

# The Commission's General Counsel Office

# KEEPING CONNECTED TO THE LAW

**W**hen you flip on the light switch, you probably know that electricity flows through a vast network of transmission wires crisscrossing the land over hundreds and perhaps thousands of miles. But did you know that the electricity you use also flows through a multi-dimensional legal landscape on its way to your living room?

The General Counsel is the attorney authorized by statute to represent and advise the Commission regarding all matters in connection with the Commission's powers and duties. Attorneys in the General Counsel's Office (GCO) provide legal services and support the wide-ranging and varied areas of law in which the Commission does its work.

## Missouri Laws

Much of the Commission's authority is governed by Missouri law. State statutes require the Commission to make sure that public utilities provide services that are "safe and adequate," and that utilities charge customers rates that are "just and reasonable." The Commission often holds lengthy hearings where multiple parties — including the utility, consumer advocates, employee unions and environmental groups — weigh in on the utility company's rates and service. As you might expect, these parties do not always agree about how the Commission should regulate the utility.

Parties who disagree with a Commission decision frequently appeal the Commission's orders to the state's appellate courts or to the Supreme Court of Missouri for judicial review of the lawfulness and reasonableness of the Commission's decisions. Attorneys in the General Counsel's Office defend those orders and decisions by researching, briefing and arguing the case to the court.

Missouri law also authorizes attorneys in the General Counsel's Office to enforce the Commission's regulations. When the Commission has determined that a violation of law, rule or order has occurred, it can direct the GCO to seek penalties against a regulated utility by filing an action in any of the state's circuit courts. Other enforcement actions are also filed by the GCO to pursue compliance. For instance, attorneys can file circuit court cases for a company's failure to produce documents or comply with Commission discovery orders, or for failure to pay assessments or submit annual reports.

If the Commission determines that a small water or sewer utility has been actually or effectively abandoned by its owners, or that the utility is unable or unwilling to provide safe or adequate service to its customers, the Commission is authorized to file a case in circuit court requesting the appointment of a receiver to manage the utility in order to provide service in the best interests of its customers.

Whether the matter involves multi-million dollar issues before the Missouri appellate courts, or a small sewer utility with just a handful of customers, attorneys in the GCO represent or coordinate litigation for the Commission at all stages of an action. The first stages of litigation may be



**PSC External Litigation attorneys represent the Commission if decisions are appealed to the courts.**

researching potential risks for litigation, or handling and responding to subpoenas served on the Commission for documents or testimony of its staff. Thereafter, depending on the type of proceeding, GCO will either file the action or defend the Commission by filing pleadings, motions, processing discovery, and preparing the case for trial through its conclusion.

## Federal Laws

In addition, the utility rates that Missourians pay are affected by decisions made by a myriad of different national and regional organizations operating beyond the borders of

our state. Some entities, like the Federal Energy Regulatory Commission (FERC) or the Environmental Protection Agency (EPA), are well known. Other entities, like the Regional Transmission Organizations (RTOs), are not. The General Counsel's Office analyzes how this rapidly changing legal landscape affects the Commission, the utilities under its jurisdiction, and Missouri citizens. The General Counsel's Regulatory Analysis Department consists of a team of technical experts from multiple disciplines who monitor all types of federal and regional actions and issues that could impact Missouri utilities and their customers.

For example, transmission of electricity and natural gas across state lines is regulated by the FERC. The FERC has significant authority to regulate the transmission of both electric power and natural gas through wires and pipelines that cross from one state to another. FERC determines how much interstate natural gas pipeline companies can charge utility companies to ship natural gas from wells in the Gulf of Mexico or Pennsylvania to customers in Missouri.

These shipping charges are included in the amount the utility charges its customers, and will ultimately be borne by the Missouri citizens and businesses that pay the utility rates. As part of its mission to ensure just and reasonable rates for Missourians, the Commission is authorized to intervene in cases before the FERC, and, if necessary, to litigate in favor of reasonable gas and electric transmission rates.



Unlike other public utilities like natural gas and water, electricity cannot be stored for later use. Although there is much research in this area, presently electricity must be used as it is produced, or else it is wasted. At the same time, most people expect that they will be able to use all the power they need or want on demand. To help manage the complicated task of making sure that enough electricity is produced to



meet demand with a minimum of waste, the FERC has developed "regional transmission organizations" (RTOs).

Two RTOs operate in Missouri: the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP). FERC allows RTOs to perform various functions within a region's energy market. For example, RTOs operate the Interstate Electric Transmission Grid, plan upgrades and expansions of the grid, manage wholesale electric markets through which utilities buy and sell electricity to one another, and work to ensure reliable supplies of electric power to the customers in the entire region. MISO and SPP each have established numerous committees and working groups to carry out each of these FERC mandates. Experts in the GCO's Regulatory Analysis Department not only monitor these organizations, but actively participate in many committees and key working groups.

FERC-approved electric transmission rates include the amount of investor profit (called the "return on equity," or "ROE") to be collected by the companies that build electric transmission lines. The ROE for a particular transmission company can be based on many different factors involving various aspects of the global energy market, so GCO experts and attorneys must work together to stay fully informed of current trends in order to effectively advocate for Missouri ratepayers in FERC proceedings.

Monitoring, and sometimes Commission participation in, FERC, RTO and EPA actions is necessary to ensure that Missouri consumers receive safe and reliable electric and natural gas service at reasonable rates. Missouri ratepayers have saved millions of dollars in energy costs because of the Commission's participation in various federal administrative cases.



## Advising the Commission

As a large state agency operating in a complex legal landscape, there are many different types of lawsuits and legal matters in which the Commission may need to intervene; additionally, the Commission may be named as a party to a lawsuit in state or federal court. The GCO is charged with advising the Commission, or any Commissioner as requested,

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on any legal matter that may arise. In addition, the GCO provides other departments within the Commission with legal research and counsel in matters of employee relations, human resources, contractual matters, and other topics. GCO also analyzes Commission processes and procedures for compliance with applicable laws or regulations.

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the rates Missourians pay for these essential services. The GCO attorneys and staff serve both the Commission and Missourians with critical evaluation, attention to detail, and broad knowledge of this dynamic legal landscape.

— **John Borgmeyer**, PSC Litigation Attorney  
**Cherlyn Voss**, PSC Regulatory Analysis Manager  
**Rodney Massman**, PSC Assistant General Counsel

## Update on the PSC Law Library

This summer, the Commission continued the process of determining to what extent the Commission's Law Library provides valuable resources to the agency and its Staff in carrying out the Commission's duties to the public. The Commission surveyed the Commission's attorneys and determined that, in light of the increased availability of online resources, it is no longer necessary to keep and update all of the books, journals, and other publications that are currently maintained in hardcopy.



The process of reducing the Law Library collection began with the ultimate goal of retaining what is still of value while making room for conference and meeting space for Staff and others. According to the Commission's Budget & Fiscal Services Department, the changes that have been made and are planned will result in more than \$50,000 in annual savings for the Commission.