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**FILED**

JUL 28 1998

July 28, 1998

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Re: Utility Assessments for the Fiscal Year Commencing July 1, 1998  
Case No. 11,110; Supplemental Order No. 52**

00-99-44

Dear Mr. Roberts:

On behalf of West Elm Place Corporation, The Empire District Electric Company, St. Joseph Light & Power Company, UtiliCorp United Inc. d/b/a Missouri Public Service, Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Laclede Gas Company and Missouri-American Water Company, enclosed is an original and fourteen (14) copies of an **Application for Rehearing and Stay** for filing with the Commission in the referenced matter. I would appreciate it if you would see that the copies are distributed to the appropriate Commission personnel.

I have enclosed five (5) extra copies of the document which I request that you stamp "Filed" and return to the person delivering them to you.

Thank you in advance for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Paul A. Boudreau

PAB:db  
enc.

cc: Office of the Public Counsel

63.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

JUL 28 1998

Missouri Public  
Service Commission

In the matter of the assessment )  
against the public utilities in the )  
State of Missouri for the expenses ) Case No. 11,110  
of the Commission for the fiscal )  
year commencing July 1, 1998 )

**APPLICATION FOR REHEARING AND STAY**

COME NOW West Elm Place Corporation, The Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Laclede Gas Company, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service (hereinafter "Applicants"), pursuant to §386.500, RSMo 1994, and 4 CSR 240-2.160, and respectfully apply to the Missouri Public Service Commission ("Commission") that it grant rehearing and hold a hearing with respect to its June 29, 1998, *Supplemental Order No. 52* in the captioned case. The Commission's June 29, 1998, *Supplemental Order No. 52*, particularly as it relates to certain Article X transfers, is unlawful, unjust and unreasonable.

1. On June 29, 1998, the Commission issued its *Supplemental Order No. 52* in the captioned case pursuant to which it estimated the amounts of expenses directly attributable to all groups of public utilities and, also, the amounts of expenses not directly attributable to any such group. The apparent purpose of said *Supplemental Order No. 52* is to make the public utility assessments provided for pursuant in §386.370, RSMO 1994, for the Commission's fiscal year commencing July 1, 1998 (hereinafter "the 1999 fiscal year").

2. The cover letter accompanying the assessments to Applicants states, in pertinent part,

that "a significant increase in the annual assessment has been experienced this year, primarily as a result of the costs associated with Article X transfers for the Hancock refunds and costs for the move of the Public Service Commission from the Harry S Truman Building to the former Hotel Governor site."

3. The June 30, 1998, assessments represent a substantial increase from the prior fiscal year's assessments to Applicants. While Applicants are concerned about the overall magnitude of the increases, there is a larger issue with respect to the appropriate use of monies that are paid into The Public Service Commission Fund ("the Fund") by regulated utilities.

4. In this regard, it is Applicants' understanding that the Commission has been directed by the Office of Administration to transfer monies out of the Fund and into General Revenues to facilitate tax refunds to the general public mandated by the Hancock Amendment. These transfers apparently account for much of the increase in this year's assessment.

5. The depletion of the Fund for this purpose impacts Applicants and their customers because any reserve left in the Fund at the end of any particular fiscal year is carried over into the next year and reduces the following year's assessments. §386.370.4, RSMo Supp. 1997. It follows that a reduction of the reserve in the Fund to facilitate tax refunds can result in higher assessments in the following years than would otherwise be the case.

6. Applicants are aware that the "Article X transfers" are due to factors external to the Commission's customary budgetary considerations and are, thus, the result of circumstances not entirely of the Commission's making and, may not be entirely within the Commission's control. Nevertheless, Applicants believe that they, like the Commission, have the obligation to identify and challenge items that are not eligible to be included in the calculation of the Commission's

assessments. The use of the Fund for any purpose other than to pay the Commission's cost of regulating utilities subject to its jurisdiction is a serious matter and one worthy of serious and thoughtful inquiry. This Application is being filed to facilitate that dialogue.

7. The following are specific reasons why the Commission should grant a rehearing and enter upon a hearing concerning the appropriateness of its assessments for the 1999 fiscal year.

- That aspect of the Commission's estimate of expenses for fiscal year 1999 which includes the cost of Hancock Amendment tax refunds for prior tax years is unauthorized by law because the said "Article X transfer" out of the Fund does not represent a "expense to be incurred by" the Commission during the 1999 fiscal year. *See*, §386.370.1, RSMo Supp. 1997.
- That aspect of the Commission's estimate of expenses for fiscal year 1999 which includes the cost of Hancock Amendment tax refunds for prior tax years is unauthorized by law because the said "Article X transfer" out of the Fund is not "reasonably attributable to the regulation of public utilities" as is required by §386.370.1, RSMo Supp. 1997.
- The "Article X transfer" out of the Fund to facilitate the Hancock Amendment income tax refunds for prior tax years was not authorized by law. The Fund is funded solely by direct assessments on public utilities for the purpose of covering the Commission's costs of operation. The Fund is not funded from general tax revenues and, accordingly, is not an appropriate funding source for refunding excessive taxes to the general public as is provided for by *Mo. Const.*, Art. X, §16-24. Indeed, §386.370.4, RSMo, clearly provides that any amounts in the Fund "shall not revert to the general

revenue fund.”

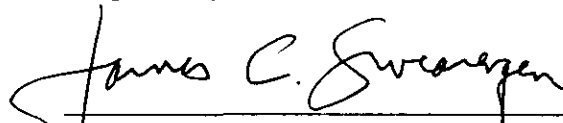
- The “Article X transfer” out of the Fund to facilitate the Hancock Amendment income tax refunds for prior tax years is an unlawful attempt to recover a tax refund. The Hancock Amendment is a constitutional provision the purpose of which is to refund to citizens tax revenues paid by them to which the State of Missouri is not entitled. Any effort to finance such a tax refund through a Commission assessment violates the provisions of the Missouri Constitution. *Mo. Const.*, Art. X, §16-24.
- The Commission’s assessment for fiscal year 1999 is unreasonable and unauthorized by law because there is no competent and substantial evidence or other information to show that the estimation of expenses directly and indirectly attributable to regulating particular groups of public utilities comports with the requirements of §386.370, RSMo Supp. 1997.
- *Supplemental Order No. 52* is unlawful and of no effect inasmuch as the order of the Commission was made effective the day of issuance. This has deprived those interested parties of a reasonable opportunity to prepare and file an Application for Rehearing. *State ex rel. St. Louis County v. Public Service Commission*, 360 Mo. 339, 228 S.W.2d 1, 2 (1950).

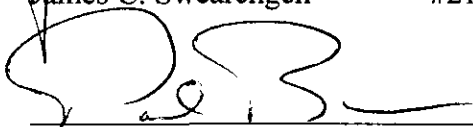
8. In view of the foregoing, Applicants believe that the Commission should stay the effectiveness and enforcement of its *Supplemental Order No. 52* so that a dialogue may be established among the interested parties and the matters hereinabove described may be inquired into, reheard and reconsidered by the Commission.

WHEREFORE, Applicants respectfully request that the Commission stay the effectiveness

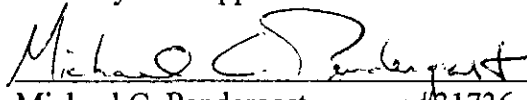
and enforcement of *Supplemental Order No. 52* issued in the captioned docket, grant a rehearing and enter upon a hearing concerning the propriety of its public utility assessments and other matters related thereto and, upon reconsideration, issue a new Supplemental Order setting aside its June 29, 1998, *Supplemental Order No. 52*, which new Supplemental Order is consistent with the evidence and the applicable law as more fully set forth above in this pleading.

Respectfully submitted,

  
James C. Swearingen #21510

  
Paul A. Boudreau #33155  
BRYDON, SWEARENGEN & ENGLAND P.C.  
P.O. Box 456  
Jefferson City, MO 65102-0456  
(573) 635-7166

Attorneys for Applicants

 by PAB  
Michael C. Pendergast #31736  
Laclede Gas Company  
720 Olive Street, Room 1520  
St. Louis, MO 63101  
(314) 342-0532

Attorney for Laclede Gas Company

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 28th day of July, 1998, to:

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

A handwritten signature in dark ink, consisting of a large, stylized 'R' followed by a horizontal line and a small flourish.

MISSOURI PUBLIC SERVICE COMMISSION  
MINUTES OF AGENDA MEETING  
Monday, June 29, 1998  
PSC Agenda Room, Harry S Truman Building, Room 530

Present: Lumpe, Drainer, Murray, Schemenauer, and Staff.

Added for Good Cause Shown

Other Discussion

1. Supplemental Order No. 52 - Assessment - Cecil Wright/Davis  
--4-0, as submitted.

Closed Meeting

Voted 4-0 to close meeting.

1. Personnel  
--Discussed.
2. Litigation  
--Not Discussed.

*Shelia Lumpe*  
Chairman

*6/30/98*  
Date Approved



BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED**

JUN 30 1998

In the matter of the assessment )  
against the public utilities in the )  
State of Missouri for the expenses ) Case No. 11,110  
of the Commission for the fiscal )  
year commencing July 1, 1998 )

Missouri Public  
Service Commission

**SUPPLEMENTAL ORDER NO. 52**

Pursuant to the provision of Section 386.370 RSMo Supp. 1997, the Commission has made an estimate of the expenses to be incurred by it during the fiscal year commencing July 1, 1998, reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo, and has also separately estimated the amount of such expenses directly attributable to such regulation of each of the following groups of public utilities: electrical corporations, gas corporations, water corporations, sewer corporations, heating companies and telephone corporations, as well as the amount of such expenses not directly attributable to any such group. The estimated amounts of expenses directly attributable to all groups of public utilities is \$9,633,896.

The estimated amount of expenses not attributable to any such group amounts to \$ 5,712,602.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be \$221,249.

The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 1998, is estimated to be \$348,373. The Commission hereby includes these amounts in estimating its need to be \$ 15,346,498. This estimated unexpended sum of \$348,373 is hereby allocated to each group of public utilities above enumerated in proportion to the respective gross intrastate operating revenues of the respective groups during the calendar year of 1997 as provided in the aforesaid laws.

The Commission has allocated to each group of public utilities the estimated expenses directly attributable to the regulation of such group, and an amount equal to such proportion of the estimated expenses not directly

1998. Said assessment will be due and payable on or before July 15, 1998, or at the option of each public utility, same may be paid in equal quarterly installments on or before July 15, 1998, October 15, 1998, January 15, 1999, and April 15, 1999.

All checks should be made payable to the Director of Revenue, State of Missouri; however, these checks are to be sent to the Missouri Public Service Commission, Internal Accounting Department, P.O. Box 360, Jefferson City, MO 65102.

This order shall be effective from and after the date hereof.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Cecil I. Wright", written over a horizontal line.

Cecil I. Wright  
Executive Director

Lumpe, Ch.,  
Murray, Schemenauer,  
Drainer, CC., Concur.

Dated at Jefferson City, Missouri  
on this 29th day of June, 1998.

PUBLIC SERVICE COMMISSION  
FY 1999 ASSESSMENT  
CALCULATION OF PSC ASSESSMENT

FISCAL YEAR 1998 - 1999

PUBLIC SERVICE COMMISSION	\$11,709,885	
ECONOMIC DEVELOPMENT	\$15,779	
STATE OFFICE BUILDING COST TRANSFER	\$496,620	
OFFICE OF ADMINISTRATION	\$134,284	
ARTICLE X TRANSFER	<u>\$534,114</u>	
SUB-TOTAL		\$12,890,682
ADD: O.A.S.D.H.I.	\$634,414	
STATE RETIREMENT	\$1,043,258	
STATE INSURANCE	\$364,883	
LONG TERM DISABILITY	\$47,270	
DEFERRED COMPENSATION	<u>\$40,800</u>	
SUB TOTAL		\$2,130,625
ESTIMATED CARRY-OVER AFTER 6/30/98		
PERSONAL SERVICE	\$5,127	
EXPENSE AND EQUIPMENT	<u>\$320,064</u>	
SUB-TOTAL CARRY-OVER		<u>\$325,191</u>
TOTAL APPROPRIATION, TRANSFERS, CARRY-OVER		\$15,346,498
LESS: ESTIMATED CASH BALANCE - PSC FUND		(\$348,373)
ESTIMATED D.O.T. GAS SAFETY RECEIPTS		<u>(\$221,249)</u>
FISCAL YEAR 1999 PSC ASSESSMENT		<u><u>\$14,776,876</u></u>

FY 1999 PSC ASSESSMENT  
PUBLIC SERVICE COMMISSION FUND  
ESTIMATED CASH BALANCE JUNE 30, 1998

FY 98 COLLECTIONS	\$12,429,659	
CASH BALANCE AT JULY 1, 1997	\$1,174,361	
TOTAL CASH AVAILABLE		\$13,604,020
EXPENDITURES:		
JULY 1, 1997 - MAY 31, 1998		
PERSONAL SERVICE	\$6,701,609	
EXPENSE & EQUIPMENT	<u>\$2,348,890</u>	
		\$9,050,499
JUNE, 1998 ESTIMATED EXPENDITURES		
PERSONAL SERVICE	\$614,957	
EXPENSE & EQUIPMENT	<u>\$358,002</u>	
		\$972,959
CARRY-OVER AFTER 06/30/97	<u>\$353,881</u>	
TOTAL EXPENDITURES	\$10,377,339	
TRANSFERRED OUT:		
OASDHI	\$532,283	
STATE RETIREMENT	\$751,205	
STATE INSURANCE	\$335,153	
LONG-TERM DISABILITY	\$35,978	
DEFERRED COMPENSATION	\$40,616	
WORKERS COMPENSATION	\$9,425	
STATE OFFICE BUILDING COSTS	\$476,833	
DED/MIS OFFICE SPACE, MAIL ROOM	\$8,597	
ARTICLE X	<u>\$688,218</u>	
		\$2,878,308
TOTAL EXPENDITURES & TRANSFERS		<u>\$13,255,647</u>
ESTIMATED CASH BALANCE 06/30/98		<u><u>\$348,373</u></u>