

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

In the Matter of the Application of WST,)
Inc., a Missouri Corporation, for a)
Variance from Kansas City Power & Light)
Company's General Rules and)
Regulations Requiring Individual)
Metering.)

Case No. EE-2006-0123

**STAFF RESPONSE TO COMMISSION ORDER DIRECTING
STAFF TO RESPOND TO WST, INC.'S APPLICATION FOR VARIANCE**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response to the Commission's September 22, 2005 order that, among other things, directs the Staff to file a memorandum indicating whether 4 CSR 240-20.050 applies to the building being renovated by WST, Inc. by no later than October 3, 2005, states:

1. Commission Rule 4 CSR 240-20.050 provides:

Each residential and commercial unit in a multiple-occupancy building *construction of which has begun after June 1, 1981* shall have installed a separate electric meter for each residential or commercial unit.

Additionally, in 4 CSR 240-20.050(1)(D) the Commission has defined when construction begins for purposes of the rule as follows: "Construction begins when the footings are poured."

2. In multiple cases where parties sought variances from the separate metering requirement of 4 CSR 240-20.050 for premises built before June 1, 1981, the Commission determined the rule did not apply. See *In the Matter of the Application of Kansas City Power & Light Company for a Variance from the Separate Meter Requirement*, Case No. EE-2003-0199 (March 27, 2003 Order Granting Variance) and *In the Matter of the Application of Restoration St. Louis, Inc. a Missouri Corporation, and New Lindell Towers, LLC, a Missouri Limited*

Liability Company, for a Variance from 4 CSR 240-20.050, Case No. EE-2003-0365 (May 1, 2003 Order Adding a Party and Granting Variance).

3. Based on the representation in the application that WST, Inc. is renovating an existing building located at 1101 Walnut Street, Kansas City, Jackson County, Missouri originally built in 1970, over a decade before June 1, 1981, Commission Rule 4 CSR 240-20.050 does not apply.

4. Further, based on the case and law cited in the next paragraphs, if Kansas City Power & Light Company's electric tariff would prevent WST, Inc. from obtaining from Kansas City Power & Light Company master metered electric service at the building located at 1101 Walnut Street Kansas City, Missouri then it is likely the Commission does not have authority to waive the tariff to permit master metering of the premises.

5. In the 1926 case *State ex rel. Saint Louis County Gas Company v. Public Service Commission of Missouri*, 286 S.W. 84, 315 Mo. 312 (Mo. 1926),¹ a division of the Missouri Supreme Court held that the Commission did not have authority to require Saint Louis County Gas Company to extend service to new customers on terms that varied from those of Saint Louis County Gas Company's rules filed with the Commission, and affirmed the circuit court's reversal of the Commission's order. In its opinion the Court stated:

A schedule of rates and charges filed and published in accordance with the foregoing provisions acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. It may be modified or changed only by a new or supplementary schedule, filed voluntarily, or by order of the commission. Such is the construction which has been universally put upon analogous provisions of the Interstate Commerce Act, being U. S. Comp. St. s 8563 et seq. (Louisville, etc., Ry. Co. v. Maxwell, 237 U. S. 94, 35 S. Ct. 494, 59 L. Ed. 853, L. R. A. 1915E, 665; Gulf, etc., Ry. Co. v. Hefley, 158 U. S. 98, 15 S. Ct. 802, 39 L. Ed. 910); and we have so ruled with respect to similar provisions of our Public Service Commission Law relating to telegraph companies (State v. Public Service Commission, 304 Mo. 505, 264 S. W. 669,

¹ A copy of the opinion is attached hereto.

671, 672, 35 A. L. R. 328). If such a schedule is to be accorded the force and effect of law, it is binding, not only upon the utility and the public, but upon the Public Service Commission as well.

The general purpose of the statutory provision above referred to is to compel the utility to furnish service to all the inhabitants of the district which it professes to serve at reasonable rates and without discrimination. The methods by which these results are to be obtained are clearly and definitely prescribed:

"Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such * * * corporation * * * are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges [315 Mo. 318] thereafter to be in force for the service to be furnished." Rev. St. 1919, § 10478.

The rules and regulations of the St. Louis Gas Company as to extensions are integral parts of its schedule of rates and charges. If they are unjust and unreasonable, the commission, after a hearing, as just referred to, may order the schedule modified in respect to them. But it cannot set them aside as to certain individuals and maintain them in force as to the public generally. The gas company cannot--

"extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances."

Neither can the Public Service Commission.

The statutory language cited in the opinion is presently found at §§ 393.130.1 (RSMo Supp 2005), 393.140(2) and 393.140(12), RSMo 2000, and applies equally to electric corporations.

Further, subsections two and three of § 393.130, RSMo Supp 2005, provide:

2. No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

WHEREFORE, the Staff submits the foregoing in response to the Commission's September 22, 2005 order.

Respectfully submitted,

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/s/ Nathan Williams
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of October 2005.

/s/ Nathan Williams