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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 14th
day of October, 1994.

Capital Utilities, Inc.'s request)	
for increased rates for sewer)	
service pursuant to the Commission's)	<u>Case No. SR-95-39</u>
informal rate procedure.)	

ORDER APPROVING TARIFF

On December 22, 1993, Capital Utilities, Inc. (Capital or Company) initiated a small company rate procedure pursuant to 4 CSR 240-2.060(8). This rule provides for "small company rate proceedings" by water or sewer utilities having fewer than five thousand (5,000) customers and essentially allows a company to initiate rate proceedings with the Public Service Commission Staff (Staff) prior to the formal filing of its proposed tariff. Capital has made a rate increase request of forty-one thousand seven hundred seventy dollars (\$41,770) in its sewer operations.

On August 8, 1994, the Office of Public Counsel (OPC) filed a motion requesting a local public hearing in this case. In support of its motion, OPC stated that pursuant to negotiations among the parties, the PSC Staff had recommended that the Company's rates be increased to twenty-two dollars and fifty-three cents (\$22.53) for residential customers (an increase of 30.9 percent) and a rate increase to nineteen dollars and fifteen cents (\$19.15) for mobile home customers in a mobile home park (a rate increase of 39.1 percent). OPC stated in support of its request for a local public hearing that it had received complaints about the proposed increase from twelve (12) or more customers and had received a petition with seven (7) signatures protesting the proposed increase.

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On August 10, 1994, the Company's tariffs were formally filed with the Commission thus initiating this docket. The effective date for the tariffs as filed was October 1, 1994. The tariffs reflected the rates as stated by OPC in its motion.

Pursuant to the request of the Office of Public Counsel, a local public hearing was held in Jefferson City on September 8, 1994. Approximately eleven (11) witnesses testified in opposition to the rate increase and these witnesses also voiced concerns about the services which they received and the quality of those services. One of these witnesses presented the Commission with a petition containing thirty-one (31) signatures of customers of the Company who were in opposition to the increase. One witness, a Company employee, testified on behalf of the Company.

On September 16, 1994, OPC filed its Statement of Position in this case in which it did not voice any opposition to the rate increase. OPC has stated that as a result of a heavy workload and limited resources, it did not perform an audit or an investigation of the Company's books and records; neither did it perform an in-depth analysis of the annualized level of expense allowed for management fees in order to determine whether or not that level was reasonable. OPC alleges that of the one hundred seventy thousand and eight dollars (\$170,008) proposed by Staff and Company as a revenue requirement, one hundred thirty-eight thousand three hundred eighty-four dollars (\$138,384) represented the management fees paid by the Company to Helms Environmental Services pursuant to a management contract. OPC specifically stated that it had no analysis upon which to base an opinion as to this component. In spite of that limitation, OPC did state in its Statement of Position that it did not agree with the proposed accounting. Lastly, OPC stated that it would not ask the Commission to

suspend the filed tariff nor would it request any additional time in which it might investigate or further oppose the tariff filing of the Company.

On September 22, 1994, the Staff filed its Memorandum in which it recommended an increase in the Company's annual sewer revenue of twenty-eight thousand one hundred seventy-one dollars (\$28,171). The Staff stated that it has completed an investigation of the books, records and operations of the Company related to providing sewer service and also a summary of the rate design. Work papers relating to these reports were attached and filed with the Staff Memorandum. Both Staff and Company initially proposed that the Commission should approve the sewer rates contained in the tariff sheet filed by the Company on August 10, 1994, and that the Commission should allow an effective date of October 1, 1994.

It appears from the Staff recommendation that subsequent to the local public hearing, the Staff initiated some type of investigation of the complaints made by the customers at the hearing. Staff noted that it was also pursuing one telephone complaint which the Staff had received from a customer at Summit View. The Staff identified six (6) items which require attention at the Monticello Acres Lagoon, one item which required attention at the Lehman Acres Lagoon and four (4) items which require attention at the Summit View Lagoon. The Staff recommended that the Commission approve the approximate 30 percent increase in rates for sewer service and that the Commission simultaneously order the Company to make needed repairs.

This matter initially came before the Commission for consideration on September 28, 1994. It was subsequently continued and on September 30, 1994, the Company extended the effective date of its tariff to October 15, 1994. The tariff was extended by the Company in lieu of Commission action. It was the understanding of the Commission that this

extension was requested in order to allow the Company an opportunity to enter into a stipulation with the Staff and/or OPC. It was anticipated that such a stipulation would be filed relating to the service related complaints and which would address with specificity and in a binding manner the procedure to be followed for the resolution of those complaints. Instead, the Commission has merely received an item of correspondence which was submitted by a non-attorney and which was not filed with the Commission until the day before this order appeared for Commission action. Similarly, the Staff filed an additional Memorandum on the date immediately prior to the date upon which this order required Commission action.

The Commission has reviewed the proposed tariff, the Statement of Position filed by the Office of Public Counsel, the Staff Memoranda, the entirety of the Transcript from the local public hearing which was held in this case and other pertinent documents contained in the case file and makes the following findings of fact.

The Commission finds that the local public hearing revealed numerous complaints regarding the limited service currently provided to the customers of Company. Some customers are required to provide and maintain their own aerators. This situation apparently requires those customers not only to purchase the aerator but also to provide the electricity required to operate the aerator and the customer must maintain and/or replace the aerators as necessary. Consequently, it would appear from the testimony that the service provided by the Company to those customers is simply the acceptance or removal of "gray water." Pursuant to the testimony at the public hearing, it would appear that the requirement for customers of this Company to maintain aerators and other equipment is pursuant to the covenants and restrictions which exist as to the customers who are served in the Summit View Drive Lagoon area. The Commission has neither the

jurisdiction nor the authority to suspend, cancel or otherwise alter those covenants. A covenant is a contract among the members of the neighborhood and is generally thought to be binding from one neighbor to the other. It is unclear from the record whether or not this covenant runs with the land. However, to the knowledge of the Commission this covenant would not be binding on Capital Utilities, Inc. nor is it binding in any way on the Public Service Commission.

The Capital Utilities, Inc.'s facilities exist and should be capable of handling whatever sewage components are transported from each individual property owner. The fact that the property owners in this neighborhood have chosen not to use Capital Utilities' facilities to their fullest extent or, in the alternative, have chosen not to alter their own covenants is beyond the control of the Commission.

The Commission finds Customers throughout the service areas of the Company have also complained about the lack of barriers around the lagoon(s) or the lack of maintenance of those barriers, such as gates, so that this rises to a safety issue of some concern. Likewise, numerous customers have complained about odors which emanate from the sewage lagoon(s) and which may be indicia of improper or insufficient maintenance.

And, the Commission finds significant public concern regarding the level of the proposed rates in relationship to the quality and the kinds of service offered by the Company. However, the Office of the Public Counsel has not opposed the tariff filing or the rates requested by Capital in this case. Indeed, the Office of the Public Counsel has neither requested suspension nor further investigation of any issue raised in this case. Absent a request from any party herein, the Commission is hesitant to suspend the tariff or further delay the progress of this case.

In conclusion the Commission finds that Capital Utilities has agreed to complete numerous items relating to safety, maintenance and repair by certain dates and the Commission finds the timely completion of these to be in the public interest. Therefore, the Commission finds it would be in the public interest to approve the tariff filed by Capital Utilities, Inc. and to order the implementation of the company's plan for those repairs.

IT IS THEREFORE ORDERED:

1. That the tariff filed by Capital Utilities, Inc. on August 10, 1994, is approved for service on and after October 15, 1994:

P.S.C.Mo. No.2

1st revised sheet #SR 1, cancelling Original Sheet #SR 1.

2. That Capital Utilities, Inc. is hereby ordered to complete the fence repair, replace the warning signs, and complete the mowing and brush removal at the Monticello Lagoon location not later than November 11, 1994.

3. That Capital Utilities, Inc. is hereby ordered to repair the lagoon berms including but not limited to the south and west sides of the third cell and divider berm between the second and third cells of the Monticello Lagoon not later than December 11, 1994.

4. That Capital Utilities, Inc. is hereby ordered to complete the mowing and brush removal along the fence line at the Lehman Acres Lagoon not later than November 11, 1994.

5. That Capital Utilities, Inc. is hereby ordered to clean the manhole and to jet the influent line at the Lehman Acres Lagoon not later than October 19, 1994.

6. That Capital Utilities, Inc. is hereby ordered to clean the influent line from the influent manhole to the lagoon and to aerate and

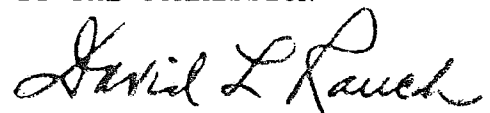
disperse the buildup of solids in the Summit View Drive Lagoon not later than November 11, 1994.

7. That Capital Utilities, Inc. shall complete the installation of approximately three hundred (300) l. f. of eight (8) inch sewer line at the location of the Summit View Drive Lagoon not later than July 15, 1995.

8. As to each and every requirement in Ordered Paragraphs 2-7, Capital Utilities, Inc. shall, pursuant to 4 CSR 240-2.040 and 4 CSR 240-2.080 file within five (5) days of the completion of each item a pleading with the Commission, to be filed within this docket, confirming successful completion of each item or, in the alternative, a pleading noting any further work which may be necessary and requesting an extension of time in which to comply.

9. That this order shall become effective on October 15, 1994.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure and
Perkins, CC., Concur.
Crumpton, C., Dissents.
Kincheloe, C., Absent.

