

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Manufactured Housing Consumer) **File No. MO-2016-0035**
Recovery Fund Advisory Committee)

STAFF’S REQUEST FOR WAIVER

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) , by and through the undersigned counsel, on behalf of the Manufactured Housing Consumer Recovery Advisory Committee (“Committee”) and respectfully requests the Missouri Public Service Commission (“Commission”) waive Commission Rule 4 CSR 240-126.020 (4). In support of this request, Staff states the following:

1. The Committee was established to assist the Commission in the administration and investigation of claims submitted by consumers to the Manufactured Housing Consumer Recovery Fund (“Recovery Fund”) and tasked with investigating and submitting to the Commission a recommendation “within sixty (60) days from receipt of the claim form.”¹

2. On April 5, 2013, Applicants to the Recovery Fund properly submitted a completed claim form and the Committee began its investigation on the allegations asserted by the Applicant.

3. On September 9, 2014, the Committee discovered that the investigation had remained incomplete due to changes in program management. The Committee convened and determined that more information was needed to submit a recommendation. However, due to technical difficulties related to the program software,

¹ Commission Rule 4 CSR 240-126.020(4)

CitizenServe, the Committee was unable to track disbursement requests from the Recovery Fund, and the complaint was not processed.

5. On April 16, 2015, the Committee was apprised of the situation and took action to address the complaint. The Committee requests that the Commission find that the mistake was caused by harmless error and accept the Recommendation beyond sixty (60) days of the receipt of the claim form.

6. No parties will be prejudiced by accepting the Recommendation beyond sixty (60) days of the receipt of the claim form. “[T]he failure of an agency to comply with its own rules may invalidate its actions only when prejudice results.”² “Procedural irregularities are not per se prejudicial; each case must be determined on its individual facts and, if the errors are deemed to be minor and insubstantial, the administrative order should be enforced notwithstanding.”³ Disbursements under this program are made from a dedicated Recovery Fund; therefore no parties will be prejudiced or exposed to liabilities as a result of accepting this Recommendation. The failure of the Committee to timely recommend Commission action on a claim bears no relation to the standards of the Recovery Fund or the eligibility requirements necessary to be met by an Applicant to receive disbursement.

7. It is within the Commission’s authority to accept the Committee’s belated Recommendation so as to avoid prejudice against the Applicant. “[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the

² Bd. of Educ. of City of St. Louis v. Missouri State Bd. of Educ., 271 S.W.3d 1, 13 (Mo. 2008). *Accord* Missouri Nat. Educ. Ass’n v. Missouri State Bd. of Education, 695 S.W.2d 894, 897 (Mo. banc 1985); Port of Jacksonville Maritime Ad Hoc Committee, Inc. v. Hayes, 485 F.Supp. 741 (M.D.Fla.1980) *aff’d*, 620 F.2d 567 (5th Cir.1980); FTC v. Foucha, 356 F.Supp. 21 (N.D.Ala.1973).

³ Trifid Corp. v. Nat’l Imagery & Mapping Agency, 10 F. Supp. 2d 1087, 1095 (E.D. Mo. 1998).

ends of justice require it.”⁴ The Applicant properly completed and timely filed a complaint form in compliance with Commission Rules, and but for the omissions by Staff and the Committee, the Applicant would have had an opportunity to receive disbursement from the Recovery Fund.

WHEREFORE, the Committee respectfully request the Commission waive Commission Rule 4 CSR 240-126.020 (4) and accept its recommendation.

Respectfully submitted,

/s/ Hampton Williams

Wm. Hampton Williams
Assistant Staff Counsel
Missouri Bar No. 65633
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65012
(573) 751-8517 (Telephone)
(573) 751-9285 (Fax)
Hampton.Williams@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 12th day of August, 2015.

/s/ Hampton Williams

⁴ Am. Farm Lines v. Black Ball Freight Serv., 397 U.S. 532, 539, 90 S. Ct. 1288, 1292, 25 L. Ed. 2d 547 (1970).