



BAKER
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John F. Cooney
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St. Louis Office

April 14, 2004

FILED³

APR 19 2004

**Missouri Public
Service Commission**

Hon. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

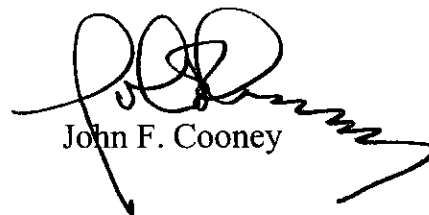
Re: *Missouri Public Service Commission v. Ton Services, Inc.*
Claim No.: TC-2004-0383

Dear Mr. Roberts:

I have enclosed a copy of Motion to Set Aside Default Order and Request for Hearing, or in the Alternative, Application for Rehearing and reconsideration. I have also enclosed a copy of the formal Answer to the Complaint.

If you have any questions regarding these filings, please feel free to call.

Sincerely,



John F. Cooney

JFC:jfc
Enclosures

W:\TON SERVICES\Roberts 04-14-04.wpd

cc: Office of the Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102

Mr. Bruce H. Bates
Associate General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

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

FILED³

APR 19 2004

THE STAFF OF THE MISSOURI PUBLIC
SERVICE COMMISSION,

Complainant,

vs.

TON SERVICES INC.,

Respondent.

Missouri Public
Service Commission

Case No. TC-2004-0383

**MOTION TO SET ASIDE DEFAULT ORDER AND REQUEST FOR
HEARING, OR IN THE ALTERNATIVE,
APPLICATION FOR REHEARING AND RECONSIDERATION**

COMES NOW Respondent **TON Services Inc.**, pursuant to 4 CSR 240-2.080, 4 CSR 240-2.160 and Section 386.500, R.S. Mo 2000, and for its Motion to Set Aside Order Granting Default and Request For Hearing, or in the alternative, Application For Rehearing and Reconsideration, states:

1. On April 6, 2004, the Commission issued its Order Granting Default.
2. Respondent states that contrary to the findings set forth in the Order Granting Default, it responded to the Commission's Complaint with its written response to the Commission dated March 10, 2004.
3. On and before March 10, 2004, Respondent by and through its attorney participated in a series of telephone conversations with various representatives of the Missouri Public Service Commission and its attorneys regarding the Complaint filed against it and the procedure and process of resolving the issues raised therein.
4. As discussed with the Commission's attorney, until late February 2004, Respondent had been under the mistaken impression that it was in compliance with all reporting requirements and that all assessments had been paid as required.

5. Further, since first learning of the problems set forth in the Complaint in late February 2004, Respondent's management has moved to correct the problems and to resolve all pending issues between it and the Missouri Public Service Commission.

6. An investigation into the issues raised by the Complaint discovered that the person employed by Respondent and charged with the responsibility for compliance issues was found by Respondent's management to have not filed the required reports or to have paid the assessments as required. In December 2003, before the issues contained in the Complaint were raised by the Commission and made known to Respondent, this employee was terminated as a result of his general failure to perform his responsibilities. It is believed by Respondent that its former employee's poor performance was directly related to some personal problems he was experiencing in the months leading up to his termination.

7. Further since this employee's departure and after learning about the compliance issues for the first time, there has been a concerted effort on the part of Respondent to understand and resolve the compliance issues which have resulted in the Complaint being filed against Respondent in this cause.

8. As set forth above, a written response to the Complaint was filed with the Commission on March 10, 2003. Said response included the completed 2002 and 2003 Annual Reports and the payment of the 2004 assessment, as calculated by the Commission. Respondent was of the impression that this satisfied the Commission's Complaint with the exception of the penalties sought by the Commission. The language added to the Respondent's March 10, 2004 reply to the Complaint, which acknowledges that Respondent's payment was not made in full satisfaction of all fines and penalties, was added at the request of the Commission's attorney.

9. Further as part of its response to the Complaint and in an effort to conclude this matter, discussions by telephone and correspondence have been initiated by Respondent with the Commission's attorneys in an attempt to finally resolve all

issues between the Respondent and the Commission. Respondent was waiting to hear from the Commission regarding its proposal for resolving this matter when it first learned of the Order Granting Default.

10. Immediately upon learning of the Order Granting Default, Respondent's attorney contacted the Commission's attorney to express his surprise at the Commission's action, but also to discuss the Commission's position on resolution and the Respondent's continued request and desire to resolve any and all remaining penalty issues amicably, equitably and promptly.

11. As discussed with the Commission's attorney, Respondent does not wish to delay the resolution of this matter, but it does want an opportunity to clarify the record, discuss the reasons behind the alleged non-compliance and its continued request and desire to resolve these issues amicably, equitably and promptly. Respondent believes these issues are best discussed before the Commission and not in the Circuit Court.

12. As prescribed in **§392.210 (1) R.S. Mo.**, the Commission may extend the time permitted to file an annual report. It is Respondent's intention to respectfully request that the Commission extend the time for Respondent to file its 2002 and 2003 Annual reports until March 11, 2004. Respondent states that these forms have been filed and have been accepted by the Commission as being in the proper form.


13. Further, on or about March 10, 2003, Respondent paid its Fiscal Year 2004 Annual Assessment in full. It is Respondent's intention to respectfully request that the Commission amend any finding it has made or will make to acknowledge that as of March 11, 2004 and prior to the date of its Order Granting Default, that Respondent has paid its fiscal 2004 assessment in full.

14. In the alternative, Respondent respectfully suggests that the Order Granting Default is not based upon competent and substantial evidence, is unjust, unreasonable, unlawful, violates due process of law, is arbitrary and capricious and

results in an abuse of discretion under the circumstances set forth herein. Therefore, in the event that the Commission does not set aside its Order Granting Default, Respondent requests that the Commission grant it a rehearing and/or reconsideration.

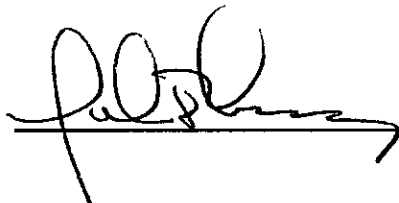
WHEREFORE, Respondent requests that the Commission set aside its Order Granting Default; allow Respondent to file its proposed formal Answer to the Complaint (attached and incorporated herein by reference); grant Respondent an opportunity to be heard on the issues set forth in the Complaint; or in the alternative, grant its Application For Rehearing and Reconsideration, and for such other relief as the Commission deems meet and proper.

BAKER, STERCHI, COWDEN & RICE, L.L.C.

By 
John F. Cooney, #32522
Attorney for Respondent
1010 Market Street, Suite 1610
St. Louis, Missouri 63101
(314) 231-2925
(314) 231-4857 (fax)
email: cooney@bscr-law.com
Attorney for TON Services Inc.

CERTIFICATE OF SERVICE

Copy of the foregoing mailed this 14th day of April, 2004, to **Bruce H. Bates**, attorney for the Staff of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, and the Office of the Public Counsel, P. O. Box 2230, Jefferson City, Missouri 65102.





BAKER
STERCHI
COWDEN
& RICE L.L.C.

John F. Cooney
cooney@bscr-law.com
St. Louis Office

March 10, 2004

Missouri Public Service Commission
Post Office Box 360
Jefferson City, MO 65102-0360

RE: Case No. TC-2004-0383
Complaint against TON Services Inc.

Dear Sir or Madam:

This letter is submitted in response to the Commission's complaint filed against TON Services Inc. (TON) issued February 10, 2004 for failure to file its 2002 Annual Report and failure to pay its Fiscal Year 2004 annual assessment.

It is understood that the payment enclosed herein is not made in satisfaction of all fines and penalties which may be due, but is intended to stop the running of any future fines and penalties.

Enclosed for filing and processing are the originals of the following documents for TON:

- 2002 Annual Report
- Fiscal Year 2004 annual assessment (calculated by the Commission as \$42.89)
- 2003 Annual Report

Please acknowledge receipt of these filings by returning, date-stamped, the extra copy of this cover letter to the TON address as noted below.

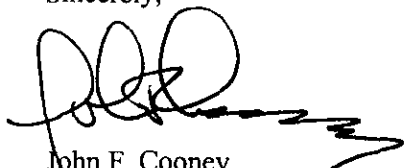
Also, please be advised that Neil Vos is no longer the regulatory contact person at TON. Effectively immediately, future correspondence should be sent to D. Brett Sanford:

D. Brett Sanford
Chief Financial Officer
TON Services Inc.
4185 Harrison Blvd., Suite 301
Ogden, Utah 84403
Phone: (801) 624-4542
Fax: (801) 624-4530
Email: brett.sanford@tonservices.com

We will be filing a formal Answer to the Complaint shortly.

Please contact the undersigned or Mr. Sanford with any questions you may have pertaining to these filings or the Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cooney', with a long, horizontal, wavy line extending to the right.

John F. Cooney
Baker Sterchi Cowden and Rice, L.L.C.
Missouri Bar No. 32522

Enclosures