

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day
of July, 2009.

In the Matter of R.D. Sewer Company, L.L.C.'s)	<u>File No. SR-2009-0226</u>
Small Company Rate Increase)	Tariff No. YS-2009-0765

**ORDER FURTHER SUSPENDING TARIFFS AND SETTING
EVIDENTIARY HEARING**

Issue Date: July 24, 2009

Effective Date: July 24, 2009

On November 26, 2008, R.D. Sewer Company ("R.D. Sewer")¹ initiated a small sewer company rate increase action pursuant to Commission Rule 4 CSR 240-3.050 and pursuant to the Commission's directives in its Report and Order in File No. SO-2008-0289.² On April 27, 2009,³ Staff and R.D. Sewer filed a Disposition Agreement ("Agreement") that included comprehensive accounting schedules, a review of R.D. Sewer's customer service and business operations and example tariffs designed to implement the agreed upon revenue requirements. On April 30, R.D. Sewer filed revised tariff sheets reflecting certain rate and language changes to bring the tariffs into full conformity with the Agreement. The

¹ R.D. Sewer provides service to approximately 172 customers in its certificated service area under the provision of its Commission-approved tariff.

² See *In the Matter of the Joint Application of Stoddard County Sewer Company, Inc., R.D. Sewer Co., L.L.C. and the Staff of the Missouri Public Service Commission for an Order Authorizing Stoddard County Sewer Co., Inc. to Transfer its Assets to R.D. Sewer Co., L.L.C., and for an Interim Rate Increase*, File No. SO-2009-0289, Report and Order issued on October 23, 2008. R.D. Sewer originally sought to make permanent the interim rate increase that was ordered in File No. SO-2009-0289; however, after the Commission's Staff ("Staff") completed a full audit of the company, R.D. Sewer and Staff agreed that R.D. Sewer's annualized sewer system operating revenue should be increased by \$14,549.00.

³ All dates from this point forward refer to the year 2009 unless otherwise noted.

tariff sheets were assigned tracking number YS-2009-0765 and bear an effective date of June 15.

The Office of the Public Counsel (“Public Counsel”) did not join in the Agreement. Instead, on May 29, Public Counsel filed motions requesting the Commission suspend R.D. Sewer’s tariff and schedule a local public hearing, or in the alternative, an evidentiary hearing. The Commission suspended R.D. Sewer’s tariffs until August 14 and held a local public hearing on July 1.

On July 9, Staff filed its recommendation that the Commission approve the Agreement and tariff sheets filed by the company. On July 16, Public Counsel filed its position statement. Public Counsel states it believes a resolution has been achieved and that a unanimous disposition agreement is forthcoming. However, to preserve its right to an evidentiary hearing, Public Counsel requested an evidentiary hearing should negotiations between the parties fail to reach resolution. Public Counsel included a specified list of issues that the public counsel believes should be the subject of the hearing in compliance with Commission Rule 4 CSR 240-3.050(20).

There is no question that the public policy of Missouri favors settlements.⁴ However, while settlement is preferred, public policy and judicial and administrative economy also favors finality; that there be an end to litigation.⁵ Because of the limited time frame allowed in the small rate increase procedure, the Commission shall set an evidentiary hearing. In the event an agreement is reached by all of the parties, the Commission shall cancel the evidentiary hearing.

⁴ *Williams v. Preman*, 911 S.W.2d 288, 298 (Mo. App. 1995); *Parks v. Union Carbide Corp.*, 602 S.W.2d 188, 202 (Mo. banc 1980).

⁵ *Sprung v. Negwer Materials, Inc.*, 775 S.W.2d 97, 106 (Mo. banc 1989).

Commission Rule 4 CSR 240-2.110(1) requires the Commission to set the time and place for hearings and serve notice as required by law. Section 536.067(4), RSMo 2000, and Section 386.390.5, RSMo 2000, require at least ten days notice be given prior to a hearing. In complying with its statutory mandate, and taking into consideration the expedited nature of the small water company rate increase procedure, the Commission shall set the date for the evidentiary hearing for Thursday, August 13, 2009.⁶

The Commission finds that the following conditions should be applied:

(A) The evidentiary hearing shall be live. No party shall pre-file testimony.

(B) The parties shall jointly file a list of the witnesses to appear at the hearing, the proposed order in which they shall be called and examined.

(C) The Transcript shall be expedited.

(D) The Commission will allow one round of post-hearing briefs.

(E) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 4 CSR 240-2.080.

(F) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has not been prefiled, the party offering it should bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.

(G) Each party may prepare and file proposed findings of fact and conclusions of law, including citations to testimony and other evidence, to be filed on the same deadline for filing post-hearing briefs.

⁶ Commission Rule 4 CSR 240-3.050(24) sets a deadline of nine months to complete the presentation of small company rate increase requests, i.e. August 26, 2009. The Commission's final order must become effective no later than eleven months after the case is opened; in this case October 26, 2009.

(H) Filings with the Commission shall be considered timely if made through EFIS by no later than 11:59 p.m. of the day that they are due.

(I) In the event that the parties reach a settlement of all factual issues, such settlement shall not be grounds for a continuance of the hearing unless the agreement is final, has been submitted to the Commission in writing, and there are no objections to the agreement.

Because the Commission shall not have sufficient time to hear this case and make a decision prior to the effective date of R.D. Sewer's tariff, i.e. August 14, it shall suspend the tariffs until October 26, the date a final order from the Commission must be effective.⁷ However, if the parties reach a unanimous agreement, compliance tariffs may be implemented at an earlier date.

THE COMMISSION ORDERS THAT:

1. The revised tariff sheets filed by R.D. Sewer Company on April 30, 2009, and assigned Tariff File No. YS-2009-0765, previously suspended until August 14, 2009, are suspended until October 26, 2009, or until otherwise ordered by the Commission. The tariff sheets suspended are:

P.S.C. MO No. 1

4th Revised Sheet No. 7, Canceling 3rd Revised Sheet No. 7

Original Sheet No. 7a

2nd Revised Sheet No. 8, Canceling 1st Revised Sheet No. 8

2nd Revised Sheet No. 9, Canceling 1st Revised Sheet No. 9

2. The Commission gives notice that it shall hold an evidentiary hearing on Thursday, August 13, 2009, beginning at 8:00 a.m.

3. The following procedural schedule for the evidentiary hearing is established:

List and Order of Witnesses

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August 3, 2009

⁷ Commission Rule 4 CSR 240-3.050(24).

Live Evidentiary Hearing	-	August 13, 2009 beginning at 8:00 a.m.
Transcripts Filed	-	August 17, 2009
Post-Hearing Briefs	-	August 26, 2009
Proposed Findings of Fact	-	August 26, 2009
Proposed Conclusions of Law	-	August 26, 2009

4. The hearing shall be held in the offices of the Missouri Public Service Commission at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This hearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

5. In the event that the parties file a unanimous disposition agreement the evidentiary hearing and associated procedural schedule shall be canceled.

6. This order shall become effective immediately upon issue.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

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

Stearley, Senior Regulatory Law Judge