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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 28th
day of January, 1998.

West Elm Place Corporation,)	
Complainant,)	
)	
v.)	
)	
Imperial Utility Corporation,)	<u>Case No. SC-98-180</u>
Respondent.)	

ORDER REGARDING DEFAULT

On October 29, 1997, West Elm Place Corporation (Complainant) filed a complaint against Imperial Utility Corporation (Respondent). Complainant states that pursuant to its tariff provision (Sewer Rate Schedule E: Wholesale Service; P.S.C. Mo. No. 2, Sheets 1A, 1B, 1C, 1D and 1E), Complainant provides wholesale sewer service to retail sewer service providers, including Respondent, in Jefferson County. Complainant alleges that Respondent has ceased paying for the service provided pursuant to Schedule E and owes quarterly payments of \$6,871.00 due on July 1, 1997, and \$7,178.09 due on October 1, 1997. These amounts, according to Complainant, represent service to approximately 160 units consisting of residences, mobile homes, apartments and commercial establishments.

Complainant alleges that Respondent is violating Section 393.130, RSMo 1996, by not providing safe and adequate service to its customers. Complainant argues that Respondent is not paying for wholesale sewer service as required by tariffs approved by the Commission and is thus exposing Respondent's customers to the prospect of disconnection of sewer service and the concomitant loss of treatment of the waste produced by the

affected customers. Complainant further alleges that Respondent is violating Schedule E of the Complainant's approved tariff by intentionally not paying lawful bills for service when due. Complainant seeks the following relief from the Commission:

- (1) A finding by the Commission that Respondent has violated Section 393.130, RSMo, by failing to provide safe and adequate service, and the authorization for the Commission's General Counsel to seek penalties from Respondent in the amount of up to \$2,000.00 per day for each day on which Respondent has intentionally refused to pay amounts lawfully due under Complainant's tariffs;
- (2) An order of the Commission requiring Respondent to pay all outstanding amounts due Complainant for service under Schedule E;
- (3) An order of the Commission requiring Respondent to pay all future bills rendered by Complainant pursuant to Schedule E when due;
- (4) An order of the Commission determining that the tariff sheets of Respondent which allow Respondent to provide retail sewer service in the areas authorized by the Commission, but which are actually provided sewer service through Schedule E of Complainant's tariff, should be modified to exclude those areas where Complainant is providing wholesale service;
- (5) An order of the Commission authorizing Complainant to file a tariff changing its boundaries so as to provide retail service in those particular areas now served by Respondent pursuant to Complainant's Rate Schedule E; and
- (6) For such other relief, not inconsistent with that prayed for, as the Commission shall consider appropriate.

On October 31 the Commission issued a Notice of Complaint. The Notice of Complaint was issued pursuant to 4 CSR 240-2.070 and advised Respondent that it had 30 days in which to file an answer stating legal and factual defenses or to describe the measures taken to satisfy the complaint. The Respondent did not file an answer to the complaint.

On December 22 Complainant filed a Motion for Entry of Default Judgment. Complainant states that in addition to not answering the complaint, the Respondent has failed to satisfy the complaint and continues to be delinquent in payments. According to Complainant, Respondent presented Complainant with a check for over \$7,000.00 in November which Respondent's bank has refused to cash. Therefore, Complainant requests the Commission enter a default judgment against Respondent and an order granting the relief requested in the complaint. In particular, Complainant requests an order of the Commission which would accomplish the transfer of the affected wholesale customers to Complainant so that Complainant may bill them directly for retail service and eliminate the need to seek payments from Respondent in the future.

Pursuant to 4 CSR 240-2.070(9), the Respondent is in default and the allegations set out in the complaint are deemed to be admitted. "If the respondent in a complaint case fails to file a timely answer, the complainant's averments shall be deemed admitted unless good cause is found by the commission to extend the filing date of the answer." 4 CSR 240-2.070(9).

The Commission finds this an appropriate case in which its Staff should be directed to investigate the facts surrounding the complaint. The Water and Sewer Department Staff, along with the General Counsel of the Missouri Public Service Commission, should be directed to investigate the allegations set forth in the complaint and to file a report setting out its findings in these cases. The Commission further notes for the record that pursuant to § 386.570, RSMo 1994, failure to comply with an order of the Commission, as well as failure to obey the utility statutes and regulations of the State of Missouri, subjects a public utility to a penalty of not less than \$100.00 and not more than \$2,000.00 per day for

each violation. Respondent has failed to comply with the relevant laws herein and could be subject to cumulative penalties of up to \$2,000 per day from December 1, 1997, forward.

IT IS THEREFORE ORDERED:

1. That Imperial Utility Corporation is hereby found to be in default pursuant to 4 CSR 240-2.070(9).

2. That the allegations set out in the complaint filed and docketed under Case No. SC-98-180 are hereby deemed admitted by Imperial Utility Corporation.

3. That the Water and Sewer Department Staff, along with the assistance of the General Counsel of the Missouri Public Service Commission, shall investigate the allegations set out in the complaint filed herein and shall file a report of their findings in this case. Such report shall be filed no later than February 20, 1998.

4. That this order shall become effective on February 10, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

G. George, Regulatory Law Judge

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JAN 29 1998

COMMISSION COUNSEL (
PUBLIC SERVICE COMMISSION