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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day of
March, 2000.

In the Matter of the Application of)
the Clarence Cannon Wholesale Water)
Commission for Cancellation of Its)
Certificates of Convenience and)
Necessity and Tariffs and for an)
Order Recognizing Termination of)
Public Service Commission)
Jurisdiction.)

CASE NO. WA-2000-17

**ORDER CANCELING CERTIFICATE AND TARIFF
AND
ORDER TERMINATING JURISDICTION**

In 1999, the 90th General Assembly passed, and the Governor subsequently signed into law, two separate pieces of legislation (HS HCS SS SCS SB s 160 and 82, and CCS SS SCS HS HB 450) which, *inter alia*, removed all references to "water" and "water corporations" from Section 386.025 and 393.295 RSMo. This legislation became effective on August 28, 1999.

On June 13, 1999, the Clarence Cannon Wholesale Water Commission (CCWWC) filed an application with the Commission requesting that the Commission issue an order which would (1) cancel CCWWC's certificates of convenience and necessity; (2) cancel CCWWC's tariff(s); (3) declare that the Commission's jurisdiction over CCWWC has been terminated; and (4) waive in part or in full CCWWC's FY2000 annual PSC assessment.

On August 27, 1999, the Staff of the Missouri Public Service Commission (Staff) filed its memorandum in which it recommended approval of the application. Staff noted that CCWWC does not provide service at retail to individual customers. CCWWC provides water supply and treatment services on a wholesale basis to its member cities and water districts. The ultimate customers of CCWWC are members of CCWWC's twenty-member

municipalities and water districts. As such, the retail customer continues to be represented through the election process within their respective municipality or through their membership within their respective water district.

Staff's August 27 memorandum concluded with a request that the Commission recalculate and reissue the assessment of CCWWC on a pro-rata basis. Staff asserted this would be a reasonable calculation of assessment *in this instance* (Emphasis added). Staff also recommended the Commission cancel CCWWC's certificates and its tariff and also recognize the termination of the Commission's jurisdiction over CCWWC.

After a review of CCWWC's application and of the Staff's memorandum, the Commission issued an order directing filing. The parties were directed to clarify the actual number of certificates currently held by CCWWC and the name(s) in which those certificates were held. Similarly, the parties were asked to confirm that although CCWWC may have multiple certificates, it held only one tariff.

Lastly, the Commission asked the parties to respond to CCWWC's request regarding its assessment. In its application, CCWWC asked that the Commission waive in its entirety the annual assessment which CCWWC would be required to pay the Commission as of July 1, 1999. In the alternative, CCWWC asked the Commission recalculate on a *pro rata* basis its assessment. The Commission questioned the parties as to its authority for refunding an assessment for a period of time within which the utility in question was required by law to be regulated under the Commission's jurisdiction. The question regarding CCWWC's assessment actually involves two different issues. First, may the Commission refund assessment fees already paid for a period in which this utility was assessed? Second, may the Commission recalculate an assessment on a pro-rata basis?

On January 18, 2000, CCWWC filed its Response To Order Directing Filing. CCWWC denied any specific information regarding the certificates

which it may now hold and waived any ex parte consideration to the extent necessary so that the Commission and its staff might investigate those facts as needed. However, this waiver was not necessary and no such communication took place.

As to legal authority regarding refund of assessments in whole or in part, counsel for CCWWC noted that there is no statute or case law which governs this issue. However, CCWWC's counsel did assert that the Commission has the ability to make such a refund pursuant to the appropriation process of the Missouri General Assembly. The provisions of C.C.S. H.B. 7, wherein both appropriations to, and payments from, the Public Service Commission fund provides this authority. This section shows the amount of \$10,000.00E ("E" meaning estimated, which allows more or less than this amount as a matter of law) and should provide sufficient legal authority for the Commission to issue a refund to CCWWC as has been requested. CCWWC further argued that there is no law to preclude the Public Service Commission fund from making a refund for an overpayment by a regulated utility.

On March 15, 2000, the Staff submitted its response to the order directing filing and within that response provided the following information. There is one certificate, which was issued in Case No. WA-90-3, and this certificate has been amended by adding additional service areas in three subsequent cases, specifically: Case No. WA-92-137, Case No. WA-96-171, and Case No. WA-97-141. CCWWC has only one tariff, specifically P.S.C. Mo. No. 1. The Commission's assessment to CCWWC for the fiscal year beginning July 1, 1999, was \$18,237.00.

As noted above, in the Memorandum that Staff filed in this case on August 27, 1999, the Staff stated that it believed that "recalculation and reissuance of the assessment on a pro-rata basis would be reasonable in this instance." However, in its response filed on March 15, 2000, after further reflection and research, Staff stated it was unable to find any

legal authority that would authorize a refund of any portion of the monies that CCWWC has paid into the PSC fund. In fact, the Staff now argues that CCWWC is responsible for not only the first quarterly installment of this assessment, which CCWWC has already paid (\$4,559.49), but that it is also responsible for the unpaid balance of its annual assessment (\$18,237.00 less \$4,559.49, or \$13,677.51).

While it is clear that the purpose of Section 386.370, RSMo is to assess the expenses that the Commission incurs in regulating any group of public utilities during any fiscal year, it is not clear what the Commission is to do when the regulation of a given utility is terminated by the legislature. The Staff could find no statute that either authorizes or prohibits a partial refund of an assessment against a regulated public utility.

The Commission finds the legislation in question provides authority for terminating the assessment as of the same date upon which this legislation became law. When faced with an issue of first impression, such as this, the Commission must interpret the legislation within the realm of utility regulation as it exists today. The interpretation and construction of a statute by an agency charged with its administration is entitled to great weight. Foremost-McKesson, Inc v. Davis, 488 S.W.2d 193, 197 [1-4] (Mo. Banc 1972). The Commission finds that it was the intent of the legislature to end jurisdiction on a date certain and that the assessment should have ended on that day as well. The Commission further finds that cancellation of CCWWC's certificate(s), tariff and the recalculation of CCWWC's assessment is not detrimental to the public interest.

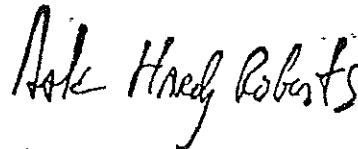
The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no

one has requested a hearing in this case, the Commission may grant the relief requested based on the application.

IT IS THEREFORE ORDERED:

1. That the certificate(s) of service authority for Clarence Cannon Wholesale Water Commission as set out herein are hereby canceled.
2. That the tariff P.S.C. Mo. No. 1 of Clarence Cannon Wholesale Water Commission is hereby canceled.
3. That under the statutes in effect on this date the Commission no longer retains regulatory authority over the Clarence Cannon Wholesale Water Commission.
4. That the annual assessment for the Clarence Cannon Wholesale Water Commission shall be recalculated by the Staff of the Commission on a *pro rata* basis so that the Clarence Cannon Wholesale Water Commission shall not be required to pay an assessment fee for the period on and after August 29, 1999.
5. That this order shall be effective April 3, 2000.
6. That this case shall be closed April 4, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton,
and Drainer, CC., Concur.
Murray and Schemenauer, CC., Dissent.

Dale Hardy Roberts, Chief Law Judge