

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

In the Matter of S.K. & M. Water and Sewer)	<u>Case No. WR-2007-0460</u>
Company's Rate Increase Request)	Tariff No. YW-2007-0864

In the Matter of S.K.& M. Water and Sewer)	<u>Case No. SR-2007-0461</u>
Company's Rate Increase Request)	Tariff No. YS-2007-0685

**RESPONSE IN OPPOSITION TO THE MOTION TO COMPEL DISCOVERY FILED BY
THE OFFICE OF THE PUBLIC COUNSEL**

S.K. & M. Water and Sewer Company ("SK&M" or "Company"), by its undersigned counsel, hereby files its Response in Opposition to the Motion to Compel Discovery, which was filed by the Office of the Public Counsel ("Public Counsel") on June 21, 2007. In support of its response, the Company states as follows:

1. On October 19, 2006, SK&M initiated small sewer and water company rate increase proceedings pursuant to 4 CSR 240-3.330 and 4 CSR 240-3.635, respectively. In its letter initiating the two proceedings, the Company noted that it had not increased rates for water service since 1991 and had not increased rates for sewer service since 1974.

2. Under rules established by the Missouri Public Service Commission ("Commission") to govern small water and sewer company rate increase requests, an agreement regarding rates must be reached and compliance tariffs filed within one hundred fifty (150) days from the date of the letter initiating a case. That date, however, can be extended upon written agreement by the applicant company.¹ In the current cases, the deadline for resolving the Company's requests to increase rates already has been extended three times.

¹ See 4 CSR 240-3.330(1)(F) and 4 CSR 240-3.635(1)(F).

3. The Commission's small water and sewer company rules also specifically state that "[i]f public counsel wishes to conduct an investigation and audit of the company, it must do so within the same time period as staff's investigation and audit."²

4. In each of the two pending cases, Public Counsel has failed to comply with the Commission's rules governing the time period within which an investigation and audit of the Company was to take place. The Commission Staff ("Staff") completed its investigation and audit sometime in late February 2007 and, as required by the Commission's rules,³ on March 28, 2007, the Staff held a conference among itself, SK&M, and Public Counsel to discuss the results of that investigation. But rather than signaling the near end of the investigation and audit phase of the two cases, it appears that Staff's conference marked the ***beginning*** of Public Counsel's investigation.

5. SK&M first received data requests from Public Counsel on April 10, 2007 – **173 days** after the Company initiated its rate increase requests. On May 10, 2007 – **203 days** after the pending cases began – Public Counsel sent SK&M a follow-up letter demanding a response to the data requests and threatening sanctions if responses were not provided. In a letter to Public Counsel dated May 16, 2007, SK&M explained that it would not respond to the data requests because the time for Public Counsel to complete its investigation and audit of the Company's rate requests had long passed. Finally, on June 21, 2007 – **245 days** after SK&M initiated its requests to increase water and sewer rates – Public Counsel scheduled a discovery conference to discuss the Company's refusal to respond to the untimely data requests. Later that same day Public Counsel filed its Motion to Compel.

6. Public Counsel's motion claims its data requests were propounded pursuant to Section 386.450, RSMo, which vests Public Counsel with broad powers to

² 4 CSR 240-3.330(1)(A) and 4 CSR 240-3.635(1)(A).

³ 4 CSR 240-3.330(1)(B) and 4 CSR 240-3.635(1)(B).

request information from regulated utility companies. But the Company believes that this is just a smokescreen designed to cover Public Counsel's manifest failure to comply – or even attempt to comply – with the time period prescribed in the Commission's rules for completing an investigation and audit of SK&M's rate increase requests. The fact that Public Counsel's data requests were intended to serve as discovery in the two pending SK&M rate cases – as opposed to a more generalized inquiry under Section 386.450 – is obvious from the fact that: a) the data requests were propounded in the context of the two pending rate cases, and b) Public Counsel states in its Motion to Compel that the requested information is needed to allow it to respond to the tariff sheets agreed to by the Company and the Staff.

7. Public Counsel has had ample time to investigate and audit SK&M's rate increase requests. Indeed, by July 2, 2007 – the time Public Counsel's comments to the settlement proposed by the Staff and SK&M are due – **256 days** will have passed since the Company filed its request for increased rates. That is more than three months beyond the one hundred fifty day period within which all activities related to a small company rate case are supposed to be completed. Public Counsel's failure to meet this deadline was conscious and was made in utter disregard for the Commission's rules governing small water and sewer company rate increase requests. Such behavior ought not be rewarded or excused; yet that is precisely what Public Counsel's Motion to Compel asks the Commission to do and what will result if the Commission grants that motion.

8. Public Counsel has offered no explanation as to why it chose to flout the Commission's rules and not shown good cause or any other justification for why its behavior should be excused by granting its motion. Indeed, nowhere in the motion is there any acknowledgement of Public Counsel's dilatory behavior, much less any basis for rewarding that behavior.

9. Under Section 393.140(11), RSMo, the Commission has the authority to prescribe rules to govern rate requests filed by water and sewer companies. The small company rate procedures set forth in 4 CSR 240-3.330 and 4 CSR 240-3.635 are legitimate exercises of that rulemaking authority. Although Public Counsel has broad authority under Section 386.450, RSMo., to request information from regulated companies, that authority can be – and in these cases, has been – reasonably restricted if those requests are propounded in the context of a rate case. The procedures that the Commission has established to govern small water and sewer rate requests provide Public Counsel ample time to seek information regarding the rate increase requests. But Public Counsel must act in a timely fashion if it wants to protect those rights. When it does not – as was the case here – Public Counsel has no one to blame but itself.

10. The Commission's authority to prescribe reasonable rules to govern small water and sewer rate cases is beyond dispute. But if the Commission's rules are to have meaning, they must be enforced, and parties who choose to violate or ignore the rules must be forced to suffer the consequences of those decisions. As noted previously in this response, the data requests here at issue were propounded in the context of two rate proceedings initiated under the Commission's rules and not as part of Public Counsel's general powers to request information from regulated utilities under Section 386.450, RSMo. Public Counsel delayed in propounding its data requests and also in pursuing a remedy for the Company's refusal to respond to those data requests so that now SK&M's rate increase requests have been delayed nearly 100 days beyond the date when the review process was to have been completed. Granting the Motion to Compel will only serve to delay that process further and to compound the hardships SK&M already has had to endure because its requests for rate relief have been extended three times. But more than that, granting the motion will punish the Company

for actions that are solely the fault and responsibility of Public Counsel; actions that should be censured, not rewarded.

WHEREFORE, for the reasons stated above, SK&M asks the Commission to deny Public Counsel's Motion to Compel and to move forward expeditiously to consider the settlement proposed by the Company and Staff.

Respectfully submitted,

/s/ L. Russell Mitten

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 26th day of June, 2007, to the following:

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