

HOUSE _____ **AMENDMENT NO.** _____**Offered By**

AMEND House Committee Substitute for Senate Bill No. 0207, Section 137.115, Page 21, Line 198, by inserting after all of said section and line the following:

"386.420. 1. At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant, the public counsel and the corporation, person or public utility complained of, and such corporations and persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses.

2. Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts. Witnesses whose depositions are taken as provided in this section and the officer taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this state.

3. If an order cannot, in the judgment of the commission, be complied with within thirty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

4. A full and complete record shall be made of all proceedings before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. Preparation of a printed transcript may be waived by unanimous consent of all the parties. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and proceedings in the cause, shall constitute the record of the commission; provided, that on review of an order or decision of the commission, the [petitioner] appellant and the commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the [circuit] reviewing court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review. In any proceeding resulting in the establishment of new rates for a public utility, the commission shall cause to be prepared, with the assistance of the parties to such proceeding, and shall approve, after allowing the parties a reasonable opportunity to provide written

1 input, a detailed reconciliation containing the dollar value and rate or charge impact of each contested
2 issue decided by the commission, and the customer class billing determinants used by the commission to
3 calculate the rates and charges approved by the commission in such proceeding. Such information shall
4 be sufficient to permit a reviewing court and the commission on remand from a reviewing court to
5 determine how the public utility's rates and charges, including the rates and charges for each customer
6 class, would need to be temporarily and, if applicable, permanently adjusted to provide customers or the
7 public utility with any monetary relief that may be due in accordance with the procedures set forth in
8 section 386.520. In the event there is any dispute over the value of a particular issue or the correctness of
9 a billing determinant, the commission shall also include in the reconciliation a quantification of the dollar
10 value and rate or charge impact associated with the dispute.

11 386.490. 1. Every order of the commission shall be served upon every person or corporation to
12 be affected thereby, either by personal delivery of a certified copy thereof, by electronic service, or by
13 mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected
14 thereby, or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be
15 served in accordance with the provisions of the code of civil procedure.

16 2. [It shall be the duty of every person and corporation to notify the commission forthwith, in
17 writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such
18 notification must be signed and acknowledged by a person or officer duly authorized by the corporation to
19 admit such service. Within a time specified in the order of the commission every person and corporation
20 upon whom it is served must if so required in the order notify the commission in like manner whether the
21 terms of the order are accepted and will be obeyed.

22 3.] Every order or decision of the commission shall of its own force take effect and become
23 operative thirty days after the service thereof, except as otherwise provided, and shall continue in force
24 either for a period which may be designated therein or until changed or abrogated by the commission,
25 unless such order be unauthorized by this law or any other law or be in violation of a provision of the
26 constitution of the state or of the United States.

27 386.510. With respect to commission orders or decisions issued on and after the effective date of
28 this section, within thirty days after the application for a rehearing is denied, or, if the application is
29 granted, then within thirty days after the rendition of the decision on rehearing, the applicant may [apply
30 to] file a notice of appeal with the [circuit court of] commission, which shall also be served on the parties
31 to the commission proceeding in accordance with section 386.515, and which shall also be filed with the
32 appellate court with the territorial jurisdiction over the county where the hearing was held or in which the
33 commission has its principal office [for a writ of certiorari or review (herein referred to as a writ of
34 review)] for the purpose of having the reasonableness or lawfulness of the original order or decision or the
35 order or decision on rehearing inquired into or determined. [The writ shall be made returnable not later
36 than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record
37 in the case to the court. On the return day the cause shall be heard by the circuit court, unless for a good
38 cause shown the same be continued.] Except with respect to a stay or suspension pursuant to subsection 1
39 of section 386.520, no new or additional evidence may be introduced [upon the hearing] in the [circuit]

1 appellate court but the cause shall be heard by the court without the intervention of a jury on the evidence
2 and exhibits introduced before the commission and certified to by it. The notice of appeal shall include
3 the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section
4 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the
5 commission proceeding, and any other information specified by the rules of the court. Unless otherwise
6 ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of
7 appeal, certify its record in the case to the court of appeals. The commission and each party to the action
8 or proceeding before the commission shall have the right to [appear] intervene and participate fully in the
9 review proceedings. Upon the [hearing the circuit] submission of the case to the court of appeals, the
10 court of appeals shall [enter judgment] render its opinion either affirming or setting aside, in whole or in
11 part, the order or decision of the commission under review. In case the order or decision is reversed by
12 reason of the commission failing to receive testimony properly proffered, the court shall remand the cause
13 to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new
14 order or render a new decision based upon the evidence theretofore taken, and such as it is directed to
15 receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for
16 further action. No court in this state, except [the circuit courts to the extent herein specified and] the
17 supreme court or the court of appeals [on appeal], shall have jurisdiction or authority to review, reverse,
18 correct or annul any order or decision of the commission or to suspend or delay the executing or operation
19 thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties.
20 The [circuit] appellate courts of this state shall always be deemed open for the trial of suits brought to
21 review the orders and decisions of the commission as provided in the public service commission law and
22 the same shall where necessary be tried and determined as suits in equity.

23 386.515. [Prior to August 28, 2001, in proceedings before the Missouri public service
24 commission, consistent with the decision of the supreme court of Missouri in State ex rel. Anderson
25 Motor Service Co., Inc. v. Public Service Commission, 97 S.W.2d 116 (Mo. banc 1936) the review
26 procedure provided for in section 386.510 is exclusive to any other procedure.] With respect to
27 commission orders or decisions issued on and after the effective date of this section, an application for
28 rehearing is required to be served on all parties and is a prerequisite to the filing of an [application for writ
29 of review] appeal under section 386.510. The application for rehearing puts the parties to the proceeding
30 before the commission on notice that [a writ of review] an appeal can follow and any such review under
31 the appeal may proceed [without formal notification or summons to] provided that a copy of the notice of
32 appeal is served on said parties. With respect to commission orders or decisions issued on and after
33 [August 28, 2001] the effective date of this section, the review procedure provided for in section 386.510
34 continues to be exclusive except that a copy of [any such writ of review] the notice of appeal required by
35 section 386.510 shall be [provided to] served on each party to the proceeding before the commission[, or
36 his or her attorney of record, by hand delivery or by registered mail, and proof of such delivery or mailing
37 shall be filed in the case as provided by subsection 2 of section 536.110] by the appellant according to the
38 rules established by the court in which the appeal is filed.

39 386.520. 1. The pendency of [a writ of review] an appeal under section 386.510 shall not of itself

1 stay or suspend the operation of the order or decision of the commission, but [during the pendency of such
2 writ, the circuit court in its discretion may stay or suspend, in whole or in part, the operation of the
3 commission's order or decision. No order so staying or suspending an order or decision of the commission
4 shall be made by any circuit court otherwise than on three days' notice and after hearing, and if the order
5 or decision of the commission is suspended the same shall contain a specific finding based upon evidence
6 submitted to the court and identified by reference thereto, that great or irreparable damage would
7 otherwise result to the petitioner and specifying the nature of the damage. In case the order or decision of
8 the commission is stayed or suspended, the order or judgment of the court shall not become effective until
9 a suspending bond shall first have been executed and filed with, and approved by, the circuit court,
10 payable to the state of Missouri, and sufficient in amount and security to secure the prompt payment, by
11 the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or
12 decision of the commission, and of all moneys which any person or corporation may be compelled to pay,
13 pending the review proceedings, for transportation, transmission, product, commodity or service in excess
14 of the charges fixed by the order or decision of the commission, in case such order or decision is
15 sustained.

16 2. The circuit court, in case it stays or suspends the order or decision of the commission in any
17 manner affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the
18 corporation, person or public utility affected to pay into court, from time to time, there to be impounded
19 until the final decision of the case, or into some bank or trust company paying interest on deposits, under
20 such conditions as the court may prescribe, all sums of money which it may collect from any corporation
21 or person in excess of the sum such corporation or person would have been compelled to pay if the order
22 or decision of the commission had not been stayed or suspended.

23 3. In case any circuit court stays or suspends any order or decision of the commission lowering
24 any rate, fare, toll, rental, charge or classification, upon the execution and approval of said suspending
25 bond, shall forthwith require the corporation, person or public utility affected, under penalty of the
26 immediate enforcement of the order or decision of the commission, pending the review and
27 notwithstanding the suspending order, to keep such accounts, verified by oath, as may, in the judgment of
28 the court, suffice to show the amounts being charged or received by such corporation, person or public
29 utility, pending the review, in excess of the charges allowed by the order or decision of the commission,
30 together with the names and addresses of the corporations and persons to whom overcharges will be
31 refundable in case the charges made by the corporation, person or public utility, pending the review, be
32 not sustained by the circuit court; provided, that street railroad corporations shall not be required to keep a
33 record of the names and addresses of such persons paying such overcharge of fares, but such street
34 railroad corporations shall give to such persons printed receipts showing such overcharges of fares, the
35 form of such printed receipts to be approved by the commission.

36 4. The court may, from time to time, require said party petitioning for a review to give additional
37 security on, or to increase, the said suspending bond, whenever in the opinion of the court the same may
38 be necessary to secure the prompt payment of said damages or said overcharges.

39 5. Upon the decision of the circuit court, all moneys which the corporation, person or public
40 utility may have collected pending the appeal, in excess of those authorized by such decision, together

1 with interest, in case the court ordered the deposit of such moneys in a bank or trust company, shall be
2 promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of
3 distribution as may be prescribed by the court, unless an appeal be granted such corporation, person or
4 public utility, as herein provided] with respect to commission orders or decisions issued on and after the
5 effective date of this section that do not involve the establishment of new rates and charges for a public
6 utility, the appellate court may in its discretion, or upon the recommendation of a special master appointed
7 for such purpose, and after the posting of an appropriate appeal bond, stay or suspend the operation of the
8 order or decision of the commission, in whole or in part, if in its discretion it determines that great or
9 irreparable damage would otherwise result to the appellant.

10 2. With respect to orders or decisions issued on and after the effective date of this section that
11 involve the establishment of new rates or charges, there shall be no stay or suspension of the commission's
12 order or decision, however:

13 (1) In the event a final and unappealable judicial decision determines that a commission order or
14 decision unlawfully or unreasonably decided an issue or issues in a manner affecting rates, then the court
15 shall instruct the commission to provide temporary rate adjustments and, if new rates and charges have not
16 been approved by the commission before the judicial decision becomes final and unappealable,
17 prospective rate adjustments. Such adjustments shall be calculated based on the record evidence in the
18 proceeding under review and the information contained in the reconciliation and billing determinants
19 provided by the commission under subsection 4 of section 386.420 and in accordance with the procedures
20 set forth in subdivisions (2) to (5) of this subsection;

21 (2) If the effect of the unlawful or unreasonable commission decision issued on or after the
22 effective date of this section was to increase the public utility's rates and charges in excess of what the
23 public utility would have received had the commission not erred or to decrease the public utility's rates
24 and charges in a lesser amount than would have occurred had the commission not erred, then the
25 commission shall be instructed on remand to approve temporary rate adjustments designed to flow
26 through to the public utility's then existing customers the excess amounts that were collected by the utility
27 plus interest at the higher of the prime bank lending rate minus two percentage points or zero. Such
28 amounts shall be calculated for the period commencing with the date the rate increase or decrease took
29 effect until the earlier of the date when new rates and charges consistent with the court's opinion became
30 effective or when new rates or charges otherwise approved by the commission as a result of a general rate
31 case filing or complaint became effective. Such amounts shall then be reflected as a rate adjustment over
32 a like period of time. The commission shall issue its order on remand within sixty days unless the
33 commission determines that additional time is necessary to properly calculate the temporary or any
34 prospective rate adjustment, in which case the commission shall issue its order within one hundred and
35 twenty days;

36 (3) If the effect of the unlawful or unreasonable commission decision was to increase the public
37 utility's rates and charges by a lesser amount than what the public utility would have received had the
38 commission not erred or to decrease the public utility's rates and charges in a greater amount than would
39 have occurred had the commission not erred, then the commission shall be instructed on remand to
40 approve temporary rate adjustments designed to allow the public utility to recover from its then existing

1 customers the amounts it should have collected plus interest at the higher of the prime bank lending rate
2 minus two percentage points or zero. Such amounts shall be calculated for the period commencing with
3 the date the rate increase or decrease took effect until the earlier of the date when new permanent rates
4 and charges consistent with the court's opinion became effective or when new permanent rates or charges
5 otherwise approved by the commission as a result of a general rate case filing or complaint became
6 effective. Such amounts shall then be reflected as a rate adjustment over a like period of time. The
7 commission shall issue its order on remand within sixty days unless the commission determines that
8 additional time is necessary to properly calculate the temporary or any prospective rate adjustment, in
9 which case the commission shall issue its order within one hundred and twenty days;

10 (4) If the effect of the unlawful or unreasonable commission decision was to allocate too much of
11 a rate increase or too little of a rate decrease to a customer class or classes, then the commission shall be
12 instructed on remand to approve temporary rate adjustments for each customer class as necessary to
13 ensure that each customer class is charged the amounts that would have been charged had the commission
14 not erred. Such amounts shall be calculated for the period commencing with the date the rate increase or
15 decrease took effect until the earlier of the date when new rates and charges consistent with the court's
16 opinion became effective or when new rates or charges otherwise approved by the commission as a result
17 of a general rate case filing or complaint became effective. Such amounts shall then be reflected as a rate
18 adjustment over a like period of time. The commission shall issue its order on remand within sixty days
19 unless the commission determines that additional time is necessary to properly calculate the temporary or
20 any prospective rate adjustment, in which case the commission shall issue its order within one hundred
21 and twenty days;

22 (5) On and after the effective date of this section, no action affecting the public utility's collection
23 of rates and charges shall be taken in cases where the court cannot make a determination on the merits
24 because the commission failed to include adequate findings of fact to support the commission's decision or
25 failed to receive evidence properly proffered, provided that the commission shall provide such findings of
26 fact or otherwise issue a new order within ninety days of the date of the court's mandate. If such new
27 order is appealed, the period for measuring amounts subject to temporary rate adjustments process set
28 forth in subdivisions (1) to (4) of this subsection shall commence beginning with the date the rate increase
29 or decrease took effect.

30 386.530. All actions or proceedings under this or any other chapter, and all actions and
31 proceedings commenced or prosecuted by order of the commission, and all actions and proceedings to
32 which the commission, the public counsel or the state may be parties, and in which any question arises
33 under this or any other chapter, or under or concerning any order or decision or action of the commission,
34 shall be preferred over all other civil causes except election contests in all the [circuit] appellate courts of
35 the state of Missouri, and shall be heard and determined in preference to all other civil business pending
36 therein except election contests, irrespective of position on the calendar. The same preference shall be
37 granted upon application of the public counsel or the commission counsel in any action or proceeding in
38 which either or both may be allowed to intervene.

39 386.540. 1. The commission and any party, including the public counsel, who has participated in
40 the [commission] court of appeals proceeding [which produced the order or decision may, after the entry

1 of judgment in the circuit court in any action in review, prosecute an appeal to a court having appellate
2 jurisdiction in this state. Such appeal shall be prosecuted as appeals from judgment of the circuit court in
3 civil cases except as otherwise provided in this chapter] and is aggrieved by the opinion of the court may
4 seek rehearing or transfer to the Missouri supreme court under rules established by the court. The original
5 transcript of the record and testimony and exhibits, certified to by the commission and filed [in the circuit
6 court in any action to review an order or decision of the commission, together with a transcript of the
7 proceedings in the circuit court,] with the court of appeals shall constitute the record on appeal to the
8 supreme court [or any court of appeals].

9 2. Where an appeal is taken to the supreme court [or the court of appeals], the cause shall, on the
10 return of the papers to the supreme court [or court of appeals], be immediately placed on the docket of the
11 then pending term by the clerk of the court and shall be assigned and brought to a hearing in the same
12 manner as other causes on the then pending term docket, but shall have precedence over all civil causes of
13 a different nature pending in the court. [No appeal shall be effective when taken by a corporation, person
14 or public utility unless a cost bond of appeal in the sum of five hundred dollars shall be filed within ten
15 days after the entry of judgment in the circuit court appealed from.]

16 3. [The circuit court may in its discretion suspend its judgment pending the hearing in the
17 supreme court or court of appeals on appeal, upon the filing of a bond by the corporation, person or public
18 utility with good and sufficient security conditioned as provided for bonds upon actions for review and by
19 further complying with all terms and conditions of this law for the suspension of any order or decision of
20 the commission pending the hearing or review in the circuit court. This bond shall be in addition to the
21 cost bond heretofore provided in this section.

22 4.] The general laws relating to appeals to the supreme court and the court of appeals in this state
23 shall, so far as applicable and not in conflict with the provisions of this chapter, apply to appeals taken
24 under the provisions of this chapter."; and
25

26 Further amend said bill, Page 24, Section 393.1075, Line 112, by inserting after all of said line the
27 following:

28 "Section B. Because of the immediate need to provide meaningful and equitable relief to parties
29 who may successfully pursue review of Missouri Public Service Commission orders or decisions, the
30 repeal and reenactment of sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540 of section
31 A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and
32 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the
33 repeal and reenactment of sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540 of section
34 A of this act shall be in full force and effect upon its passage and approval."; and
35 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.