

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day
of June, 2007.

Metropolitan St. Louis Sewer District,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2007-0040</u>
)	
Missouri-American Water Company,)	
)	
Respondent.)	

**ORDER DENYING MOTION TO EXTEND EFFECTIVE DATE AND
FOR LEAVE TO FILE APPLICATION FOR REHEARING**

Issue Date: June 22, 2007

Effective Date: July 2, 2007

On May 22, 2007, the Missouri Public Service Commission issued its Report and Order in this case. The effective date of the order was June 1, 2007. On June 15, 2007, Metropolitan St. Louis Sewer District (MSD) filed a Motion to Extend Effective Date and for Leave to File Application for Rehearing. Movant also filed a Motion for Rehearing.

In support of the former motion, Movant relies on Section 386.490.3, RSMo 2000, Commission rule 4 CSR 240-2.050(3) and that a Commissioner had not filed an anticipated dissenting opinion.

Section 386.490.3 states:

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.

The Commission has routinely “otherwise provided” an effective date of 10 days. Movant requests that the Commission abrogate that effective date through Commission rule 4 CSR 240-2.050(3), which allows the Commission to enlarge the time in which an act must be done when that act is required by order or rule of the Commission.

This argument fails. The “act” that would be at issue is that of Movant filing a motion for rehearing. The Commission has not issued an order requiring Movant to file for rehearing nor do Commission rules require Movant to take such action. Filing a motion for rehearing is purely within Movant’s discretion. Movant goes on to point out that it did not file a motion for rehearing because Commissioner Gaw had not yet filed his anticipated dissenting opinion. Movant argues that the Report and Order is not final until Commission Gaw files his dissent.

Again, Movant’s argument fails both legally and rationally. An order of the Commission is final upon a majority vote in support of the order and an effective date which allows time for a party to file a motion for rehearing.¹ Further, if a Commission order could not be final until a dissenting Commissioner filed a dissent, that Commissioner would have the power to prevent the order from ever becoming final by never filing a dissent. For these reasons, the Commission must reject MSD’s arguments and deny its requested relief.

On June 19, 2007, MSD filed an amended motion setting out the above arguments and further stating as follows:

- Section 386.490(1), provides that the PSC’s orders “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

¹ *State ex rel. St. Louis County v. Public Service Commission* 360 Mo. 270, 228 S.W.2d 1, (Mo. 1950)

sealed package with postage prepaid . . . to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure.”

- Because MSD is a quasi-public corporation, there are special service provisions adopted by the Supreme Court in the Missouri Rules of Civil Procedure that apply here.
- Pursuant to Rule 54.13(b)(4) of the Missouri Rules of Civil Procedure, service must be made “[u]pon a public, municipal, governmental, or quasi-public corporation or body, by delivering a copy of the summons and petition . . . to the chief executive officer in the case of any public, municipal, governmental or quasi-public corporation or body.”
- As the Clerk’s Certificate of Service makes clear, and MSD has confirmed, the chief executive officer of MSD was never served with a certified copy of the Order.
- Because service of the Order was not properly effectuated, the effective date should be amended and the timeframe allowed to file an application for rehearing should be extended.

Although the rules of civil procedure require service upon the chief executive officer, Section 386.490.1 allows service of the Commission’s orders upon an officer or agent of the corporation. The Commission, throughout the course of this proceeding, has served orders upon the attorneys, acting as agents, not upon the chief executive officer.

Further, the Commission even questions the sincerity of this argument in light of MSD’s first motion setting out its reason for delay as that of waiting for Commissioner Gaw’s dissent. Now, MSD argues that it did not even know of the order; knowledge being the underlying purpose of proper service.

In light of this ruling, the Commission will not address the substance of MSD’s Motion for Rehearing.

IT IS ORDERED THAT:

1. Metropolitan St. Louis Sewer District’s Motion, as amended, to Extend Effective Date and for Leave to File Application for Rehearing is denied.

2. This order shall become effective on July 2, 2007.
3. This case may be closed on July 3, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Jones, Senior Regulatory Law Judge