

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE EX REL. OFFICE OF
PUBLIC COUNSEL**

APPELLANT,

v.

**PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI AND
SOUTHERN UNION COMPANY**

RESPONDENTS.

DOCKET NUMBER WD72625

DATE: December 14, 2010

Appeal From:

Cole County Circuit Court
The Honorable Paul C. Wilson, Judge

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Attorneys:

Marc D. Poston, Jefferson City, MO, for appellant.

Steven C. Reed and Jennifer Heintz, Jefferson City, MO , for respondent Public Service
Commission of the State of Missouri; Diana C. Carter and James C. Swearngen, Jefferson City,
MO, for respondent Southern Union Company.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Cole County

Before Division Three Judges: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

The Office of the Public Counsel appeals from the trial court's judgment dismissing its petition for writ of review. OPC contends: (1) the trial court erred because its petition was not premature as it was properly filed after the Public Service Commission orally denied OPC's application for rehearing in its agenda meeting; (2) the trial court misinterpreted the law because although section 386.510 requires petitions for writ of review to be filed no later than thirty days after the PSC denies rehearing, it does not prohibit the filing of a petition for writ of review before rehearing is denied; and (3) the trial court misinterpreted the law in that premature petitions for writ of review should be considered filed when the PSC denies rehearing.

AFFIRMED.

Division Three holds:

(1) Until the Order was signed by the PSC's secretary, the PSC had not denied the applications for rehearing in a manner sufficient to constitute an order under section 386.280.1.

(2) Until an application for rehearing is denied in the manner required by section 386.280.1, by written order, it remains pending, rendering any prematurely filed petition for writ of review insufficient to invoke the circuit court's authority under section 386.510.

(3) OPC failed to demonstrate that judicial review of a prematurely filed petition for writ of review is authorized by section 386.510 or by any other statute. Section 386.510 anticipated that more than one party may file a petition for writ of review and that venue may be proper in more than one county. If prematurely filed petitions for writ of review were treated as timely upon entry of the PSC's written order denying rehearing, parties would be motivated to "race to

the courthouse" and to file competing petitions prematurely generating the impossible task of determining the first to file.

Opinion by: Cynthia L. Martin, Judge

December 14, 2010

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