



Legal Framework for Utility Resource Planning

Timeline of Missouri's IRP rules

- Initially adopted in December of 1992.
- In 1999, the rules were suspended.
- In December of 2005, suspension expired. No changes were made to the IRP rules.
- Since 2005, all Missouri IOUs have made two IRP filings.

Commission's 1992 Rulemaking

- What was the Commission attempting to accomplish in 1992?

"The commission is of the belief that the [IRP] rules should be put in place to promote proper, accurate, and increasingly necessary long-range planning..."

- What was the Commission NOT attempting to accomplish in 1992?

"...but not to dictate either the strategic decision itself or the decision-making process."

Order of Rulemaking, Case No. EX-92-229

Commission Authority

- **Broad authority to regulate utilities 386.040 RSMo.**
- **“Purely a creature of statute” and its “powers are limited to those conferred by the statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted.”** *Utility Consumers Council, 585 S.W. 2d at 49; City of West Plains v. PSC, 310 S.W.2d 925, 928 (Mo. Banc. 1958).*
- **“Neither convenience, expediency, or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by statute.”** *Utility Consumers Council, 585 S.W.2d at 49 (citing State ex rel. Kansas City v. PSC, 257 S.W.2d 462 (Mo. Banc. 1923.))*

Commission Authority

- **Does not extend to Management of the Utility**

State Supreme Court held:

“But it must be kept in mind that the commission’s authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. The company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing, it does not injuriously affect the public. The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service.” *St Joseph v PSC*, 30 S.W.2d 8, 14 (1930).

Commission Authority

- **Limitation has been upheld over time:**

“The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.” *Harline v. PSC*, 343 S.W. 2d 177 (Mo. App. 1960).

“The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. These powers do not, however, clothe the Commission with the general power of management incident to ownership.” *PSC v. Bonacker*, 906 S.W. 2d 896 (Mo. App. 1995)., citing *Harline*.

Commission Authority

- The Commission has recognized utility's right to control management decisions.

A "company's choice of the appropriate mix of gas to procure is a management decision and is properly left to the company." *In the matter of developments in the transportation of natural gas and their relevance to the regulation of natural gas corporations in Missouri*, 29 Mo.P.S.C (N.S.) 137, 143 (1987).

Commission Authority

- Commission endorsed this distinction in 1992 IRP rulemaking

“The commission is wary of assuming, either directly or in a de facto fashion, the management prerogatives and responsibilities associated with strategic decision making, preferring to allow utility management the flexibility to make both overall strategic planning decisions and more routine management decisions in a relatively unencumbered framework.” Order of Rulemaking, Case No. EX-92-299, December 8, 1992.

Commission Authority and the IRP Rules

- **The Commission cannot dictate resource decisions or resource decision making processes of the utility.**
- **The Commission can ensure the utility is engaging in a proper planning process.**

“The commission reemphasizes that strategic decision-making itself has been left to the utilities. What is proposed here is data collection and analyses requirements to assist in long-term planning and decision-making. Specifically, the primary purpose of this proposed rule is to require the utility to quantify its judgments about the uncertainties in planning based on unknown future events, including such major factors as load growth, fuel prices, capital costs, demand-side program effectiveness and future environmental requirements.” *Id.*