

**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
September, 2010.

In the Matter of Rex Deffenderfer Enterprises, Inc.)
Request for a Increase in Annual Water System) **File No. WR-2011-0056**
Operating Revenues)

ORDER REGARDING WAIVER REQUEST

Issue Date: September 8, 2010

Effective Date: September 8, 2010

On August 26, 2010, Rex Deffenderfer Enterprises, Inc. ("RDE") requested approval of an increase in rates for its water service pursuant to Commission Rule 4 CSR 240-3.050. RDE also requests a waiver of 4 CSR 240-4.020(2) that requires sixty days notice prior to filing what is likely to become a contested case. RDE states that it requires the rate increase as soon as possible because of increases in plant investment, increases in operation and maintenance expenses, increases in the Commission's annual utility assessment and changes in its number of customers. RDE asserts that it cannot wait an additional sixty days for the rate increase. No party has opposed the request.

Commission Rule 4 CSR 240-4.020(2)(B) provides that the sixty-day notice requirement may be waived for good cause shown. Although the term "good cause" is frequently used in the law,¹ the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.² Good cause "generally means a

¹ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

² See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term "good cause" as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”³ Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁴

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁵ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁶

The Commission finds that RDE has shown good cause for waiving the sixty-day notice requirement.

THE COMMISSION ORDERS THAT:

1. Rex Deffenderfer Enterprises, Inc.’s request for a waiver of Commission Rule 4 CSR 240-040(2) is granted.

2. This order shall be effective September 8, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge

³ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁴ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁵ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁶ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).