

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of October, 2011.

ORDER DENYING MOTIONS TO DISMISS

Effective Date: October 26, 2011

A. Filings

⁶ Staff Reply to Ameren Missouri's Response to MIEC'S Motion to Dismiss.

B. Statutes v. Common Law

On a motion to dismiss, movants have the burden of proof.⁷ Movants argue that the application is barred under res judicata, the common-law doctrine that precludes the re-litigation of a claim decided on the merits in an earlier decision.⁸ Movants cite previous Commission actions (“earlier cases”) to show that the claim was—or could have been—decided on the merits.

But whether any of the earlier cases included a decision on the merits of the claim does not matter. That is because Section 386.490.2 expressly provides that the Commission may change or abrogate Commission decisions:

Every order or decision of the commission . . . shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission [. ⁹]

Staff cites that statute, as authority for the Commission to change or abrogate a decision, when Staff seeks that relief.¹⁰ That relief—the eventual chance to have a decision changed or abrogated—is precisely the application’s prayer. Thus, the application is no different from Staff’s complaint against an approved tariff sheet. And it is no more precluded than the filing a new tariff sheet.

Just as complaints exist under Section 393.390,¹¹ tariff cases exist under Section 393.150,¹² and prudence reviews exist under Section 386.266,¹³ the application exists

⁷ *Missouri Soybean Ass’n v. Missouri Clean Water Comm’n*, 102 S.W.3d 10, 22 (Mo. banc 2003).

⁸ *State ex rel. City of Blue Springs, Missouri v. Schieber*, 343 S.W.3d 686, 689 (Mo. App., W.D., 2011) (citations omitted).

⁹ S.B. 48, 96th Gen. Assem., 1st Reg. Sess.

¹⁰ *Staff of the Public Service Comm’n v. Southern Union Co.*, File No. GC-2011-0100, *Staff’s Suggestions in Opposition to MGE’s Motion for Summary Determination and Staff’s Reply to MGE’s Response to Staff’s Motion for Summary Determination*, filed on May 18, 2011, page 12.

¹¹ RSMo 2000.

¹² RSMo 2000.

¹³ RSMo Supp. 2010.

under Section 386.410.1:¹⁴

All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission.

Under that authority, Commission made rules 4 CSR 240-2.060 and 4 CSR 240-30-030(5), which provide for this action. In this action, the Commission may change or abrogate its decision in the earlier actions as explicitly allowed under Section 386.490.2.

C. Ruling

The statutes that control this order are plain and require no construction. Any construction, if needed, would be in derogation of the common law.¹⁵ Movants have failed to show that res judicata precludes the claim so the Commission will deny Staff's motion and MIEC's motion.

THE COMMISSION ORDERS THAT:

1. *MIEC's Motion to Dismiss* is denied.
2. *Staff Motion to Dismiss Application of Ameren Missouri for AAO* is denied.
3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett,
and Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge

¹⁴ RSMo 2000.

¹⁵ Section 1.010, RSMo 2000.