

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

MBP Development, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. SC-2005-0359
)	
Aqua Missouri, Inc.,)	
)	
Respondent.)	

**AQUA MISSOURI, INC.'S MOTION TO DISMISS
BASED UPON FINDINGS OF THE STAFF INVESTIGATION**

Comes Now Aqua Source/CU Inc., d/b/a Aqua Missouri, Inc. ("Aqua Missouri" or "Respondent"), pursuant to 4 CSR 240-2.080, and respectfully files its Motion To Dismiss Based Upon Findings Of The Staff Investigation. In support of its Motion, Aqua Missouri states as follows:

INTRODUCTION

1. In this case, the Complainant has alleged that Aqua Missouri has improperly charged Complainant for sewer service at "Summit Apartments", which allegedly consist of 2-three story buildings containing 59 separate apartments, in December 2004 and February 2005. During this period, Aqua Missouri has applied its schedule of rates for multi-family facilities of \$19.15 per unit, including vacant units, pursuant to its lawfully approved tariffs. Complainant has requested that Aqua Missouri be ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments and that Respondent be ordered to stop charging Complainant for sewer services for vacant apartments.

2. On May 4, 2005, Aqua Missouri filed its Answer And Motion To Dismiss, answering the allegations in the Complaint, and requesting dismissal of the Complaint.

3. On May 27, 2005, the Commission issues its Order Directing Filing Staff Investigation and Report which noted that the "Commission views its Staff as a neutral third party in this complaint case. . . ", and directed the Staff to investigate the contested issues and file a verified report of its findings with the Commission, no later than June 27, 2005. (Order, p. 1).

STAFF REPORT

4. On June 16, 2005, Staff filed its Report Of Investigation which stated in part:

Conclusions and Recommendations

The Company's tariff provides, in the Staff's opinion, for all of the apartment units to be billed for sewer service whether occupied or not. Past due bills, in the Staff's opinion would have been legitimately calculated without regard to occupancy, though the Company could exercise an option to settle on some amount in order to settle a past due account. It is not practical for the Company to track occupancy, nor to modify flat rate billing based on some level of sewer use. An alternative billing arrangement, to which the Staff would have no objection, would be for the apartment buildings to be considered as commercial customers, with the Company then applying the commercial rate that is based on water use. However, to do so requires water usage information to be available to the Company.

Regarding action by the Commission, the Complainant's pleading requests the following specific relief:

1. "That Respondent (Complainant) be ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments."
2. "That Respondent be ordered to change its billing practices so as to fully comply with Rule 9, Bills of Service (sic), of the Rules and Regulations governing rendering of service."

The Staff believes that the Commission has jurisdiction pertaining to treatment of customers of a specific class, but recommends that the Commission not issue an order that would grant relief as requested in No. 1. With regard to billing based on water (and sewer) usage, such an order possibly could either apply special treatment to the Complainant with respect to other customers of the same class, or could be construed to apply to all customers of the same class as the Complainant which may be impossible with some such customers because of varying water supply conditions, as discussed herein. With regard to billing of vacant apartment units, the Staff believes that such an order would create difficulty for the Company, and perhaps extending to other regulated sewer utilities, to properly bill customers. Further, the Staff believes that such issuing such an order would require a finding that it is unreasonable to consider a sewer customer to be a customer unless physically disconnected from the system, which the Staff believes is reasonable. However, as discussed herein, the Staff also believes that the Company could optionally consider customers of the Complainants class as either Multi-Family with the approved multi-family flat rate applied, or as a Commercial with the water-use based Commercial/Industrial rate applied. Notably, to do so requires water usage information to be available somehow. In lieu of the relief requested in No. 1 above, the Commission could so order such an option to be considered if the conditions for Commercial/Industrial billing can be met.

The Staff believes that there has been no violation of Rule 9 with regard to the billing issues, and thus recommends that no order be issued that would grant the relief requested in No. 2, above. (Emphasis added.)

5. As referenced above, Staff has recommended that the Commission should not grant the relief requested by the Complainant with regard to changing the Respondent's tariffs to require that the sewer charges to Complainant be based upon actual water and sewage service usage per building instead of the number of apartments, as requested by Complainant. In addition, Staff stated: "The Staff believes that there is no violation of Rule 9 with regard to the billing issues, and thus recommends that no order be issued that would granted the relief requested in No. 2, above." (Staff Recommendation, Attachment A, p. 3).

6. Based upon the findings of Staff, Aqua Missouri respectfully requests that the Commission issue its Order Dismissing Complaint. In the alternative, Aqua Missouri requests that the Commission should issue an Order Scheduling A Prehearing Conference to allow the parties to recommend a procedural schedule for resolving this case.

Wherefore, Respondent respectfully requests the Commission to dismiss the Complaint, and for such other and further relief as the Commission deems necessary and just in the circumstances.

Respectfully submitted,

/s/ James M. Fischer

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Answer and Motion To Dismiss has been hand-delivered, emailed or mailed, First Class mail, postage prepaid, this 7th day of September, 2005, to:

Office of the Public Counsel
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/s/ James M. Fischer

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