

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Joseph A. Lucks, et al.,       )  
                                  )  
          Complainant,        )  
                                  )  
v.                                )  
                                  )  
Terre Du Lac Utilities Corp.,   )  
                                  )  
          Respondent.         )

Case No. WC-94-83

APPEARANCES:       Joseph A. Lucks, 369 State Highway 47, Bonne Terre, MO 63628  
                          Complainant.

Donald C. Otto, Jr., Attorney at Law, Hendren and Andrae,  
P.O. Box 1069, Jefferson City, MO 65102 for Terre Du Lac  
Utilities Corporation.

John B. Coffman and Susan Anderson, Assistants Public Counsel,  
P.O. Box 7800, Jefferson City, MO 65102 for Office of the  
Public Counsel and the Public

William K. Haas, Assistant General Counsel, P.O. Box 360,  
Jefferson City, MO 65102 for Staff of the Missouri Public  
Service Commission.

HEARING EXAMINER:   Joseph A. Derque, III

REPORT AND ORDER

On September 2, 1993, this complaint was filed by Joseph A. Lucks, Complainant, against Terre Du Lac Utilities (TDLU) alleging improper refusal to resume water service to a residence owned by the complainant. An answer was made to the complaint by TDLU on September 23, 1993, denying the allegations, and the Commission established a procedural schedule and set the evidentiary hearing in this matter for February 8, 1994.

The evidentiary hearing was held on the above date, briefing schedules were established, and this matter has now been finally submitted to the Commission for decision.

#### Findings of Fact

The Missouri Public Service Commission, having considered all competent and substantial evidence, upon the whole record, makes the following findings of fact.

The evidence presented by the parties indicates that, in 1987 the complainant, Joseph A. Lucks, purchased a piece of residential property together with a mobile home located at 200 Rue Dauphine, Terre Du Lac Development, Bonne Terre, Missouri. Complainant stated that he rented the mobile home to various individuals from 1987 to the present. Water and sewer service is provided to the residents of Terre Du Lac by TDLU, a public utility regulated by the Commission.

Sometime in March 1991, the complainant rented his mobile home to the Bess'. The Bess' applied to TDLU in March 1991 to have the water and sewer service placed in their name, but were refused, apparently on the basis that property owners were the only persons considered customers by TDLU. As a result, an arrangement was worked out between complainant and the Bess' in which the Bess' were to pay complainant for the utilities and complainant would then pay TDLU. Billing records indicate that the water and sewer bills were being sent to complainant from December 1991 through August 1992.

In September 1992, as the result of a dispute between TDLU and complainant as to payment of the water and sewer bills, the Bess' again made application for water service in their own name. TDLU had, at that time, no formal application process. It is clear from the testimony, however, that the Bess' adequately communicated and TDLU understood that the responsibility for the water and sewer service was to be changed from complainant to the Bess'. TDLU began to bill

the Bess' for the service September 1, 1992. In addition to their application, the Bess' also paid the balance due on the bill through August 1992, and examination of the TDLU billing records indicates that a credit of \$21.26 resulted.

The Bess' moved from the mobile home in December 1992, leaving an additional balance due for the period from September 1992 through December 1992 of \$49.80. TDLU terminated the water service sometime in December 1992 or January 1993 as the result of nonpayment of the overdue balance.

In January 1993 the Complainant again rented his mobile home, this time to the other joint complainants, Pope and Brown. He again applied for water service in his own name. This request was refused by TDLU unless the balance due on the Bess' account from September 1992 through December 1992 was paid. Subsequently, and also in January 1993, the new renters, Pope and Brown, applied for water service in their own names, but were again refused by TDLU unless the balance due was paid on the account. These refusals to serve in January 1993 gave rise to this complaint.

The evidence indicates that, for the period of time from January 1992 through August 1992, when service was voluntarily resumed by TDLU pending the outcome of this complaint, no voluntary service was provided to the complainant's mobile home. Nonetheless, TDLU also maintains that complainant owes a minimum bill for water and sewer service for that period of time.

During the course of the hearing, various landlord-tenant problems, alleged criminal acts, and other irrelevancies were brought up. Objection was made by the Staff, Office of Public Counsel (OPC), and the complainant as to the relevance of a line of questioning by TDLU regarding alleged theft of service at the Lucks' mobile home. Ruling was reserved and the evidence was taken with the record. As the issue in this case is strictly one of tariff interpretation as applies to the actions of TDLU, it is the decision of the Commission that all matters in this case involving landlord-tenant disputes and possible criminal violations are both irrelevant to this

case and outside the scope of the Commission's jurisdiction. The objection by Staff, OPC, and the complainant is therefore sustained and all references to alleged theft of service are stricken from the record.

Various theories have been offered by the parties to determine the responsibility for payment of the water and sewer service and the responsibility of TDLU to provide that service. While TDLU maintains that the property owner or individual who ultimately benefits from the service is responsible for payment, OPC offers the argument that the end-user is the actual customer and should be responsible for the service used. However, it is the position of the Staff in this matter that is the most convincing as to the actual issues presented for decision. The Staff argues the case from the position that the tariffs on file with the Commission dictate what TDLU, during the course of the dispute, was or was not authorized to do.

It is the opinion of the Commission that the real issue presented in this complaint is whether TDLU complied with its tariffs in its dealings with complainant Lucks. Although various theories have been offered by the parties as to the responsibility for payment of the water and sewer service and the responsibility to serve of TDLU, the clear language of the tariffs filed by TDLU, which govern their operations and with which they must comply, controls the outcome of this case.

In that regard, the principle question, and one presented and argued by all parties, deals with who, during the course of this dispute, was the appropriate customer as defined by TDLU's tariffs.

TDLU is responsible, under its tariffs, to provide service to ". . . any water service customer . . .". (Tariff No. 1, 3rd Sheet No. 8, Rule No. 1). Tariff No. 1, Sheet 10, Rule 2b states: "The 'customer' is any person, firm, corporation or governmental body receiving water service from such company."

Tariff No. 1, Sheet No. 12, Rule 4(a) states in pertinent part, "A written application or contract properly executed, will be required from the customer, before the company will be required to supply service; provided, however, that the company shall have the right to reject, for failure of the customer to abide by its rules and regulations on file with the Commission, any application."

A reading of the above tariffs indicates that, prior to obtaining service, a potential customer must fill out an application form. TDLU is required to provide service, as part of their tariffed responsibilities, to any legitimate applicant for service, unless that application is rejected for failure to comply with tariff regulations. Non-payment of overdue balances clearly constitutes a tariff violation and could legitimately result in termination of service. Here, however, is where TDLU has erred in interpreting its own tariff requirements.

A plain reading of the applicable tariffs, as set out above, shows that action by TDLU to terminate or refuse service can only be taken against the "customer" who has incurred the overdue balance. TDLU has exceeded the authority given them in their tariffs in attempting to collect overdue balances by refusing service to subsequent customers, e.g., Pope and Brown, or property owner Lucks, when they were not the customer of record.

Lucks had apparently made application and was the customer of record during the period of time through August 1992, when the Bess' applied for service in their own name. Evidence in the form of TDLU's Attachment A of its answer indicates that, at the time of transfer of service to the Bess', complainant owed a balance due of \$63.60. At the time of the Bess' application, the Bess' had apparently agreed with complainant to pay this bill. As TDLU was paid in full, therefore, complainant owes no balance through August 1992.

Once the application was taken from the Bess', they became the customer. Upon termination of their service, late in December 1992, they owed a balance,

according to TDLU's records, of \$34.80 net plus \$15.00 for the disconnection as the result of the delinquent bill, in accordance with Tariff No. 1, Sheet 26, Rule 16(d), making a total balance due of \$49.80. For collection of this overdue balance TDLU has no recourse against the complainant, as he was not the customer of record.

A second tariff violation, and the violation that this complaint centers around, was committed by TDLU in January 1993, when it refused service to the complainant and then to Pope and Brown, even though the evidence shows that neither complainant nor renters Pope and Brown had violated any tariffed rules of TDLU up to that point. TDLU should have accepted either application and resumed service immediately, in accordance with their own tariffs.

Instead, TDLU attempted to collect various alleged past-due balances by refusing service to prospective customers who were not, under TDLU's tariffs, customers of record during the period of time the past-due amounts were incurred. The Commission would again point out that TDLU, under its own tariffs, cannot collect balances due for service from anyone who was not the customer of record when the service was rendered.

Further, during the period of time from January 1993 through August 1993, during which time service had been terminated at the complainant's mobile home, TDLU maintains that it has the tariffed authority to charge complainant, as the property owner, a minimum water and sewer bill, being \$6.25 per month for water and \$14.92 per month for sewer. This is also reflected in TDLU's billing summary, Attachment A of its answer. Levy of this minimum charge is vigorously contested by complainant.

TDLU Tariff No. 1, Sheet 19, Rule 11, governs the application of service charges and rates as the result of discontinuance of service by the Company, and states:

"Rule 11 DISCONTINUANCE OF SERVICE BY THE COMPANY

- (a) In areas where the Company provides both water and sewer service, the Company reserves the right to shut off the water supply for any of the following reasons:
  - (1) For failure to comply with terms of water contract.
  - (2) For nonpayment of water or sewer bill. (See Rule 15).
  - (3) For resale of water service.
  - (4) For an unauthorized water connection to Company water mains.
  - (5) For violation of any rules and regulations for water service or sewer service.
- (b) Discontinuance of water and/or sewage service to a premise for any reason shall not prevent the Company from pursuing any lawful remedy by action at law or otherwise for the collection of monies due from the Customer.
- (c) In case the Company discontinues its service for any of these causes or is, through fault of the Customer, prevented from providing water service according to the provisions of any contract or agreement, then there shall forthwith become due and payable to the Company as liquidated damages, and not as penalty, the amount remaining unpaid, and also the amount which is guaranteed by the contract or agreement as a minimum payment for same."

While minimum payment is provided if discontinuance of service is for various specified reasons or through the fault of the customer, TDLU may not charge a minimum payment in this specific instance as the termination by TDLU was unauthorized and inappropriate.

During the course of the hearing, a tangential issue arose regarding charging the complainant a \$350.00 service connection fee, as provided in Tariff No. 1, Sheet 13, Rule 4-1, to resume service after January 1993. This charge is clearly inappropriate. A reading of the above-cited tariff indicates that it

applies only to new service installations, including construction of lines and installation of meters. In this case, had the termination been authorized, TDLU terminated ongoing service by merely shutting off a valve, thus incurring only the \$15.00 charge. As the termination was not authorized, the \$15.00 charge will not be levied on complainant.

Finally, it was maintained by TDLU that various restrictive covenants, running with the land in the development, were recorded as part of TDLU's tariffs. One of these restrictions allegedly provides for water and sewer minimum payments to be guaranteed by the property owner. While this covenant may exist, it nowhere appears in the TDLU tariffs currently on file with the Commission and is not a part of those tariffs.

The Commission finds that the complainant, Joseph Lucks, currently owes no money to TDLU. Further, as TDLU improperly terminated complainant's service in January 1993, no service charge will be required of complainant, and TDLU will be ordered to resume service to complainant's property immediately.

The Commission finds that, as the result of the improper termination of service, complainant owes no minimum charge from January 1993 through August 1993. It is the understanding of the Commission, through statements on record by counsel for TDLU, that service to complainant was voluntarily resumed on or about September 1, 1993, pending the outcome of this complaint. It is also a matter of record that renters Pope and Brown were the last formal applicants for service before the filing of the complaint, and that renter Pope still resides in the mobile home and, presumably, has received this voluntary service. Therefore, in accordance with TDLU's tariffs as set out above, charges for service rendered from September 1, 1993 to the present must be collected by TDLU from renter Pope.



### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

TDLU is a regulated utility providing water and sewer service in Terre Du Lac Lake Development, Bonne Terre, Missouri, and, as such, is under the jurisdiction of the Commission in accordance with Chapters 386 and 393 of the revised statutes of the State of Missouri.

An individual may file, and the Commission may hear and adjudicate, a formal complaint in accordance with Sections 386.390 and 386.400, RSMo. Cum. Supp. 1994, and in accordance with 4 CSR 240-2.070 of the Commission's rules and regulations.

Water utilities in the State of Missouri are required to file tariffs governing the application of rates and charges to all services provided by the utility in accordance with 4 CSR 240, Chapter 50.

Once the Commission has approved a set of tariffs governing the operation of a public utility, the order of the Commission gives those tariffs the effect of law, and they must be complied with by the regulated utility. *State ex rel. Capital City Water Company v. Missouri Public Service Commission*, 1993, 850 S.W.2d 903.

The complainant has established, by weight and sufficiency of evidence, that his complaint was well-taken in that Terre Du Lac Utility did fail to comply with its tariffs as set out in the findings of fact above.

#### IT IS THEREFORE ORDERED:

1. That Terre Du Lac Utilities Corporation improperly terminated service to complainant, Joseph Lucks, at 200 Rue Dauphine, from January 1993 through August 1993, and is therefore ordered to restore sewer and water service to that location as of the date of this order.

2. That Terre Du Lac Utilities Corporation is ordered to accept an application for service from complainant or complainant's renter, at the option of complainant, for service as of the date of this order.

3. That Terre Du Lac Utilities Corporation is due and owing no past due amounts from complainant, Joseph Lucks.

4. That Terre Du Lac Utilities Corporation is authorized to collect amounts due and owing for service from September 1, 1993 to the present from Craig Pope, renter at 200 Rue Dauphine, Bonne Terre, Missouri.

5. That the effective date of this order is May 10, 1994.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., Perkins, Kincheloe  
and Crumpton, CC., Concur and certify  
compliance with the provisions of  
Section 536.080, RSMo 1986.  
McClure, C., Absent.

Dated at Jefferson City, Missouri, on  
this 29th day of April, 1994.