

FIRST REGULAR SESSION

HOUSE BILL NO. 967

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH (150).

2058L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540, RSMo, and to enact in lieu thereof six new sections relating to the public service commission's appellate procedures.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540, to read as follows:

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.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

20 4. A full and complete record shall be made of all proceedings before the commission
21 or any commissioner on any formal hearing had, and all testimony shall be taken down by a
22 reporter appointed by the commission, and the parties shall be entitled to be heard in person or
23 by attorney. Preparation of a printed transcript may be waived by unanimous consent of all the
24 parties. In case of an action to review any order or decision of the commission, a transcript of
25 such testimony, together with all exhibits or copies thereof introduced and all information
26 secured by the commission on its own initiative and considered by it in rendering its order or
27 decision, and of the pleadings, record and proceedings in the cause, shall constitute the record
28 of the commission; provided, that on review of an order or decision of the commission, the
29 petitioner and the commission may stipulate that a certain question or questions alone and a
30 specified portion only of the evidence shall be certified to the [circuit] **reviewing** court for its
31 judgment, whereupon such stipulation and the question or questions and the evidence therein
32 specified shall constitute the record on review. **In any proceeding resulting in the**
33 **establishment of new rates for a public utility, the commission shall cause to be prepared,**
34 **with the assistance of the parties to such proceeding, and shall approve, after allowing the**
35 **parties to provide written input, a detailed reconciliation containing the dollar value and**
36 **rate or charge impact of each contested issue decided by the commission, including the**
37 **customer class billing determinants used by the commission to calculate the rates and**
38 **charges approved by the commission in such proceeding. Such information shall be**
39 **sufficient to permit a reviewing court and the commission on remand from a reviewing**
40 **court to determine how the public utility's rates and charges, including the rates and**
41 **charges for each customer class, would need to be temporarily and, if applicable,**
42 **permanently adjusted to provide customers or the public utility with any monetary relief**
43 **that may be due in accordance with the procedures set forth in section 386.520. In the**
44 **event there is any dispute over the value of a particular issue or the correctness of a billing**
45 **determinant, the commission shall also include in the reconciliation a quantification of the**
46 **value and rate or charge impact associated with the dispute.**

 386.510. Within [thirty] **fifteen** days after the application for a rehearing is denied, or,
2 if the application is granted, then within [thirty] **fifteen** days after the rendition of the decision
3 on rehearing, the applicant may [apply to] **file a notice of appeal with** the [circuit court of]
4 **commission, which shall also be served on the parties to the commission proceeding in**
5 **accordance with section 386.515, and which shall also be filed with the appellate court with**

6 **the territorial jurisdiction over** the county where the hearing was held or in which the
7 commission has its principal office [for a writ of certiorari or review (herein referred to as a writ
8 of review)] for the purpose of having the reasonableness or lawfulness of the original order or
9 decision or the order or decision on rehearing inquired into or determined. [The writ shall be
10 made returnable not later than thirty days after the date of the issuance thereof, and shall direct
11 the commission to certify its record in the case to the court. On the return day the cause shall be
12 heard by the circuit court, unless for a good cause shown the same be continued. No new or
13 additional evidence may be introduced upon the hearing in the circuit court but the cause shall
14 be heard by the court without the intervention of a jury on the evidence and exhibits introduced
15 before the commission and certified to by it.] **The notice of appeal shall include the**
16 **appellant's application for rehearing, if applicable, a copy of the reconciliation required**
17 **by subsection 4 of section 386.420, a concise and complete statement of the issues being**
18 **appealed, a full and complete list of the parties to the commission proceeding, and any**
19 **other information specified by the rules of the court. Unless otherwise ordered by the**
20 **court of appeals, the commission shall, within thirty days of the filing of the notice of**
21 **appeal, certify its record in the case to the court of appeals and appellant shall, within sixty**
22 **days of the filing of a notice of appeal, submit to the court its initial brief.** The commission
23 and each party to the action or proceeding before the commission shall have the right to
24 **intervene, appear, and submit briefs** in the review proceedings **in accordance with the**
25 **briefing schedule established by the court.** Upon the [hearing the circuit] **submission of the**
26 **case to the court of appeals, the court of appeals** shall [enter judgment] **render its opinion**
27 either affirming or setting aside **(in whole or in part)** the order **or decision** of the commission
28 under review. In case the order **or decision** is reversed by reason of the commission failing to
29 receive testimony properly proffered, the court shall remand the cause to the commission, with
30 instructions to receive the testimony so proffered and rejected, and enter a new order **or render**
31 **a new decision** based upon the evidence theretofore taken, and such as it is directed to receive.
32 The court may, in its discretion, remand any cause which is reversed by it to the commission for
33 further action. No court in this state, except [the circuit courts to the extent herein specified and]
34 the supreme court or the court of appeals [on appeal], shall have jurisdiction **or authority** to
35 review, reverse, correct or annul any order or decision of the commission or to suspend or delay
36 the executing or operation thereof, or to enjoin, restrain or interfere with the commission in the
37 performance of its official duties. [The circuit courts of this state shall always be deemed open
38 for the trial of suits brought to review the orders and decisions of the commission as provided
39 in the public service commission law and the same shall be tried and determined as suits in
40 equity.]

386.515. [Prior to August 28, 2001, in proceedings before the Missouri public service
2 commission, consistent with the decision of the supreme court of Missouri in State ex rel.
3 Anderson Motor Service Co., Inc. v. Public Service Commission, 97 S.W.2d 116 (Mo. banc
4 1936) the review procedure provided for in section 386.510 is exclusive to any other procedure.]
5 An application for rehearing is required to be served on all parties and is a prerequisite to the
6 filing of an [application for writ of review] **appeal under section 386.510**. The application for
7 rehearing puts the parties to the proceeding before the commission on notice that [a writ of
8 review] **an appeal** can follow and any such review **under the appeal** may proceed without
9 formal notification or summons to said parties. On and after August 28, [2001] **2011**, the review
10 procedure provided for in section 386.510 [continues to] **shall** be exclusive except that a copy
11 of [any such writ of review] **the notice of appeal required by section 386.510** shall be
12 provided to each party to the proceeding before the commission, or his or her attorney of record,
13 by hand delivery or by registered mail, and proof of such delivery or mailing shall be filed in the
14 case [as provided by subsection 2 of section 536.110] **by the appellant**.

386.520. 1. The pendency of [a writ of review] **an appeal under section 386.510** shall
2 not of itself stay or suspend the operation of the order or decision of the commission, but [during
3 the pendency of such writ, the circuit court in its discretion may stay or suspend, in whole or in
4 part, the operation of the commission's order or decision. No order so staying or suspending an
5 order or decision of the commission shall be made by any circuit court otherwise than on three
6 days' notice and after hearing, and if the order or decision of the commission is suspended the
7 same shall contain a specific finding based upon evidence submitted to the court and identified
8 by reference thereto, that great or irreparable damage would otherwise result to the petitioner and
9 specifying the nature of the damage. In case the order or decision of the commission is stayed
10 or suspended, the order or judgment of the court shall not become effective until a suspending
11 bond shall first have been executed and filed with, and approved by, the circuit court, payable
12 to the state of Missouri, and sufficient in amount and security to secure the prompt payment, by
13 the party petitioning for the review, of all damages caused by the delay in the enforcement of the
14 order or decision of the commission, and of all moneys which any person or corporation may be
15 compelled to pay, pending the review proceedings, for transportation, transmission, product,
16 commodity or service in excess of the charges fixed by the order or decision of the commission,
17 in case such order or decision is sustained.

18 2. The circuit court, in case it stays or suspends the order or decision of the commission
19 in any manner affecting rates, fares, tolls, rentals, charges or classifications, shall also by order
20 direct the corporation, person or public utility affected to pay into court, from time to time, there
21 to be impounded until the final decision of the case, or into some bank or trust company paying
22 interest on deposits, under such conditions as the court may prescribe, all sums of money which

23 it may collect from any corporation or person in excess of the sum such corporation or person
24 would have been compelled to pay if the order or decision of the commission had not been stayed
25 or suspended.

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

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

44 5. Upon the decision of the circuit court, all moneys which the corporation, person or
45 public utility may have collected pending the appeal, in excess of those authorized by such
46 decision, together with interest, in case the court ordered the deposit of such moneys in a bank
47 or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such
48 manner and through such methods of distribution as may be prescribed by the court, unless an
49 appeal be granted such corporation, person or public utility, as herein provided] **with respect to**
50 **commission orders or decisions that do not involve the establishment of new rates and**
51 **charges for a public utility, the appellate court may in its discretion, or upon the**
52 **recommendation of a special master appointed for such purpose, stay or suspend the**
53 **operation of the order or decision of the commission, in whole or in part, if in its discretion**
54 **it determines that great or irreparable damage would otherwise result to the appellant.**

55 **2. With respect to orders or decisions involving the establishment of new rates or**
56 **charges, there shall be no stay or suspension of the commission's order or decision,**
57 **however:**

58 (1) In the event a final and unappealable judicial decision determines that a
59 commission order or decision unlawfully or unreasonably decided an issue or issues in a
60 manner affecting rates, then the court shall instruct the commission to provide temporary
61 rate adjustments and, if applicable, prospective rate adjustments as calculated based on
62 the reconciliation and billing determinants provided by the commission under subsection
63 4 of section 386.420 and in accordance with the procedures set forth in subdivisions (2) to
64 (5) of this subsection;

65 (2) If the effect of the unlawful or unreasonable commission decision was to
66 increase the public utility's rates and charges in excess of what the public utility would
67 have received had the commission not erred or to decrease the public utility's rates and
68 charges in a lesser amount than would have occurred had the commission not erred, then
69 the commission shall be instructed on remand and within sixty days to approve temporary
70 rate adjustments designed to flow through to the public utility's then existing customers
71 the excess amounts that were collected by the utility plus interest at the prime bank lending
72 rate minus two percentage points. Such amounts shall be calculated from the time the issue
73 or issues were first identified in the appellant's notice of appeal to the court of appeals until
74 the earlier of the date when new rates and charges consistent with the court's opinion
75 became effective or when new rates or charges otherwise approved by the commission as
76 a result of a general rate case filing or complaint became effective. Such amounts shall
77 then be reflected as a rate adjustment over a like period of time;

78 (3) If the effect of the unlawful or unreasonable commission decision was to
79 increase the public utility's rates and charges by a lesser amount than what the public
80 utility would have received had the commission not erred or to decrease the public utility's
81 rates and charges in a greater amount than would have occurred had the commission not
82 erred, then the commission shall be instructed on remand and within sixty days to approve
83 temporary rate adjustments designed to allow the public utility to recover from its then
84 existing customers the amounts it should have collected plus interest at the prime bank
85 lending rate minus two percentage points. Such amounts shall be calculated for the period
86 commencing with the date the appellant's notice of appeal was filed until the earlier of the
87 date when new permanent rates and charges consistent with the court's opinion became
88 effective or when new permanent rates or charges otherwise approved by the commission
89 as a result of a general rate case filing or complaint became effective. Such amounts shall
90 then be reflected as a rate adjustment over a like period of time;

91 (4) If the effect of the unlawful or unreasonable commission decision was to allocate
92 too much of a rate increase or too little of a rate decrease to a customer class or classes,
93 then the commission shall be instructed on remand and within sixty days to approve

94 **temporary rate adjustments for each customer class as necessary to ensure that each**
95 **customer class is charged the amounts that would have been charged had the commission**
96 **not erred. Such amounts shall be calculated for the period commencing with the date the**
97 **appellant's notice of appeal was filed until the earlier of the date when new rates and**
98 **charges consistent with the court's opinion became effective or when new rates or charges**
99 **otherwise approved by the commission as a result of a general rate case filing or complaint**
100 **became effective. Such amounts shall then be reflected as a rate adjustment over a like**
101 **period of time;**

102 **(5) No action affecting the public utility's collection of rates and charges shall be**
103 **taken in cases where the court cannot make a determination on the merits because the**
104 **commission failed to include adequate findings of fact to support the commission's**
105 **decision, provided that the commission shall provide such findings of fact or otherwise**
106 **issue a new order within ninety days of the date of the court's mandate. If such new order**
107 **is appealed, the period for measuring amounts subject to temporary rate adjustments**
108 **process set forth in subdivisions (1) to (4) of this subsection shall commence beginning with**
109 **the initial brief filed in such new appeal.**

386.530. All actions or proceedings under this or any other chapter, and all actions and
2 proceedings commenced or prosecuted by order of the commission, and all actions and
3 proceedings to which the commission, the public counsel or the state may be parties, and in
4 which any question arises under this or any other chapter, or under or concerning any order or
5 decision or action of the commission, shall be preferred over all other civil causes except election
6 contests in all the [circuit] **appellate** courts of the state of Missouri, and shall be heard and
7 determined in preference to all other civil business pending therein except election contests,
8 irrespective of position on the calendar. The same preference shall be granted upon application
9 of the public counsel or the commission counsel in any action or proceeding in which either or
10 both may be allowed to intervene.

386.540. 1. The commission and any party, including the public counsel, who has
2 participated in the [commission] **court of appeals** proceeding [which produced the order or
3 decision may, after the entry of judgment in the circuit court in any action in review, prosecute
4 an appeal to a court having appellate jurisdiction in this state. Such appeal shall be prosecuted
5 as appeals from judgment of the circuit court in civil cases except as otherwise provided in this
6 chapter] **and is aggrieved by the opinion of the court may seek rehearing and/or transfer**
7 **to the Missouri supreme court under rules established by the court.** The original transcript
8 of the record and testimony and exhibits, certified to by the commission and filed [in the circuit
9 court in any action to review an order or decision of the commission, together with a transcript

10 of the proceedings in the circuit court,] **with the court of appeals** shall constitute the record on
11 appeal to the supreme court [or any court of appeals].

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

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

26 4.] The general laws relating to appeals to the supreme court and the court of appeals in
27 this state shall, so far as applicable and not in conflict with the provisions of this chapter, apply
28 to appeals taken under the provisions of this chapter.