

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

In the Matter of a Requested Rate Increase for)	
Annual Sewer Operating Revenues by Hickory)	File No. SR-2014-0166
Hills Water & Sewer.)	

In the Matter of a Requested Rate Increase for)	
Annual Water Operating Revenues by Hickory)	File No. WR-2014-0167
Hills Water & Sewer.)	

**THE OFFICE OF THE PUBLIC COUNSEL’S MOTION
TO COMPEL DISCOVERY**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Motion to Compel Discovery states as follows:

The Office of the Public Counsel (Public Counsel) certifies that it has complied with all requirements of 4 CSR 2.090(2). Public Counsel has faced continuing and significant problems with Hickory Hills Water & Sewer Company, Inc. (Hickory Hills) failing to respond to proper data requests made to Hickory Hills. Public Counsel now invokes the authority of the Missouri Public Service Commission (Commission) to enforce discovery under the rules and statutes, and seeks the Commission’s intervention in these unresolved discovery matters so that Public Counsel can receive full and complete answers to its data requests which Public Counsel has a clear and unambiguous right to receive from Hickory Hills.

Public Counsel asks the Commission to consider and issue appropriate orders in favor of Public Counsel and against Hickory Hills on Public Counsel’s request to compel Hickory Hills to fully and completely respond to the data requests sent to Hickory Hills on December 6, 2013, which are significantly overdue.

(1) Background

On December 6, 2013, Ms. Keri Roth sent a series of data requests to Hickory Hills requesting information designed to facilitate Public Counsel's review of Hickory Hills' request for rate increases in its sewer and water operating revenues. The data requests indicated that answers were due to Public Counsel on December 26, 2013. When no response to the December 6, 2013, data requests was received Ms. Roth sent an email to Mr. Cover, Receiver for Hickory Hills on December 27, 2013, noting that the data requests had not been answered by the date responses were due. Despite a response that same day from Mr. Cover saying that Hickory Hills was in the process of accumulating the information and should have it to Public Counsel shortly, no answers to Public Counsel's data requests was received.

On January, 9, 2014, the undersigned attorney sent an email to Mr. Cover again noting that the December 6, 2013, data requests had not been answered by the date responses were due and requesting that complete responses be received by January 16, 2014, or the matter would be brought to the attention of the Regulatory Law Judge assigned to the case and if necessary, steps would be taken to seek a motion to compel. No responses were received by Hickory Hills despite a reminder email from the undersigned attorney on January 16, 2014.

When, again, no response to the December 6, 2013, data requests was received, Public Counsel notified the Regulatory Law Judge on January 17, 2014, who attempted to schedule an informal telephone conference to discuss this discovery dispute. Efforts to arrange a telephone conference with Mr. Cover to discuss discovery was unsuccessful and the Regulatory Law Judge notified Public Counsel via email that Public Counsel had met its obligation to arrange a telephone conference under 4 CSR 240-2.090(8)(B).

(2) Request for Motion to Compel

Section 386.450, RSMo 2000, requires the Commission, upon a showing of good cause by the Public Counsel, to order a public utility to produce papers or records of the utility for examination by the Public Counsel. The Commission has stated that the statute does not require Public Counsel to show that the requested documents are relevant to any particular issue in a contested case.¹ The Commission has also stated that the statute allows the Commission to require the production of the requested documents even if there were no contested case in existence.²

This right is not conditioned on considerations of relevance under MO Rule Civ. Pro. 56.01(b)(1) and PSC Rule 4 CSR 240-2.090(1). The Commission has recognized that information sought by the Public Counsel, if not relevant, may well lead to other information which is relevant.³ Therefore, the Commission has determined that Public Counsel and the Staff can request records they want in their investigation without any showing that it is otherwise discoverable or is relevant to a specific case even if it is no more admissible in a hearing in their hands than in those of any other party.⁴

Public Counsel's right to pose data requests seeking information from any utility and the right to inspect and obtain copies of any utility's records or documents in its possession is coequal to that of the Staff of the Missouri Public Service Commission (Staff) and is broader than the discovery authority permitted other litigants under Commission Rules.⁵ Therefore, the fact that Public Counsel is requesting production of these documents in the context of small

¹ *Order Regarding Public Counsel's Motion to Compel Discovery*, Case No. ER-2007-0002, March 15, 2007.

² *Id.*

³ *Staff of the Missouri Public Service Commission, v. Union Electric Company, doing business as AmerenUE*, Case No. EC-2002-1, 2002 Mo. PSC LEXIS 31

⁴ *Id.*

⁵ RSMo. Section 386.450 and *In the Matter of Missouri-American Water Company's Tariff* (Case No. WR-2000-281, et al.)(2-2-2000).

water and sewer company rate increase requests does not in any way diminish Public Counsel's right to examine those documents.

Missouri Regulation 4 CSR 240-2.090 (1) states that sanctions may be imposed for the abuse of the discovery process or failure to comply with commission orders regarding discovery. Public Counsel has sent numerous email responses to Hickory Hills' failure to respond and made a good faith effort to resolve the discovery dispute in an informal telephone conference. Due to the fact that the rate requests for Hickory Hills were filed under the expedited small company rate case procedure, time is of the essence to obtain the information sought in these data requests. Therefore, Public Counsel requests that the Commission act on its motion in an expedited manner so that Public Counsel may receive responses from Hickory Hills to the December 6, 2013, data requests within seven (7) days of an order by the Commission or as soon as practicable.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission issue an Order to Compel Responses to Public Counsel's December 6, 2013, data requests, in full and completely, within seven (7) days of an order by the Commission or as soon as practicable, and for such other and additional relief that is necessary and proper.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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By: _____

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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 17th day of January 2014:

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