

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. WC-2006-_____
)	
Missouri Utilities Company,)	
)	
Respondent.)	

COMPLAINT AND MOTION FOR EXPEDITED TREATMENT

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel and, for its Complaint and Motion for Expedited Treatment, states to the Missouri Public Service Commission the following:

1. Missouri Utilities Company (“Missouri Utilities” or “Company”) is a “public utility,” a “water corporation,” and a “sewer corporation,” as those terms are defined in Section 386.020, RSMo.¹ Missouri Utilities regularly provides service to fewer than eight thousand customers. Missouri Utilities’ business mailing address of record is: 328 S. Frontage Road, Osage Beach, Camden County, MO 65065.

2. Missouri Utilities is a Missouri general business corporation in good standing. Its registered agent is William P. Mitchell, whose office address is: Highway 54 E, P.O. Box 824, Linn Creek, Camden County, MO 65062. According to the most recent Annual Registration Report that the Company filed with the Missouri Secretary of State (filed on April 13, 2005), the only officer of the Company is William P. Mitchell, president and secretary, and the sole director

of the Company is William P. Mitchell. According to the Company's 1993 Annual Report, filed on July 19, 1994, which is the most recent and only one the Company has ever filed, William P. Mitchell was the president of the corporation. The Company has filed no document that indicates that there is any person other than William P. Mitchell who is an owner, director or officer of the Company, and the Staff knows of no other owner, director or officer of the Company. To the best of Staff's knowledge, William P. Mitchell is the only owner, director or officer of the Company.

3. Section 393.145 contains provisions that govern the appointment of a receiver for a water or sewer corporation in certain circumstances. The said statute was amended during the 2005 session of the Missouri General Assembly by the enactment of Senate Bill No. 462. Gov. Matt Blunt signed SB 462, which contained an emergency clause, on June 29, 2005, and the bill became effective the same day. Section 393.145.1, as amended and currently effective, provides in full as follows:

If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections *is unable or unwilling to provide safe and adequate service, or has been actually or effectively abandoned by its owners*, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. The venue of such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business. (Emphasis added.)

4. The Company's conduct satisfies each of the bases for the appointment of a receiver that are set forth in italics above in Section 393.145.1. The Company has failed to provide safe and adequate service to its customers; it is unwilling to take the steps that are necessary to

¹ All statutory citations are to RSMo 2000, as currently supplemented, unless otherwise noted.

provide safe and adequate service to its customers; and its only known owner, officer, director, and agent has actually or effectively abandoned the Company.

5. On April 1, 2005, William P. Mitchell sent a letter to the customers of the Company, in which he indicated that the Company was not willing to take actions that might become necessary in order for Missouri Utilities to continue to provide safe and adequate service to its customers. In that letter, Mr. Mitchell, writing on behalf of the Company, stated: “The well could quit any day ... I refuse to pay or borrow money personally to fix or operate your system.” A copy of the said letter is attached hereto as Exhibit A. Mr. Mitchell previously sent another letter to the customers of the Company on July 29, 2003, in which he also expressed his unwillingness to take the actions necessary to provide safe and adequate service. A copy of the said letter is attached hereto as Exhibit B.

6. On several other occasions, Mr. Mitchell made similar statements to the members of the Staff of the Commission, indicating that he was not willing to invest any additional money in the operations of the Company.

7. On Friday, July 15, 2005, the well pump in the water well that serves the Company’s customers failed, causing an interruption of water service to all customers of the Company. Mr. Mitchell refused to take any action to replace the well pump, despite the requests and demands by members of the Water and Sewer Department of the Commission. Mr. Mitchell reiterated his position that he was not willing to invest any more of his money to repair or replace the pump or to restore service.

8. The service outage continued for four days and was finally restored on the following Tuesday, July 19, 2005. Neither Mr. Mitchell nor Missouri Utilities took any action to arrange for the restoration of service. Instead, service was restored only because of the actions of the

Staff of the Commission, and because customers of the Company, including Robert Gautreaux, Ken and Pat Miller, and Robert Meyer, arranged for the purchase and installation of a new well pump, at a cost of more than \$9,000.

9. The Company has repeatedly failed to file its annual reports with the Commission on a timely basis, and it has failed to make timely payments to the Commission of its annual assessments. As of the date of the filing of this Complaint, the Company has not paid any part of its FY 2005 Commission assessment, which was due on July 15, 2004, and it has not filed its FY 2004 annual report, which was due April 15, 2005. As a consequence, the Staff plans to file, on July 22, 2005, another complaint against the Company for failure to timely pay its Commission assessment or to timely file its annual report.

10. The Staff further states, on information and belief, that the Company is insolvent and is unable to pay its debts as they come due. Mr. Mitchell has repeatedly threatened to file bankruptcy if the Commission continues to insist that assessments be paid as required by law.

11. In addition to his refusal to provide the Company with sufficient cash to safely and adequately operate its system, Mr. Mitchell has repeatedly stated to the Staff that he is not willing to give his time and attention to the Company or to provide the personal services that are needed to adequately and safely operate the system, and stated that he is not willing to file a small water/sewer company rate increase. To the best of Staff's knowledge, there is no employee of Missouri Utilities and no other person who will provide these services (except for the voluntary contributions that customers of the Company made in order to restore water service, as described in Paragraph 8, above).

12. Missouri Utilities has no employees and has not contracted with any third party for the operation of its system.

13. It is therefore clear that, although Mr. Mitchell apparently remains the only officer, director and shareholder of the Company, and he is responsible for the day-to-day operations of the Company, he has effectively abandoned the Company.

14. The foregoing paragraphs demonstrate that the Company is unable or unwilling to provide safe and adequate service and that its sole owner has actually or effectively abandoned the Company. Accordingly, the Company's conduct satisfies the requirements specified in Section 393.145.1, which must be satisfied before the Commission may seek the appointment of a receiver. As a consequence, the Commission should direct its General Counsel to petition the circuit court for an order attaching the assets of the Company, and placing the Company under the control and responsibility of a receiver.

15. The Staff believes that qualified water and sewer companies or other persons would be willing and able to serve as a receiver for Missouri Utilities.

16. Section 393.145.7, as amended and currently effective, provides in full as follows:

Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. However, if the commission or another interested party petitions and the court determines, after hearing that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners, the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provided by law.

17. For the reasons set forth above, the Staff believes that it is extremely unlikely that control of Missouri Utilities could ever, in the best interests of its customers, be returned to the owners of the Company.

18. Robert Gautreaux has spoken to members of the Staff about the possibility of purchasing the assets of the Company in the event of liquidation. Although Mr. Gautreaux has not made any decision to proceed with such a purchase, the Staff believes that if the Company is

placed in receivership, the receiver should be able to sell the assets of the Company to a willing buyer at a fair and reasonable price.

19. The Commission should therefore additionally direct its General Counsel to seek a finding from the circuit court that control of the Company should not be returned to the owner of the Company.

20. Section 393.145.2, as amended and currently effective, provides in full as follows:

If the commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the same order appoint an interim receiver for the sewer or water corporation. The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section, except that the commission cannot authorize the interim receiver to transfer by sale or liquidate the assets of the utility. The interim receiver shall be compensated in an amount to be determined by the commission. The interim receiver shall serve until a judgment on a petition for writ of review of the commission's order, if any, is final and unappealable, and until the circuit court thereafter determines under subsection 5 of this section whether to grant the commission's petition for appointment of a receiver.

21. The Company is in immediate need of a receiver in order to insure that customers of the Company receive safe and adequate service. The Commission cannot be assured that it will achieve this objective if it must await a decision by the circuit court appointing a receiver pursuant to the provisions of Section 393.145.1. The Commission should therefore appoint an interim receiver pursuant to the provisions of Section 393.145.2.

MOTION FOR EXPEDITED TREATMENT

22. Rule 4 CSR 240.2.070 (7) provides, in part, that upon the filing of a formal complaint, the Secretary of the Commission shall notify the respondent of the complaint by certified mail, and that the respondent shall answer the complaint within 30 days, unless otherwise ordered.

23. Because the Company's owner has actually or effectively abandoned the Company, it is unable or unwilling to provide safe and adequate service to its customers. The customers of the Company are therefore in imminent danger of losing their water and/or sewer service. As a result, the Staff believes that the Company should be directed to file its answer to this Complaint on or before August 5, 2005, and that the case should be scheduled for an evidentiary hearing as soon as possible thereafter.

24. In order to expedite the processing of this Complaint, the Staff suggests that all testimony in this case be presented live, instead of following the Commission's usual custom of prefiling the testimony, and that, in lieu of ordering the submission of written briefs, the Commission direct the parties to present oral arguments at the conclusion of the evidentiary hearing. The Staff further requests that the Commission schedule an evidentiary hearing in this case on or before August 26, 2005, assuming that such hearing dates are available. Additionally, the Staff submits that one day should be sufficient for the evidentiary hearing in this case.

25. The Staff submits that the Company will not be harmed by the foregoing expedited procedural schedule, because the Staff seeks only an order that the Commission's General Counsel be authorized to file and pursue an action in the circuit court, where the Company's substantive rights will be determined, and an order appointing an interim receiver, which will not deprive the Company's owner of any right that it is now exercising.

WHEREFORE, the Staff respectfully requests that the Commission direct its General Counsel to petition the circuit court for an order attaching the assets of Missouri Utilities Company and placing Missouri Utilities Company under the control and responsibility of a receiver, and that the Commission direct its General Counsel to seek a finding from the circuit court that control and responsibility for the Company should not, in the best interest of the

Company's customers, be returned to the owners of the Company, and an order from the circuit court directing the receiver to proceed to liquidate the assets of the Company in the manner provided by law. The Staff further respectfully requests that the Commission appoint an interim receiver for the Company, pursuant to the provisions of Section 393.145.2 and that the Commission expedite the processing of this case as suggested in this motion.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Keith R. Krueger

Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or e-mailed to all counsel of record as shown on the attached service list this 21st day of July 2005.

/s/ Keith R. Krueger

Missouri Utilities 573-346-0055

4/1/05

Dear Customers, **This is not an April Fools Joke!!!!!!!!!!!!!!**

I sent the enclosed letter and only one person bothered to call and said to just raise the rates. I cannot legally do that **YOU MAY NOT HAVE ANY WATER SOON IF YOU DO NOT DO SOMETHING!**

The well is down to 25 gallons per minute and is making bad rumbling noises. The well could quit any day.
PSC Staff Water Company Manager Dale Johansen was informed of the condition of the well when the rumbling started last November and nothing has been done.

MU hired a lawyer in January 2005 to file Missouri Utilities in Federal Bankruptcy Court. The Bankruptcy Court Trustee has been burned by the PSC before on bankrupt utility companies. The Court told my lawyer they would reject any bankruptcy filing since there is not enough money to pay the Trustee to operate the company. *The MU lawyer was in contact with Dale Johansen of the PSC Staff and nothing has been done.* Due to delay of bankruptcy court March and April billing was combined.

The cost to run the system exceeds the income. Missouri Utilities (MU) is not a charity and cannot print money. *Dale Johansen Manager of the Water Department of the Public Service Commission Staff has been aware of the situation for over a year.* The PSC is threatening to sue the company for not submitting annual reports but they did not include any money in rates to pay anyone to submit the reports. I tried but cannot do them. They have not been paid their fees for over a year and refuse to do anything unless they get paid. MU spent all of the money to keep the system running. There is not enough money to pay everyone. The rates have to be raised or the expenses reduced. In my opinion the PSC is a waste of your money.

DNR has not been paid all of their fees. Their fees have gone up by over \$3500/year since 1992 and the water and sewer rates have not changed since 1992. They are threatening to sue for their fees due.

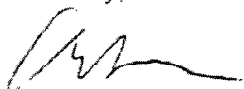
In my experience it would cost Missouri Utilities over \$20,000 in legal fees to get the water and sewer rates raised and I am confident the PSC staff would not allow MU to recover the cost in a timely basis (pay the MU lawyer) or for me to be paid personally for any work I do. The PSC Staff routinely refuse to allow the officers of any small utility to be paid. I refuse to pay or borrow money personally to fix or operate your system. *I refuse to work for free any more. I am not a Slave.* I am owed money by MU for past improvements. I have a family that requires my time and money. You and your family deserve good water and sewer at a reasonable price. The PSC costs too much money for nothing and wastes time. You can run the systems better and cheaper and have control of the rates.

I will give you Missouri Utilities.

You should convert MU to a not for profit homeowners association and escape PSC control.

Call the PSC number if the well quits or to complain: **800-392-4211 or 573-751-3234.**
You can call me for sympathy or advice but I cannot solve the problem.

Sincerely,



William P. Mitchell
President

Exhibit A

Missouri Utilities
P.O. Box 824
Linn Creek, Mo. 65052

July 29, 2003

RE: low water pressure

Dear Customer,

I received 2 reports of low water pressure and investigated the system last Sunday (7/26/03) afternoon and found:

The well was pumping 33 gallons per minute (normal is 40-45),
There was 20 psi at the well (normal is 30-40),
It was approximately 100 degrees in the shade,
The ground appeared very dry,
Numerous sprinklers and swimming pools were in use,
Several gardens appeared very green,
Daily water usage is up 25% since July 3.
I could find no leaks.

Two events will affect the output of the well:

If the water level in the well drops, the pump is forced to lift the water further and will not be able to pump as much volume. Hot and dry weather can cause the water table to drop. I have no way to measure the level at the well.

The pump could be wearing out. I have never replaced the pump. It was here when I purchased the system in 1993. I do not know how old it is.

There are 2 possible solutions: pump more or use less.

1. Conserve water. Look inside of your toilet tanks and make sure that the high water level is not over the overflow tube. Just listening is not good enough. Toilets will leak ¼ gallon per minute quietly. You have to take everything off the back of the tank and look. Adjust the ball to lower the level below the top of the overflow tube. Do not water the yard/garden during the day because most of the water is wasted by evaporation. Wait until after dark. Most people will have finished major personal water usage (dishes, laundry and showers) by dark and lawn/garden sprinkling will not be wasted. *I will not be the water police.* Conservation is a volunteer effort that shared by everyone. Just because you are not billed for each gallon you get relieves you from the responsibility to not waste water. Water is not free.

2. Put in a bigger pump, new well, water tower, hook up to city. All are possible but cost money and take time. All will take until at least September when it is cooler and wetter.

How much are you willing to pay for water and sewer? Rates have not changed since 1992. Regulatory fees have gone up over \$4000 per year. Gross income is just over \$20,000 per year. It will cost over \$20,000 for legal fees for a rate/debt case with the Public Service Commission. A new well pump will cost \$7-10,000. A new well will cost over \$50,000. Water meters will cost \$500-1,000 each installed. A used water tower will cost over \$100,000 installed. The lagoon needs a new fence (\$30,000+).

I have to follow the PSC rules on how service is rendered. That includes having to chase renters for money instead of billing property owners of single family homes. I have \$1,700 in unpaid water and sewer bills on the books. It costs money to chase money. For profit PSC regulated businesses have to pay more for interest on borrowed money than not for profit entities such as cities, co-ops or water and sewer districts. Rates are based on costs.

I am not interested in personally guaranteeing any loans to Missouri Utilities as long as it is a PSC regulated utility. I have been screwed over by the Commission and Staff on other matters and I do not trust them to set the rates at a level that will pay back any money in a timely fashion. I can borrow money through DNR revolving loan fund for water (not sewer) projects. The process will take about 2 years and cost about \$30,000 in fees (but interest is cheap 3-4%).

I have approximately \$20,000 in Missouri Utilities that I would just like to get back. I can continue to operate, sell to another utility company, the City, or to You.

State law allows conversion of PSC regulated utility companies to unregulated not for profit co-op style companies.

Are you willing to get involved? Or do you just want to flush and forget. Water and sewer are not free. You can affect the rules under which you get service and your costs by letting me know what you want to do.

800-676-5412

P.O. Box 824 Linn Creek, Mo. 65052



Sincerely,
William P. (Pat) Mitchell
President