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March 21, 2002

FILED
MAR 2 1 2002
Missouri Public Service Commission

Missouri Public Service Commission
Attn: Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
200 Madison Street, Suite 100
P. O. Box 360
Jefferson City, MO 65102-0360

Re: Case No. WC-2002-146 **VIA EXPRESS MAIL**

Dear Secretary Roberts:

Enclosed for filing please find an Original and eight copies of both the **BRIEF** and **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**, of the Respondent Missouri-American Water Company in the above styled Complaint. Will you please bring this matter to the attention of the Commission at your earliest convenience.

Thank you for your assistance and cooperation in this matter.

Very truly yours,

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Certificate of Service
Copies of this transmittal and its attachments have on the date below indicated been sent to the Office of Public Counsel, to the attorney for St. Louis County, Missouri, and to the General Counsel to the Missouri Public Service Commission by prepaid U.S. Mail.

3-21-02

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Missouri Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission, Complainant,	)	
vs.	)	Case No. WC-2002-146
St. Louis County Water Company, d/b/a Missouri-American Water Company, Respondent.	)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF RESPONDENT MISSOURI-AMERICAN WATER COMPANY

FINDINGS OF FACTS

Respondent Missouri-American Water Company (hereinafter "Respondent" or "Company") is the successor to Respondent St. Louis County Water Company, d/b/a Missouri-American Water Company. Company is a Missouri corporation , a public utility and a water corporation as defined in Chapter 386 RSMo and as such is subject to the jurisdiction of this Commission.

Complainant Staff of the Commission (hereinafter "Complainant" or "Staff") is represented by the Commission's General Counsel who is authorized by statute to "represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission]."

The Public Counsel is a constitutional charter county.

Section 66.405 RSMo (hereinafter "Statute") was enacted by the Missouri General Assembly as a result of Senate Bill 82 sponsored by Senator Wayne Goode

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(finally passed as amended to HCS/SS/SCS/SBs 160 & 82). It became effective on June 29, 1999. It provides in pertinent part as follows:

> 1. If approved by a majority of the voters voting on the proposal, [St. Louis County] may, by ordinance, levy and impose annually, upon water service lines providing water service to residential property having four or fewer dwelling units, on a countywide basis, including both the incorporated and unincorporated areas of such county, a fee not to exceed one dollar per month or an equivalent rate collected at some other interval.
>
> ...
>
> 4. If a majority of the voters voting there on approve the proposal authorized in subsection 1 of this section, the governing body of the county may enact an ordinance for the collection of such fee....
>
> 5. The county may contract with any provider of water service in the county to bill and collect such fees along with bills for water service and to pursue collection of such amounts through discontinuance of service as may be directed by the county. ...

Pursuant to the provisions of § 66.405 RSMo 2000, St. Louis County enacted an ordinance which was designated as § 502.195 SLCRO (hereinafter "Ordinance"), and which reads in pertinent part as follows:

> 502.195 Water Service Line Repair Fee. – A fee of One Dollar ($1.00) per month is imposed upon all water service lines providing water service within the county to residential property having four or fewer dwelling units, to provide funds to pay for repair or replacement commencing July 1, 2001, of water lines extending from the water main to a residential dwelling due to failure of the line or for road relocation.
>
> ...
>
> 3. The County Executive is authorized to execute contracts with providers of water service in St. Louis County to bill and collect such fees along with bills for water service and to pursue collection of such amounts through discontinuance of service...

On January 19, 2001, the Company entered into a written agreement with St. Louis County (hereinafter "Contract") which provides in pertinent part, as follows:

> 1. Beginning on March 1, 2001, [Company] shall add to the bill of each residential customer having four or fewer dwelling units a separate and clearly described fee to be paid in advance, of one dollar ($1.00) per month or three

dollars ($3.00) per quarter (and not pro-rata for periods of timeless than one month, or quarter whichever is applicable0 during which service is provided, which such amount may be billed and collected monthly, quarterly or otherwise in the due course of [Company's] usual ad ordinary billing practices.

...

7. The parties hereto understand and agree that this Contract does not seek to invade, bypass or supersede the jurisdiction of the Missouri Public Service Commission, and accordingly this Contract shall be submitted to the Missouri Public Service commission for its information, and if deemed necessary by such Commission, for its approval. This Contract shall at all times be subject to the actions of such Commission.

On January 25, 2001, the Company filed with the Commission a tariff sheet entitled "ST. LOUIS COUNTY SERVICE LINE REPAIR PROGRAM." The filing was designated as P.S.C.MO No. 6 Original SHEET No. RT 17.0 (the "Tariff Sheet") and was to become effective February 26, 2001 unless suspended by the Commission. It provides in pertinent part:

AVAILABILITY- This rate is applicable from and after March 1, 2001 to residential customers in St. Louis County having four or fewer dwelling units, and only to the extent such charge shall continue to be authorized by and provided for in [the ordinance, statute and contract].

RATE – One dollar ($1.00) per month or three dollars ($3.00) per quarter (and not prorata for periods of time less than one month or one quarter whichever is applicable" during which service is provided, to be billed and collected monthly, quarterly or otherwise in the due course of approved billing practices applicable to the customer. This tariff authorizes a reduction in this rate if and to the extent authorized by lawful action of St. Louis County, but this tariff shall not authorize any increase without further filing with and approval by the Commission.

In this Complaint, the Commission must resolve an allegation that the Tariff Sheet is unlawful because it does not comply with the permissive language of the Statute that authorizes the charge. There was no evidence that the Tariff is unreasonable, only that it exceeds the dictates of the Statute, §66,405 RSMo 2000.

Complainant contends that the words "a fee upon water service lines" means that only "owners" of those lines may be charged the authorized fee. The word "owner" does not appear in any of the statutory language. There is some question whether Complainant alleges that the language is ambiguous, or whether the language, by its plain meaning, is

limited to this "owners only" proposition. No others, including the Senate sponsor of the Statute, the Intervenor St. Louis County and the Office of Public Counsel, support this proposition that the plain meaning of the words contains this limitation, so we cannot find reasonably that this limitation is apparent in the plain meaning of the words. Accordingly, we will address the proposition of ambiguity.

The collection of funds from all customers regardless of property ownership to support repair of service lines is just and reasonable. It has not been contended otherwise, but imposing the responsibility for service line repair as a condition of service for all customers is consistent with funding that the Complainant has insisted upon in other proceedings. This funding approach has even been implemented elsewhere in Respondent's own service area pursuant to Staff's encouragement and insistence. Furthermore, the billing of customers regardless of ownership is consistent with the Respondent's previously existing Rules and Regulations regarding service line maintenance and responsibility. Company rules do not impose repair responsibility on owners; service line repair is simply a condition of service and therefore left to either the "customer" or owner to address, without distinction.

The intent of the General Assembly in enacting the statute was to charge all customers, regardless of ownership. This was the testimony of Senator Wayne Goode who sponsored the bill that was enacted into law, and it was supported by the testimony of the Complainant's witness Hubbs who stated that he did not disbelieve the Senator's testimony. The Senator testified that a bill applying to owners only would not have passed in his opinion. This indicates that the clear intent of the words "a fee upon water service lines" in §66,405 RSMo were not supposed to apply only to owners of the lines, but rather were intended to authorize the collection of the fee from all customers using those lines.

Further indication of this intent can be found in other language in the Statute that specifies the method for collecting the fee. The statute not only authorizes customer billing as a method of collection, but it is silent with respect to how billings might be collected from owners who are not customers:

5. The county may contract with any provider of water service in the county to bill and collect such fees along with bills for water service and to pursue collection of such amounts through discontinuance of service as may be directed by the county. (Section 66.405.5 RSMo 2000).

There is no evidence that the fee would be unlawful for any reason other than Staff's contention that the words of the statute unintentionally mandate this "owners only" limitation.

All parties agree that customers benefit from the service line maintenance program as well as do owners. Complainant admitted that billing all applicable residential customers is "the most efficient and cost-effective manner' in which to assess the charge. The Commission is intimately familiar with utility billing practices. It would not be possible for a utility to effectively and accurately determine who the owner is at every billing address on every day of its billing cycles. Ownership of real estate changes daily, and customer names change continually as well. Coordinating the two would not be feasible, and would lead to inevitable mistake and injustice.

Finally, we have no evidence from which we could make a finding that only the billing of owners was intended by the General Assembly, that it is feasible to impose such a limitation, or that there would be any logical reason to impose this limitation on the words "a fee upon water service lines." Complainant's entire case seems to be that the General Assembly made a mistake in choosing its wording in this statute, and that this should be so evident to us, that we are duty bound to find the Tariff Sheet unlawful. We can not make such a finding.

Complainant requests an additional finding that the Contract referenced in the Tariff Sheet has not been approved by the Commission. The definition of the word "approved" in such a finding would be critical to such a determination, and Respondent does not contend that its Contract has been afforded any status that would render it immune to the action of the Commission in this or any future proceeding. To the contrary, the Contract is specifically subject to any Commission action at any time. The question of whether a contract filed with a tariff and referenced in that tariff is "approved" when a tariff becomes effective is not material to this case, and thus we make no finding in this regard.

CONCLUSIONS OF LAW

The Tariff Sheet was filed with the Commission and became effective when the Commission did not suspend the Tariff Sheet pursuant to the provisions of § 393.150 RSMo 2000. This Complaint therefore proceeds under § 393.140 RSMo 2001. The burden of proof is upon the Complainant as specified in § 386.430 RSMo 2001.

The substantive allegation of Complainant's Complaint is that the words "a fee upon water service lines" in §66,405 RSMo do not lawfully permit Respondent to impose and collect a fee from customers who do not own their service lines. There is some question about whether the Complainant contends that the statutory language is ambiguous or that its plain meaning is contrary to the Respondent's position. The Missouri Supreme Court has held that mere fact that litigants disagree over the meaning of a statutory term does not render the statute ambiguous. We conclude that the statute is not ambiguous, but that both the legislative intent and the desired billing scheme are apparent.

In the light most favorable to Complainant, the Commission must determine whether the Staff can prove that the Tariff is unreasonable or unlawful. To do this we must determine the merits of Staff's assertions that the tariff is inconsistent with the permissive language of the statute.

Although this fee is first determined by statute and ordinance, it is nevertheless a service charge, the collection of which by Respondent requires Commission approval. All utility rate matters, even constitutional questions, must come before the Commission before the courts may entertain them. Although, statutory construction is ultimately the job of the court, an administrative tribunal must first interpret statutes in virtually every proceeding.

A filed and approved tariff has the same force and effect as a statute enacted by the legislature. Complainant has the burden of proof to show by clear and satisfactory

evidence that the Tariff is unreasonable or unlawful as the case may be, Section 386.430 RSMo.

We conclude that the Tariff Sheet is reasonable and lawful because the Tariff is consistent with the permissive statutory provisions of § 66.405 RSMo and the legislative intent of that statute, it is consistent with public policy for the funding of service line repairs by all customers regardless of ownership as actively promoted by Complainant itself, and it is otherwise in the best interest of everyone.

To conclude otherwise would require us to ignore the legislative intent and to add provisions to the statutory language under the pretext of construction. It would be one thing to argue that wording must be added to effect the legislative intent, but it is illogical to argue that language should be added to defeat the legislative intent and render the statute without effective purpose. The "owners only" limitation is not found in the literal words chosen by the General Assembly. The entire purport of Complainant's argument seems to be on the word "on." If the statute had authorized a "fee per service line," the Complaint would be transparently frivolous. This difference in preposition is insignificant and does not render the statute ambiguous or subject to any reasonable interpretation other than the one codified in the Tariff Sheet.

The logical application of Staff's position to this "owners only" interpretation of the statutory language would lead to the conclusion that non-customer owners might not have to pay the fee, and that non-owner customers would certainly not have to pay the fee. This would leave only the owner-customers to carry the load. This makes no sense at all. It would serve only to encourage every customer to put his or her account in the name of a friend or relative (which is permitted by Chapter 13 of CSR), and thus avoid the fee altogether.

If the language of the statute was clear enough for the General Assembly, the intent of which is undenied, we must conclude that it is clear enough for us to conclude that the Respondent is not precluded from applying the fee to all customers who use service lines. The Complaint is dismissed.

Respectfully submitted,

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Copies of the foregoing have on the date below written been provided to the Office of Public Counsel, to the General Counsel of the Missouri Public Service Commission and to the attorney for St. Louis County, Missouri, by electronic transmission and by first class prepaid U.S. Mail.

3-21-02