

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

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

THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response states as follows:

Introduction

1. On February 22, 2010, Lake Region Water & Sewer Company (Lake Region), the Staff of the Missouri Public Service Commission (Staff), and the Four Seasons Racquet and Country Club Condominium Owners Association, Inc. (Racquet Club) filed a Partial Nonunanimous Stipulation Respecting Adjustments To Sewer Charges Applicable To Intervenor Four Seasons Racquet And Country Club Condominium Owners Association, Inc. (Stipulation) in Case Nos. SR-2010-0110 and WR-2010-0111.
2. The Stipulation stated that Lake Region agreed to install, at its own cost and expense, flow meters at points on the Racquet Club's collection system in order for Lake Region to separately measure the: 1) total water flow from the Country Club Hotel (Hotel) system; and 2) total flow from the Racquet Club system that enters Lake Region's wastewater treatment plant. The Stipulation provided that the flow meters were to be installed by May 31, 2010.
3. Even though Public Counsel had concerns regarding the treatment of the adjusted revenue, Public Counsel saw a benefit to both the customers and the utility in determining the exact wastewater flow coming from the Racquet Club and the Hotel within the context of the pending rate case. Therefore, Public Counsel filed no objection and the Stipulation was approved

by the Missouri Public Service Commission (Commission) as a Unanimous Stipulation on April 14, 2010.

4. Additionally, a request for an extension until August 31, 2010 was made on May 27, 2010. While Public Counsel continued to have concerns, the benefit of determining the exact wastewater flow coming from the Racquet Club and the Hotel within the context of the pending rate case remained so Public Counsel filed no objection. The Commission granted this request on June 1, 2010.

5. However, on August 24, 2010, (five days after the Report and Order in Case Nos. SR-2010-0110 and WR-2010-0111) a Joint Application for Extension was filed requesting an extension of the August 31, 2010 deadline stating that Lake Region and the Racquet Club will 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.

6. Public Counsel 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.

7. On August 26, 2010, the Commission issued its Order Establishing a Separate Case for Further Proceedings, Granting Temporary Extension and Directing Filing in Case Nos. SR-2010-0110 and SR-2010-0111. In its Order, the Commission stated the following:

No later than September 6, 2010, the Office of the Public Counsel shall file a pleading, citing to relevant legal authority, explaining how it has standing to raise its objection to the "Joint Request for Extension" filed by signatories to a stipulation that Public Counsel did not oppose and that Public Counsel is not a signatory party thereto. Public Counsel shall also state, with particularity, what

factual basis it has for asserting there is any type of subsidization by other customers occurring in terms of the wastewater flow for the Racquet Club and Country Club Hotel.

The Commission also ordered that the pleading be filed in the above stated file number. On August 30, 2010, the Commission extended the filing deadline for Public Counsel to September 7, 2010 due to the Labor Day holiday.

Public Counsel's Standing

8. Public Counsel has standing to raise its objection to the Joint Request for Extension. Public Counsel is the State of Missouri's statutory representative tasked with protecting the interests of the public utility ratepayers of Missouri. RSMo § 386.710 (2000). Public Counsel by statute is a party to every case before the Missouri Public Service Commission and thus has statutory standing to raise objections in Commission cases as it deems necessary. Public Counsel has standing in the above stated case as well as in Case Nos. SR-2010-0110 and WR-2010-0111 in which the Stipulation and the Joint Request for Extension were filed. The mere existence of an agreement that Public Counsel did not sign but did not oppose does not somehow negate Public Counsel's statutory standing.

9. Additionally, it is erroneous for the Commission to claim that Public Counsel is not a party to the stipulation. In its March 2, 2010, Notice Regarding Partial Nonunanimous Stipulation, the Commission itself states that that:

On February 22, 2010, Lake Region Water & Sewer Company, the Staff of the Missouri Public Service Commission and Four Seasons Racquet and Country Club Condominium Owners Association, Inc. ("Racquet Club") jointly filed a "Partial Nonunanimous Stipulation Respecting Adjustments to Sewer Charges Applicable to Intervenor Four Seasons Racquet and Country Club Condominium Owners Association, Inc." No party opposed the agreement in the time period allowed by Commission Rule 4 CSR 240-2.115. Consequently, pursuant to that rule, **the Commission shall treat the nonunanimous partial stipulation as a unanimous agreement.** (emphasis added)

Also in its April 14, 2010, Order Approving Nonunanimous Stipulation Respecting Adjustments to Sewer Charges Applicable to Intervenor Four Season Racquet and Country Club Condominium Owners Association, Inc., the Commission stated: “No other party objected to the stipulation, and the Commission will treat the stipulation as though it were unanimous.” Therefore, since the stipulation is treated as a unanimous agreement among all the parties to the case, including Public Counsel, Public Counsel certainly has standing to raise an objection to any request seeking to change that unanimous agreement.

Public Counsel’s Factual Basis

10. As a point of clarification, Public Counsel in its Objection to the Joint Request for Extension did not assert that there **is** subsidization by other customers. Public Counsel specifically stated:

According to Staff Witness Martin Hummel, there is a **very high probability** that the bills for the Racquet Club and the Hotel will be much higher once the billing is based on the flow meter reading.¹ Therefore, until the actual wastewater flow of the Racquet Club and the Hotel are determined, the other customers of Lake Region are **most likely** subsidizing the wastewater flow of the Racquet Club and the Hotel. (emphasis added)

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. Therefore, Public Counsel objects to the Joint Application for Extension. Public Counsel requests 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 in this case.² (emphasis added)

¹ SR-2010-0110 & WR-2010-0111, Direct Testimony of Martin Hummel.

² SR-2010-0110 & WR-2010-0111, Report & Order, pg. 122.

11. Public Counsel's factual basis for its objection is the evidence presented in Case Nos. SR-2010-0110 and WR-2010-0111. Staff Witness Martin Hummel provided Direct Testimony regarding the wastewater flow being produced by the Racquet Club and the Hotel which stated:

I am presenting testimony with regard to the need to measure the wastewater flow from the Racquet Club campus and billing the Racquet Club for wastewater treatment based on that measurement. The Racquet Club owns and controls most of the collection system on its campus and its system is delivering excessive flow to LRWS's treatment plant during periods of heavy rainfall/excessive ground water. Excessive flow may cause sewage overflows or backups, treatment facility operations problems, and higher bills for the Racquet club.³

Additionally, Mr. Hummel's Direct Testimony stated:

In this particular circumstance the wastewater is coming from an extensive collection system and many separate buildings, not just one house. Using drinking water meter readings to estimate sewer flow relies on a major **assumption** that there is negligible extraneous water besides drinking water going to the sewer. That assumption is known to be false in this circumstance.⁴

Mr. Hummel's Direct Testimony also stated:

This problem has existed for several years. LRWS can not correct the problem because the Racquet Club owns, controls and maintains the collection system that is the source of the I/I. In August of 2006 I wrote a letter to LRWS stating my opinion that flow measurement should be used and that billing for sewer service should be based on such measurement. (attached as Schedule 2) Prior to 2009 Racquet Club was being billed for sewer service based on estimating sewage amounts using drinking water meter records. As such no I/I was included. There was little incentive for the Racquet Club to control the I/I. Prior to 2006, evaluation of the sewer going to the treatment plant and the collection system at the Racquet Club condominium campus showed that there was a problem.⁵

12. The issue of concern to Staff Witness Martin Hummel and Public Counsel is 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. If the Racquet Club and the Hotel are not paying their fair share of the sewer treatment

³ P. 1, L. 16-22.

⁴ P. 4, L. 16-20.

⁵ P. 6, L. 14-22.

costs, then other customers are unfairly picking up those costs. Given that utility rates are to be just and reasonable, this should also be of concern to the Commission.

13. The fact is that at this time, the actual wastewater flow of the Racquet Club and the Hotel is unknown. Public Counsel's request 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 utilized in the general rate increase request due to be filed within three years hardly seems unreasonable or excessive given the Commission's charge of ensuring just and reasonable utility rates.

WHEREFORE, Public Counsel respectfully submits its Response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 7th day of September 2010:

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