

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

MPB Development, LLC,)	
)	<u>Case No. SC-2005-0359</u>
v.)	
)	
Aqua Missouri, Inc.)	
)	
		Respondent.

STAFF REPORT OF INVESTIGATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through Counsel, and for its Staff Report of Investigation states the following to the Missouri Public Service Commission (“Commission”):

1. On April 11, 2005, MPB Development, LLC filed its Complaint against Aqua Missouri, Inc. in this case. In its Complaint, MPB requested that the Commission order Aqua Missouri to base its sewer charges to MPB on actual water and sewage service usage per building instead of the number of apartments and that Aqua Missouri be ordered to stop charging MPB for sewer services for vacant apartments.

2. On May 27, 2005, the Commission issued its **Order Directing Filing Staff Investigation and Report** (“Order”) in the instant case, wherein it directed the Staff to file a report regarding the issues in this case, including its recommendations, on or before June 16, 2005. The Commission also directed the Staff to include in its recommendation information about the Commission’s jurisdiction over the allegations and relief requested in the Complaint.

3. Rule 4 CSR 240-2.070 (1) authorizes any person “who feels aggrieved by a violation of any statute, rule, order or decision within the commission’s jurisdiction” to file a complaint. The

Commission therefore has jurisdiction to determine whether Aqua Missouri has violated a statute, rule, order or decision, and, if necessary, to order Aqua Missouri to comply with the applicable statute, rule, order or decision. However, neither this rule nor any other authority of which the Staff has knowledge, authorizes the Commission, in this case, to order Aqua Missouri to take any action that does not comply with the existing statutes, rules, orders and decisions.

4. Included in the document that is attached hereto and marked as Appendix A is the Staff Report of Investigation, and related attachments, which are being submitted in compliance with the above-referenced Order.

5. The Staff has determined that Aqua Missouri is billing MPB at the rate of \$19.15 per apartment unit, in accordance with Aqua Missouri's 1st Revised Tariff Sheet No. SR 1 and that it is billing MPB in accordance with Rule 9 of Aqua Missouri's tariff. The Staff does not know of any violation of any other rule or of any statute, order or decision of the Commission. Accordingly, the Staff does not believe it is appropriate to order Aqua Missouri to change its billing practices to comply with Rule 9 of Aqua Missouri's tariff.

6. The Staff further notes that, as a practical matter, it may not be possible for Aqua Missouri to base its sewer charges to MPB on actual usage, because Aqua Missouri provides only sewer service to MPB, and does not provide water service, and that it does not have access to meter readings that would enable it to base its sewer service billings on actual usage.

7. Even if Aqua Missouri is able to obtain water meter readings for the subject apartment buildings, the Staff believes that it would be inappropriate for the Commission to order Aqua Missouri to bill MPB for its sewer service at the commercial rate, since the apartments are residential units.

WHEREFORE, the Staff respectfully submits the above-referenced report, and related attachments, for the Commission's consideration in this case.

Respectfully Submitted,

DANA K. JOYCE
General Counsel

/s/ Keith R. Krueger

Keith R. Krueger
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Missouri Bar No. 23857

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Missouri Public Service Commission

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 16th day of June 2005.

/s/ Keith R. Krueger

Keith R. Krueger

APPENDIX A

STAFF REPORT & ATTACHMENTS

CASE NO. SC-2005-0359

Report of Complaint Investigation

Case No. SC-2005-0359

Prepared By:
James A. Merciel, Jr., P.E.
Water & Sewer Department
Utility Operations Division
June 16, 2005

Background Information

On April 11, 2005, MBP Development, LLC (Complainant) filed a formal complaint against Aqua Missouri, Inc. (Company). The complaint is in regard to billing practices for two multi-family residential apartment buildings known presently as Summit Apartments, located near Holts Summit in Callaway County, MO. This development is connected to what the Staff refers to as the Company's Evergreen sewer system. The issues raised in the complaint pertain to the monthly billing amount, and continued billings for vacant living units. Included with this report as Attachment 1 are selected pages from the Company's current tariff, which will be referred to herein.

Billing Information

Billing practices are generally addressed in the Company's tariff in Rule 9. Additionally, there are some points about apartment billing that need to be considered.

The rate for apartment units for most sewer utilities is calculated similar to single family residences, but if a flat rate is used, as it is with the Company, it may contemplate less water usage per unit as compared to a single family residence. A flat rate means the rate is not based on water usage, and flat rates are most often applied to a class of customer without regard to the size of the living unit, number of occupants, number of bedrooms, and etc. There are, of course, exceptions. The Company's approved rate for a multi-family apartment unit is \$19.15 per month per unit, which is shown on the Company's tariff Sheet No. SR1. This is as compared to \$22.53 per month for a single family residence. Based on the Company's approved rate, the correct billing for fifty-nine (59) apartment units, which is the count specified by both the Complainant and the Company in this case, would be \$1,129.85 per month.

As is normally done with most sewer utilities, the Company would bill the owner of the apartment development for all of the units, reference Rule 9 (k), Sheet No. 31. Some companies, including at least one of the Company's predecessor companies, sometimes send bills to apartment tenants as a courtesy, even though the apartment owner is ultimately responsible for payment. Most, but not all, apartment developments have one water service connection and one sewer connection for an entire building, and for this type of arrangement a fundamental problem exists in that it is impossible to deal with individual tenants with regard to turn-on, turn-off and disconnection of service, whether by physical disconnection of the sewer, or turn-off of water service by the water provider as contemplated by Missouri Statutes, specifically §393.015. During a field visit, the Staff observed that the Summit Apartments have one water service line and meter for each building, and also apparently have one service sewer pipeline and one sewer connection for each building.

With regard to including vacant units in a bill for any given month, the Staff has long held a position that in most cases the sewer utility simply has no way to know whether units are vacant or not, and as such it is reasonable to bill for each unit unless a building or perhaps certain units of a building are physically disconnected from the sewer system. This practice is described by tariff rules 9 (b) and (c) on Sheet No. SRR29. Exceptions to this practice could include locations where each living unit has an individual water connection, and the sewer utility has some type of working relationship with the water provider such that water turn-off information for the apartment units is readily available. Such an arrangement is, however, beyond the provisions of MO Revised Statute §393.015. Another exception could be a sewer utility that has a comfortable working relationship with apartment owners such that reliable vacancy information is available, and a vacancy policy can be consistently applied throughout the service area. Since the Complainant's property does not have individual water meters, tracking unit occupancy and/or dealing with individual tenants as customers is not practical.

Another alternative billing arrangement for apartments that could work, in the Staff's opinion, is to consider each apartment building, or for that matter an entire apartment complex, as one large commercial customer, with sewer bills based on water usage. The Company's commercial sewer rates are \$22.53 per month for usage up to 7,000 gallons water use, plus \$3.22 per 1,000 gallons water use above 7,000 gallons. For this billing arrangement to work, a water meter needs to be available for the Company to read monthly. The water meter could be owned by the water supplier, or owned and installed by the customer specifically for sewer billing. Provisions for such an arrangement are already in the Company's tariff in Rule 4 (h) Sheet No. SRR16. Alternatively, water usage information could be obtained from the water supplier monthly, if the water supplier is willing to enter into an agreement to provide such information. Since each of the Complainant's two apartment buildings has a water connection, it would be possible to classify the Complainant, at this location, as two commercial customers. However, if arrangements cannot be made with the water supplier to provide meter readings, it would be necessary for the Company to get permission from the water supplier to read the water meters regularly, or for the Complainant to install two additional water meters for the Company's billing use.

The Staff's experience is that it is not common practice for apartment developments to be considered commercial customers in this manner. However, the advantage of such an arrangement is that the customer (the apartment building owner) only pays sewer bills based on how much water is used, and there is no need to worry about vacancies, number of people, or other variables with regard to apartment residents. However, there could be sales tax implications with regard to whether the customer is commercial or residential class, and whether the sewer service is considered to be for residential or commercial use.

Conclusions and Recommendations

The Company's tariff provides, in the Staff's opinion, for all of the apartment units to be billed for sewer service whether occupied or not. Past due bills, in the Staff's opinion would have been legitimately calculated without regard to occupancy, though the Company could exercise an option to settle on some amount in order to settle a past due account. It is not practical for the Company to track occupancy, nor to modify flat rate billing based on some level of sewer use. An alternative billing arrangement, to which the Staff would have no objection, would be for the apartment buildings to be considered as commercial customers, with the Company then applying the commercial rate that is based on water use. However, to do so requires water usage information to be available to the Company.

Regarding action by the Commission, the Complainant's pleading requests the following specific relief:

1. "That Respondent (Complainant) be ordered to base its sewer charges to Complainant on actual water and sewage service usage per building instead of the number of apartments."
2. "That Respondent be ordered to change its billing practices so as to fully comply with Rule 9, Bills of Service (sic), of the Rules and Regulations governing rendering of service."

The Staff believes that the Commission has jurisdiction pertaining to treatment of customers of a specific class, but recommends that the Commission not issue an order that would grant relief as requested in No. 1. With regard to billing based on water (and sewer) usage, such an order possibly could either apply special treatment to the Complainant with respect to other customers of the same class, or could be construed to apply to all customers of the same class as the Complainant which may be impossible with some such customers because of varying water supply conditions, as discussed herein. With regard to billing of vacant apartment units, the Staff believes that such an order would create difficulty for the Company, and perhaps extending to other regulated sewer utilities, to properly bill customers. Further, the Staff believes that such issuing such an order would require a finding that it is unreasonable to consider a sewer customer to be a customer unless physically disconnected from the system, which the Staff believes is reasonable. However, as discussed herein, the Staff also believes that the Company could optionally consider customers of the Complainants class as either Multi-Family with the approved multi-family flat rate applied, or as a Commercial with the water-use based Commercial/Industrial rate applied. Notably, to do so requires water usage information to be available somehow. In lieu of the relief requested in No. 1 above, the Commission could so order such an option to be considered if the conditions for Commercial/Industrial billing can be met.

The Staff believes that there has been no violation of Rule 9 with regard to the billing issues, and thus recommends that no order be issued that would grant the relief requested in No. 2, above.

Original
Revised
Original
Revised

Capital Utilities, Inc.
Name of Issuing Corporation

For

Cole and Callaway Counties
Community, Town or City

Sewer Division

RECEIVED

Rules and Regulations

Governing Rendering of Service

AUG 10 1994

MISSOURI
Public Service Commission

SCHEDULE OF RATES

A. Application - The following monthly sewer service charge will be in effect for Customers of Capital Utilities, Inc., located within the Company's Cole and Callaway County service areas.

Residential	Flat Rate	\$ 22.53 Per Unit
Mobile Homes within a Mobile Home Park	Flat Rate	\$ 19.15 Per Unit
Multi-family	Flat Rate	\$ 19.15 Per Unit
Commercial and Industrial	Based on Water Usage	\$ 22.53 for 1st 7,000 gallons or part thereof of water usage, and \$ 3.22 for each additional 1,000 gallons.

All applicable Federal, State and local taxes shall be added in addition to the above charges.

A surcharge in accordance with Rule 10 for an excess strength waste discharge may be applied.

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OCT 15 1994

MO. PUBLIC SERVICE COMM.

*Indicates new rate or text
+Indicates change

DATE OF ISSUE August 10, 1994

DATE EFFECTIVE

OCT 15 1994

month day year

ISSUED BY Milton E. Leeds

name of officer

President, P.O. Box 7017, Je

title

Attachment 1 - 1

Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area
Community, Town or City
Sewer DivisionRules and Regulations
Governing Rendering of ServiceRule 1 DEFINITIONS (continued)

- (f) "B.O.D." denotes biochemical oxygen demand. It is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions expressed in milligrams per liter.
- (g) A "COLLECTING SEWER" is a pipeline, including force mains, gravity sewers, pressure piping, wyes, tees, clean-outs, manholes, lampholes and necessary appurtenances, which is owned and maintained by the Company, located on public property or on Company or utility easements, and used to transport sewage waste from the Customer's service sewer connection to the point of disposal.
- (h) The term "COMMERCIAL CUSTOMER" shall designate:
- (1) A retail or service business utilizing any building, portion of a building or combination of buildings in the same compound which does not manufacture any item or items on the premises.
- (2) A hotel, motel, tourist court, or recreational vehicle park which rents or leases rooms or spaces to tenants.
- (i) The "COMPANY" is Capital Utilities, Inc. of Jefferson City, Missouri acting through its officers, managers, operations contractor, or other duly authorized employees or agents.

FILED

MAY 27 1992

92-195

MO. PUBLIC SERVICE COMM.

*Indicates new rule or text
+Indicates changeDATE OF ISSUE April 27, 1992
month day yearDATE EFFECTIVE May 27, 1992
month day yearISSUED BY Milton E. Leeds

President, P.O. Box 70

name of officer

title

Milton E. Leeds

Attachment 1-2

Canceling P.S.C. MO. No. 2 (Original) SHEET No. SRR5AquaSource/CU, Inc.
Name of Issuing CorporationFor Missouri Certificated Area
Sewer DivisionRules and Regulations
Governing Rendering of ServiceRule 1 DEFINITIONS (continued)

- (t) "INSPECTOR" is a duly authorized officer, manager, employee or agent of the Company, qualified by appropriate education, experience and training to inspect new construction, modifications and connections to the Company's collecting sewers and treatment systems and Customer's service sewers.
- (u) A "MOBILE HOME (S)" shall be defined as a dwelling unit normally mounted on a trailer for the purpose of transporting.
- (v) A "MOBILE HOME PARK" is an area comprised of two or more spaces for the semi-permanent setup of mobile homes.
- (w) A "MULTI-FAMILY DWELLING UNIT" is a building constructed under one roof that is separated into more than one dwelling unit (i.e. duplex, fourplex, etc.).
- (x) "NON-DOMESTIC SEWAGE" is all sewage other than domestic sewage including, but not limited to, commercial or industrial wastes, (See Rule 6 pertaining to Improper Waste and Excessive Use).

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DATE OF ISSUE November 20, 2002 DATE EFFECTIVE December 20, 2002ISSUED BY Frank Hoffmann, President, 411- 7th Ave., Pittsburgh, PA 15219
Name of Officer Title AddressFiled
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Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area
Community, Town or City
Sewer DivisionRules and Regulations
Governing Rendering of Service

APR 27 1992

Rule 1 DEFINITIONS (continued)

- (x) "PH" is the relative degree of acidity or alkalinity of water as indicated by the hydrogen ion concentration. PH is indicated on a scale reading from 1 - 14, with 7 being neutral, below 7 acid, and above 7 alkaline; more technically defined as the logarithm of the reciprocal of the hydrogen ion concentration.
- (y) "REPAIRABLE PARTS" shall consist of the motors, pumps, grinders, liquid level controls, heaters, pressure release valves, gate valves, check valves, vacuum/air relief valves, alarm system, electrical protective and switching equipment that may be included as part of an alternative collection system with the Customer's service sewer. These components are normally associated with an alternative collection system and are the responsibility of the Customer.
- (z) The term "RESIDENTIAL CUSTOMER" shall designate the person(s) occupying a building or portion of building in the case of a multi-family dwelling under one roof which is owned, leased, or rented by one party and occupied as a residence.
- (aa) "SEPTIC TANK EFFLUENT PUMP (STEP) SYSTEM" is the pumps, related equipment, tankage, piping and appurtenances which separate from liquid wastes retaining the settleable and floating solid wastes and pumping the liquid waste under pressure to collecting lines.

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MO. PUBLIC SERVICE COM.

DATE OF ISSUE April 27, 1992
month day yearDATE EFFECTIVE May 27, 1992
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name of officer title

Attachment 1 - 4

Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area

Community, Town or City

Sewer Division

Rules and Regulations
Governing Rendering of Service

APR 27 1992

Rule 4 APPLICATIONS FOR SEWER SERVICE (continued)

- (f) New service connections shall be authorized when the service inspection fee is paid to the Company based on the Schedule of Service Charges.
- (g) When a service is to be connected the plumber employed by the Customer may obtain the connecting accessories either directly from the Company, or other supplier contingent on the accessories meeting the requirements of Rule 5. The plumber shall advise the Company a minimum of forty-eight (48) hours in advance of when he expects to have service installed so a representative of the Company can inspect the installation.
- (h) When sewer charges are based on water usage, the Company reserves the right to refuse sewer service to any applicant unless said applicant agrees to install a water meter accessible to the Company, so that there will be a basis for sewer charges.
- (i) For any commercial or industrial Customers whose sewer service charge is determined on the basis of water use, who uses in excess of 8,000 gallons of water per month, and can show to the satisfaction of the Company that a portion of the water as measured by the water meter or meters does not and cannot enter the sanitary sewerage system, the Company may determine in such manner and by such method as it may deem practicable the percentage of metered water entering the

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MO. PUBLIC SERVICE COMM.

DATE OF ISSUE April 27, 1992
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month day yearISSUED BY Milton E. Leeds
name of officerPresident, P.O. Box 7017, Jefferson City
title

Attachment 1 - 5

Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area

Community, Town or City

Sewer Division

Rules and Regulations

Governing Rendering of Service

APR 27 1992

Rule 4 APPLICATIONS FOR SEWER SERVICE (continued)

sanitary sewerage system. Such percentage, when so determined, shall then constitute the basis of sewerage service charges, provided, however, that the Company in its discretion may require or permit the installation of additional meters at the expense of the Customer or other interested party in such a manner as to determine the quantity of water actually entering the sewerage system, in which case the quantity of water actually entering the sanitary sewage system shall be used to determine the sewer charge.

- (j) The Company may require the Customer to periodically verify the accuracy of any Customer supplied water meter used in determining the Customer's discharge to the sewer system.

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DATE OF ISSUE April 27, 1992
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name of officerPresident, P.O. Box 7017, Jefferson City,
title

Attachment 1 - 6

Cancelling P.S.C.MO. No. All Previous Schedules {Original} SHEET No. _____
~~Revised~~

Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area

Community, Town or City

Sewer Division

Rules and Regulations
Governing Rendering of ServiceRule 9 BILLS FOR SERVICE

- (a) The charges for sewer service shall be at the rates specified in the applicable tariffs on file with the Missouri Public Service Commission. The point of assumption of sewer service shall be at the service connection. Service charges for connection or disconnection are set forth in the Schedule of Service Charges.
- (b) A Customer who has made application for service to a premises shall be held liable for all service furnished to such premises until the customer notifies the Company in writing to discontinue service.
- (c) A Customer is liable for payment for all service charges for sewer service to a premises from the date of connection until the date of disconnection. At least five (5) days prior to disconnection, the Customer shall notify the Company of the date, place, and time of disconnection.
- (d) Bills for sewer service will be mailed or delivered to the Customer's last address as shown by the records of the Company, prior to the first of the billing periods but failure to receive the bill will not relieve the Customer from the obligation to pay the same.
- (e) Payments shall be made at the office of the Company or at such other places conveniently located as may be designated by the Company or by ordinary mail. However, payment must be received by the close of business on **FILED** date due.

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MAY 27 1992
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MO. PUBLIC SERVICE COMM.

DATE OF ISSUE April 27, 1992
month day yearDATE EFFECTIVE May 27, 1992
month day year

ISSUED BY Milton E. Leeds President, P.O. Box 70
name of officer title

Attachment 1 - 7

Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area
Community, Town or City
Sewer DivisionRules and Regulations
Governing Rendering of ServiceRule 9 BILLS FOR SERVICE (continued)

- (f) A separate bill shall be rendered for each Customer's sewer service.
- (g) The Company shall have the right to render bills in advance of the billing period and such bills shall be due and payable on the due date indicated on the bill. The Company shall have the right to charge Customers on a billing period basis in arrears when the sewer charges are based on water usage.
- (h) Neither the Company nor the Customer will be bound by bills rendered under mistake of fact as to the quantity of service rendered or as a result of clerical error.
- (i) All bills for sewer service become delinquent after the due date stated on the bill and, as such, are subject to a delinquent charge as noted in the Schedule of Service Charges. Service may be discontinued thirty (30) days after written notice by certified mail from the Company. The Company shall have the right to charge to the Customer's account reasonable costs and fees incurred in collecting the delinquent amount.
- (j) When bills are rendered for a period of less than a complete billing period due to the connection or termination of service, the billing shall be the monthly minimum service charge amount based on the water used at the commodity (water usage) rate. If a flat rate service charge system is applicable, the billing shall be for the proportionate part of the billing period charge.

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DATE OF ISSUE April 27, 1992
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month day year

ISSUED BY

Milton E. Leeds

name of officer

President, P.O. Box 70
title

Attachment 1-8

Cancelling P.S.C.MO. No. All Previous Schedules

SHEET No.

Capital Utilities, Inc.

Name of Issuing Corporation

For Missouri Certificated Service Area

Community, Town or City

Sewer Division

Rules and Regulations
Governing Rendering of ServiceRule 9 BILLS FOR SERVICE (continued)

- (k) The landlord or leaser shall be considered the Customer receiving sewer service for all rented or leased multi-family dwellings. The sewer service billing for each unit within the multi-family dwelling will be sent to the landlord or leaser who is then responsible for payment.
- (l) If a Customer is a tenant residing in a single family dwelling, the Company will require the owner of the property to be ultimately responsible for payment of bills for service, provided the Company has made reasonable and timely efforts to collect bills due from the Customer. All notices of delinquent bills or disconnection shall also be sent to the owner of the property.

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MO. PUBLIC SERVICE COMM.

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ISSUED BY

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name of officer

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title

Attachment 1 - 9