

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

In the Matter of Proposed Rules)	
4 CSR 240-3.162 and)	<u>Case No. EX-2008-0105</u>
4 CSR 240-20.091, Environmental)	
Cost Recovery Mechanisms)	

MOTION FOR RECONSIDERATION

COMES NOW the Office of the Public Counsel and for its Motion for Reconsideration states as follows:

1. Pursuant to 4 CSR 240-2.160(2), Public Counsel files this Motion for Reconsideration of the Commission's Order Denying Rehearing issued April 16, 2008. The Order Denying Rehearing denied Public Counsel's Application for Rehearing solely because the Commission¹ judged the Application for Rehearing to be untimely; the Commission did not address the substance of the Application for Rehearing.

2. The Commission erred in finding Public Counsel's Application for Rehearing untimely. The Commission determined that the Final Orders of Rulemaking became effective at 12:01 am on April 3, 2008. The Commission reached this conclusion primarily through a misreading of Section 386.490.3 RSMo 2000. Section 386.490 provides that:

386.490. 1. Every order of the commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby, or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure.

¹ The Order Denying Rehearing was voted on at a meeting at which only three Commissioners were in attendance and of those three, only two voted in favor of denying rehearing.

2. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served must if so required in the order notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

3. Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States.

In order for the Commission to be correct in its calculation of the effective date of the Final Orders of Rulemaking, **both** of the following must be true: 1) “service” in this instance means service upon JCAR and only on JCAR; and 2) no date other than 30 days was “otherwise provided.” In this case, **neither** is true.

3. Service is called for not only in Section 386.490, but also in Section 386.710.2. The latter requires that “The public counsel shall be served...with a copy of all orders of the commission.” Even if the Commission is correct (and Public Counsel submits that it is not) that Section 386.490 does not require service upon Public Counsel, Section 386.710 absolutely requires it. And even if service upon Public Counsel is not required under Section 386.710, “service” in this instance must be delivery of Final Orders of Rulemaking to the Secretary of State, not to JCAR.

4. Furthermore, a specific effective date **was** “otherwise provided.” The Commission has recently stopped showing effective dates on its Final Orders of Rulemaking. Public Counsel therefore specifically asked the Commission’s official Custodian of Records, Secretary, Chief Administrative Law Judge, presiding officer on this case, and author of the Final Orders of Rulemaking “can you please tell me what the effective date of the orders will

be?” The answer was “June 30.” Exhibit 1, attached hereto, is an email reflecting the exact question and the specific answer from the Commission’s official Custodian of Records, Secretary, Chief Administrative Law Judge, presiding officer on this case, and author of the Final Orders of Rulemaking.

WHEREFORE Public Counsel respectfully requests that the Commission reconsider its April 16, 2008 Order Denying Applications for Rehearing.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 17th day of April 2008.

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/s/ Lewis R. Mills, Jr.

By: _____

Mills, Lewis

From: Dale, Cully [cully.dale@psc.mo.gov]
Sent: Monday, March 03, 2008 5:37 PM
To: Mills, Lewis
Subject: RE: Final Orders of rulemaking 4 CSR 240- 3.162 and 20.091

June 30. I'd better take another look at them - I must have sent over the wrong electronic copy.
Thanks, cully

From: Mills, Lewis [mailto:lewis.mills@ded.mo.gov]
Sent: Monday, March 03, 2008 5:30 PM
To: Dale, Cully
Subject: RE: Final Orders of rulemaking 4 CSR 240- 3.162 and 20.091

Cully,
Are these the final orders? One seems to be a redline/strikethrough of a telco rule. My main concern is with the effective date; can you please tell me what the effective date of the orders will be?
Thanks,
Lewis

From: Dale, Cully [mailto:cully.dale@psc.mo.gov]
Sent: Monday, March 03, 2008 4:43 PM
To: Mills, Lewis
Subject: FW: Final Orders of rulemaking 4 CSR 240- 3.162 and 20.091

From: Dale, Cully
Sent: Monday, March 03, 2008 3:42 PM
To: 'rules@sos.mo.gov'
Subject: Final Orders of rulemaking 4 CSR 240- 3.162 and 20.091

<< File: ECRM 3.162 final ord of rulemaking.doc >> << File: ECRM 20.091 Final Ord of Rule.doc >>

03/03/08
Secretary/Chief RLJ
573-751-4255