

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE EX REL. AG PROCESSING, INC., ET AL.,
APPELLANTS,**

v.

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
RESPONDENT.**

WD68727

DATE: November 12, 2008

Appeal From:
COLE COUNTY CIRCUIT COURT
THE HONORABLE JON EDWARD BEETEM, JUDGE

Appellate Judges:
Division Two Judges: Smart, P.J., Hardwick and Welsh, JJ.

Attorneys:
David Woodsmall, Kansas City, MO, **for appellants.**

J. Dale Youngs, Kansas City, MO; Renee Parsons, Kansas City, MO; and Kevin A. Thompson, Jefferson City, MO, **for respondent.**

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE EX REL. AG PROCESSING, INC., ET AL., APPELLANTS

v.

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
RESPONDENT**

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COLE COUNTY CIRCUIT COURT

Before: Division Two Judges: Smart, P.J., Hardwick and Welsh, JJ.

AG Processing, Inc. and Sedalia Industrial Energy Users Association (Consumers) are consumers of electrical services provided by Aquila, Inc. The rates Aquila is permitted to charge for those services are regulated by the Missouri Public Service Commission (PSC). After the PSC granted Aquila's request for rate increases, the Consumers sought a rehearing before the PSC and a stay of the new rates. The PSC ordered the new rates to go into effect before the rehearing was granted. Then, before the PSC ruled on the application for rehearing, the Consumers filed a petition in the circuit court seeking judicial review of the PSC's decision to allow the rate increases. Following a hearing, the circuit court dismissed the Consumer's petition for lack of jurisdiction in that the PSC order the Consumers sought to have reviewed was not yet final. Consumers appeal the circuit court's dismissal of their petition.

AFFIRMED.

Division Two holds: Aquila's motion to dismiss the appeal as moot is denied, because the issue raised is subject to repetition while evading appellate review.

The circuit court did not err in dismissing the Consumers' petition for judicial review for lack of finality. The applicable statutes require a party to file an application for rehearing with the PSC -- and the PSC to have ruled on that application -- before that party can seek a petition for review in the circuit court. Where, as here, the PSC has not yet ruled on an application for rehearing, the PSC's order cannot be considered *de facto* final and ripe for judicial review, as argued by the Consumers, just because the new rates have already gone into effect and overpayments cannot be recovered due to a ban on "retroactive ratemaking." The Consumers fail to demonstrate that they have been deprived of their constitutional and statutory rights. The judgment is affirmed.

Opinion by James M. Smart, Jr., Judge

November 12, 2008

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