

RICHARD S. BROWNLEE III
MICHAEL A. DALLMEYER
JOHN W. KUEBLER
SARA C. MICHAEL
RODNEY D. GRAY
BEVERLY J. FIGG
KEITH A. WENZEL
T. DREW SCHAUFFLER
GAYLIN RICH CARVER
ADAM R. TROUTWINE



HENDREN ANDRAE
LLC

ATTORNEYS AT LAW
P.O. BOX 1069
JEFFERSON CITY, MISSOURI 65102-1069

(573) 636-8135
(573) 636-5226 (Facsimile)

OFFICE LOCATION
221 BOLIVAR STREET, SUITE 300
JEFFERSON CITY, MO 65101

HENRY ANDRAE (Retired)

JOHN H. HENDREN (1907-1988)

WEBSITE

www.hendrenandrae.com

May 31, 2007

FILED³

MAY 31 2007

Missouri Public
Service Commission

Ms. Colleen Dale, Secretary
Public Service Commission
PO Box 360
Jefferson City, MO 65102

Re: Becker v. Aqua Missouri, Inc.
Case Nos. SC-2007-0044 and SC-2007-0045

Dear Ms. Dale:

Please find enclosed for filing on behalf of Jason Becker and Becker Development Company, LLC, Complainants, the original and eight (8) copies of Complainants' Brief.

Thank you for your attention and should you have any questions please call.

Sincerely,

HENDREN ANDRAE, LLC

Keith A. Wenzel

kwenzel@hendrenandrae.com

KAW:tr

Enclosures

cc: Marc Ellinger
Kevin Thompson
Lewis R. Mills, Jr.
Jason Becker

BEFORE THE PUBLIC SERVICE COMMISSION OF THE
STATE OF MISSOURI

FILED³

MAY 31 2007

Missouri Public
Service Commission

Jason Becker & Becker Development
Inc.,)

Complainant,)

vs.)

Aqua Missouri, Inc.)

Respondent.)

Case No. SC-2007-0044

Jason Becker & Becker Development
Inc.,)

Complainant,)

vs.)

Aqua Missouri, Inc.)

Respondent.)

Case No. SC-2007-0045

BRIEF OF JASON BECKER AND BECKER DEVELOPMENT COMPANY, LLC

COMES NOW Jason Becker and Becker Development Company, LLC, by and through
counsel, Hendren Andrae, LLC, and for their Brief submit the following:

Procedural History.

In 1998 the Lake Carmel Subdivision real estate was purchased by Becker Development
Company, LLC, and contained a total of 77 lots. In 1999, Capital Utilities, Inc. was purchased
by Aqua Source/CU, Inc. and assumed all of Capital Utilities, Inc.'s obligations, including the
provision of water and sewer services. In 2000, as a result of the death of James Becker, the
managing member of Becker Development Company, LLC, Becker Development Company,
LLC was put into Mr. Becker's Trust. Aqua Source/CU, Inc. was purchased by Aqua America
in 2000, and in 2004 Aqua Source/CU, Inc.'s name was changed to Aqua Missouri, Inc.

In 2001, Muldoon Engineering was hired by Becker Development Company, LLC to complete the design of the collecting mains and water mains in the remainder of the unplatted subdivision. In 2002, Jason Becker and Christopher Becker purchased Becker Development Company, LLC from the James Becker Trust.

Between 1999 and 2002, eight (8) sewer connections were made by Aqua Missouri, Inc. and its predecessor, and at no time was the sewer system capacity an issue. In late 2002 and early 2003, Becker Development Company, LLC submitted extension applications to Aqua Missouri, Inc. for the extension of the sewer and water mains to the previously unplatted part of the subdivision. These extensions would serve an additional forty-seven (47) lots. In 2003, Aqua Missouri, Inc. accepted the water main application but rejected the sewer application for the stated reason that the sewer system was over capacity. Although Aqua Missouri, Inc. took the position that the sewer system was over capacity, it has taken no action to improve the system.

In 2004, Becker Development Company, LLC retained Professional Waste Water Solutions to engineer a STEP system to handle undeveloped lots without sewer mains present. In 2005, Becker Development Company, LLC submitted Professional Waste Water Solutions' plans and specifications for the STEP System to Aqua Missouri, Inc. Aqua Missouri, Inc. failed to formally respond to the STEP System proposal.

In 2005, the Missouri Department of Natural Resources required a water quality review and waste load allocation be performed on the receiving stream, and recommended that the current lagoon system be replaced with a regionalized mechanical plant. In 2005, Becker Development Company, LLC retained Professional Waste Water Solutions to engineer a regionalized system and proposed a cost-sharing plan with Aqua Missouri, Inc. Aqua Missouri, Inc. rejected the proposal.

Becker Development Company, LLC has had three (3) engineering reports completed to address a perceived sewer capacity problem on a sewer system owned by Aqua Missouri, Inc. and for which Aqua Missouri, Inc. received compensation for water and sewer service. On August 29, 2005, representatives from Becker Development Company, LLC, Aqua Missouri Inc., the Public Service Commission and the Missouri Department of Natural Resources met to outline a proposed solution. Several other meetings occurred prior to August 29, 2005 and subsequent to August 29, 2005 by and among the interested parties and regulators with attempts to resolve any issues.

On August 7, 2006, Jason Becker and Becker Development Company, LLC, filed formal complaints with the Public Service Commission, and on September 25, 2006, the two complaint cases were consolidated. On April 23, 2007, an evidentiary hearing was held relative to the consolidated case.

Issues Presented

1. Service to Becker.

A. Has Respondent violated its obligation as a public utility by refusing to serve Complainant despite repeated requests?

B. Has Respondent violated its tariff by refusing to provide service to Complainant unless Complainant enters into a Developer Agreement with Respondent?

C. What steps, if any, must Complainant take in order to receive service from Respondent?

D. If an expansion of Respondent's wastewater treatment plant is necessary in order for Respondent to serve Complainant, who is responsible for the cost of expansion?

2. Safe and Adequate Service at Lake Carmel.

A. Is Respondent presently providing safe and adequate service to its customers at Lake Carmel?

B. Is the wastewater treatment facility at Lake Carmel presently at or over its permitted capacity?

C. If the wastewater treatment facility at Lake Carmel is not at or over its permitted capacity, how many additional homes or lots may be connected?

D. If the wastewater treatment facility at Lake Carmel is presently over its permitted capacity, must Respondent make improvements to its facility in order to add capacity sufficient to meet its present load?

3. Respondent's Tariff. Does the public interest or the law require that Respondent amend or modify its tariff so that individuals and developers will be treated similarly with respect to extensions?

Argument

1A. Has Respondent violated its obligation as a public utility by refusing to serve Complainant despite repeated requests?

Respondent has violated its obligation as a public utility by refusing to serve Complainant in that Respondent has refused to allow Complainant to connect lots, although Complainant has demonstrated that the necessary capacity exists. Thomas P. Wells, Complainant's expert, testified at the hearing:

....some work might be needed to raise the burms and create additional capacity, but also that, based not the water use records from Aqua Missouri, that the domestic flow was such that with minimal work, approximately 4 of the new lots that Mr. Becker wishes to develop could be served...." (See Transcript, p. 27).

Complainant does not own the treatment facility and should not be required to demonstrate that capacity exists. The evidence adduced at the hearing indicated that it is Aqua Missouri's responsibility for checking to make sure that capacity and flow is correct. James A. Merciel, Jr., Assistant Manager, Engineering, in the water and sewer department of the Missouri Public Service Commission stated that:

[Respondent] own[s] and operate[s] the treatment facility and if there is a problem with it, it's really up to the company to diagnose and correct the problem to the extent that is necessary, or perhaps they can live with the problem. (See Transcript, p. 56).

Evidence was also adduced at the hearing that the treatment facility has been neglected for some time, allowing for the build up of sludge. So even in the event there is no additional capacity, it is incumbent upon Aqua Missouri, the owner of the treatment facility, to maintain and remove sludge which would add additional capacity. (See testimony of Respondent's expert, Robert Gaebe, Transcript p. 132-135).

1B. Has Respondent violated its tariff by refusing to provide service to Complainant unless Complainant enters into a Developer Agreement with Respondent?

Respondent may not have violated the letter of its tariff through its conduct; however, evidence was adduced at the hearing which would demonstrate that the tariff requires revision in order to make it easier for development to occur. (See Transcript pp. 60, 64).

1C. What steps, if any, must Complainant take in order to receive service from Respondent?

Complainants have done everything necessary to receive service from Respondent.

1D. If an expansion of Respondent's wastewater treatment plant is necessary in order for Respondent to serve Complainant, who is responsible for the cost of expansion?

The cost of any expansion of Respondent's wastewater treatment plant that may be necessary in order for Respondent to serve Complainants must be borne by Respondent. James

A. Merceil, Jr. testified at the hearing:

....I'm inclined to say that this company should go out and figure out what to do with this facility, considering the growth that it expects. And to the extent the company expends money doing design construction, it would be considered rate base. (See Transcript p. 78).

Respondent's approved tariff addresses extensions of collection facilities and whose responsibility it is for extending collection facilities, but does not address treatment facilities, which is at issue in the case. (See Transcript pp. 150-152). Respondent should, therefore, bear the cost of expanding the treatment facility.

2A. Is Respondent presently providing safe and adequate service to its customers at Lake Carmel?

Respondent is not presently providing safe and adequate service to its customers at Lake Carmel. James A. Merceil testified in response to inquiries made from Kevin Thompson that there is a question with respect to the treatment facility's safety and adequacy. (See Transcript pp. 100-106). Robert Gaebe in response to inquiry from Kevin Thompson also indicated some concerns about the adequacy and safety of the facility. (See Transcript pp. 131-135).

2B. Is the wastewater treatment facility at Lake Carmel presently at or over its permitted capacity?

See discussion of issue 1A.

2C. If the wastewater treatment facility at Lake Carmel is not at or over its permitted capacity, how many additional homes or lots may be connected?

It is unclear how much additional capacity is available at the treatment facility and, therefore, unclear as to how many additional homes or lots may be connected.

2D. If the wastewater treatment facility at Lake Carmel is presently over its permitted capacity, must Respondent make improvements to its facility in order to add capacity sufficient to meet its present load?

See discussion of issue 1D.

3. Respondent's Tariff. Does the public interest or the law require that Respondent amend or modify its tariff so that individuals and developers will be treated similarly with respect to extensions?

The evidence adduced at the hearing reflected that individual property owners could be added to the facility with the proper application, but developers would be required to enter into developer agreements prior to having lots added to the treatment facility. (See Transcript pp. 143-145; 159-160). The addition of individual lot owners will continue to reduce the treatment facility's capacity, therefore, requiring the developer to expend additional funds for facility expansion so as to provide capacity and service to individuals for which the developer has no relationship. In other words, the developer is forced to pay for a treatment facility for an entire development when, in fact, the developer may only own a fraction of the homes in that development.

Respectfully submitted,

HENDREN ANDRAE, LLC

Keith A. Wenzel, 33737
221 Bolivar Street
P.O. Box 1069
Jefferson City, MO 65102
(573) 636-8135

Attorneys for Complainants

CERTIFICATE OF SERVICE

I hereby certify that Complainants' Brief was mailed on the 31st day of May, 2007, by prepaid United States mail to:

Kevin Thompson
General Counsel's Office
PO Box 360
200 Madison Street, Ste. 800
Jefferson City, MO 65102

Lewis R. Mills, Jr.
PO Box 2230
200 Madison Street, Ste. 650
Jefferson City, MO 65102

Marc Ellinger
308 E. High Street, Ste. 301
Jefferson City, MO 65101.

Keith A. Wenzel