

OF THE STATE OF MISSOURI

) **Case No. WE-2007-0412**
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NOTICE OF DEFICIENCY

Issue Date: April 24, 2007

On April 20, 2007, U.S. Water Company (“USW”), by and through its attorney, filed a half-page-long pleading requesting that the Missouri Public Service Commission extend the time within which it may file its 2006 annual report respecting its regulated water operations to June 15, 2007.

Except as otherwise provided, Commission Rule 4 CSR 240-3.640(1) requires all water utilities to “submit an annual report to the commission on or before April 15 of each year.” However, Section 393.140(6) authorizes the Commission to “extend the time prescribed for cause shown.”¹ Accordingly, Commission Rule 4 CSR 240-3.640(7) states:

A water utility that is unable to meet the submission date established in section (1) of this rule may request an extension of greater than thirty (30) days for submitting its annual report by:

(A) Filing a pleading, in compliance with the requirements of Chapter 2 of 4 CSR 240, which states the reason for and the length of the extension being requested, with the commission prior to April 15; and

¹ All statutory citations are to RSMo 2000.

(B) Certifying that a copy of the pleading was sent to all parties of record in pending cases before the commission where the utility's activities are the primary focus of the proceedings.²

It is readily apparent that USW's application, which is *dated* April 16, 2007 and was not received by the Commission until April 20, 2007, was not filed "with the commission prior to April 15" as required by 4 CSR 240-3.640(7)(A). Nor does it contain the certification required by 4 CSR 240-3.640(7)(B).

Moreover, although it states the reason for and the length of the extension being requested, the application filed by USW is not a pleading which complies "with the requirements of Chapter 2 of 4 CSR 240," as also required by 4 CSR 240-3.640(7)(A). To begin with, the letter contains some, but not all, of the information required by 4 CSR 240-2.060(1),³ which must "be furnished prior to the granting of the relief sought."⁴ Moreover, USW has failed to meet the requirements of 4 CSR 240-2.080(18), which states that "the party filing a pleading . . . shall serve [on] every other party, including the general counsel and the public counsel, a copy of the pleading[.]" Commission Rule 4 CSR 240-2.080(19) further states that "[e]very pleading . . . shall include a certificate of service," which "shall be adequate proof of service." USW's submission does not comply with either of these rules, because it does not include a certificate of service and does not otherwise affirmatively

² The Commission's rules are quite different (and less rigorous) if an extension of up to 30 days is requested. In such cases, the party seeking an extension need only submit the certification along with "a written request, which states the reason for the extension, to the attention of the secretary of the commission prior to April 15." 4 CSR 240-3.640(6)(A).

³ This regulation sets forth the filing requirements for *any* application to the Commission requesting relief under statutory or other authority. Those filing requirements are *in addition to* those imposed by 4 CSR 240-3.640(7). See 4 CSR 240-2.060(6) ("In addition to the general requirements set forth above, the requirements found in Chapter 3 of the commission's rules pertaining to the filing of various types of applications must also be met.")

⁴ 4 CSR 240-2.060(2).

indicate that it was served on the General Counsel of the Commission and the Office of the Public Counsel.

Under normal circumstances, the Commission would reject USW's pleading, close this case, and advise it to submit a new pleading in proper form under a new case number.⁵ This is especially true here, since the Commission expressly notified all Missouri public utilities, by letter dated January 19, 2007, that:

All requests for an extension of 30 days or more must be filed prior to April 15th as a legal pleading. If the Company is a corporation or partnership, the pleading must be filed by an attorney licensed to practice in Missouri. If the utility is individually-owned, the Company owner may file this pleading. The pleading must state the reason for the extension and certify that a copy of the written request was sent to all parties of record in pending cases where the Company's activities are the primary focus of the proceeding (i.e., where the Company is identified as a moving party in the case caption). The filing should be submitted in pleading form and comply with the filing requirements of Chapter 2 of 4 CSR 240.

Nevertheless, since any water utility that does not timely file its annual report is subject to a penalty of \$100, as well as an additional penalty of \$100 for each day the utility is late in filing the report,⁶ the Commission will instead simply issue a notice of deficiency. The deficiencies described above must all be corrected before the Commission will take

⁵ See, e.g., Commission Rule 4 CSR 240-3.015(1), which states: "The requirements for filing applications for waivers or variances from commission rules and tariff provisions, as well as those statutory provisions that may be waived, are contained in Chapter 2 of the commission's rules in rule 4 CSR 240-2.060."

⁶ See 4 CSR 240-3.640(9); Section 393.140(6).

any further action on or give any further consideration to USW's request for a 60-day extension of the due date for its 2006 annual report.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 24th day of April, 2007.

Lane, Regulatory Law Judge