

Jason Becker & Becker Development, Inc.,)
)
Complainant,)
)
v.) **Case No. SC-2007-0044**
)
Aqua Missouri, Inc.,)
)
Respondent.)

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Post-Hearing Brief, states as follows:

1. The Commission issued its Report & Order herein on July 12, 2007, effective August 11, 2007. Among other things, that Report & Order directed Aqua Missouri to “connect up to ten additional houses to its sewer system at the Lake Carmel subdivision.”

3. On August 21, 2007, the Commission directed Staff to respond to Aqua Missouri's Application by August 27, 2007, stating, "The Commission would like to know the views of its Staff before ruling on the Application for Rehearing."

4. Aqua Missouri first complains that, by connecting ten more houses at Lake Carmel, it may thereby breach its permit from the Missouri Department of Natural Resources (“DNR”) and be subject to penalties at the hands of that agency. Aqua Missouri complains that the Report & Order is unlawful for this reason.

5. Aqua Missouri should have foreseen that an adverse result in this case might subject it to inconsistent obligations to this Commission and to DNR. For this reason, Aqua Missouri should have joined DNR as a party at the outset so that the Commission’s decision would be binding on that agency as well. In any event, the record shows that nine or ten more houses can be connected now without exceeding the DNR permit (see Staff’s Post-Hearing Brief, 7), so the fears expressed by Aqua Missouri are unlikely to come to pass. Should Aqua Missouri seek certainty, it can always make a prudent capital investment and expand, improve or restore its Lake Carmel plant so that there is less possibility that its DNR permit might be violated.

6. Aqua Missouri complains second that the Report & Order fails to distinguish developers, like Becker, from private individuals, although its Commission-approved tariff makes such a distinction. Aqua Missouri complains that the Report & Order is unlawful for this reason.

7. The obligation of a public utility to serve all the public within its allotted service area extends to commercial customers, such as Becker, as well as to residential customers, industrial customers, and governmental customers. The statutory prohibition on discrimination in the provision of utility services likewise

protects commercial customers as well as all others. Staff considers this point to lack substantial merit.

8. Aqua Missouri complains third that the Commission made an error of fact when it found that “Becker has done everything necessary to receive service for the ten additional houses.” Aqua Missouri complains that the Report & Order is unlawful for this reason.

9. As the finder of fact, the Commission is entitled to believe some, all or none of the evidence adduced by the parties. Staff believes that the particular finding of fact challenged by Aqua Missouri here is based on substantial evidence of record and is likely to be upheld by a reviewing court. For this reason, Staff concludes that this point is also without substantial merit.

10. Aqua Missouri complains fourth that the Report & Order “fails to state with specificity whether Aqua Missouri can recover in rates for maintenance and repairs of the existing sewer treatment facilities.” In particular, Aqua Missouri states, “By dredging or raising the berms, it is likely that the capacity of the facility will exceed the immediate demands on the facilities” (emphasis deleted). Aqua Missouri complains that the Report & Order is unlawful for this reason.

11. This is a complaint case, not a rate case. The Commission cannot lawfully fix the ratemaking treatment of any expenditure in this case. In general, prudent and reasonable operating and maintenance expenses are recoverable in rates. Additions to plant in service are likewise recoverable in rates in so far as they are reasonable and are used and useful. It is not possible to advise Aqua Missouri in this case whether or not its investment in dredging the Lake Carmel

treatment facility or raising the berms, or both, would be entirely recoverable in rates if the result was to increase the plant's capacity beyond the level required to serve the present inhabitants of Lake Carmel. Perhaps the answer would turn on just how much excess capacity was thereby created. In any event, the Report & Order resolves the complaints brought by Complainant Becker and that was the matter before the Commission.

WHEREFORE, having fully responded to Aqua Missouri's Application for Rehearing, Staff urges the Commission to deny the same; and to grant such other and further relief as may be just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson
KEVIN A. THOMPSON
Missouri Bar Number 36288
General Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-6514 (Voice)
573-526-6969 (Fax)
kevin.thompson@psc.mo.gov

Attorney for Staff.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **27th day of August, 2007**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson