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## Missouri Public Service Commission

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January 2, 2002

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Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: Case No. WC-2002-146**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cliff E. Snodgrass  
Senior Counsel  
(573) 751-3966  
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CES:sw  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

JAN 02 2002

Missouri Public  
Service Commission

Staff of the Missouri Public Service  
Commission,

Complainant,

v.

St. Louis County Water Company, d/b/a/  
Missouri-American Water Company,

Respondent.

Case No. WC-2002-146

**STAFF'S PROPOSED FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

**COMES NOW** the Staff of the Missouri Public Service Commission and, for its Proposed Findings of Fact and Conclusions of Law, states to the Missouri Public Service Commission as follows:

On November 8, 2001, the Commission issued its Order Adopting Procedural Schedule, in which it directed the Staff to file its proposed findings of fact and conclusions of law simultaneously with its direct testimony, on January 2, 2002.

The following proposed findings and conclusions are necessarily preliminary in nature, inasmuch as the Staff has not seen any of the evidence that will be offered by other parties in the case. The Staff understands that these proposed findings and conclusions are offered as an aid to the Commission only, and that they do not constitute pleadings or admissions. The Staff recognizes that it may view the facts and the law surrounding this case in a different manner after

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it has had the opportunity to study the testimony of other parties and to conduct cross-examination of the witnesses that testify on behalf of other parties in the case. The Staff therefore reserves the right to modify, amend or extend the proposed findings and conclusions in light of the evidence that is ultimately presented to the Commission prior to the hearing and at the hearing of this case.

The Staff further understands that only findings of fact and conclusions of law have been ordered. Accordingly, this document does not include a recitation of the procedural history of the case, a discussion of the evidence, or proposed "Ordered" paragraphs.

### **Proposed Findings of Fact**

1. County Water is a Missouri corporation with its principal office and place of business located at 535 N. New Ballas Road, St. Louis, MO 63141. It is a public utility engaged in providing water service to the public in the State of Missouri, and is subject to the jurisdiction of the Commission, pursuant to Chapters 386 and 393, RSMo.

2. The Staff is represented by the Commission's General Counsel, an employee of the Commission authorized by statute to "represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission.]"

3. The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and is authorized to "represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]" Sections 386.700 and 386.710, RSMo 2000.

4. Intervenor St. Louis County is a constitutional charter county.

5. Section 66.405, RSMo (the Statute), which became fully effective on June 29, 1999, provides, in 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 thereon 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. ... The county may administer the program or may contract with one or more persons, through a competitive process, to provide for administration of any portion of implementation activities of any ordinance adopted and approved pursuant to this section, and reasonable costs of administering the program may be paid from the special account established pursuant to this section.

6. Pursuant to the provisions of § 66.405, RSMo 2000, St. Louis County enacted an ordinance which was designated as § 502.195, SCLRO 1974 as amended (the Ordinance), and which reads in part as follows:

**502.195 Water Service Line Repair Fee.** – 1. 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. All such contracts shall be approved by the Accounting Officer and shall contain such terms and conditions as are approved by the County Counselor.

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

1. Beginning on March 1, 2001, [County Water] 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 time less than one month, or quarter, whichever is applicable) during which service is provided, which such amount may be billed and collected monthly, quarterly or otherwise in the due course of [County Water's] usual and ordinary approved billing practices.

2. Amounts collected shall be accounted for on a calendar month basis and shall be remitted by the fifteenth (15<sup>th</sup>) of each month to St. Louis County. ...

3. [County Water] may reduce the amount of total remittance to St. Louis County by the amount deemed uncollectible from a prior billing period.

...

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.

8. On January 25, 2001, County Water filed with the Commission a tariff sheet. It was entitled "ST. LOUIS COUNTY SERVICE LINE REPAIR PROGRAM," was designated as P.S.C. MO No. 6 Original Revised SHEET No. RT 17.0," (the Tariff Sheet) and was to become effective February 26, 2001. It provides, in 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 pro-rata 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.

...

9. Staff witness Wendell R. Hubbs testified that Jim Jenkins, the vice president and treasurer of County Water, told Mr. Hubbs and Dale Johansen, the manager of the Staff's Water

and Sewer Department, that the Company would withdraw the Tariff Sheet. He testified that the Staff relied upon the Company's promise to withdraw the Tariff Sheet, and did not move to suspend the Tariff Sheet. County Water, however, did not withdraw the Tariff Sheet, and it went into effect by operation of law on February 26, 2001.

10. County Water denied that it ever promised to withdraw the Tariff Sheet.

11. The Commission finds the testimony of Mr. Hubbs to be credible and finds that the Tariff Sheet went into effect because County Water failed to withdraw the Tariff Sheet as promised.

12. The wording of the Tariff Sheet and of County Water's contract with St. Louis County are not consistent with the wording of § 66.405, RSMo 2000 or of § 502.195, SCLRO 1974 as amended, in that the Statute and the Ordinance impose the tax or fee upon "water service lines," whereas the Contract and the Tariff Sheet impose the tax or fee upon "residential customers."

13. In some cases, the Tariff Sheet will result in some customers paying the tax or fee, even though they do not own the water service line.

14. The Tariff Sheet is titled: "St. Louis County Service Line Repair Program." This title is misleading to those who refer to the tariff, because it makes it appear that the program has been approved by the Commission, when in fact it has not. In fact, the program and the amount of the tax or fee is determined by the General Assembly and the voters of St. Louis County, and not by the Commission.

15. The Tariff Sheet refers to the "availability" of the Service Line Repair Program. This is also misleading to those who refer to the tariff, because it makes the program appear voluntary, when in fact it is not. In fact, County Water's customers have no choice about

participating in the program. As Staff witness Hubbs testified, it would be more accurate to say the program is "applicable" to County Water's customers, rather than to say it is "available" to them.

16. The Tariff Sheet refers to the "rate" for the Service Line Repair Program. This reference is also misleading to those who refer to the tariff, because it makes it appear that the Commission is setting a rate for a service, whereas in fact the "rate" is actually the pass-through of a tax.

17. The Tariff Sheet states that it authorizes a reduction in the tax rate, if authorized by St. Louis County, but it does not allow an increase without approval of the Commission. However, if rates are reduced without Commission action, the Tariff Sheet will incorrectly state the amount of the tax, and this would be misleading to customers. And if St. Louis County later decides that it needs to increase the tax rate, another filing with the Commission would be required.

18. County Water did not request the Commission to approve its contract with St. Louis County.

19. Since the Tariff Sheet became effective on February 26, 2001, County Water has collected monies from its customers for the fee imposed by the St. Louis County Ordinance. In some cases those monies have been collected from residential customers who do not own service lines. Such collections are inconsistent with the Statute and the Ordinance. In other cases, those monies have been collected in a manner that is consistent with the Statute and the Ordinance, but pursuant to a contract that is inconsistent with the Statute and the Ordinance.

20. Staff witness Hubbs testified, and the Commission finds, that it would be very expensive for County Water to correctly identify the owners of the water service lines and to properly collect the tax from them.

21. Some of the owners of the water service lines are not customers of County Water. There is no current tariff that would authorize County Water to recover the ordinance fees from these property owners who are not customers of County Water.

### **Proposed Conclusions of Law**

1. The Staff is authorized by law to file the complaint in this case against County Water. Sections 386.240 and 386.390.1, and Rule 4 CSR 240-2.070(1).

2. Section 66.405, RSMo, authorizes St. Louis County to impose a fee upon water service lines providing water service to certain residential property. Likewise, the St. Louis County ordinance, § 502.195, SLCRO, imposes a fee upon all water service lines providing water service to certain residential property.

3. Unless there is an explicit statement to the contrary, a tax or fee that is imposed upon property becomes the obligation of the person who owns the property, and not upon a lessee of the property or upon another person who happens to be using the property. Thus, real estate taxes are imposed upon the real estate and become the obligation of the owner of the real estate, and not the obligation of a lessee or renter. Although the owner of the real estate may be able to shift the obligation for the payment of such taxes to a lessee or tenant by contract, the obligation remains upon the real estate and the owner thereof.

4. St. Louis County's contract with County Water, however, provides that County Water shall add a fee to the bill of each residential customer in certain dwelling units. Likewise,



County Water's Tariff Sheet No. RT 17.0 is applicable to residential customers in certain dwelling units.

5. The terms of County Water's contract with St. Louis County and of County Water's Tariff Sheet No. RT 17.0 are thus different from, and inconsistent with the terms of Section 66.405 and of St. Louis County ordinance § 502.185 in that they impose the fee upon residential customers, instead of upon the owners of lines that serve residential property. In many cases, the owner of the service line is, in fact, County Water's customer, but in other cases, the customer does not own the service line.

6. The Contract and tariff sheet are therefore unauthorized and unlawful.

7. The Tariff Sheet is misleading to those who read or use the tariff, for the reasons described in Paragraphs 14, 15, 16 and 17 of the Proposed Findings of Fact herein.

8. The Tariff Sheet went into effect by operation of law only because County Water failed to perform a promise that it made to the Staff that it would withdraw the Tariff Sheet prior to the tariff's effective date.

9. The Tariff Sheet should be withdrawn, and County Water should be ordered to file a new Tariff Sheet canceling the existing Tariff Sheet.

10. County Water has failed to demonstrate that its Contract with St. Louis County is prudent.

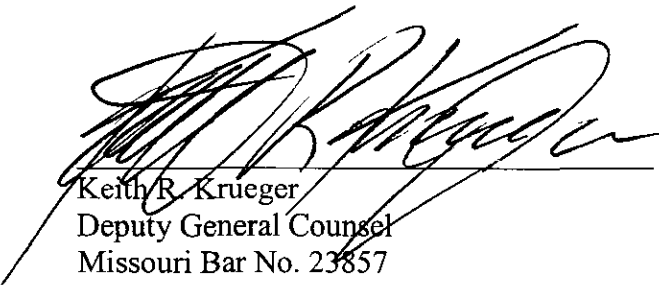
11. The Commission has never approved the terms of County Water's Contract with St. Louis County, and it does not now approve the terms of the Contract. The Contract and any other contract that County Water enters into for the performance of services to St. Louis County or any other entity shall be subject to review for their prudence and for ratemaking in future rate cases.

or any other entity shall be subject to review for their prudence and for ratemaking in future rate cases.

**WHEREFORE**, the Staff submits its Proposed Findings of Fact and Conclusions of Law to the Commission.

Respectfully submitted,

DANA K. JOYCE  
General Counsel



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Deputy General Counsel  
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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 2nd day of January 2002.



**Service List for  
WC-2002-146  
Verified: January 2, 2002 (SW)**

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