

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 23, 1998**

CASE NO: OO-99-44

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Paul A. Boudreau
Brydon, Swearingen & England P.C.
PO Box 456
Jefferson City, MO 65102

Michael Pendergast
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Jeremiah W. Nixon
Attn: Ron Molteni
PO Box 899
Jefferson City, MO 65102

Karen Winn
Office of the Commissioner of Admin.
Capitol Building, Room 125
Jefferson City, MO 65101

James M. Fischer
James M. Fischer, P.C.
101 West McCarty Street, Suite 215
Jefferson City, MO 65101

Robert J. Hack
Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111

Paul G. Lane, Leo J. Bub
Anthony K. Conroy, Katherine C. Swaller
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Susan B. Cunningham
Kansas City Power & Light
1201 Walnut Street
Kansas City, MO 64141

Jeffrey A. Keevil
Stewart & Keevil, L.L.C.
Cherry Street Centre
1001 Cherry Street, Suite 302
Columbia, MO 65201

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 23rd
day of September, 1998.

In the Matter of the Assessment Against the)
Public Utilities in the State of Missouri) CASE NO. OO-99-44
for the Expenses of the Commission for the)
Fiscal Year Commencing July 1, 1998.)

ORDER REGARDING PROCEDURAL SCHEDULE

On September 14, 1998, Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a Associated Natural Gas, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service (Joint Applicants) filed their Motion To Establish Procedural Schedule. The proposed procedural schedule, in large part, reflects the discussion held at the prehearing conference. The proposal anticipates a joint Stipulation of Facts and a Statement of Issues Presented to be filed on October 6, 1998, and a separate Memorandum of Law and Argument filed separately by each party, also on October 6. The Commission would convene a hearing for the purpose of oral argument of the legal issues and for questions from the bench on Wednesday, October 14. The Commission will accept this proposed procedural schedule subject to minor modifications.

The Commission shall follow the same procedure which it uses for hearing memorandums with respect to the joint Stipulation of Facts and Statement of Issues Presented. All parties shall jointly file this document. The Commission's General Counsel shall assume the responsibility for filing the joint Stipulation of Facts. All parties shall submit their portion of that document to the General Counsel two business days in advance of the filing deadline. If any party is unable to sign the joint

filing that party shall timely file its separate Proposed Facts and a Statement of Issues Presented along with a statement which clearly explains that party's inability to join in the joint stipulation.

With the separate Memorandum of Law and Argument, each party is encouraged, but not required, to file its proposed conclusions of law. Conclusions of law may be submitted as an attachment or a separate document and shall set out the conclusions which the submitting party would argue are appropriate and necessary for the resolution of this case. Each party, in its separate Memorandum of Law and Argument, shall cite its legal authority for each position and where that legal authority is not a Missouri case which may be found in the Southwestern Reporter, such authority shall be duplicated and attached to the memorandum.

Absent an approved request to the contrary, the Commission will entertain oral argument from the parties in the order in which they appeared in this case. In light of the number of parties, the Commission will encourage that opening statements be as concise as possible. The Commission will first hear from the initial applicants and thereafter from intervenors in the order in which they have been granted intervention, to wit:

1. Empire District Electric Company,
2. St. Joseph Light & Power Company,
3. Arkansas Western Gas Company d/b/a Associated Natural Gas Company,
4. Missouri-American Water Company,
5. UtiliCorp United Inc. d/b/a Missouri Public Service,
6. Southern Missouri Gas Company,
7. Atmos Energy Corporation,
8. Fidelity Natural Gas Company and Fidelity Telephone Company,

9. Missouri Gas Energy,
10. Southwestern Bell Telephone,
11. Kansas City Power & Light,
12. Trigen-Kansas City Energy Corporation.

Thereafter, the Commission will entertain oral argument from the Office of the Public Counsel and then from the Commission Staff. This order will be followed for the opening statement. If a closing statement is necessary the Commission will follow this order there as well. After opening statements the Commission will provide an open period for questions and answers.

Within each party's memorandum of law and argument, as well as within each party's oral argument, each party shall first address whether a utility assessment paid to the Commission constitutes a "tax, excise, custom, duty or other source of income" which the State receives into its treasury in a given fiscal year. In addition, the parties should address whether the funds must be considered within the definition of "total state revenue." See, Missourians for Tax Justice Education Project v. Holden, 959 S.W.2d 100 (Mo. 1997), Kelly v Hansen, 959 S.W.2d 107 (Mo. banc 1997) and Keller v. Marion County Ambulance District, 820 S.W.2d 301 (Mo. banc 1991). The parties may also wish to comment on the appropriate definition and meaning of "assessment." See, Zahner v. City of Perryville, 813 S.W.2d 855 (Mo. banc 1991).

The parties should present any legal authority which defines an assessment and whether an assessment constitutes a fee or a tax within the meaning of the provisions within the Hancock Amendment. In addition, the parties must address whether or not utility assessment shall be included within the definition of total state revenues as that limit is established in Article X, Section 18 (a) of the Hancock Amendment.

Assuming, *arguendo*, that utility assessments fall within limitations set by the Hancock Amendment, the parties shall also address whether such funds may be transferred from the PSC fund and, if so, whether that transfer was properly conducted with respect to the recent transfer from the PSC fund. Thereafter, each party may argue any additional issue which it deems necessary and appropriate.

IT IS THEREFORE ORDERED:

1. That the proposed procedural schedule is adopted as follows:

All parties shall submit their input for the "stipulation of facts and statement of issues presented" to the General Counsel.	October 2, 1998
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All parties file "joint stipulation of facts and statement of issues presented" by and through the General Counsel	October 6, 1998
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All parties file separate memorandum of law and argument, and parties may optionally file proposed conclusions of law	October 6, 1998
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Hearing and oral argument of legal issues	October 14, 1998 10:00 a.m.
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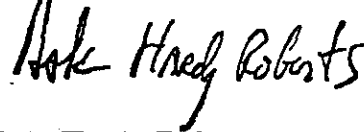
2. That the hearing scheduled in paragraph one shall be convened in Room 520B of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, Missouri 65101.

3. Anyone with special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline -- 1-800-392-4211, or TDD Hotline -- 1-800-829-7541.

4. That the applicants, intervenors, and all other parties are ordered to comply with the requirements of this order as set out herein.

5. That this order shall be effective on October 5, 1998.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts", written over the printed name.

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

(S E A L)

Murray, Schemenauer, and
Drainer, CC., Concur.
Lumpe, Ch., Crumpton, C., Absent.

Roberts, Chief Regulatory Law Judge

Roberts / Fridgin

hh-66-00

CASE NO.

absent

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9-23-98

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Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge