

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
JULY 06, 1999**

**CASE NO: SC-99-135**

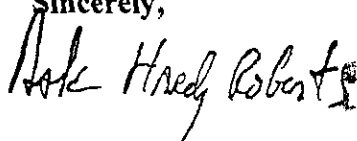
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**Enclosed find certified copy of ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**

**Eugene A. Fribis**  
House Springs Sewer Company  
3800 Jeffco Blvd.  
Arnold, MO 63010

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 6th  
day of July, 1999.

Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. SC-99-135</u>
	)	
House Springs Sewer Company,	)	
	)	
Respondent.	)	

**ORDER APPROVING STIPULATION AND AGREEMENT**

**Procedural History**

On October 2, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a complaint against House Springs Sewer Company (House Springs) for failure to pay its annual assessments to the Missouri Public Service Commission (Commission) for the fiscal years 1997, 1998, and 1999, in violation of Section 386.370, RSMo Supp. 1998<sup>1</sup>.

House Springs filed an answer on December 21, 1998. Although a prehearing conference was never held, the Staff and House Springs

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<sup>1</sup> All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

filed their proposed *Stipulation and Agreement* (Agreement) on May 10, 1999.

The Agreement stated, *inter alia*, that if requested by the Commission, the Staff had the right to submit a memorandum explaining its rationale for entering into the Agreement. The Agreement also stated that each party should be served with a copy of the memorandum and had the right to submit a responsive memorandum served on all the parties within five (5) business days of the service of the Staff's memorandum. On May 28, 1999, the Commission requested a memorandum from the Staff. On June 16, 1999, the Staff submitted its *Memorandum* which served as its suggestions in support of the stipulation and agreement. House Springs did not respond.

### Discussion

The Agreement stated that, as a result of discussions, House Springs and Staff had reached an agreement to resolve Staff's complaint against House Springs.

The Agreement stated that the Commission issued an order in Case No. SM-99-287 on April 22, 1999, which authorized the sale of Imperial Utility Corporation's (Imperial) sewer assets to Rock Creek Public Sewer District. The Agreement stated that Imperial and House Springs are owned and operated by the same entity, viz., EPCO, Incorporated (EPCO), a Missouri corporation. The Agreement stated that Imperial, House Springs, and EPCO are all currently under receivership in the Circuit Court of Saint Louis County, Missouri, with Patricia Fribis acting as receiver for all three companies. The Agreement stated that the Commission conditioned the distribution of

the net proceeds of the Imperial sale on the payment of the assessments owed by Imperial and House Springs. The Agreement stated that the parties to the Imperial sale anticipated the closing of the sale "within a couple of weeks" (of May 10, 1999)<sup>2</sup>, although the final distribution of the sale proceeds to the owners of Imperial was not anticipated in the near future.

In the Agreement, House Springs admitted that it owed assessments to the Commission in the amount of \$41,093.52, and that, in the event of the sale of House Springs' assets, House Springs would provide, through an escrow agreement, for the payment of all assessments owed the Commission. The Agreement provided that House Springs agreed that it would pay the said assessments immediately upon the closing of the House Springs' assets sale or at such time as the net proceeds of the Imperial sale are distributed to the owners of Imperial, whichever occurs first. Staff agreed to file a motion to dismiss with prejudice the complaint within one (1) week after the full payment of the assessments owed by House Springs is received by the Commission.

The Agreement also stated that in the event the Commission issued an order approving the Agreement, the parties would waive their respective rights in the present case to: (a) call, examine, or cross-examine witnesses, pursuant to Section 536.070(2); (b) present oral argument and written briefs, pursuant to Section 536.080.1; (c) have the transcript read by the Commission pursuant to Section

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<sup>2</sup> The report of this sale was filed May 24, 1999.

536.080.2; (d) seek rehearing or reconsideration pursuant to Sections 386.410, RSMo Supp. 1998, and 386.500<sup>3</sup>; and (e) seek judicial review pursuant to Section 386.510.

### **Findings of Fact**

The Missouri Public Service Commission has arrived at the following findings of fact:

House Springs is a Missouri corporation doing business as a public utility operating a sewer system in the City of Arnold, County of Jefferson, State of Missouri. EPCO holds sole control of House Springs.

The Commission is obligated to render a statement of assessment to each public utility on or before July 1 and the amount so assessed to each such public utility shall be paid by it to the Director of Revenue in full on or before July 15 next following the rendition of such statement, except that any such public utility may at its election pay such assessment in four equal installments, pursuant to Section 386.370.3, RSMo Supp. 1998.

For fiscal year 1997, the assessment for House Springs was set at \$11,632.13. As of the date of the complaint, House Springs had only paid a total of \$5,816.07 on its fiscal year 1997 assessment, leaving an unpaid balance of \$5,816.06. For fiscal year 1998, the

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<sup>3</sup> The Agreement did not cite these sections but instead cited Section 386.510, which was a scrivener's error.

assessment for House Springs was set at \$12,490.69. As of the date of the complaint, House Springs had paid nothing on its fiscal year 1998 assessment, leaving an unpaid balance of \$12,490.69. For fiscal year 1999, the assessment for House Springs was set at \$27,468.51. As of the date of the complaint, House Springs had paid nothing on its fiscal year 1999 assessment, leaving an unpaid balance of \$27,468.51. The total amount at issue, subsequent to a recalculation by the Staff of the fiscal year 1999 assessment, is \$41,093.52. The Commission served proper notice upon House Springs of its fiscal year assessments for each of the fiscal years 1997, 1998, and 1999.

### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over public utilities operating sewer systems, pursuant to Sections 386.020(42), (49), and 386.250(4), RSMo Supp. 1998. The Commission is vested with the general power and authority to estimate the expenses to be incurred by it during each fiscal year reasonably attributable to the regulation of public utility. In addition, the Commission is also vested with the specific power and authority to separately estimate and allocate the amount of expenses directly attributable to the regulation of, *inter alia*, sewer corporations. Section 386.370.1, RSMo Supp. 1998.

There is no need for a hearing. The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no party requests a hearing, the Commission may determine that a hearing is not necessary and that

the Commission may make a decision based on the Agreement. See State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C., 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission concludes that all issues were settled by the Agreement. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in a case, pursuant to Section 536.060, RSMo Supp. 1998.

### Decision

The Commission has decided to approve all the terms of the Agreement as being in the best interests of the parties and achieving an equitable resolution of all the issues.

### **IT IS THEREFORE ORDERED:**

1. That the Missouri Public Service Commission approves the *Stipulation and Agreement* between the Staff of the Public Service Commission of the State of Missouri and House Springs Sewer Company, signed and filed on May 10, 1999.

2. That, in the event of the sale of the assets of House Springs Sewer Company, the company provide, through an escrow agreement, for the payment of all assessments owed to the Missouri Public Service Commission. Further, that House Springs Sewer Company pay the said assessments immediately upon the closing of such sale, or at such time as the net proceeds of the sale of Imperial Utility Corporation's assets to Rock Creek Public Sewer District are distributed to the owners, whichever occurs first.

3. That the Staff of the Missouri Public Service Commission shall file a motion to dismiss with prejudice the complaint against

House Springs Sewer Company within one (1) week after the full payment of the assessments owed by House Springs Sewer Company is received by the Missouri Public Service Commission.

4. That this case shall stay open until the provisions of paragraphs two (2) and three (3) as set forth immediately above are fulfilled.

5. That this order shall become effective on July 16, 1999.

**BY THE COMMISSION**

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Murray, Schemenauer  
and Drainer, CC., concur  
Crumpton, C., absent

Hopkins, Senior Regulatory Law Judge



Alt/Sec'y: Hopkins/Boyce  
Date Circulated 7-1 CASE NO. SC-99-135  
Lumpke, Chair HL  
Crumpton, Commissioner HL also  
Murray, Commissioner on 2,3  
Schemenauer, Commissioner HL  
Draimer, Vice-Chair HL  
Agenda Date 7-6  
Action taken: 4-0 AS  
Must Vote Not Later Than \_\_\_\_\_  
6/23/99

STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson  
City,

Missouri, this 6TH day of JULY, 1999.



Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge