

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

The Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	File No. SC-2013-0332
)	
West 16 th Street Sewer Company,)	
)	
Respondent.)	

MOTION FOR LEAVE TO LATE FILE ANSWER AND ANSWER

COMES NOW West 16th Street Sewer Company (West 16th), by and through counsel and, as its Motion for Leave to Late File Answer and Answer, states as follows to the Missouri Public Service Commission (Commission):

MOTION TO LATE FILE

1. On December 14, 2012, the Commission issued its Notice of Complaint ordering the Respondent to file its answer no later than January 14, 2013.
2. On December 31, 2012, the undersigned counsel entered his appearance on behalf of West 16th in this matter. On January 3, 2013, the undersigned counsel participated in a prehearing conference before the Commission. Counsel has further engaged in discussions with both counsel for the Staff of the Commission and counsel for the Office of the Public Counsel (OPC).
3. On January 16, 2013, OPC filed its Request for Order Granting Default. Therein, OPC pointed out that West 16th did not file an answer on January 14, 2013, and asked that the Commission grant a default judgment.

4. Counsel apologizes for his failure to file this answer. The failure resulted because counsel neglected to add this item to his calendar. As can be seen from the record, there has been no intent to ignore the Commission or this case as counsel has previously made a filing, participated in the prehearing conference and engaged in discussions with counsel for Staff and OPC. Further, if West 16th's Motion to Late File is granted, the answer, as found below, will be filed only two days¹ out of time. As no procedural schedule has yet been ordered in this case, that two day delay will not prejudice any party.

5. Moreover, while OPC's motion requests that an order of default be entered, no such default has been granted at this time.² Commission Rule 4 CSR 240-2.050(3) states that "When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission may . . . (B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect or for other good cause shown."

6. The timing of this motion and the public interest in a substantive review of the subject of OPC's complaint should provide good cause for a grant of the motion to late file. In the alternative, counsel's failure to file an answer, given the mere two days that have elapsed since the filing date and counsel's participation in all other matters pertaining to this case, should be deemed excusable neglect.

7. Accordingly, West 16th moves the Commission for an order granting it leave to late file its answer.

¹ Or one day, if Monday, January 14, is considered a holiday due to the fact that the Commission and all state offices in Cole County were closed on that date.

² If a default were entered, Respondent would have seven (7) days from the entry of such order to move that it be set aside for good cause. 4 CSR 240-2.070(10).

ANSWER

8. West 16th admits the allegations as to the identity of the Complainant in this matter. (Complaint, para. 1)

9. West 16th admits that it is a public utility subject to the jurisdiction of the Commission, as provided by law. (Complaint, para. 2)

10. West 16th admits that the Commission has certain jurisdiction over public utilities, pursuant to state statute. (Complaint, para. 3)

11. West 16th restates its admissions found in paragraphs 8, 9 and 10 above, in response to paragraph 4 of the Complaint.

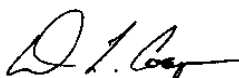
12. West 16th is without knowledge sufficient to form a belief as to what steps OPC may have taken prior to filing this Complaint and, therefore, denies the allegations contained in the first sentence of paragraph 5 of the Complaint. Further, West 16th denies that its current sewer rates and charges produce over earnings and denies that these rates and charges are unjust and unreasonable on this basis.

13. Except as expressly admitted in this answer, West 16th denies each and every allegation contained in the Complaint.

14. Further answering and as an affirmative defense, West 16th states that it has acted in accordance with its tariffs and that its tariffs are prima facie just and reasonable.

WHEREFORE, West 16th prays the Commission grant its motion to late file an answer and grant such other relief as the Commission deems reasonable and just.

Respectfully submitted,



Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
dcooper@brydonlaw.com

ATTORNEYS FOR WEST 16TH STREET
SEWER COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail, this 16th day of January, 2013, to:

Ms. Rachel Lewis/Goldie Tompkins
Missouri Public Service Commission
rachel.lewis@psc.mo.gov
goldie.tompkins@psc.mo.gov

Ms. Christina Baker
Office of the Public Counsel
christina.baker@ded.mo.gov

