

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,)
Complainant,)
v.)
Smoke Signal Communications,)
Respondent.)

Case No. TC-2002-327

ORDER SETTING ASIDE DEFAULT AND
ORDER DISMISSING COMPLAINT

This order sets aside a default against the respondent and dismisses the complaint.

On January 14, 2002, the Staff of the Missouri Public Service Commission filed a complaint against Smoke Signal Communications, requesting that the Commission open a complaint case to determine whether Smoke Signal failed, omitted, or neglected to obey the Commission order compelling the answers to Staff Data Request No. 2501 in case number TO-2001-467, and also to authorize the Commission's General Counsel to bring a penalty action against Smoke Signal if Smoke Signal is found to have failed, omitted, or neglected to obey a Commission order.

Smoke Signal did not respond to Staff's complaint. An order granting default against Smoke Signal and also authorizing the Commission's General Counsel to bring a

penalty action against Smoke Signal under Section 386.600, RSMo 2000, was issued on March 7, 2002, with an effective date of March 17, 2002.

On April 10, 2002, Staff filed a notification of submittal of requested information. Staff noted that 9 days before the Commission issued its order granting default, i.e., on February 26, 2002, Smoke Signal submitted information in response to Staff Data Request 2501 from case number TO-2001-467. Staff stated that it has reviewed the information and finds it complete and satisfactory in answering Data Request 2501 from case number TO-2001-467.

Commission Rule 4 CSR 240-2.080(16) allows parties ten days to respond to a pleading. The rule states: "Parties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission." No one responded to Staff's notice and the time for doing so has elapsed.

Commission Rule 4 CSR 240-2.116(4) gives the Commission the authority to dismiss a case if, after at least a ten-day notice to all parties, good cause is found by the Commission for the dismissal. The rule states: "A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved." Staff has demonstrated good cause for the dismissal of this case in that Smoke Signal submitted the requested information that Staff had requested. In addition, a ten-day notice is provided to all parties by this order.

Since the order granting default and also authorizing the General Counsel to seek civil penalties had already gone into effect by the time Staff's notice was filed, the notice will not be treated as a notice of dismissal, but will be treated as a motion to set aside the order granting default.

IT IS THEREFORE ORDERED:

1. That the order granting default against Smoke Signal Communications and also authorizing the General Counsel of the Missouri Public Service Commission to bring a penalty action against Smoke Signal Communications under Section 386.600, RSMo 2000, issued on March 7, 2002, is set aside for good cause shown by the Staff of the Missouri Public Service Commission.

2. That this order will become effective on May 3, 2002.

3. That this complaint case is dismissed and may be closed on May 4, 2002.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts
Secretary/Chief Law Judge**

(S E A L)

Bill Hopkins, Senior Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000,
as currently submitted.

Dated at Jefferson City, Missouri,
on this 23rd day of April, 2002.