

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 16, 2001**

CASE NO: WC-99-186

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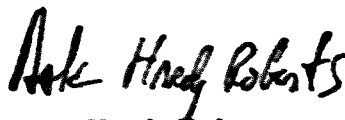
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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



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

Uncertified Copy:

At a Session of the Public Service Commission held at its office in Jefferson City on the 16th day of January, 2001.

Respondent.

Case No. WC-99-186

Park Hills responded to the complaint on December 2, 1998 by filing a combined answer and motion to dismiss. Park Hills asserted that the Commission lacks jurisdiction to regulate a municipally owned utility. On December 14, 1998, Desloge and Leadington responded with suggestions in

opposition to Park Hills' motion to dismiss. On January 28, 1999, the Commission issued an order denying Park Hills' motion to dismiss. The Commission denied Park Hills's request for rehearing in an order issued on March 18, 1999.

Park Hills appealed the Commission's refusal to dismiss Desloge and Leadington's complaint to the Circuit Court of Cole County. On June 10, 1999, in case number CV199-403cc, the Circuit Court issued a judgment finding that the Commission's order denying Park Hills' motion to dismiss was not a final judgment and that the Circuit Court had no jurisdiction to review the Commission's order at that time. Park Hills appealed that decision and on July 25, 2000, the Court of Appeals, Western District, issued an order affirming the decision of the circuit court. City of Park Hills v. Public Service Commission, 26 S.W.3d 401 (Mo. App. W.D. 2000).

On November 13, 2000, Park Hills filed a motion asking that the Commission dismiss Desloge and Leadington's complaint as moot. Park Hills indicates that on May 9, 2000, Park Hills adopted an ordinance that established a unitary tariff for its provision of water service. Under this tariff all customers of the water system operated by Park Hills, whether within or without the city limits of Park Hills, pay the same rate. Park Hills asserts that this change in its water rates removes the basis for Desloge and Leadington's complaint and eliminates any relief that the complainants can obtain from the Commission. For that reason, Park Hills asks the Commission to dismiss the complaint as moot.

On November 27, 2000, Desloge and Leadington filed a response opposing Park Hill's motion to dismiss. Desloge and Leadington acknowledge that Park Hills has now instituted a uniform water rate system. However, they argue that the Commission should proceed with its consideration of this complaint to eliminate the possibility that Park Hills will reinstitute a surcharge on the water rates for Desloge's and Leadington's

citizens at some time in the future. On November 29, 2000, Desloge and Leadington filed a First Amended Complaint that details the relief they continue to seek from the Commission. On January 9, 2001, Park Hills filed a reply to Desloge and Leadington's position.

In essence, Desloge and Leadington ask the Commission to determine that Park Hills has violated the terms of the Commission's Report and Order in Case No. 17941 (the case in which the sale of the water system serving Desloge and Leadington was approved) in that it charged and collected water rates from customers outside the city limits of Park Hills that exceeded the rates charged to residents of Park Hills without submitting a tariff for the Commission's approval. Desloge and Leadington also ask the Commission to determine that the rates charged to Desloge and Leadington and their citizens in excess of the rates charged in Park Hills were unjust and unreasonable. Finally, Desloge and Leadington ask that the Commission determine what rates Park Hills may charge and order Park Hills to file tariffs for the Commission's approval setting out those rates.

The Commission is not a court and it may not function in a judicial role. "It has no power to determine damages, award pecuniary relief, declare or enforce any principle of law or equity." State ex rel. Fee Fee Trunk Sewer v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980). When Park Hills acted to change its water rates to a unitary system that did not treat its non-resident customers differently than it treated its customers within the city limits, it removed the present controversy between the complainants and Park Hills. The Commission has no authority to order Park Hills to pay any damages or make any refunds to the complainants. Although the complaint, as amended by Desloge and Leadington does not ask the Commission to order payment of damages or refunds, it also does not ask for any relief that the Commission has authority to provide. In the absence of a current controversy between the parties, the Commission will not

undertake the academic exercise of attempting to determine the reasonableness of the rates formerly charged by Park Hills. Under the circumstances Desloge and Leadington's complaint against Park Hills is moot and will be dismissed.

IT IS THEREFORE ORDERED:

1. That the City of Park Hill's Motion to Dismiss Complaint for Mootness is granted.

2. That the complaint filed by the City of Desloge and the City of Leadington on October 29, 1998, is dismissed.

3. That this order shall become effective on January 26, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer,
and Simmons, CC., concur

Woodruff, Senior Regulatory Law Judge

ALJ/Sec'y: Woodruff/Boyce

1-10
Date Circulated MC-71-186
CASE NO.

JD
Lumpke, Chair
mal
Drainer, Vice Chair
MA
Murray, Commissioner
JS
Schemmaw, Commissioner
KS
Simmons, Commissioner

1-16
Agenda Date

Action taken: 5-CAS
Must Vote Not Later Than _____

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 16th day of Jan. 2001.

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