

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the matter of the joint request by the City of )  
Kirkwood, Missouri, and St. Louis County Water Company ) Case No. WO-95-171  
for arbitration of dispute and for hearing. )  
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**REPORT AND ORDER**

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**Issue Date:** September 29, 1995

**Effective Date:** September 29, 1995

**OF THE STATE OF MISSOURI**

Case No. WO-95-171

## APPEARANCES

David L. Coffman, Lewis, Rice & Fingersh, L.C., 500 North Broadway, Suite 2000, St. Louis, Missouri 63102, for the City of Kirkwood, Missouri.

Richard T. Ciottone, Vice President and General Counsel, St. Louis County Water Company, 535 North New Ballas Road, St. Louis, Missouri 63141, for St. Louis County Water Company.

David L. Woodsmall, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102 for the staff of the Missouri Public Service Commission.

## ADMINISTRATIVE

**LAW JUDGE:** Cecil I. Wright, Chief.

## REPORT AND ORDER

On November 23, 1994, St. Louis County Water Company (SLCWC) and the City of Kirkwood, Missouri (City) filed a joint request for arbitration pursuant to the provisions of Section 386.230, R.S.Mo. 1994. The arbitration was sought by SLCWC and City to resolve a dispute concerning the amount of water taken by City under Rate D of SLCWC's tariff. By order issued December 6, 1994, the Commission established a prehearing conference and gave notice to Commission Staff and the Office of the Public Counsel (OPC) to participate in this case. Staff filed a motion to participate; OPC did not.

On June 12, 1995, the parties filed a Joint Prehearing Compliance in which they proposed a procedural schedule, described the findings to be made by the Commission, set out the parties' positions, and stipulated to the facts upon which the issues are to be decided.

On August 18, 1995, an arbitration hearing was held as scheduled and subsequently, City filed a brief. Neither SLCWC nor Staff filed a brief. This matter is now before the Commission for decision.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

SLCWC (St. Louis County Water Company) is a regulated public utility which supplies water to customers primarily in St. Louis County, Missouri. City (City of Kirkwood, Missouri) is an incorporated municipality which purchases water from SLCWC under a tariffed rate approved by the Public Service Commission, Rate D, which is Attachment A to this Report And Order and is incorporated herein by reference. This matter has been submitted to the Commission for a final decision through the Commission's arbitration authority, and the issues have been submitted based upon the facts stipulated to in the Joint Prehearing Compliance filing and the evidence presented at the hearing. The facts stipulated to are as follows:

1. The City of Kirkwood, Missouri, is a constitutional charter city of the State of Missouri and is a customer of the St. Louis County Water Company.
2. The St. Louis County Water Company is a public water utility operating within the State of Missouri, serving St. Louis County and specific portions of Jefferson County, Missouri.
3. The City of Kirkwood purchases water from the St. Louis County Water Company pursuant to the terms and provisions of Rate D, a tariff on file with the Missouri Public Service Commission. . . .
4. Rate D, under which the City of Kirkwood has been purchasing water from St. Louis County Water Company since 1987, states, in part, that "during any 24 hour period during the months of June, July, August, September or October, customer's actual usage from each metering point shall not exceed 1.75 times the base load of that metering point. . . ." And if this "ratio is exceeded, all water sold . . . for the next eleven billing

months . . . shall be paid for at . . . ." an alternate rate. In addition, Note C of the tariff calls for a doubling of the 2 million cubic feet per month minimum usage (to 4 million cubic feet per month) if Kirkwood uses in excess of one million gallons in a 24 hour period during the summer months.

5. Between 1987 and the fall of 1991, the St. Louis County Water Company monitored the City of Kirkwood's usage by manually reading large water meters in Kirkwood. The meters were read during periods of expected peak usage at approximately 8:00 a.m. each morning and usually again during the peak hours in the evening.
6. In 1989 Kirkwood had installed its own remote reading devices to monitor its usage on a continuous basis. In the Fall of 1991, the St. Louis County Water Company abandoned the manual meter readings and installed electronic metering devices, which measure water usage continuously.
7. The cities of Webster Groves and Kirkwood do not have wholesale supply contracts for the purchase of water from the Company. They may purchase at will, unlike contractual customers whose purchases are conditioned on a long term commitment. This is by choice of the Cities. Both Webster Groves and Kirkwood also have alternate supplies of water from [sic] other sources; Webster purchasing water from the City of St. Louis and Kirkwood using its own production facilities. This permits the two Cities to control their peak usage and entitles them, under cost-of-service principles, to a different rate than the Company's other purchasers for resale. Because there is no contract to detail other terms of supply, the tariff must be more detailed than is the case with other tariffs for purchasers for resale. Accordingly, Rate D is a rate designed specifically for Kirkwood and Webster Groves only.
8. Rate D specifies a minimum purchase requirement of at least 4,000,000 cubic feet/month. Webster Groves routinely exceeds this minimum. Kirkwood purposely does not. In developing Rate D, Kirkwood requested a lower minimum purchase. Note C was designed to accommodate Kirkwood's request and permits the minimum to reduce to 2,000,000 cubic feet under specified conditions. Kirkwood's intention is to always operate its system so as to qualify for the reduced minimum requirement.
9. Rate D specifies water rates, and then has two potential alternate rate increases which are triggered by usage patterns (hereinafter "1st Alternate Rate" and "2nd Alternate Rate"). The applicable Alternate Rate then applies to that current month and thereafter to the following 11 months. Application of 2nd Alternative Rate is not claimed by any party hereto, and is not relevant to this proceeding.
10. Generally, whether the 1st Alternate Rate applies to Kirkwood first depends on Kirkwood's "base load" at the Swan pumping

station. This is a rolling number depending on usage in the previous 12 months. The base load calculations for July/August were as follows:

	<u>July/August</u>
Daily average GPM usage for preceding 12 mo.	369.45
Times 1440 minutes per day = average GPD "base load"	532,008
Times 1.75 = limitation for that month (GPD)	931,014

11. The parties agree the base load in July was 532,008 gallons per day. If, during any 24-hour period during July the City's usage exceeded 931,014 gallons (1.75 x 532,008), the 1st Alternate Rate would technically apply.
12. The Company's meters show, and the City agrees, that the City's rolling 24-hour usage of water in July exceeded 931,014 gallons per day during the following times:

<u>24-hour day beginning on</u>	<u>24-hour time period</u>	<u>total gallons/day during 24-hour period</u>
Sun. July 24	3 p.m. to 3 p.m.	932,715
"	4 p.m. to 4 p.m.	940,814
"	5 p.m. to 5 p.m.	"
"	6 p.m. to 6 p.m.	"
"	7 p.m. to 7 p.m.	"
Weds. July 27	12 p.m. to 12 p.m.	935,690
"	1 p.m. to 1 p.m.	1,024,173
"	2 p.m. to 2 p.m.	1,112,073
"	3 p.m. to 3 p.m.	1,197,923
"	4 p.m. to 4 p.m.	1,283,733
"	5 p.m. to 5 p.m.	1,285,091
"	6 p.m. to 6 p.m.	"
"	7 p.m. to 7 p.m.	"
"	8 p.m. to 8 p.m.	"
"	9 p.m. to 9 p.m.	"
"	10 p.m. to 10 p.m.	"
"	11 p.m. to 11 p.m.	1,223,237
Thur. July 28	12 a.m. to 12 a.m.	1,136,334
"	1 a.m. to 1 a.m.	1,047,249
"	2 a.m. to 2 a.m.	956,397

The City used water in July under the mistaken belief that the 24-hour average usage calculation was made only once per day, at 8 a.m. and 8 a.m. the next day, and was not a rolling calculation. Had the City been correct in this understanding there would have been no violation of the "base load" limitation and no triggering of the 1st Alternate Rate for the subsequent 12 months because of July usage.

13. In addition, usage patterns can dictate eligibility for the reduced minimum purchase requirement from 4,000,000 cubic feet/month (hereinafter, "the Minimum") to 2,000,000 cubic feet/month (hereinafter "the Reduced Minimum"). This Note C application of the appropriate minimum does not depend on base load. It says that in order for the City to have a 2,000,000 cubic feet per month minimum purchase requirement instead of the 4,000,000 cubic feet per month minimum, the City must not do either of two things. It must not:

- A. use any water between the hours of 2 p.m. and 7 p.m. on Saturday and Sunday, or 6 p.m. and 10 p.m. on Monday through Friday during the months of June, July, August, September or October; and
- B. use in excess of 1 million gallons in any 24-hour period.

The parties agree that there was no violation of the peak hour aspect of the tariff referred to in Note C, and therefore the only question concerning Note C is the 1 MGD constraint in any 24-hour period.

14. The Company's meters show, and the City agrees, that the City used water in July which exceeded 1 million gallons per day during the following times:

<u>24-hour</u> <u>day beginning on</u>	<u>24-hour</u> <u>time period</u>	<u>total gallons/day</u> <u>during 24-hour period</u>
Wed. July 27	1 p.m. to 1 p.m.	1,024,173
"	2 p.m. to 2 p.m.	1,112,073
"	3 p.m. to 3 p.m.	1,197,923
"	4 p.m. to 4 p.m.	1,283,733
"	5 p.m. to 5 p.m.	1,285,091
"	6 p.m. to 6 p.m.	"
"	7 p.m. to 7 p.m.	"
"	8 p.m. to 8 p.m.	"
"	9 p.m. to 9 p.m.	"
"	10 p.m. to 10 p.m.	"
"	11 p.m. to 11 p.m.	1,223,237
Thur. July 28	12 a.m. to 12 a.m.	1,136,333
"	1 a.m. to 1 a.m.	1,047,248

The City used water in July under the mistaken belief that the 24-hour average usage calculation was made only once each day, at 8 a.m. and 8 a.m. the next day, and was not a rolling calculation. Had the City been correct in this understanding, there would have been no violation of the Note C requirement and no increase in the minimum usage requirement for the subsequent 12 months because of July usage.

15. Notwithstanding the company's representations to the contrary, the Company now states and the City agrees that the registration data relied on by the Company to assert an August violation of the tariff constraints are not reliable. It is

therefore the Company's belief, with which the City agrees, that the City did not violate the tariff constraints in August.

16. The Company incurred no unrecovered costs due to the City's usage in July. The 1st Alternate Rate is designed to be a deterrent and is not based on cost-of-service (See WR-87-2), and the minimum purchase requirement is designed to require the City to support plant costs commensurate with its availability demands and expectations.

From the stipulated facts the Commission finds that City began purchasing water from SLCWC on Rate D in 1987. This tariffed rate was specifically designed for water provided by SLCWC to City and the City of Webster Groves, Missouri. Rate D contains a specific provision (Note C) which was designed to allow City to reduce the minimum purchase required by the tariff if it meets certain conditions. Note C thus allows City to reduce its cost of water purchased from SLCWC.

During the period from 1987 through the fall of 1991 SLCWC monitored City's water usage manually at approximately 8:00 a.m. each day and during the applicable peak hours in the evening. In the fall of 1991 SLCWC installed electronic metering devices which could monitor City's usage continuously. City had installed its own remote reading device in 1989 and, in 1995, has installed additional monitoring devices. After SLCWC installed its electronic monitoring devices, it no longer monitored water usage by City manually but monitored usage on a continuous basis. This change in monitoring increased City's exposure to violation of Rate D since monitoring continuously meant the usage was calculated in a rolling calculation rather than at the previous 8:00 a.m. reading.

The crux of the issue before the Commission is whether the usage by City which exceeded the limits established in Rate D are violations of that tariff and City, therefore, is subject to the penalties prescribed. The Commission has considered the matter and finds that although the usage exceeded the limits in Rate D, no violation of the tariff occurred and the penalties should not apply. This decision is based primarily on the monitoring pattern established by SLCWC

with City when the rate was first approved, and that there is no evidence that SLCWC had informed City that monitoring procedures would be changed.

The evidence clearly indicates that City did not intentionally exceed the usage limits and had a reduced minimum approved in Rate D to enable it to use SLCWC water without incurring substantial expense for water it could not use. The system established appears to have worked well prior to 1994 and City has demonstrated its intent not to exceed the limits in Rate D in the future by purchasing additional monitoring equipment to ensure compliance with the limitations on a rolling calculation basis.

Two additional items support the Commission's decision. First, Rate D was established to ensure recovery by SLCWC of costs associated with providing water through tariffed rates rather than contracts with City and the City of Webster Groves. The evidence indicates that when City exceeded the Rate D limits, no additional costs were incurred by SLCWC. The penalties are designed to be a deterrent from exceeding the limits in the tariff and to recover costs commensurate with availability demands and expectations. Based upon the evidence, City has not caused additional costs by exceeding the limits in Rate D.

Second, the evidence indicates that City exceeded the limits in 1988 because of equipment failure. When notified of the malfunction, SLCWC did not charge City with the applicable penalties. Although the circumstances which caused the excess water usage are different, the limited occurrence and immediate rectification of the problem are similar and the Commission believes the two incidents should be dealt with on a similar basis. Additionally, when, in October 1994, City exceeded the Rate D limits, it paid the penalties.

Based upon the above findings, the Commission finds that City is not subject to the penalties for its excessive water usage during July 1994.



## **Conclusions of Law**

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

The Commission has jurisdiction over the subject matter of this dispute under the provisions of Chapters 386 and 393, R.S.Mo. 1994. This case is before the Commission pursuant to the parties' request for binding arbitration under Section 386.230, R.S.Mo. 1994. The provisions of this section require the parties to agree in writing to submit a controversy to the Commissioners of the Public Service Commission as arbitrators. The statute makes the decision of the Commission final.

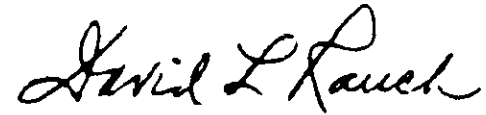
The parties have submitted this matter to the Commission for final determination based upon the evidence presented. The Commission has found that although City did exceed the limits in Rate D of SLCWC's tariff, that City is not subject to penalties as the excess usage was not a violation of the Rate D limitations. The Commission decision is consistent with its decision in Case No. WR-89-246 (Report And Order issued April 27, 1990) where the Commission found that no penalty should be assessed against the City of Webster Groves for a failure by it to have a proper monitoring device that had a sufficient number of digits to accurately calculate water usage. This case is similar and the Commission concludes no penalty should be assessed under the circumstances of this case.

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

1. That the City of Kirkwood, Missouri, shall not be assessed penalties for exceeding the usage limitations of Rate D of St. Louis County Water Company's tariff during July 1994.

2. That this Report And Order shall become effective on the date hereof.

**BY THE COMMISSION**

A handwritten signature in cursive script, reading "David L. Rauch".

**David L. Rauch  
Executive Secretary**

( S E A L )

Mueller, Chm., McClure, Kincheloe,  
Crompton and Drainer, CC., concur.

Dated at Jefferson City, Missouri,  
on this 29th day of September, 1995.

FORM NO. 13 P.S.C.MO.No. 6 Sixth Revised SHEET No. RT 4.0  
Cancelling P.S.C.MO.No. 6 Fifth Revised SHEET No. RT 4.0  
ST. LOUIS COUNTY WATER COMPANY For ST. LOUIS COUNTY, MISSOURI and

JEFFERSON COUNTY, MISSOURI

RECEIVED

RATE D  
RATE FOR RESALE OF WATER BY CUSTOMERS - MEETING CERTAIN LOAD CRITERIA 23 1994

MISSOURI

Public Service Commission

AVAILABILITY: This rate is available only to a wholesale purchaser of water having another approved source of potable water for resale to its customers and the rates herein are predicated upon responsible use of this other supply of water, plus storage, to control peak day and hour demands on Company's system. Company will determine maximum withdrawal rate from each metering point using best available data.

RATE COMPONENTS:

METER CHARGE(A) - The charge for each month shall be based on the meter size or multiple meter sizes if more than one meter is installed as follows:

Meter Size	Monthly Charge
5/8"	4.73
3/4"	5.27
1"	6.35
1-1/2"	9.06
2"	12.31
3"	20.98
4"	30.73
6"	57.81
8"	90.31

COMMODITY RATE(A):

REGULAR RATE: \$ .6646 hundred cubic feet  
1st ALTERNATE RATE: \$ .7056 hundred cubic feet  
2nd ALTERNATE RATE: \$ .7538 hundred cubic feet

USAGE RATE LIMITATIONS:

1) Customers "base load" shall be calculated as the daily average of water purchased from St. Louis County Water Company during the previous 12 monthly billing periods. Each metering point will be calculated separately.

\*Indicates new rate or text  
+Indicates change

FILED

AUG 1 1994  
34 - 165  
MO. PUBLIC SERVICE COMM.

DATE OF ISSUE July 21, 1994 DATE EFFECTIVE August 1, 1994

ISSUED BY T. L. Reeder, V.P., Admin., 535 N. New Ballas Rd., St. Louis, MO 63141

FORM NO. 13 P.S.C.MO.No. 6 First Revised SHEET No. RT 4.0(a)

Cancelling P.S.C.MO.No. 6 Original SHEET No. RT 4.0(a)

ST. LOUIS COUNTY WATER COMPANY For ST. LOUIS COUNTY, MISSOURI and

JEFFERSON COUNTY, MISSOURI

RATE D

RATE FOR RESALE OF WATER BY CUSTOMERS - MEETING CERTAIN LOAD CRITERIA

RECEIVED

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RATE D (continued)

USAGE RATE LIMITATIONS (continued):

MISSOURI  
Public Service Commission

2) During any 24-hour period during the months of June, July, August, September or October, customer's actual usage from each metering point shall not exceed 1.75 times the "base load" of that metering point. Also, during any hour period within these months (herein defined as "peak hour") between 2 p.m. and 7 p.m. Saturday and Sunday, and 6 p.m. and 10 p.m. Monday through Friday, customer's actual usage times 24 shall not exceed 1.75 times the "base load" of that metering point (B). If either ratio is exceeded, all water sold during the current billing month and for the next 11 billing months (from all metering points) shall be paid for at the first alternate rate. If both ratios are exceeded, all water sold during the current billing month and for the next 11 billing months (from all metering points) shall be paid for at the second alternate rate.

3) A minimum charge for any month shall be equal to the appropriate commodity rate (Regular or Alternate), times the greater of 1) 60% of the maximum monthly usage during any of the months of June, July, August, September, or October in the 12-month period preceding the month for which the bill is to be rendered or 2) 4,000,000 cubic feet (C). For the purposes of calculating this minimum charge, all metering points shall be added together.

4) Customer must not exceed the "base load" usage during any 24 hour period during months other than June, July, August, September and October, unless permission has been requested in writing from company at least 14 days in advance to use no more than three (3) times the "base load." If granted, customer must pay for water used during such periods, up to 1.75 times the "base load" at the appropriate commodity rate, and in excess of 1.75 times the "base load" at the 1st alternate commodity rate. If permission is not requested and obtained from Company or if usage exceeds three times the "base load," customer must pay for all water used during that month at 10% over the appropriate commodity rate. In any month (other than June, July, August, September or October) that customer exceeds the "base load" (with or without permission from Company), the minimum for that month shall be equal to 1.75 times the current applicable minimum.

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MO. PUBLIC SERVICE COMM.

\*Indicates new rate or text  
+Indicates change

DATE OF ISSUE July 21, 1994 DATE EFFECTIVE August 1, 1994

ISSUED BY T. L. Reeder, V.P., Admin., 535 N. New Ballas Rd., St. Louis, MO 63141

FORM NO. 13 P.S.C.MO.No. 6 Original SHEET No. RT 4.0(b)

Cancelling P.S.C.MO.No. 6

SHEET No. ~~RT 4.0(b)~~ RECEIVEDST. LOUIS COUNTY WATER COMPANYFor ST. LOUIS COUNTY, MISSOURI and 22 1994JEFFERSON COUNTY, MISSOURI 1994

Public Service Commission

RATE DRATE FOR RESALE OF WATER BY CUSTOMERS - MEETING CERTAIN LOAD CRITERIA

RATE D (continued)

## USAGE RATE LIMITATIONS (continued):

5) Upon the furnishing of proof satisfactory to the Company by the City, water used in a declared emergency resulting from a major fire or broken transmission main (12 inches in diameter or & larger) will be excluded in establishing alternate rates and minimum bills. City's request for this variance must be made immediately to an officer of the Company with a written confirmation of the incident, the request and the approval delivered to the Company within 48 hours of the occurrence of the emergency. Other short term incidents other than major fires or broken transmission mains may qualify as "declared emergencies" as determined in the Company's sole discretion on a case-by-case basis without precedent or any other standard for qualification.

## NOTES:

- (A) Exclusive of every tax or payment imposed upon the Company by any political subdivision of the State of Missouri, for the right to do business in such political subdivision. See P.S.C. MO No. Original Sheet No. RT 11.0.
- (B) If the Company deems it hydraulically feasible, Company may combine usages from two or more metering points in calculating the hour period restrictions.
- (C) If customer uses no water from Company during the "peak hour" periods during the months of June, July, August, September, and October, in the 12-month period preceding the month for which the bill is to be rendered (except under declared emergency conditions), and maximum 24-hour usage does not exceed one (1) Million Gallons for any of the same months, the 4,000,000 cubic feet minimum shall be reduced to 2,000,000 cubic feet.

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\*Indicates new rate or text  
+Indicates change

AUG 1 1994  
94 - 166  
MO. PUBLIC SERVICE COMM.

DATE OF ISSUE July 21, 1994 DATE EFFECTIVE August 1, 1994ISSUED BY T. L. Reeder, V.P., Admin., 535 N. New Ballas Rd., St. Louis, MO 63141