

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Assessment Against  
the Public Utilities in the State of  
Missouri for the Expenses of the Commission  
for the Fiscal Year Commencing July 1, 1998.

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Case No. 00-99-44

FILED

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Missouri Public  
Service Commission

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## REPORT AND ORDER

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**Issue Date:**

**Effective Date:**

[Proposed by The Empire District Electric Company, St. Joseph Light & Power Company,  
Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Missouri-American  
Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service]

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**APPEARANCES**

**Paul A. Boudreau**, Brydon, Swearingen & England P.C., 312 E. Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102, for The Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service.

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

**Paul G. Lane, Leo J. Bub, Anthony K. Conroy and Katherine C. Swaller**, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

**James M. Fischer**, James M. Fischer, P.C., 101 W. McCarty Street, Suite 215, Jefferson City, Missouri 65101, for Southern Missouri Gas Company, L.P., Atmos Energy Corporation, Fidelity Natural Gas, Inc. and Fidelity Telephone Company.

**William H. Koegel**, Kansas City Power & Light Company, 1201 Walnut Street. Kansas City, Missouri 64106, for Kansas City Power & Light Company.

**Michael C. Pendergast**, Laclede Gas Company, 720 Olive Street, Room 1520, St. Louis, Missouri 63101, for Laclede Gas Company.

**Jeffrey Keevil**, Stewart & Keevil, L.L.C., 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Trigen-Kansas City Energy Corporation.

**John Coffman**, Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

**William K. Haas**, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE: Dale Hardy Roberts**

## REPORT AND ORDER

### 1. Procedural History

On June 29, 1998, the Commission issued its *Supplemental Order No. 52*, in its Case No. 11,110.<sup>1</sup> By virtue of this order, the Commission made its public utility assessments against public utilities provided for by §386.370, RSMo, for the Commission's fiscal year commencing July 1, 1998. The assessments thus determined were sent to the public utilities regulated by the Commission under letters dated June 30, 1998.

On July 27, 1998, a group of public utilities comprised of The Empire District Electric Company, St. Joseph Light & Power Company, Associated Natural Gas Company, Missouri-American Water Company and UtiliCorp United Inc., West Elm Place Sewer Corporation<sup>2</sup> and Laclede Gas Company filed an *Application for Rehearing and Stay* ("Application"). The Application alleged a number of errors with respect to *Supplemental Order No. 52*, specifically, the manner in which the assessment amount was determined.

Thereafter, on August 5, 1998, the Commission issued its *Order Regarding Application for Rehearing and Stay*. The Commission established Case No. OO-99-44 and granted a rehearing to address the issues raised by the Application.

By separate orders dated September 1, 1998, and September 23, 1998, the Commission granted the Applications to Intervene of Southwestern Bell Telephone Company, Kansas City Power

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<sup>1</sup>*In the Matter of the Assessment Against Public Utilities in the State of Missouri for Expenses of the Commission for the Fiscal Year Commencing July 1, 1998.*

<sup>2</sup>West Elm Place Corporation withdrew as a party participant on September 25, 1998.

& Light Company, Missouri Gas Energy, Southern Missouri Gas Company, L.P., Atmos Energy Corporation, Fidelity Natural Gas, Inc., Fidelity Telephone Company and Trigen-Kansas City Energy Corporation.

On October 6, 1998, the parties filed a *Stipulation of Facts* in lieu of an evidentiary hearing and, also, a *Statement of Issues Presented*.<sup>3</sup> The *Stipulation of Facts* consists of fifty-one (51) numbered paragraphs and eight (8) attachments thereto (Exhibits A-H). The *Statement of Issues Presented* is comprised of four (4) separately stated issues.

Also on October 6, 1998, parties to the case filed their separate Memoranda of Law addressing the issues identified by the parties and, also, the issues set forth in the Commission's September 23, 1998, order.

Oral argument was held in the Commission's offices in Jefferson City on October 14, 1998.<sup>4</sup> Post-hearing briefs were filed on or before November 2, 1998.

## 2. Findings of Fact

The Commission finds the following to be true:

The Empire District Electric Company ("Empire") is a Kansas corporation authorized to do, and doing, business in the State of Missouri. Empire has its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical and water utility services in the State of Missouri to residential, commercial and industrial customers in its service areas.

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<sup>3</sup>Exhibit No. 1.

<sup>4</sup>Transcript, Vol. 2.

St. Joseph Light & Power Company ("SJLP") is a Missouri corporation. SJLP has its principal office and place of business at 520 Francis Street, St. Joseph, Missouri 64501. SJLP is engaged in the business of providing electrical, natural gas and steam utility services in the State of Missouri to residential, commercial and industrial customers in its service areas.

Associated Natural Gas Company ("ANG") is a division of Arkansas Western Gas Company, an Arkansas corporation, which is authorized to do, and doing, business in the State of Missouri. ANG has its principal office and place of business at 1001 Sain Street, P.O. Box 1288, Fayetteville, Arkansas 72702-1288. ANG provides natural gas utility service in the State of Missouri to residential, commercial and industrial customers in its service areas.

Missouri-American Water Company ("MAWC") is a Missouri corporation, having its principal office and place of business at 1003 East St. Maartens Drive, P.O. Box 6276, St. Joseph, Missouri 64506. MAWC is engaged in the business of furnishing water and sewer utility services in the State of Missouri to residential, commercial and industrial customers in its service areas.

UtiliCorp United, Inc. ("UtiliCorp") is a Delaware corporation, with its principal office and place of business at 20 W. Ninth Street, Kansas City, Missouri 64105. UtiliCorp is authorized to conduct business in Missouri through its Missouri Public Service ("MPS") operating division and, as such, is engaged in providing electrical and natural gas utility service in the State of Missouri to residential, commercial and industrial customers in its service areas.

Laclede Gas Company ("Laclede") is a Missouri corporation, having its principal office and place of business at 720 Olive Street, St. Louis, Missouri 63101. Laclede provides natural gas utility services to residential, commercial and industrial customers in the St. Louis Metropolitan area and surrounding counties.

Southwestern Bell Telephone Company ("SWBT") is a Missouri corporation duly authorized to conduct business in Missouri with its principal Missouri offices at One Bell Center, St. Louis, Missouri 63101. SWBT is a "local exchange telecommunications company" and is duly authorized to provide "telecommunications service" within the State of Missouri as defined in Section 386.020, RSMo (1997 Supp.).

Kansas City Power & Light Company ("KCPL") is a corporation duly organized and existing under the laws of the State of Missouri, with its principal office at 1201 Walnut Street, Kansas City, Missouri, 64106, and is an electrical corporation and a public utility as those terms are defined in Section 386.020, RSMo (1997 Supp.). KCPL primarily is engaged in the generation, transmission, distribution and sale of electric energy and power in the States of Missouri and Kansas.

Fidelity Natural Gas, Inc. ("FNG") is a Missouri corporation, having its principal office and place of business at 64 North Clark, Sullivan, Missouri 63080. FNG provides natural gas utility services to residential, commercial and industrial customers in the Sullivan, Missouri, area and its environs.

Fidelity Telephone Company ("Fidelity") is a Missouri corporation, having its principal office and place of business at 64 North Clark, Sullivan, Missouri 63080. Fidelity provides basic local exchange and other telecommunications services in nine exchanges in its service area.

Atmos Energy Corporation is a corporation organized and existing under the laws of the State of Texas and the Commonwealth of Virginia, with its principal place of business located at Three Lincoln Centre, Suite 1800, 5430 LBJ Freeway, Dallas, Texas 75240. Atmos is authorized to conduct business in Missouri through its United Cities Gas Company ("United Cities") and Greeley Gas Company ("Greeley") divisions, and is engaged in providing natural gas utility service in the

State of Missouri to residential, commercial and industrial customers in its service areas.

Southern Missouri Gas Company, L.P. ("SMGC") is a limited partnership organized and existing under the laws of the State of Missouri with its principal place of business located at 301 East 17<sup>th</sup> Street, Mountain Grove, Missouri 65711. SMGC provides natural gas utility service to residential, commercial and industrial customers in various communities in southern Missouri.

Missouri Gas Energy ("MGE"), a division of Southern Union Company, which is incorporated under the laws of the State of Delaware, is engaged in the provision of natural gas utility services to residential, commercial and industrial customers in various communities in western Missouri. MGE's principal office and place of business is located at 3420 Broadway, Kansas City, Missouri 64111.

Trigen-Kansas City Energy Corporation ("Trigen-KC") is a Delaware corporation authorized to do, and doing, business in the State of Missouri. Trigen-KC has its principal office at 911 Main Street, Suite 2320, Kansas City, Missouri 64105. Trigen-KC is engaged in providing steam heating services in the Kansas City area.

These companies are "public utilities" as that term is defined at §386.020(42), RSMo Supp. 1997, and each is subject to the jurisdiction and supervision of the Commission as provided by law.

The Missouri Public Service Commission ("Commission") is an executive state agency of the State of Missouri within the Department of Economic Development and, among other things, is charged by law with regulating the rates and terms and conditions of service of electric, gas, steam, water, sewer and telecommunications corporations as provided in Chapters 386, 392 and 393, RSMo 1994, as amended.

The Commission's primary source of funding for payment of expenses incurred by it and

attributable to the regulation of public utilities are assessments against public utilities rendered by the Commission on or before the first of July of each year. Generally, and as more specifically provided in §386.370, RSMo Supp. 1997, the Commission is authorized to estimate the amount of such expenses to be incurred by it in the coming fiscal year which are directly attributable to groups of public utilities, as well as the amount of such expenses which are not directly attributable to any such group, and then to allocate said expenses to each group (i.e., electrical, gas, water, heating, telephone, telegraph, sewer corporations and other public utilities). The amount so allocated is then assessed against the public utilities in each group in proportion to their respective gross intrastate operating revenues. In addition to public utility assessments, the Commission receives some small degree of funding from the federal Department of Transportation in connection with administration of gas safety requirements.

The public utility assessments are prepared by the Commission's Internal Accounting Department ("IAD") and approved by the Commission. Public utilities are required to pay the amounts assessed against them when due to the Missouri Director of Revenue who, in turn, remits the payments to the Missouri State Treasurer. The payments are deposited by the Missouri State Treasurer and credited to the Public Service Commission Fund (the "Fund"). The Fund is a special fund within the State Treasury devoted solely and specifically to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities. *See*, §386.480.4, RSMo Supp. 1997, and §33.571, RSMo 1994.

The moneys collected as a result of the Commission's public utility assessments are appropriated out of the Fund by the Missouri General Assembly for the payment of expenditures incurred by the Commission attributable to the regulation of public utilities. Any amount remaining

in the Fund at the end of any the following year by the Missouri General Assembly to the payment of the Commission's expenditures in the succeeding fiscal year and is applied by the Commission to the reduction of the amount assessed against public utilities in such succeeding fiscal year. The Commission receives no appropriations out of the State's General Revenues Fund in connection with its regulation of public utilities.

In 1996, the 88th General Assembly passed into law Conference Committee Substitute for House Bill No. 1004 ("HB 1004-88"). HB 1004-88 directed that certain amounts chargeable to specific State funds "as are necessary for refunds required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to the General Revenue Fund ("General Revenues"). The amount specified by HB 1004-88 to be transferred out of the Fund to General Revenues was \$262,347. HB 1004-88 was signed into law by Governor Carnahan on June 13, 1996.

In 1997, the 89th General Assembly passed into law Conference Committee Substitute for House Bill No. 4 ("HB 4"). HB 4 directed that the aggregate sum of \$42,284,895 and chargeable to State funds "as are necessary for refunds required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to General Revenues. HB 4 did not direct that any specific dollar amount be transferred out of the Fund to General Revenues. HB 4 was signed into law by Governor Carnahan on June 27, 1997. On or about February 26, 1998, a representative of the Office of Administration notified fiscal officers of affected State agencies of the amounts to be transferred out of each State fund in order to carry out HB 4's Article X transfer directive. Said notification provided a spreadsheet showing the proportional share of the transfer for each affected State fund, including the Fund. The amount specified to be transferred out of the Fund to General Revenues pursuant to HB 4 was \$425,871.

On June 17, 1998, the \$262,347 attributable to fiscal year 1995 was transferred out of the Fund to General Revenues. On June 22, 1998, the \$425,871 attributable to fiscal year 1996 was transferred out of the Fund to General Revenues. The total transferred out of the Fund attributable to fiscal years 1995 and 1996 was \$688,218. This amount (\$688,218) has been used by the Missouri State Treasurer to make refunds of excess state revenues to the income taxpayers of the State relating to tax years 1995 and 1996 in accordance with the provisions of the Hancock Amendment to the Missouri Constitution.<sup>5</sup>

In 1998, the 89th General Assembly passed Conference Committee Substitute for House Bill No. 1004 ("HB 1004-89"). HB 1004-89 directed that certain amounts chargeable to enumerated State funds "as are necessary for refunds required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to General Revenues. The amount specified by HB 1004-89 to be transferred out of the Fund to General Revenues was \$534,114. HB 1004-89 was signed into law by Governor Carnahan on June 19, 1998.

The amount specified by HB 1004-89 to be transferred out of the Fund to General Revenues is anticipated to take place during the month of January or February of 1998. This amount (\$534,114) will be used by the Missouri State Treasurer to make state revenue refunds to the income taxpayers of the State relating to tax year 1997.

HB 1004-88, HB 4 and HB 1004-89 were appropriations bills.

On June 29, 1998, the Commission issued its *Supplemental Order No. 52* ("Order 52") in its

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<sup>5</sup>*Mo. Const.*, Art. X, §§16-24.

Case No. 11,110.<sup>6</sup> The stated purpose of Order 52 was to estimate in accordance with the provisions of §386.370, RSMo Supp. 1997, the expenses to be incurred by the Commission during its 1999 fiscal year commencing July 1, 1998, and reasonably attributable to the regulation of public utilities and to determine assessments for each public utility regulated by it within each group. Order 52 was sent to each affected public utility under cover of letter of the Commission's Executive Director dated June 30, 1998, which set forth the specific amount(s) assessed against each public utility.

The Commission's "Estimated Cash Balance June 30, 1998" filed as an attachment to Order 52 includes as a deduction to the cash "carry-over" calculation a transfer of \$688,218 for "Article X." The Commission's "Calculation of PSC Assessment" filed as an attachment to Order 52 includes in the calculation of the Commission's fiscal year 1999 assessment a cost of \$534,114 attributable to "Article X transfer." As a result, the Commission's calculation of \$14,776,876 for the fiscal year 1999 Commission total assessment includes the sum of \$1,222,332 associated with Article X transfers out of the Fund to General Revenues as directed by HB 1004-88, HB 4 and HB 1004-89 to facilitate state revenue refunds required by *Mo. Const.*, Art. X, §18(b), of the Hancock Amendment for tax years 1995, 1996 and 1997.

Order 52 was the first actual notice any of the public utilities received that monies from the Commission's public utility assessments had been or were to be used for state revenue refunds required by the Hancock Amendment. Neither the Commission's proposed budget for the fiscal year commencing July 1, 1997, or the proposed budget for the fiscal year commencing July 1, 1998, as

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<sup>6</sup>*In the matter of the assessment against the public utilities in the State of Missouri for the expenses of the Commission for the fiscal year commencing July 1, 1998.*

submitted, contained any line item or other indication showing that the moneys relating to Article X transfers were intended to be recouped or returned to the Fund by means of an appropriation by the General Assembly or through assessment. Neither the House Bill containing the Commission's appropriation for the fiscal year commencing July 1, 1997 (House Bill No. 7 - 89th General Assembly), or the fiscal year commencing July 1, 1998 (House Bill 1007 - 89th General Assembly), as enacted into law, contained any line item or other indication showing that the moneys relating to Article X transfers were intended to be recouped or returned to the Fund by means of an appropriation by the General Assembly or through assessment.

### **Conclusions of Law, Decision and Order**

This case has been submitted on stipulated facts, a procedure permitted by §536.060, RSMo, and Commission rule 4 CSR 240-2.130(9). Based upon the undisputed facts as contained in the parties' *Stipulation of Facts*, the Commission reaches the following conclusions of law, decision and order.

**Issue No. 1. Whether the Article X transfers from the Public Service Commission Fund to the General Revenues Fund for fiscal years 1995, 1996 and 1997 are authorized by law?**

The Commission concludes that its public utility assessments authorized by §386.370, RSMo, are true assessments for Hancock Amendment purposes. In *Zahner v. City of Perryville*, 813 S.W.2d 855, 858 (Mo. banc 1991), the Missouri Supreme Court concluded that an assessment for Hancock Amendment purposes is a charge "related . . . to a . . . specific purpose" and is not a forced proportional contribution levied by the State for the support of the government and for all public needs. A plain reading of §386.370, RSMo, reveals that the monies paid into the Fund are devoted

solely and specifically to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities. As such, they are in the nature of a charge for a service rendered or privilege granted and they are not intended for the purpose of raising revenue to defray general governmental expenditures by the State of Missouri. The Commission notes that it is the Commission, not the General Assembly, that imposes public utility assessments. The Commission is not a political subdivision and has no taxing power. Rather, the Commission is an executive state agency of the State of Missouri within the Department of Economic Development and is charged by law with regulating the rates and terms and conditions of the service of public utilities as provided in Chapters 386, 392 and 393, RSMo.

The Commission also finds that its public utility assessments are not a "tax, excise, custom or duty or other source of income" received into the state treasury "for public use" as that phrase is used in *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983). This is evidenced by the fact that state law specifically provides that the Fund "shall be devoted solely to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities." The state law further provides that any amount remaining in the Fund at the end of any fiscal year "shall not revert to the General Revenue Fund but shall be applicable by appropriation of the General Assembly to the payment of such expenditures of the Commission in the succeeding fiscal year and shall be applied by the Commission to the reduction of the amount assessed to such public utilities in each succeeding year." §386.370.4, RSMo.

The appropriations bills HB 1004-88, HB 4 and HB 1004-89 do not repeal the limited purpose of the Fund. Under longstanding Missouri Supreme Court case law, an appropriation that contravenes general statutory law is unenforceable. *State ex rel. Davis v. Smith*, 75 S.W.2d 828 (Mo.

banc 1934)<sup>7</sup> The *Davis* court noted that "legislation of a general character cannot be included in an appropriation bill." *Id.* at 830. According to the *Davis* court, "[t]here is no doubt but what the amendment of a general statute . . . and the mere appropriation of money are two entirely different and separate subjects." *Id.* Thus, the *Davis* court held that an act appropriating \$3,000 to the Board of Barber Examiners Fund could not amend the general statute because a statute that makes an appropriation and also amends a general statute would contain more than one subject, thereby violating Missouri's Constitution. *Id.*

On this record, and absent controlling legal authority, the Commission is not in a position to determine whether or not the Fund is part of "total state revenue" or TSR for purposes of calculating whether or not the state has taken in excess revenue. In *Kelly v. Hanson*, 959 S.W.2d 107 (Mo. banc 1997), the Missouri Supreme Court appears to have established a two-part test for determining whether or not particular funds may be considered as "revenue" within the meaning of TSR. The court concluded that a fund may not be included in the calculation of TSR unless (1) the funds are received into the state treasury and (2) the funds are subject to appropriation by the General Assembly. It is not clear whether this test is exhaustive.<sup>8</sup> One of the issues in *Kelly* was whether that portion of the river boat casino admission fee deposited in the state treasury to the credit of the Gaming Commission Fund was a component of TSR. The trial court had concluded it was revenue

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<sup>7</sup> *Davis* was recently approved in *Rolla 31 School Dist. v. State*, 837 S.W.2d 1, 4 (Mo. banc 1992) ("This constitutional limitation, which provides that no bill shall contain more than one subject and limits appropriations to appropriations only, is still good law.") Also, a number of Attorney General Opinions confirm the prohibition on general legislation in appropriation bills. (See e.g. Opinions No. 23-85; 53-84; 206-1980; 43-1980; 51-1979)

<sup>8</sup> Compare the "contextual analysis favored by the Court in *Keller v. Marion County Ambulance District*, 820 S.W.2d 301 (Mo. banc 1991).

for purposes of calculating TSR. This finding was challenged on appeal. The Missouri Supreme Court did not rule on the contention of the appellant because the issue had not been properly preserved by cross-appeal. As such, the judgment of the trial court was allowed to stand.

Given the uncertain state of the law, the Commission is in no position to determine whether or not its public utility assessments are a component of TSR under the Hancock Amendment. However, it is within the Commission's power to determine whether monies paid into the Fund have been used in accordance with its enabling legislation. As already noted, §386.370, RSMo, unambiguously states that monies paid into the Fund "shall be devoted solely to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities." It further states that any amount remaining in the Fund at the end of any fiscal year "shall not revert to the General Revenue Fund but shall be applicable by appropriation of the General Assembly to the payment of such expenditures of the Commission in the succeeding fiscal year and shall be applied by the Commission to the reduction of the amount assessed to such public utilities in each succeeding year." The Commission concludes that the Article X transfers directed by the Missouri General Assembly pursuant to HB 1004-88, HB 4 and 1004-89 were for reasons other than the restrictive statutory purpose provided for the use of the Fund set forth in §386.370.4, RSMo, that is, the Article X transfers are not in any way attributable to expenses associated with the regulation of public utilities. Rather, the Article X transfers merely moved monies out of the Fund and into the General Revenues to satisfy a general state obligation to make distributions of excess state revenues collected by it during tax years 1995, 1996 and 1997, as mandated by the Hancock Amendment.

**Issue No. 2. Whether the Article X transfers for fiscal years 1995, 1996 and 1997 (which are included in the Commission's calculation of assessments against public utilities for the fiscal year commencing July 1, 1998) represent expenses to be incurred by the Commission that are reasonably attributable to the regulation of public utilities?**

The Commission concludes that its public utility assessments for its fiscal year commencing July 1, 1998, as determined in its *Supplemental Order No. 52* in Case No. 11,110, were in error to the extent that they included any amount attributable to Article X transfers for tax years 1995, 1996 and 1997. As noted above, the Article X transfers were directed by the Missouri General Assembly to meet the State's constitutional obligation to distribute to the income taxpayers of the State of Missouri excess state revenues taken in during those tax years. Even assuming that the Commission's public utility assessments should be included in the calculation of TSR and, further, that the transfers are authorized by law, the Article X transfers have nothing to do with the Commission's regulation of public utilities.

First, the Article X transfers do not represent an expense incurred by this Commission in the performance of its regulatory duties. Rather, they were a legislatively-mandated movement of monies out of the Fund and into the General Revenues by the General Assembly to facilitate distributions by the State of Missouri of excess revenues to which the state is not entitled. *See, Missourians for Tax Justice Education Project v. Holden*, 959 S.W.2d 100, 104 (Mo. banc 1997).

Secondly, \$688,218 of the Article X transfers took place during the Commission's 1998 fiscal year and, as such, cannot be fairly included in the calculation of its budget for the 1999 fiscal year.

Finally, the Article X transfers are not, in any manner, connected with the performance by this Commission of its regulatory responsibilities over public utilities. No party to the case disputes

this fact. Rather, the transfers are merely an accounting entry evidencing movement of monies from one state fund to another. The only connection that the transfer has to the regulation of public utilities is that the monies, had they not been transferred, would have been used by this Commission to regulate public utilities.

Accordingly, the Commission concludes that its *Supplemental Order No. 52* was in error to the extent that it included in the calculation of its public utilities assessments for fiscal year commencing July 1, 1998, \$1,222,332 million attributable to "Article X transfers." The Commission further concludes that its *Supplemental Order No. 52* in Case No. 11,110 is not authorized by law to the extent that Article X transfers have been included in the calculation of the assessments.

The Commission is a creature of statute. As such, its powers are limited to those conferred by statute, either expressly, or by clear implication as necessary to carry out the powers specifically granted. *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958). While the Commission's enabling legislation is remedial in nature and should be liberally construed in order to effectuate the purpose for which they were enacted, neither convenience, expediency or necessity are proper matters for consideration in the determination of whether an act of the Commission is authorized by statute. *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979) [quoting *State ex rel. Kansas City v. Public Service Commission*, 301 Mo. 179, 257, S.W. 462 (Mo. banc 1923)]. The Commission concludes that it has no statutory authority to include the Article X transfers in its public utility assessments.

**Issue No. 3. Whether the Commission may recover Article X transfers from the Public Service Commission Fund to the General Revenues Fund in the calculation of public utility assessments?**

Finally, the Commission finds that the recovery of the Article X transfers through public utility assessments frustrates the very purpose of the Hancock Amendment. The monies that have been distributed to the income taxpayers of this state, by Constitutional declaration, are revenues to which the State is not entitled. It would be inappropriate for this Commission, as an agency of the State, to attempt to recover them, directly or indirectly, because to do so would frustrate the Constitutional purpose of the state revenue limit. The Commission also finds that recover of the Article X transfers through public utility assessments nullifies, in part, the General Assembly's actions pursuant to HB 1004-88, HB 4 and HB 1004-89. The Commission cannot follow a practice which results in nullifying the expressed will of the Legislature. *State ex rel. Springfield Warehouse and Transfer Company v. Public Service Commission*, 225 S.W.2d 792, 794 (Mo. App. 1950).

IT IS, THEREFORE, ORDERED:

1. That Commission erred in including in its public utility assessments for the fiscal year commencing July 1, 1998, the Article X transfers out of the Public Service Commission Fund and into the General Revenues Fund made pursuant to HB 1004-88, HB 4 and HB 1004-89.
2. That the Commission's Internal Accounting Department recalculate the public utility assessments for fiscal year 1998 omitting from the calculation the \$1,222,332 associated with Article X transfers out of the Public Service Commission Fund to General Revenues as directed by HB 1004-88, HB 4 and HB 1004-89.
3. That all public utilities regulated by the Commission receive revised assessments and, further, that each public utility receive an appropriate refund, credit or adjustment for the amounts overpaid by the public utilities.

4. That this Report and Order shall become effective on [date].

BY THE COMMISSION

(S E A L)

Dated at Jefferson City, Missouri,  
on this \_\_\_\_ day of \_\_\_\_\_, 1998.