

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
February 17, 1999**

**CASE NO: OO-99-44**

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**Enclosed find certified copy of ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**

**Brian Long**  
Office of the Governor  
State Capitol Building  
Room 216  
Jefferson City, MO 65101

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 17th  
day of February, 1999.

In the Matter of the Assessment Against	)	
the Public Utilities in the State of	)	<u>Case No. 00-99-44</u>
Missouri for the Expenses of the Commission	)	
for the Fiscal Year Commencing July 1, 1998.	)	

ORDER DENYING REHEARING

On December 17, 1998, the Commission issued its Report and Order in which it directed its Staff to recalculate the assessments for fiscal year 1999 omitting from the calculation the five-year averaging process and the amount of \$534,114. That order was issued to be effective on January 16, 1999. On January 15, a timely Application for Rehearing and Stay was filed on behalf of The Empire District Electric Company (Empire) and UtiliCorp United Inc. d/b/a Missouri Public Service (UtiliCorp) (jointly Applicants for Rehearing). Without repeating the contents of the Application for Rehearing and Stay at length the Applicants for Rehearing generally request rehearing on the grounds that the Commission's Report and Order failed to make certain necessary findings and conclusions. The Applicants for Rehearing specifically allege error owing to the fact that the Commission failed to include all of the stipulated facts in its Findings of Fact. Applicants for Rehearing go on to cite 4 CSR 240-2.130(9) for the proposition that the Commission is bound by the record before it and may not ignore or modify the undisputed facts presented in

the stipulation of facts. However, the rule cited does not require the Commission to restate all of the stipulated facts in its own findings of facts.

Admittedly, the Commission has declined to make many of the conclusions of law which were requested by the Applicants in the underlying case. However, within the Report and Order the Commission restated legal principles which prevent it from reaching the conclusions requested by the parties, to wit:

Although the Commission agreed to review the Motion for Rehearing it must be noted that agency adjudicative power extends only to the ascertainment of facts and the application of existing law in order to resolve issues within the given area of agency expertise. In re City of Kinloch, 242 S.W.2d 59, 63 (1951). "[A]n administrative body or even a quasi-judicial body is not and cannot be a court in a Constitutional sense." *Id.* The judicial power of the State is vested only in the courts designated in Mo. Const. Art. V, Sec. 1. The Public Service Commission has no power to declare any principle of law or equity. Lightfoot v. City of Springfield, 236 S.W.2d 348, 352 (1951). Therefore, the PSC has no power to declare statutes unconstitutional. State ex rel. Missouri Southern Railroad v. Public Service Commission, 168 S.W.2d 1156, 1164 (banc 1914). The PSC may hear evidence from a party regarding the constitutionality of the statute but only for the purposes of creating a record for the issue to be resolved judicially. Missouri Bluffs Golf Venture v. St. Charles County Board of Equalization, 943 S.W.2d 752, 755 (Mo. App. Ct. 1997).

Because Missouri common law states that an administrative agency, such as the Missouri Public Service Commission, has no jurisdiction to determine the constitutionality of a statute, it seems equally apparent that the Commission lacks the jurisdiction to rule on the constitutionality of an Executive Order such as the directive issued by the Missouri Office of Administration to transfer moneys out of the Fund and into the General Revenue. Based upon a review of the common law of Missouri the Commission concluded that it would convene a hearing but that the scope of any such hearing would be for the limited

purpose of developing the record for the primary issue(s) to be resolved judicially<sup>1</sup>.

The Commission has included in its Conclusions of Law only those conclusions which it has the jurisdictional authority to reach. The conclusions requested by the Applicants for Rehearing and, indeed, by the Applicants in the underlying case, are those matters to which the Commission must defer to the circuit court. The Commission has determined that if it were to reach the conclusions of law requested by the Applicants for Rehearing it would require the Commission to infringe upon the jurisdiction of the court and this the Commission will not do.

The Commission therefore determines that there is no further action which it may lawfully take in this matter and the request for rehearing or stay shall be denied.

**IT IS THEREFORE ORDERED:**

1. That the Application for Rehearing and Stay filed by The Empire District Electric Company and UtiliCorp United Inc. d/b/a Missouri Public Service on January 15, 1999 is denied.

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<sup>1</sup>Report and Order pages 9-10 (December 17, 1999).

2. That this order shall become effective on February 17, 1999.

**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Murray, Schemenauer  
and Drainer, CC., concur  
Crumpton, C., absent

Roberts, Chief Regulatory Law Judge

Atty/Sec'y:

*Roberts/Boyce*

Date Circulated

CASE NO.

*2-16*

*00-99-44*

Lumpé, Chair

*Robert*  
Crumpton, Commissioner

*LM*  
Murray, Commissioner

*RS*  
Schemenauer, Commissioner

*AB*  
Drainer, Vice-Chair

Agenda Date

*2-17*

Action taken:

*4-0 AS*

Must Vote Not Later Than

STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson  
City,

Missouri, this 17TH day of FEBRUARY, 1999.

*Dale Hardy Roberts*

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

