm from further delay in making necessary revisions to the Commission’s rules. It appears that the Commission will not make changes without going through the process with its ethics consultant, and if the Commission decides to look for a new consultant, rule changes would be even farther in the future. Public Counsel does not believe that the potential conflicts are anything to be concerned about. They are noted, they are public, and the Commission should now proceed with making long overdue changes.

WHEREFORE, Public Counsel respectfully requests that the Commission accept this Response to Notice Soliciting Responses to Report of Potential Conflicts of Interest, and proceed with evaluating and making changes to its rules.

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<sup>1</sup> Hinshaw & Culbertson is being assisted by Montgomery Hollie, who does no work for entities that have matters before the Commission or counsel listed as appearing before the Commission, or for law firms whose attorneys appear before the Commission.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Lewis R. Mills, Jr.**

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been emailed to the General Counsel of the Commission this 13<sup>th</sup> day of April 2009.

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**/s/ Lewis R. Mills, Jr.**

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