## 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

## ORDER EXTENDING TIMELINE AT THE REQUEST OF THE PARTIES

Issue Date: February 15, 2013 Effective Date: February 15, 2013

On February 11, 2013, Emerald Pointe Utility Company filed a motion asking the Commission to waive a provision of its rules to extend the timeline for this case by thirty days. Emerald Pointe explains that the primary driver of the sewer portion of this small company rate increase case is the construction and connection of a new sewer line. That new sewer line is now in service, but unanticipated delays in completion of the sewer line have made it difficult for the parties to address this major investment within the existing timeline for the rate case.

Commission Rule 4 CSR 240-3.050 establishes a timeline for the handling of small utility rate cases. Sections (9), (10), and (11) of that rule set dates for the filing of preliminary reports and a disposition agreement. Section (12) of the rule allows the parties to agree to extend those dates by 60 days. That extension has already been granted in this case. In addition, Section (24) of the rule states:

The proposed full resolution of a small utility rate case must be finally presented to the commission no later than nine (9) months after the case is opened, regardless of how it is presented, and the commission's decision and order regarding the case shall be issued and effective no later than eleven (11) months after the case was opened.

Emerald Pointe's motion asks the Commission to extend the filing date for the disposition agreement from February 11, 2013 to March 13, 2013. It also asks that the 9-month deadline be extended from April 16, 2013 to May 16, 2013, and that the 11-month deadline be extended from June 16, 2013 to July 16, 2013.

There is no provision in the Commission's regulation that would allow the Commission to further extend the filing dates set out in the regulation. For that reason, Emerald Pointe asks the Commission to waive application of the provisions of the regulation that establish the filing dates. Unfortunately, there is also no provision in the regulation that would allow the Commission to waive those provisions.

The Commission's rules have the force and effect of law and they are binding, even on the Commission. However, "the failure of an agency to comply with its own rules may invalidate its actions only when prejudice results." In this case, the filing dates established in the regulation are designed to protect the utility's interest by prodding the Commission to promptly act on the small utility's request for a rate increase. However, in the circumstances before the Commission, adhering to the dates established by the regulation would harm the small utility by precluding the prompt consideration of a substantial investment on the part of the utility. Clearly, Emerald Pointe would not be prejudiced if the Commission grants its request for an extension. Furthermore, the motion represents that Staff and Public Counsel, the only other parties to this case, are not opposed to the requested extension. Therefore, they cannot be prejudiced if the extension is granted. Therefore, the Commission will grant the extension that Emerald Pointe requests.

<sup>&</sup>lt;sup>1</sup> Missouri Nat. Educ. Ass'n v. Mo. State Bd. of Mediation, 695 S.W.2d 894, 897 (Mo. 1985).

## THE COMMISSION ORDERS THAT:

- 1. The filing dates regarding Emerald Pointe Utility Company's request for a rate increase are extended as follows:
- a. The filing date for the disposition agreement is extended from February 11,2013 to March 13, 2013;
  - b. The 9-month deadline is extended from April 16, 2013 to May 16, 2013; and
  - c. The 11-month deadline is extended from June 16, 2013 to July 16, 2013.
  - 2. This order shall become effective upon issuance.

BY THE COMMISSION

Shelley Brueggemann Acting Secretary

(SEAL)

Morris L. Woodruff, Chief Regulatory Law Judge, by delegation of authority pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri, on this 15<sup>th</sup> day of February, 2013.