

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
October, 2010.

In the Matter of the Stipulation Respecting Adjustments to)
Sewer Charges Applicable to Four Seasons Racquet and) **File No. SO-2011-0046**
and Country Club Condominium Owners Association, Inc.)

ORDER REGARDING REQUESTED EXTENSION

Issue Date: October 6, 2010

Effective Date: October 13, 2010

Background

On February 22, 2010, Four Seasons Racquet and Country Club Condominium Owners Association, Inc. ("Racquet Club"), Lake Region Water and Sewer Company ("Lake Region") and the Commission's Staff filed a "Partial Non-Unanimous Stipulation Respecting Adjustments to Sewer Charges Applicable to the Racquet Club Condominium Property Owners Association, Inc." (Stipulation). This Stipulation resolved the Racquet Club's purpose for intervening in Lake Region's rate case.¹ Not all of the parties from the rate case were signatories to the Stipulation, but the two non-signatories did not oppose the Stipulation and by operation of Commission rule they waived all rights to a hearing on the Stipulation.² The Commission approved the Stipulation on April 14, 2010.

Originally, the Stipulation called for the installation of flow meters by May 31, 2010, to measure the total water flow from the Racquet Club (specifically the Country Club Hotel)

¹ See File Nos. Sr-2010-0110 and WR-2010-0111.

² Commission Rule 4 CSR 240-2..115.

and the total flow from the Racquet Club that enters Lake Region's wastewater treatment plant. It was later determined that the May 31, 2010 deadline was not feasible, so a request for extension until August 31, 2010 made, and the Commission granted that request on June 1, 2010.

The Stipulation also contained provisions for how to treat revenue derived from Lake Region's charges for services to the Racquet Club and Hotel for purposes of the rate case, for how monthly billings would be based on the effective date of the Stipulation and once the flow meters were fully operational, and how to address any potential recalculations of charges and determine if credits were owed to the Racquet Club.

On August 19, 2010, the interested parties met to discuss the status of the installation of flow meters. Staff and Lake Region have concerns as to the type of flow meter installations required and the efficacy of the flow meter installations. It was agreed that the August 31, 2010 deadline was again not feasible. Lake Region and Staff desired to first proceed with modifying the existing flow meter installation and monitor its performance over a sufficient length of time to include both wet and dry periods. Then, assuming this flow meter performs adequately, Lake Region and Staff believe it is desirable to repeat this process sequentially for the additional flow meters that will be required to accurately measure the separate usage of Lake Region and the Country Club Hotel. It is expected that this process will take many months to complete. Consequently, the Racquet Club and Lake Region requested an extension of the August 31, 2010 deadline and Staff did not oppose that request.

The Racquet Club and Lake Region proposed to report to the Commission when the flow meter installations are completed, or report to the Commission as to the progress of

the flow meter installations by June 1, 2011, whichever first occurs. The Parties to the Stipulation agree to meet on a quarterly basis beginning September 15, 2010 in order to remain informed on the status of installation of flow meters.

On August 25, 2010, the Office of the Public Counsel (“Public Counsel”) objected to the request. Consequently, the Commission granted a temporary extension until November 1, 2010, and opened this case to address Public Counsel’s concerns.

Public Counsel’s Position

Public Counsel³ “objected to the Joint Application for Extension and requested that the Commission order a specific deadline for determining the actual wastewater flow of the Racquet Club and the Hotel so that this information can be used for determining the rates revenue in the general rate increase request Lake Region has been ordered to file within three years of the effective date of the Report and Order.” Public Counsel also stated: “It is imperative that the actual wastewater flow be determined for the Racquet Club and the Hotel in order to prevent **possible** long-term subsidization by other customers.” Public Counsel clarifies that it bases its possible concern on the testimony of Staff Witness Martin Hummel from the rate case and that until the actual wastewater flow of the Racquet Club and the Hotel are determined, other customers of Lake Region are **most likely** subsidizing

³ Public Counsel was directed to explain how it had standing to raise its objection since it had waived all right to a hearing on the Stipulation by not objecting to it when it was filed. The Commission accepts Public Counsel’s argument that it has standing based upon Section 386.710, RSMo because the Commission opened a new case for this matter. However, the Commission rejects Public Counsel’s argument that it is a party to the Stipulation. Public Counsel is not a signatory to the Stipulation. While the Commission “treated” the Stipulation as being unanimous because no non-signatory objected, “treating” the document as unanimous does not raise Public Counsel to the position of being a party to the Stipulation; that merely means Public Counsel waived all rights to contest the Stipulation through a hearing.

the wastewater flow of the Racquet Club and the Hotel. (Emphasis added by Public Counsel).

Public Counsel adds that the amount of wastewater flow being produced by the Racquet Club and the Hotel is unknown but is suspected to be more than they would be billed for through the use of drinking water meter readings, and if the Racquet Club and the Hotel are not paying their fair share of the sewer treatment costs, then other customers must be unfairly picking up those costs. Public Counsel does not identify what customers it believes might be subsidizing the Racquet Club and the Hotel.

The Racquet Club's Position

The Racquet Club points out that when the installations of the meters are consummated pursuant to the terms of the Stipulation, this will only eliminate the possibility of subsidization between two customers, the Hotel and itself. This was the purpose of the Stipulation. The Stipulation keeps Racquet Club's usage based on water meter readings until the flow-meter installations are certified as accurate, and this usage was assimilated into the test year utilized for ratemaking. The Racquet Club asserts that as long as the installation is accomplished prior to the rate case due in three years, there will be no subsidization different than that in place during the test year.

The Racquet Club claims that Public Counsel's subsidization argument assumes, without substantiation, that Lake Region receives more sewage quantities at its treatment plants than it bills customers whose flow is received at any respective treatment plant. According to the Racquet Club, no party has established, and the Commission has not

found, that different customers contribute disproportionate levels of inflow and infiltration (“I&I”) to any plant.⁴

Racquet Club maintains that in order for either the Shawnee Bend or Horseshoe Bend sewer rates and usage to be structured to eliminate I&I subsidization, each should be completely based on flow-meter usage readings that capture the I&I of each customer. In order to accurately measure usage, including I&I, without any possibility of subsidization, all customers would have to be converted to flow-meter usage, not just one. Until all customers are converted to flow-meter readings, there will always be the possibility that customers with disproportionate I&I will be subsidized by other customers.

When the Racquet Club was placed on a flow-meter prior to institution of the rate case, it was placed in the position of possibly subsidizing other customers, whose usage remained based on water meter readings. More specifically, because the Racquet Club’s flow-meter measured usage from the Hotel and itself, but Hotel’s usage remained based on water meter usage, the Racquet Club was then billed for, and subsidized Hotel for, any I&I contributed by Hotel, if any. Racquet Club believes the Stipulation provides a reasonable resolution of the concern with respect to I&I and subsidization for two larger commercial customers.

⁴ I/I is rain and groundwater entering the sewer system. Infiltration is the entry of clean water through cracks and holes in the pipes and manholes. Inflow is entry of clean water from roof drains, driveway drains or other intentional pipe connections. I/I may also come from excess irrigation. Virtually all sewer systems have some I/I, but excessive I/I is the issue of concern in this case. In the short term, excessive I/I can cause operational

Staff's Position

While Staff agrees with Public Counsel that the actual wastewater flow at issue is unknown and should be established, Staff believes the deadline for this determination must be reasonable. Staff disagrees with any assertion that the request of the extension of time somehow alters the Stipulation. Paragraph 4 of the stipulation expressly allows for an extension for good cause, and because the initial equipment installed is not technically workable and accurate, good cause exists to grant the extension. Staff describes its recommendation as follows:

Staff recommends a new timeline be established for the Racquet Club and Lake Region to comply with the Stipulation and Agreement entered into in the general rate case SR-2010-0110. While the parties were optimistic and ambitious with their short timeline during the general rate case, the task has proven to be much greater than anticipated. Accurate flow measurement is a prerequisite to addressing the issues of whether there is excessive flow from the Racquet Club and Hotel building complex (complex), which shares the same collection systems, and how to properly bill for impact/costs of treatment.

An initial flow meter, installed prior to the rate case, was to measure the total flow of sewage from the complex, but the Racquet Club and the Company agreed that that flow measurement was not accurate enough for billing purposes. Subsequently, it appeared that the installation of multiple flow measurement devices could be used and was agreed upon in the Stipulation and Agreement filed in the general rate case and approved by the Commission. An additional benefit to accurate flow measurement is that the Racquet Club would be able to use the measurement results to observe the reduction of I/I from its improvements on the sewers it owns. At this time the adequacy of the installation of the first initial meter has not been accomplished.

Additionally, the installation of multiple meters has shown to be more complicated than anticipated. This is because of limitations of the original equipment selected and difficult physical character of the expected installation sites, including the steep grade of the sewers. Staff understands that the original flow measurement device was installed under the direct

problems and in the long term, it can cause capacity problems. Staff Memorandum, page 1, filed on September 17, 2010.

guidance of the supplier and detrimental effects of excessive turbulent flow were not recognized. Lake Region has had to reconsider which equipment will work, possibly obtaining different equipment from a different supplier.

Please note that the installation of flow measurement in this case is doable but it is not routine.

Staff recommends that one (1) flow measurement assembly be installed and verified for accuracy before any additional installations are made.

Staff's also recommends the following times be established:

- 1.) That Lake Region should reinstall a total flow measurement assembly completed by December 1, 2010;
- 2.) Lake Region should test and verify the accuracy by January 30, 2011;
- 3.) After such verification, total flow data should be collected for six (6) months, February through July 2011; and
- 4.) In August 2011, the data from those six (6) months, which includes both winter and summer flow measurements, will be available to evaluate the options in measuring flow at other complex locations toward reducing and billing for excess flow. At that time Lake Region should file a report as to its current results and future plans.

No party responded to Staff's recommendation or objected to its recommendations.

Decision

The Stipulation was designed to eliminate potential subsidization between two customers, the Racquet Club and the Hotel, and the signatories built appropriate ratemaking treatment into the Stipulation for purposes of Lake Region's rate case in regard of the charges for services to the Racquet Club and Hotel. The signatories to the Stipulation built in a provision to allow for time extensions for the very reason that it may take longer than originally planned to accurately measure inflow and infiltration.

Public Counsel assumes, without substantiation, that Lake Region receives more sewage quantities at its treatment plants than it bills customers whose flow is received at any respective treatment plant, and it has not been established that different customers contribute disproportionate levels of inflow and infiltration to any plant. Public Counsel had the opportunity to address any subsidization issues between any other of Lake Region's customers during the rate case, but apparently declined.

Based upon the verified pleadings, the Commission finds good cause exists to grant the requested extension; however, that extension must be reasonable. The Commission finds Staff's proposed schedule to be reasonable and will order the Signatories to comply with that schedule. The Signatories to the Stipulation will be further directed to meet on a quarterly basis in order to remain informed on the status of installation of flow meters and they shall be directed to file status reports after each meeting.

THE COMMISSION ORDERS THAT:

1. The "Joint Request for Extension" filed by Lake Region Water and Sewer Company and the Four Seasons Racquet and Country Club Condominium Property Owners Association, Inc. on August 24, 2010, is granted.

2. The deadlines recommended by the Staff of the Public Service Commission in relation to installing the flow meters and determining the flow measurements as delineated in the Commission-approved Partial Nonunanimous Stipulation Respecting Adjustments to Sewer Charges Applicable to Intervenor Four Season Racquet And Country Club Condominium Owners Association, Inc. ("Stipulation") are adopted. The Signatories to the Stipulation shall comply with their respective obligations pursuant to these deadlines.

3. The Signatories shall hold their planned periodic meetings, and file quarterly status reports, the first report being due on October 15, 2010.

4. This order shall become effective October 13, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge