

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

In the Matter of the Request for an)
Increase in Sewer Operating Revenues of)
Emerald Pointe Utility Company.) **File No. SR-2013-0016**

In the Matter of the Request for an)
Increase in Water Operating Revenues of)
Emerald Pointe Utility Company.) **File No. WR-2013-0017**

**THE OFFICE OF THE PUBLIC COUNSEL’S OBJECTION
TO PROPOSED TARIFFS**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Objection to Proposed Tariffs states as follows:

1. On July 24, 2013, Emerald Pointe Utility Company (Emerald Pointe) filed proposed revised tariff sheets with the Missouri Public Service Commission (Commission) designed to effectuate the decisions made by the Commission in the Report and Order for the above stated cases. The proposed revised tariff sheets bear an issue date of July 24, 2013, and an effective date thirty days thereafter (August 23, 2013).
2. Also on July 24, 2013, Emerald Pointe filed a Motion for Expedited Treatment of Tariff Sheets Filed in Compliance with Commission Report and Order. Emerald Pointe requested that grant the motion for expedited treatment in regard to the compliance tariff sheets that were filed by the Company on July 24, 2013, for service rendered on and after August 1, 2013.
3. On July 25, 2013, the Commission issued its Order Directing Staff to File Expedited Recommendation and Establishing Time for Other Parties to Offer Recommendations. In its Order, the Commission required Staff and any other party wishing to file a recommendation

regarding Emerald Pointe Utility Company's compliance tariffs, Tariff Nos. YW-2014-0035 and YS-2014-0036, to do so no later than July 30, 2013.

4. On July 25, 2013, Public Counsel filed its Objection to Motion for Expedited Treatment of Tariff Sheets Filed in Compliance with Commission Report and Order in the above stated cases.

5. On July 26, 2013, Public Counsel filed its Application for Rehearing and Request for Stay Order Pending Appeal, or in the Alternative, Order for a Separate Fund for Rate Increase and/or Any Back-Billing for Sewer Commodity Charges Subject to Refund.

6. Public Counsel was only provided four business days to perform a detailed review of the two proposed tariffs for Emerald Pointe. In addition to other items, these tariff sheets incorporate rate case expense calculations that were not even provided to Public Counsel until the day after the tariffs were filed by Emerald Pointe. As a result, Public Counsel has only had the opportunity to perform a cursory review of the proposed tariff filings at this time.

7. However, Public Counsel now states that its cursory review of the proposed sewer tariff and proposed water tariff has revealed the necessity for Public Counsel to object to their approval by the Commission.

8. Sheet No. 4 of the proposed sewer tariff states a Monthly Usage Charge (for all usage >2,000 gal/month) of \$3.32. As listed, the monthly usage charge is a flat rate for any usage over 2,000 gallons per month. There is no statement as in the proposed water tariff that the monthly usage charge is to be charged per 1,000 gallons and makes no statement that it is to be based on the amount of water usage by the customer. Public Counsel believes this is incorrect and does not comply with the agreement between the parties in the Unanimous Stipulation and Agreement Regarding Rate Design Methodology which states:

7. The same methodology used in the sewer rate design will be used in the water rate design, except that Testing Expenses will be allocated 100% to commodity.

Therefore, the proposed sewer tariff does not comply with the Report and Order and Public Counsel objects to its approval by the Commission.

9. Additionally, Sheet No. 12 of the proposed sewer tariff includes the following statement:

D. The Company shall not be liable for damages resulting to Customer or third persons, unless due to contributory negligence on the part of the Company, and without any contributory negligence on the part of the Customer or such third party.

However, the Supreme Court has determined that Missouri is a comparative fault state not a contributory negligence state.¹ Additionally, the Commission has no authority to limit a public utility's negligence liability involving personal injury or property damage.² As a result, the proposed sewer tariff attempts to impermissibly exculpate Emerald Pointe from claims of negligence resulting in personal injury or property damage. Therefore, Public Counsel objects to the proposed sewer tariff's approval by the Commission.

10. Similarly, Sheet No. 28 of the proposed water tariff states:

...The Company's liability for damages to any and all property caused by such leakage shall in no event exceed the price of water service to the affected premises for one average billing period in the preceding year. Where damage is caused by the negligence of Company personnel at the premises, this limitation will not apply. ...

Public Counsel is concerned that this language may be reasonably interpreted to impermissibly exculpate Emerald Pointe from claims of negligence resulting in personal injury or property damage. For example the language could reasonably be interpreted to limit liability for damage that is also partially caused by negligence of another, damage due to negligence by the Company itself not its personnel specifically, or damage due to negligence that occurs at other locations

¹ *Gustafson v. Benda*, 661 S.W.2d 11 (Mo. 1983).

² *State PSC v. Mo. Gas Energy*, 395 S.W.3d 540 (Mo. Ct. App. 2013).

besides the premises specifically. As a result of the uncertainty of this language, Public Counsel objects to the proposed water tariff's approval by the Commission.

11. Additionally, Public Counsel would point out an error on Sheet 32 of the proposed water tariff. Rule 14-3. should state "14 D.1. or 14 D.2." instead of "14. F.1. or 14 F.2." as the proper citation for the earlier calculation.

12. Again, Public Counsel notes that it has only had enough time for a cursory review of the proposed sewer tariff and the proposed water tariff. Therefore, additional concerns may need to be raised by Public Counsel after a thorough review is completed.

13. Public Counsel renews its objection to Emerald Pointe's Motion for Expedited Treatment of Tariff Sheets Filed in Compliance with Commission Report and Order. Additionally, Public Counsel renews its request for a stay of the Report and Order for the reasons stated in its Application for Rehearing and Request for Stay Order Pending Appeal, or in the Alternative, Order for a Separate Fund for Rate Increase and/or Any Back-Billing for Sewer Commodity Charges Subject to Refund.

WHEREFORE, Public Counsel respectfully submits its Objection.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

Christina L. Baker (#58303)

Deputy Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 30th day of July 2013:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Kevin Thompson
General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Kevin.Thompson@psc.mo.gov

Dean Cooper
Emerald Pointe Utility Company
P.O. Box 456
312 East Capitol
Jefferson City MO 65102
dcooper@brydonlaw.com

/s/ Christina L. Baker
