

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

In the Matter of Union Electric Company,)
d/b/a AmerenUE's Tariffs to Increase Its) **Case No. ER-2010-0036**
Annual Revenues for Electric Service)

**STAFF RESPONSE TO COMMISSION REQUEST FOR
CITATION TO COMMISSION AUTHORITY**

Comes now the Staff of the of the Missouri Public Service Commission (Staff), by and through the undersigned Staff counsel, and submits in writing the authority that the Staff cited at the oral argument regarding MEUA’s Motions To Compel on the morning of Wednesday, March 3, 2010:

1. Pursuant to Section 386.240 RSMo 2000 “[t]he commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform . . .” and pursuant to Section 393.140(9) “[t]he commission may require of all such [gas, electrical, water and sewer] corporations or persons specific answers to questions upon which the commission may need information . . .”¹

2. The Commission’s rule authorizing the use of data requests (4 CSR 240-2.090(2)) has been upheld on the basis of Section 392.210.1 RSMo, respecting telecommunications companies, and Section 386.410.1 RSMo., which states in part that “in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.” *State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm’n*, 645 S.W.2d 45,

¹ Section 386.010 RSMo 2000 (“This chapter shall be known as the ‘Public Service Commission Law’ . . .”) contains a note from the Revisor of Statutes which states as follows: “Reference to ‘chapter’ is taken from RSMo 1939 and includes all of chapter 386. . . . and 393.110 to 393.290.”

50 (Mo.App. W.D. 1982) (*SWBT*).² In the *SWBT* decision, the form of discovery at issue is denominated “interrogatories,” but the Commission Rule is 4 CSR 240-2.090. The Western District Court of Appeals noted the comparable statutory section respecting gas, electrical, water and sewer corporations to Section 392.210.1 is Section 393.140(9) RSMo. *Id.* Both Section 392.210.1 and Section 393.140(9) state, in part, that the Commission may require of any utility specific answers to questions upon which the Commission may need information. On the basis of these sections and Section 386.410.1, the Commission has the authority, in addition to Section 383.450 RSMo., to authorize the Staff, the Office of the Public Counsel, and other parties to use data requests

3. The Court further stated in *SWBT* regarding the Commission’s powers:

. . . Surely Public Counsel could apply to the Commission under Section 392.210-1 for an order calling upon Bell to provide specific answers to questions. Thus, Public Counsel in any event has a method whereby to get the same answers from Bell under Section 392.210-1 that it can under Regulation 4 CSR 240-2.090. The only difference is that under the Regulation, Public Counsel is spared the time and inconvenience of filing a prior application to the Commission and the Commission is spared the time and the inconvenience of filing a prior application to the Commission [sic] and the Commission is spared the time and the inconvenience of processing a special order. The impact upon Bell of either procedure would be virtually the same.

The only purpose of Section 386.410-1 was to serve the convenience of the Commission and the parties before it and to expedite proceedings. That purpose will be best served by upholding Regulation 4 CSR 240-2.090.

645 S.W.2d at 50-51.

4. The Western District Court of Appeals noted in *SWBT*, which involved two rate proceedings, initiated at different times by *SWBT*, and a third proceeding denominated as a cost of service study, that rather than the provisions of the Administrative Procedures Act controlling,

² The Commission is still bound by the fundamental rules of evidence even though it is not bound by the technical rules of evidence. *State ex rel. AT&T v. Public Serv. Comm’n*, 701 S.W.2d 745, 754-55 (Mo.App. W.D. 1985).

Section 393.140(9), Section 392.210.1, and Section 386.410.1 are “special statutory provisions directed solely to proceedings before the Public Service Commission” which are “considerably different from and vastly more complicated than the type of proceedings involved in” Chapter 536. *Id.* at 50. In fact, the Court commented that “[t]he authority under Section 386.410-1 for the Commission to adopt its own rules of procedure seems to be a rather uncommon grant to an administrative agency . . .” *Id.*³

Wherefore the Staff submits in written form the preceding citations to Commission authority to proceed by Commission Rule 4 CSR 240-2.090(2).

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 3rd day of March, 2010.

³ The St. Louis District Court of Appeals in the first *UCCM* case, *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm’n*, 562 S.W.2d 688, 693 n.11 (Mo.App. St.L. D. 1978)(*UCCM*) stated:

Chapter 536, the Missouri Administrative Procedure Act, supplements Chapter 386 regulating the Public Service Commission, except where in direct conflict with it. *See Patterson v. Thompson*, 277 S.W.2d 314, 317(5) (Mo.App.1955). Thus, the procedures delineated in Chapter 536 for a hearing and for the presentation of evidence during a hearing apply unless a contrary provision exists in Chapter 386.

* * * *

“One purpose of Chapter 536 is to fill in gaps in administrative procedures. [Citations omitted.] . . .” *State ex rel. Noranda Aluminum, Inc. v. Public Serv. Comm’n*, 24 S.W.3d 243, 245 (Mo.App. W.D. 2000).

/s/ Steven Dottheim