

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

The Office of the Public Counsel,)
An agency of the State of Missouri,)
COMPLAINANT)

v.)

Case No. WC-2015-0290

)
Ridge Creek Development, LLC,)
Ridge Creek Water Company, LLC,)
Mike Stoner, Denise Stoner,)
A Missouri water corporation,)
RESPONDENTS)

**THE OFFICE OF THE PUBLIC COUNSEL’S STATEMENT IN OPPOSITION TO
STAFF’S RESPONSE AND RESPONDENTS’ MOTION TO DISMISS**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Statement in Opposition to Staff’s Response and Respondents’ Motion to Dismiss, states as follows:

1. On May 5, 2015, Public Counsel filed the above-stated complaint with the Missouri Public Service Commission (Commission) alleging that Respondents have charged and currently charge for water service in violation of Missouri Statute.

STAFF’S RESPONSE

2. On May 19, 2015, the Staff of the Missouri Public Service Commission (Staff) filed its Response.

3. In its Response, Staff states: “Staff agrees that these Respondents are providing water services or water and sewer services without authorization from this Commission and are both billing for those services and collecting payments despite having no Commission-approved tariffs.”

4. Staff also states: “Indeed, Staff has for that very reason brought complaints against Ridge Creek Development, LLC, and its owners, Mike and Denise Stoner (“Ridge Creek”), Case No. WC-2015-0011, ...” However, Staff goes on to state: “Because each of the Respondents is now seeking a CCN and cooperating with Staff, Staff has obtained all of the relief it sought from its aforementioned Complaints.”

5. Staff indicates that because Respondents have sought a Certificate of Convenience and Necessity (CCN) from the Commission, the Commission should refuse any relief requested by Public Counsel. However, in making this conclusion Staff skips an important component in this matter – the rate payers’ due process right to be heard before the Commission. The Respondents just filed Answers in this case, which included many admissions to Public Counsel’s allegations, including as noted below, an admission that Ridge Creek Development LLC charges for water service connections and that neither Ridge Creek Development, LLC, nor Mike Stoner, nor Denise Stoner have tariffs approved by the Missouri Public Service Commission for rates and charges relating to water service. The rate payers have the due process right to have these admitted allegations heard before the Commission.

6. Staff also indicates its belief that it is reasonable for the Commission to consolidate these complaints with other complaints Public Counsel filed involving completely different Respondents.¹

7. To be clear, merely seeking a CCN does not provide Respondents the statutory authority to charge for water service. And, all the parties seem to concur that at least Respondent Ridge Creek Development LLC is charging for utility services.

¹ Case Nos. WC-2015-0290, WC-2015-0291 & SC-2015-0292.

8. Section 393.130.1, RSMo., states “Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”
9. Section 393.140(11), RSMo., also states “No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time.”
10. The filed rate doctrine precludes a public utility from collecting any rates other than those properly filed with the appropriate regulatory agency. *State ex rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 531 (Mo. Ct. App. 1997).
11. Missouri Public Service Commission Rule, 4 CSR 240-3.010 (28) states specifically:

Tariff means a document published by a public utility, and approved by the commission, that sets forth the services offered by that utility and the rates, terms and conditions for the use of those services.
12. Therefore, only a tariff which is approved by the Missouri Public Service Commission may set out the lawful rates for a public utility. This is a requirement independent of the establishment of a franchise in a CCN case. Any charge made or demanded by a public utility for gas, electricity, water, sewer or any such service, without a Missouri Public Service Commission approved tariff is statutorily prohibited.
13. Neither Ridge Creek Development, LLC, nor Ridge Creek Water Company, LLC, nor Mike Stoner, nor Denise Stoner have tariffs approved by the Missouri Public Service Commission for rates and charges relating to water service.
14. The affirmative requirements of a statute cannot be waived, even if consented to by the parties. *Westerman v. Supreme Lodge K. P.*, 196 Mo. 670 (Mo. 1906). As a result, Respondents

cannot charge for water service without violating Missouri statute. The fact that the Respondents consented to seek a CCN, or that Staff does not seem to mind that customers are being charged without a Commission-approved tariff, does not change or negate the fact that customers are being charged for utility service in violation of the law right now.

15. Staff's totally premature request that the Commission refuse to order relief in this case and hold these complaints in abeyance pending the completion of the associated CCN cases, and then dismiss them, is unjust, unreasonable and contrary to the law.

16. Additionally, Public Counsel believes that Staff's discussion regarding the Commission's ability to order refunds is erroneous, incomplete and premature. In its Complaints, Public Counsel asked that the Commission grant such relief as it deems appropriate and necessary. Should the Commission ultimately determine that it cannot order refunds; the Commission has the ability to issue an order authorizing its General Counsel to seek in Circuit Court any and all refunds allowed by law – and the Commission should do so if determined to be just and reasonable in this case. The Commission also has the ability to stop the illegal conduct of the public utility by requiring the submission of interim or emergency tariffs or another form of relief.

17. Finally, Public Counsel opposes Staff's request asking the Commission to consolidate these complaints with other complaints Public Counsel recently filed. While Public Counsel would agree that all of the complaints involve charging for utility services without a Commission-approved tariff, the complaints involve completely different Respondents, completely different charges and completely different factual circumstances. Therefore, it is not just and reasonable that complaints involving different Respondents be consolidated and to do so may hinder the individual Respondents' due process rights.

RESPONDENTS' MOTION TO DISMISS

18. On May 19, 2015, Respondents Ridge Creek Development, LLC, Mike Stoner and Denise Stoner filed a Separate Answer to Complaint and Motion to Dismiss (Answer and Motion to Dismiss).

19. Public Counsel opposes the motion to dismiss contained in the Answer and Motion to Dismiss.

20. In the Answer and Motion to Dismiss, Respondents Ridge Creek Development, LLC, Mike Stoner and Denise Stoner state: "The complaint against Separate Respondents should be dismissed because there is another complaint pending before the Commission between the same parties and for the same cause."

21. The Answer and Motion to Dismiss goes on to say: "Because a complaint against the same parties, in which Staff and Office of Public Counsel are also parties, is currently pending before the Commission, the present complaint is redundant, a waste of the Commission's resources and improvidently filed to the detriment and unnecessary expense of Ridge Creek Development LLC and Mike Stoner and Denise Stoner. The complaint should be dismissed and, in fairness, Separate Respondents should be awarded their costs to date in defending it."

22. As noted above, Staff did bring a complaint against Ridge Creek Development, LLC, and its owners, Mike and Denise Stoner, in Case No. WC-2015-0011. However, also as noted above Staff in its Response in this case states: "Because each of the Respondents is now seeking a CCN and cooperating with Staff, Staff has obtained all of the relief it sought from its aforementioned Complaints."

23. Public Counsel is authorized to file complaints against public utilities for the violation, or claimed violation, of any provision of law, or of any rule or order or regulation, or decision of

the Missouri Public Service Commission, including the unauthorized rates or charges of any water corporation. Section 386.390, RSMo, and 4 CSR 240-2.070.

24. While Public Counsel is a party to Staff's complaint, Staff did not request the same relief sought by Public Counsel in this case. And, according to its Response as noted above, Staff actually opposes the relief sought by Public Counsel. The fact that Staff has filed a complaint and believes it has obtained all the relief it sought has no bearing on the relief sought by Public Counsel in this complaint.

25. Under Section 386.390, RSMo, and 4 CSR 240-2.070, Public Counsel has the right to file a complaint seeking the relief it believes is just and reasonable under the circumstances. This right is not foreclosed by the existence of a completely separate complaint made by a completely separate complainant seeking completely different relief.

26. Additionally, the motion to dismiss Public Counsel's complaint is premature and violates the rate payers' due process right to be heard before the Commission. The Answer and Motion to Dismiss includes many admissions to Public Counsel's allegations, including an admission that Ridge Creek Development LLC charges for water service connections and that neither Ridge Creek Development, LLC, nor Mike Stoner, nor Denise Stoner have tariffs approved by the Missouri Public Service Commission for rates and charges relating to water service. The rate payers have the due process right to have these admitted allegations heard before the Commission.

27. Therefore, the Respondents' motion to dismiss Public Counsel's complaint is unjust, unreasonable and contrary to the law, and should be denied.

WHEREFORE, Public Counsel submits its opposition.

Respectfully submitted,

THE 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 21st day of May, 2015:

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

Mark W Comley
Ridge Creek Development, LLC
Ridge Creek Water Company, LLC
Mike Stoner
Denise Stoner
601 Monroe Street, Suite 301
Jefferson City, MO 65102-0537
comleym@ncrpc.com

/s/ Christina L. Baker
