BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

ERIC C. LARSON	)	
Complaintant,	)	
vs.	)	Case No. WC-2011-0409
WOODLAND MANOR WATER, LLC,	)	
Respondent.	)	

WOODLAND MANOR'S COMMENTS
ON RECOMMENDED DECISION

COMES NOW Respondent Woodland Manor, LLC, and pursuant to Order of the Commission and applicable regulations files the following comments with respect to the Recommended Decision issued by Judge Jordan.

The Recommended Decision contains a number of errors and omissions which unfortunately have led to errors in the recommended Decision and associated Orders. These comments will largely attempt to follow the Recommended Decision chronologically and in format, except where additional comment is necessary.

Procedure

While Judge Jordan correctly points out that Mr. Larson bears the burden of proving that a violation has occurred, Respondent believes it is important to review the alleged tariff violations found in the Complaint. Mr. Larson complains that the Easterly meter was improperly set, being some 12 feet from his property line. This is the alleged tariff violation. His Complaint can further be read to imply a violation of tariff by failing to repair the leak which occurred in the service line between his two valve boxes. Mr. Larson certainly did not

introduce any evidence that the Easterly meter was improperly placed (and Judge Jordan correctly finds as much), and Mr. Larson failed to submit evidence upon which to base a monetary award for any expenses he may have incurred in making the leak repair (also correctly found by Judge Jordan). No claim was made, evidence introduced, or finding made by Judge Jordan (nor should it be), that the Westerly meter box was placed in violation of a tariff, or that the tariffs require the Company to make customer service connections. Other findings or Orders were incorrect for the reasons which follow.

Findings of Fact

Finding #6 contains an error, and this misunderstanding by the Judge appears to have repercussions in his later findings and reasoning. The relevant portion of the Water Company's system serving the Vista Haven Beach area subdivision was originally a looped system, which can be seen from Complainant's "Exhibit C," among others, particularly if one recalls from testimony and other exhibits that the line marked "1" is in the approximate position of the portion of the line which services Lot 1 of the subdivision, and that the line at "5," the western portion of what Judge Jordan termed the "west curve," continued on to connect to said line. The water supply to Lot 1, therefore, was in fact originally tied into the same loop as the rest of the subdivision.

Finding #7 is important and correct to include, as it notes that the system was originally entirely "customer owned" prior to the adoption of tariffs, and should be remembered when Judge Jordan seems to imply the Water Company or its predecessor is seeking to force

ownership upon the customer. The contrary is true.

Findings #11 and 12, while pointing out the adoption of the tariffs, omit finding that Mr. Larson acquired Lots 2 through 8 of the subdivision *after* the adoption of the tariffs and that he purchased the property subject to those tariffs and knowing of their existence.

Finding #14 is in error in that, upon Mr. Larson's request for new service and a 2" meter at the Westerly side of the subdivision (justifying the larger than standard meter request as necessary when the Westerly cabins were connected), the Company crossed Holiday Drive with a new line to its new meter setting at the property line, next to the new cabin and approximately ten feet from the existing West valve box. No new valve box was installed, and Mr. Larson has not to date completed his customer service connection from the valve box to the meter.

Finding #17: Respondent is unable to locate the source for the facts contained therein and would appreciate a citation to the evidenciary record.

Finding #18 is correct in conclusions but misleading in fact. In installing the new North/South line to the Westerly meter, the Company intentionally cut and capped in both directions the black CVT line where they crossed it so as to isolate the line in preparation for abandoning. The resort portion of the system was, therefore, no longer a complete "circuit." But see #6 above, the western portion of the "west curve" as it is called by Judge Jordan remained connected to the rest of the system, and in particular the line serving Lot 1. When the CVT line was subsequently encountered by a City crew further West, near where it

connected to the Lot 1 line, the Company again capped it so that the rest of that portion of the old line could be abandoned. However, this action was related to isolating the line from Lot 1 and the rest of the system to which it was tied, and had nothing to do with the Resort (which was no longer served by it).

Finding #19 is likewise correct in its ultimate conclusion but highly misleading in fact. The Company naturally assumed Mr. Larson would connect his West valve box to the West meter, because he had requested not only the service, but a 2" service for the express purpose of connecting his Westerly cabins, and furthermore he *did/does* have a duty to connect. It is irrelevant whether he "saw" a duty to do so, any more than whether we "see" a speed limit sign. Mr. Larson purchased the property subject to the tariffs, and furthermore he actively requested service from the Water Company, which expressly subjects him to said tariffs. *"Every water customer, upon signing an application for any water service rendered by the Company, or upon taking of water service, shall be considered to have expressed consent to be bound by the rates, rules, and regulations."* Tariff Rule 2(a). "*The Service Connection from the water main to the Customer's property line, the meter installation and setting shall be constructed, owned and maintained by the Company. Service line construction and maintenance from the property line or meter setting, including the connection to the meter setting, to the building shall be the responsibility of the Customer, and is subject to inspection by the company...."* Tariff Rule 5(b). *"The Customer's water service lines shall be brought to the unit …."* Tariff Rule 5(d).

Likewise perplexing is the proposed finding that Larson “did not know the system's details....” Is this to imply he chose to stay connected to a mystery system instead of simply connecting his valve box to the West meter? No finder of fact could reasonably find Larson credible in this regard, as *he submitted a drawing of the system attached to his Complaint* (the same drawing admitted at the hearing as Exhibit C). Judge Jordan also clearly figured out the system in short order. It is untenable to state Larson didn't know about the tariffs or the system; the only plausible explanation is he wanted to delay making the connection to the West meter for his own benefit and convenience; frankly, to save money. That is not a crime, but neither should Judge Jordan urge a decision based upon “facts” that cannot be supported by the record.

Finding #20 also finds facts which Respondent has been unable to locate in the record, such that a citation to the record would be appreciated.

Merits

The analysis and argument suggested to the Commission seem to center around a concept that if a system is in place, the classifications and rules should be frozen in time and never change. Respondent would submit that this is not a correct statement of the law, and for good reason. Under such reasoning, there never will be or indeed can be improvements to any system in the State without running afoul of varying ownership and duty claims throughout any given system. The purpose of tariffs is to have one set of rules that are reasonable and fair and equal for all customers, publicly recorded and accessible. If every

future property purchaser has to do detailed records searches and legal analysis just to determine at what point which lines are owned by who, rather than simply read the tariffs, the entire tariff regime is meaningless. Furthermore, what reason would any developer have to try to upgrade a system, if it will only lead to a confusing array of duties with respect to each different customer?

The Recommended Decision seems to read that the only duties are those of the Company, and acknowledging that any lie with Customers is an imposition. It might be noted that prior to the tariffs being adopted, *all* of the lines were “customer” owned and their repair and maintenance was 100% the property owner's (Mr. Connell's) responsibility. The adoption of tariffs changed this, such that the new Water Company was agreeing to accept some of the customer's responsibilities. According to these approved tariffs, when a meter is installed, everything beyond that installation is the responsibility of the customer. This is not imposing a new duty, this is the tariff. It's the duty that comes with becoming a customer, accepting water service. Cf. Tariff Rule 2(a).

The Recommended Decision concentrates on not wanting to unjustly impose duties on customers, but in doing so overlooks the important fact that meters were installed for this customer, and at his request. Simply put, that changes everything. It is not imposing new duties; the Company was providing new service, along with a new mechanism for improving the old service and getting rid of old lines. The Westerly meter installation provided completely new service for the new cabin, as well as a new service line and large meter for

the Westerly cabins. Then, also at the customer's request, a second meter was installed on the Easterly portion of the property, again to provide new service for a new home as well as new, metered service for the Easterly cabins. The East valve box actually was connected to the East meter as it was supposed to be by tariff, and at that point the old black line became unnecessary from the Company's point of view, and was abandoned. It is true one ought mind the equities involved, but in this case the equities are overwhelmingly in favor of the Company. The Company provided not one, but TWO metered water connections for Mr. Larson's property (by tariff there was absolutely no requirement the second meter be provided, it was done entirely for his benefit). He has utilized that service happily for over a decade. It would be extremely unfair and inequitable for a customer to be able to shift his duty and responsibility to maintain his service lines to the water company simply by refusing to comply with the tariffs and make his (Westerly) connection. The Company is in absolute agreement that the old line is problematic and undesirable, which is the whole reason it has striven at every opportunity (taking into account the convenience of the customers) to excise it from the system. But it was absolutely, 100% Larson's decision to adopt and use the old, now abandoned (by the company) line for his service line to his West cabins. The metered service was already there, on both ends of his property. As a line connecting the two meters was certainly not needed, or required for service to the customer, the old line was properly abandoned by the Company.

Summary and Proposed Order

While it is proper to examine the history of the system, Respondent believes the Recommended Decision errs in focusing on the system as if it was frozen in time. This is not the case; this is a changing, improving system, and to hold that duties and responsibilities of the respective parties cannot be changed beyond some arbitrary moment in time defeats the purpose of the tariffs and the Commission's goals to encourage service providers to update and improve service to consumers whenever it is reasonable to do so.

In this case, the PSC determined as a policy that placing customers on a metered system was more fair and in their best interests, and directed the Company to install meters for its customers. The Company has always striven to comply, and with respect to Mr. Larson, provided metered water service to his property in not one, but two separate locations (the second being entirely for Mr. Larson's convenience and benefit). It would be unreasonable to believe the Company could be required to provide metered service, but that any previously existing customer could refuse to connect to the meter. And as noted above, the tariffs provide that all customers indeed have the responsibility to connect their service to the meter. The Recommended Decision would have the duties and responsibilities of the parties frozen at the time of the adoption of the tariffs, but such a ruling would lead to internally inconsistent treatment of customers and a hopeless morass of future litigation for the Commission over the history of each section of every water system in the State.

It is respectfully submitted that the duties and responsibilities of the parties were

governed by the “unmetered rules” (essentially, property line oriented) at the time of the adoption of the tariffs, but from the time a meter was placed and metered service provided to this customer, the responsibilities must be governed by the “metered service rules,” wherein Company responsibility for repairs and maintenance ends at the meter. If the Company was remiss it was in not forcing the issue and requiring Mr. Larson to complete his Westerly service connection sooner, at which point he would have no longer had any desire to utilize the old CVT line to accomplish that service. Mr. Larson's decision to adopt the old black line to continue service to his Westerly cabins, rather than connecting them to the already provided Westerly meter, should in no way impose an obligation on the Company to maintain a line it had intentionally bypassed in its system and which was not necessary for service to the Western cabins for which a meter had already been provided. In sum, the Recommended Decision proposal to effect the removal of the old black CVT line from use is appropriate, but requiring the Company to make a customer service connection from its meter to the customer's valve box is completely contrary to the tariffs and is improper and inequitable. The customer has had an obligation under the tariffs to connect to that meter since it was placed, and has delayed doing so for over a decade for his own purposes, but the proper solution is to permit the Company to require that connection be completed now.

Respondent submits that the following Decision and Orders ought be made, not only to resolve the current dispute but to avoid a repetition in the future.

1. Hold that the Company has operated in good faith in setting two meters for Mr.

Larson's property and that they are properly set under applicable tariffs.

2. Hold that subsequent to the setting of the two meters, the old black CVT line was adopted by Mr. Larson to continue service to his Westerly cabins in lieu of connecting to the Westerly meter, and according to the tariffs he is liable for all costs of repairs and maintenance to all lines on his side of the meters.

3. Hold that sufficient evidence was presented by all parties to find that the old black CVT line is problematic and inappropriate for a customer to use as a service line, and pursuant to multiple subsections of Tariff Rule 5 the customer Mr. Larson shall cease using said line as a service line. Mr. Larson to be granted 30 days in which to disconnect said line from his valve boxes, and complete the connection of his Westerly valve box and service lines to the Westerly meter as required by tariff. Should these changes not be performed within 30 days, the Company is authorized to effect said connections, the reasonable expenses thereof to be paid by Mr. Larson.

/s/ Gregory R. Gibson
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above pleading was served upon

all parties via EFIS this 15th day of August, 2012.

/s/ Gregory R. Gibson
Gregory R. Gibson