

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
)	<u>Case No. SC-2016-0135</u>
v.)	
)	
Taney County Utilities Corporation)	
Richard E. Scott)	
116 Laughing Lane)	
Rockaway Beach, MO 65740)	
)	
Respondent.)	

STAFF MOTION FOR DEFAULT DETERMINATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Motion for Default Determination* pursuant to Commission Rule 4 CSR 240-2.070(10), states as follows:

Introduction

1. Staff filed its *Complaint* on December 3, 2015, asserting that Respondent Taney County Utilities Corporation ("Respondent" or "Taney County") failed to submit its 2013 annual report and failed to pay its 2014 assessment as required by Section 393.140(6), RSMo.¹ and Commission Rule 4 CSR 240-3.640. For relief, Staff prays that the Commission authorize the General Counsel's Office to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600, 386.570, and 393.140(6), RSMo. for the collection of the assessment, penalties, and interest on the assessment amount.

¹ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri ("RSMo"), revision of 2000.

2. Respondent's answer was due by January 4, 2016, but Respondent failed to answer. On February 4, 2016, the Commission directed Staff to file a status report.

3. Staff filed its status report on February 16, 2016, informing the Commission that it has been unable to elicit a response from Respondent and that it would file a *Motion for Default Determination*.

General Allegations

4. Respondent is a "sewer corporation" as defined by Section 386.020(49), RSMo. and a "public utility" as defined by Section 386.020(43), RSMo., and thus is subject to the jurisdiction of this Commission pursuant to Section 386.250(3), RSMo.

5. Section 386.390.1, RSMo. authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by any...public utility...in violation, or claimed to be in violation, of any provision of law, or of any rule, or order or decision of the commission."

6. Section 386.600, RSMo. provides, "an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission."

7. Section 393.140(6), RSMo. requires every sewer corporation to file with the Commission an annual report, and Rule 4 CSR 240-3.640(1) requires the annual report to be filed with the Commission on or before April 15 of each year.

8. Respondent did not file its 2013 annual report by April 15, 2014.

9. On May 2, 2014, Staff mailed a letter to the Company notifying Respondent that the Commission had not received the Company's 2013 annual report and that the Respondent would be subject to legal action if the Company did not file its 2013 annual report by May 22, 2014. On May 14, 2014, the letter was returned as undeliverable and was re-mailed.

10. Subsequent to the May 14 letter, Staff contacted the Company in an attempt to help file the annual report. As of the date of this filing, Respondent has failed, omitted, or neglected to file its calendar year 2013 annual report.

11. As of the date of this filing, Respondent has filed, omitted, or neglected to file its calendar year 2014 annual report as well.

12. Section 393.140(6), RSMo. states, "[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same..."

13. On June 19, 2013, the Commission, in Case No. AO-2013-0525, issued its Assessment Order for Fiscal Year 2014 (Assessment Order) pursuant to Section 386.370 RSMo.

14. The Assessment Order fixed the amount allocated to public sewer corporations at \$ 707,914.

15. Section 386.370.5 RSMo provides:

In order to enable the commission to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission...shall file...on or before March thirty-first of each year, a

statement under oath showing its gross intrastate operating revenues for the preceding calendar year...

16. Respondent filed its 2012 Statement of Revenue with the Commission on March 28, 2013.

17. Section 386.370.2 RSMo, states:

The Commission shall allocate to each group of public utilities the gross intrastate operating revenues of such group during the preceding calendar year. The Commission shall then assess the amount allocated to each public utility in proportion to their respective gross intrastate operating revenues during the preceding calendar year.

18. Section 408.020 allows "creditors to receive interest at the rate of nine percent per annum, when no other rate is agreed upon....on accounts after they become due and demand of payment is made[.]" and Complainant is statutorily entitled to prejudgment interest on Respondent's delinquent assessment amount.

19. On November 15, 2013, the Commission's Budget and Fiscal Services sent Respondent notice that the October 15 payment amount of \$338.85 needed to be received by December 15, 2013 to keep Respondent's account in good standing.

20. On May 6, 2014, the Commission's Budget and Fiscal Services sent Respondent notice stating that \$677.68 was due to keep Respondent's account in good standing.

21. As of the date of this filing, Respondent has failed, omitted, or neglected to pay \$677.68 of its total 2014 fiscal year assessment.

22. Section 386.570.1 RSMo provides that,

Any...public utility which violates or fails to comply with any...law, or which fails to comply with any order, decision, decree, rule direction, demand or requirement, or any part or

provision thereof, of the commission in a case in which a penalty has not herein been provided for such...public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

23. Section 386.570.2, RSMo., provides that "...in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

Standard for Entering Default Judgment

24. Commission Rule 4 CSR 240-2.070(10) provides, "If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered."

25. Respondent's answer was due by January 4, 2016, but Respondent failed to answer.

WHEREFORE, the Staff prays that the Commission will grant default determination of its Complaint filed herein and enter its order (1) finding that the Respondent failed, omitted, or neglected to file an annual report for 2013, (2) finding that the Respondent has failed to pay the fiscal year 2014 assessment, and (3) authorizing the General Counsel's Office to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600, 393.140(6), and 386.570 RSMo. for the collection of the assessment, penalties, and interest on the assessment amount; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Marcella L. Mueth

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 23rd day of February, 2016.

/s/ Marcella L. Mueth