

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of December, 1997.

In the Matter of Missouri-American Water)
Company for Permission, Approval, and A)
Certificate of Convenience and Necessity)
Authorizing It to Construct, Install, Own,) CASE NO. WA-97-45
Operate, Control, Manage and Maintain A)
Water System for the Public in Certain Areas)
in St. Charles County, Missouri.)

In the Matter of Missouri-American Water)
Company's Revised Tariff Filing Concerning) CASE NO. WO-97-492
Service Connections.)

Public Water Supply District No. 2 of)
St. Charles County, Missouri,)
)
Complainant,)
)
vs.) CASE NO. WC-96-441
)
Missouri-American Water Company,)
)
Respondent.)

ORDER DENYING REQUEST FOR STAY

On November 26, 1997, the Commission issued its Report and Order in the above consolidated cases. Although Commission orders regularly bear a 10-day effective date, the effective date for this particular order was extended to 13 days in order to allow additional time for any potential response.

On December 5 Public Water Supply District No. 2 of St. Charles County, Missouri (District) filed an Application for Rehearing and Request for Stay. The Commission will respond to the application for rehearing in a separate order to follow. However, if the Commission is to address the

request for stay, it must do so prior to December 9, 1997. Because the request for stay was filed after the conclusion of the last public meeting of the Commission, on December 4 and because the Commission's next regularly scheduled public meeting is not scheduled until after the effective date of the order, the Commission has convened a special agenda, for good cause, in which to address this motion.

District's request for stay seems to suggest that an order of the Commission may not become effective until the passage of a period of thirty days. Admittedly, Section 386.490(3) RSMo. 1994 provides that "every order of the Commission shall of its own force take effect and become operative 30 days after the service thereof, except as otherwise provided." The District attempts to elevate this statutory section to a requirement that all Commission orders must carry an effective date of at least 30 days when that is not the case. This statute holds that, in lieu of a specific effective date, all Commission orders shall become effective after a period of *not more than* 30 days. (Emphasis added.)

District's inability to cite any cases in support of its interpretation of this statute is noteworthy. The Commission, likewise, is unable to find any such authority for District's interpretation. In fact, although Supreme Court Rule 3.3 mandates that legal counsel shall advise the bench of any and all contrary authority, counsel in this case has failed to do so.¹ The contrary authority may be found in State ex. rel. Kansas City, Independence, & Fairmount Stage Lines Co. v. Public Serv. Comm'n, 63 S.W.2d 88, 93 (Mo. 1933) where the Missouri Supreme Court

¹ (a) A lawyer shall not knowingly: (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; Missouri Supreme Court Rule 3.3(a)(3).

reviewed an identical statutory provision and ruled contrary to the District's assertion herein.

It is further suggested that, under Section 10 of the Motor Bus Act of 1927, Section 5276, R. S. 1929, the commission's order could not become effective until 30 days after it was made, even though the commission attempted to fix an earlier effective date, and therefore the application for rehearing was timely. That section provides that the orders and decisions of the commission on matters covered by the Act shall be reduced to writing and a copy thereof served on the motor carrier effected thereby by mail, "And such order and decision shall become operative and effective within 30 days after such service," etc. We do not think that provision was designed to prohibit the commission from fixing an effective date within such 30 day period and earlier than 30 days from the date of the order or decision. At 92.

In that same case the Supreme Court specifically approved a 10-day effective date for final orders of the Commission, to wit: "It is our conclusion that the commission had the authority to make the order in question effective ten days after its date;" At 93.

Although District complains that the Report and Order herein will become effective "only thirteen days after it was issued." The law in Missouri provides that "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation" Missouri Supreme Court Rule 44.01(a). See also 4 CSR 240-2.050. When a prescribed period is more than seven days, the intermediate Saturdays, Sundays and legal holidays are not excluded.

In the case *sub judice* the Commission allowed 13 days instead of the traditional 10 days. The District's complaint of an inadequate time period

in which to respond is, therefore, unconvincing. The Commission will deny the Request for Stay.

IT IS THEREFORE ORDERED:

1. That the Request for Stay filed on December 5, 1997, by Public Water Supply District No. 2 of St. Charles County, Missouri is denied.

2. That the Application for Rehearing filed on December 5, 1997 by Public Water Supply District No. 2 of St. Charles County, Missouri will be addressed in an order to follow.

3. That this order shall become effective on December 8, 1997.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

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

(S E A L)

Lumpe, Ch., Crumpton,
Murray, and Drainer,
CC., Concur.

Roberts, Chief Regulatory Law Judge