

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

CHARLES A. HARTER,

Appellant,

v.

MISSOURI PUBLIC SERVICE COMMISSION,

Respondent.

DOCKET NUMBER WD73913

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 6, 2011

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ellis and Howard, JJ.

CONCURRING.

ATTORNEYS

Charles A. Harter
St. Louis, MO

Appellant, *pro se*,

Shelley Brueggemann
Jefferson City, MO

Attorney for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

CHARLES A. HARTER,)
)
Appellant,)
v.) **OPINION FILED:**
) **December 6, 2011**
MISSOURI PUBLIC SERVICE)
COMMISSION,)
)
Respondent.)

WD73913

Cole County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and
Joseph M. Ellis and Victor C. Howard, Judges

Charles A. Harter appeals from the judgment of the Circuit Court of Cole County, Missouri, granting the Missouri Public Service Commission’s (“PSC”) Motion to Dismiss, with prejudice. The essence of Harter’s appeal is his assertion that the trial court erroneously applied the law in granting the PSC’s Motion to Dismiss on the grounds that his Application for Rehearing was not timely filed with the PSC, and therefore, he was not entitled to judicial review. He contends that: (i) the provisions of section 386.490 precluded the PSC from shortening the statutory thirty-day effective date for its order to deny him a rehearing; (ii) Rule 44.01 applies to extend the filing deadline; (iii) the Missouri Administrative Procedures Act supersedes case law interpreting the PSC statute; and (iv) he was denied due process.

AFFIRMED.

Division Two holds:

1. Statutory Authority to Review Untimely Application for Rehearing: Section 386.490.3 provides that PSC orders or decisions shall take effect and become operative thirty days after the service thereof, *except as otherwise provided*. Section 386.500.2 specifically states that no action arising out of any order or decision of the PSC shall accrue unless the party applies to the PSC for a rehearing, *before the effective date of such order or decision*. If the rehearing application is not timely filed before the effective date of the order, then the order and

decision of the PSC becomes final and is not reviewable by the circuit court. In this case, the PSC fixed the effective date of its Report and Order on Saturday, November 13, 2010. Thus, Harter's application for rehearing was due on or before Friday, November 12, 2010. Instead, Harter filed his application on Monday, November 15, 2010, two days after the effective date of the Report and Order. Accordingly, no cause of action accrued for judicial review.

2. Inapplicability of Rule 44.01: Rule 41.01 specifically states that Rules 41 through 101 govern civil actions already filed and pending in a court. Rules 41 through 101, by their terms, do not apply to proceedings in administrative agencies. Furthermore, Rule 44.01(a) is not applicable to this case because section 386.500.2 does not require a computation of time; instead, the statute requires the application for rehearing to be made to the PSC "*before the effective date*" of the order.

3. PSC's Authority to Set Effective Date of Order: Although the law specifies thirty days for applying for rehearing, the PSC has the discretion to set a shorter time as long as the time is reasonable. The PSC had the authority to make the order effective on a date certain—November 13, 2010—which was ten days after the date of the PSC Report and Order. Ten days was not an unreasonable deadline.

4. Due Process: It was Harter's failure to meet the deadline for requesting rehearing with the PSC and not any insufficiency in the statutory procedure that resulted in his inability to obtain administrative rehearing or judicial review of the PSC's decision.

Opinion by: Mark D. Pfeiffer, Presiding Judge

December 6, 2011

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.