

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL. OFFICE OF THE PUBLIC COUNSEL
RELATOR
vs.**

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, A STATE
AGENCY, AND ITS MEMBERS KEVIN GUNN, TERRY JARRETT, ROBERT
KENNEY, STEPHEN STOLL AND WILLIAM KENNEY, IN THEIR OFFICIAL
CAPACITY,
RESPONDENTS**

DOCKET NUMBER WD76079

DATE: SEPTEMBER 10, 2013

Appeal from:

The Public Service Commission

Appellate Judges:

Special Writ Division: Joseph M. Ellis, P.J., Victor C. Howard and Lisa White Hardwick, JJ.

Attorneys:

Lewis Robinson, for Relator

Jennifer Leigh Heintz, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, A STATE AGENCY,
AND ITS MEMBERS KEVIN GUNN, TERRY JARRETT, ROBERT KENNEY,
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WD76079

Public Service Commission

Before Writ Division Judges: Joseph M. Ellis, P.J., Victor C. Howard and Lisa White Hardwick, JJ.

Office of Public Counsel ("the OPC") has petitioned this Court for a writ of mandamus ordering the Public Service Commission ("the PSC") to vacate an order issued with an effective date three days later and to allow the OPC a reasonable time in which to file an application for rehearing in any subsequently issued order.

PRELIMINARY WRIT OF MANDAMUS MADE PEREMPTORY.

Writ Division holds:

- (1) While vested with the discretion to set a shorter time than thirty days for the filing of a motion for rehearing, the PSC has an unequivocal duty to allow parties a reasonable time in which to file a motion for rehearing.
- (2) Where the PSC has abused its discretion in failing to provide a reasonable time for the filing of a motion for rehearing, this Court has the authority to issue a writ of mandamus compelling the PSC to vacate its order and to allow the parties a reasonable period of time in which to appeal the order.
- (3) A tariff approval order is appealable by the OPC.
- (4) The PSC's failure to meet appropriate timelines cannot justify or constitute "good cause" for infringing upon the due process rights of the parties.
- (5) Any shortening of the date on which PSC orders will become effective to less than ten days is presumptively unreasonable and, if challenged, requires the PSC to demonstrate (1) that the circumstances surrounding the case are so extraordinary as to clearly warrant further encroachment on the time provided to

the parties in which to exercise their right to apply for rehearing and/or appeal and (2) that the time allowed was reasonably sufficient.

(6) Having reviewed the record and found no exigent circumstances that could justify the exceedingly truncated period provided for the filing of an application for rehearing dictated by the PSC in this case, we conclude that the time allowed by the PSC for filing an application for rehearing was not reasonable and that the PSC thereby abused its discretion.

(7) This Court, therefore, makes peremptory our preliminary writ of mandamus requiring the PSC to vacate its order granting expedited treatment and approving tariffs issued on January 23, 2013, and to allow the OPC a reasonable time to prepare and file an application for rehearing upon the approval of those tariffs in any subsequent order.

Opinion by Joseph M. Ellis, Judge

Date: September 10, 2013

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