

Respondent.

File No. WC-2011-0409

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# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Eric C. Larson,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. WC-2011-0409
	)	
Mona L. Fennema d/b/a	)	
Woodland Manor Water Company, <sup>1</sup>	)	
	)	
Respondent.	)	

## RECOMMENDED DECISION

Issue Date: August 3, 2012

Effective Date:

The Missouri Public Service Commission is:

- Granting the complaint of Eric C. Larson (“Mr. Larson”), and
- Ordering an improvement and extension to the water system.

The tariff’s purpose is to impose the duties associated with a public utility, not to divest them. Placing a meter does not, alone, divest the Company of any duty. To dispose of any necessary and useful part of the system, the Company first must have the Commission’s authorization as the statutes provide. No such authorization exists for the pipe that Mr. Larson fixed (“east curve”), and the east curve was necessary and useful, so it was within the Company’s duty to maintain. This report and order is subject to comment,<sup>2</sup> rehearing,<sup>3</sup> and appeal.<sup>4</sup>

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<sup>1</sup> The Commission is changing the caption of this action to correctly name the water company as discussed below.

<sup>2</sup> 4 CSR 240 2.070(15)(H).

<sup>3</sup> Section 386.500, S.B. 48, 96<sup>th</sup> Gen. Assem., First Reg. Sess.

<sup>4</sup> Section 386.500, S.B. 48, 96<sup>th</sup> Gen. Assem., First Reg. Sess.

## **Appearances**

For Eric C Larson:

Eric C Larson  
31 Holiday Drive,  
Kimberling City, Missouri 65686

For Woodland Manor Water Company, LLC:

Gregory R. Gibson, Attorney at Law,  
P.O. Box 108  
Blue Eye, Missouri 65611

For Staff:

Rachel Lewis and Amy Moore, Deputy Staff Counsel  
Amy Moore, Staff Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, MO 65102.

Senior Regulatory Law Judge: Daniel Jordan.

## **Procedure**

Mr. Larson began this action by filing the complaint alleging that a public utility committed a violation of statute, regulation, tariff, or Commission order (“violation”).<sup>5</sup>

Mona L. Fennema filed an answer as chief operator of Woodland Manor Water Company, LLC (“the LLC”). The LLC also filed an answer through counsel.<sup>6</sup> Mr. Larson filed a reply.<sup>7</sup> The Commission’s staff (“Staff”) filed a recommendation.<sup>8</sup> Mr. Larson, the LLC, and Staff filed a stipulation.<sup>9</sup>

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<sup>5</sup> On June 27, 2011.

<sup>6</sup> On August 5, 2011. Because the complaint and answer alleged that the respondent is a limited liability company, the Commission required the LLC to answer through counsel.

<sup>7</sup> On August 8, 2011.

<sup>8</sup> On August 11, 2011.

<sup>9</sup> *Joint Stipulated Facts*, filed on May 23, 2012.

The Commission issued notice<sup>10</sup> that the Commission intended to conduct this action under the small complaint regulation.<sup>11</sup> The small complaint regulation sets time limits for deciding the case, but the parties<sup>12</sup> sought, agreed to, and received extensions of the procedural schedule, which constituted an extension of the time to issue a decision. Those facts also constitute good cause to extend the time for issuing the recommended report and order, so the time for issuing the recommended report and order is extended.

As required by the small complaint regulation, the Commission convened the evidentiary hearing on the merits of the complaint at a location within 30 miles of where the service was rendered.<sup>13</sup> The reporter filed the hearing transcript.<sup>14</sup> The Commission received briefs from Mr. Larson,<sup>15</sup> the company,<sup>16</sup> and Staff.<sup>17</sup> Mr. Larson also filed a reply<sup>18</sup> to Staff's brief. The last briefs were due on July 11, 2012.<sup>19</sup>

Mr. Larson has the burden of proof.<sup>20</sup> Mr. Larson carries that burden with a preponderance of the evidence, meaning that a violation is more likely than not.<sup>21</sup> Based on the record, the Commission independently finds the facts as follows.

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<sup>10</sup> *Notice of a Contested Case and Orders for Small Contested Case*, issued on June 27, 2011.

<sup>11</sup> 4 CSR 240-2.070(15).

<sup>12</sup> The Office of the Public Counsel is a party to every action before the Commission, 4 CSR 240-2.010(10), but opted to enter no appearance, and so is not within the term "party" as used in this decision.

<sup>13</sup> 4 CSR 240-070(15)(E).

<sup>14</sup> On June 11, 2012.

<sup>15</sup> *Summary Brief*, filed on July 2, 2012.

<sup>16</sup> *Staff's Brief*, filed on July 2, 2012.

<sup>17</sup> *Post-Hearing Brief*, filed on July 3, 2012; *Order Granting Leave to File Out of Time*, issued on July 5, 2012.

<sup>18</sup> *Objection to the Lies in the Staff's Brief*, filed on July 3, 2012.

<sup>19</sup> 4 CSR 240-2.140(2) and (3).

<sup>20</sup> *State ex rel. Tel-Central of Jefferson City, Inc. v. Public Serv. Comm'n of Missouri*, 806 S.W.2d 432, 435 (Mo. App., W.D. 1991).

<sup>21</sup> *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

## Findings of Fact

1. Woodland Manor Water Company, LLC (“the LLC”) is a Missouri limited liability company.

2. Mona L. Fennema holds a certificate of convenience and necessity (“certificate”) to provide water service in Missouri under the fictitious name of Woodland Manor Water Company<sup>22</sup> (“the Company”).

3. The Company’s service territory includes 31 Holiday Drive, Kimberling City, Missouri 65686, which is the location of Kimberling Oaks Resort (“the resort”).

4. The resort’s owner is Mr. Larson, who is the customer liable on the account for water service to the resort.

5. The resort is within a platted subdivision called Vista Haven Beach (“the subdivision”). The subdivision is entirely north of Holiday Drive (“the street”), which runs east and west. The subdivision consists of nine lots numbered 1 through 9, west to east, of which lots 2 through 9 constitute the resort.

6. When Mr. Larson bought the resort:

- a. On Lot 1 was a house (“yellow house”). The yellow house’s water supply has always been, and is, separate from the resort. The yellow house was not part of the resort. On October 23, 2006, Mr. Larson purchased the yellow house. As of the date of the hearing, Mr. Larson lives in the yellow house and leases the rest.

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<sup>22</sup> *In the Matter of the Application of Bob Connell d/b/a Woodland Manor Water Company to Sell his Water System in Stone County, Missouri to Stephen T. Fennema and Mona L. Fennema, Husband and Wife*, File No. WM-99-199, *Order Approving tariff in Compliance with Commission Order*, issued April 13, 1999.

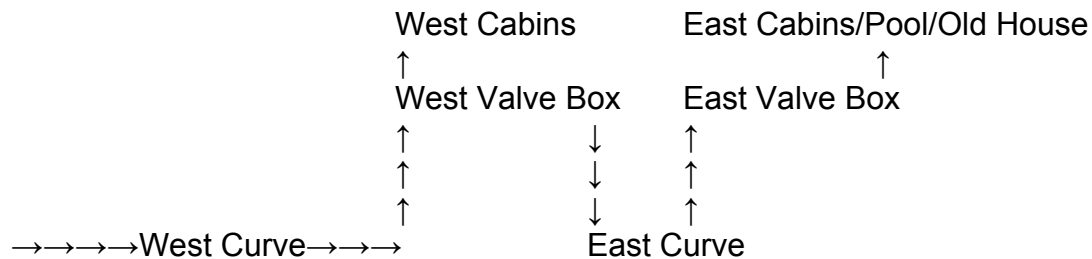
- b. Lots 2 and 9 were empty. On lots 3, 4, 5, 6, and 7, were cabins and a swimming pool. Lot 8 had a residence (“old house”).

7. The resort’s builder was Bob Connell. Mr. Connell was also subdivision’s developer. Mr. Connell installed and operated a water system (“the system”) to serve the subdivision.

A. Mr. Connell’s System<sup>23</sup>

8. Originally, Mr. Connell did not operate the system as a public service. The system had no meters and Mr. Connell collected a flat fee for water service. As installed by Mr. Connell, the system included pipe made of one-inch flexible black plastic, gauged to copper tube size<sup>24</sup> (“old pipe”).

9. The system served the resort as follows.



- a. From the west, under the middle of the street, old pipe ran to the east and curved north (“west curve”) to the subdivision’s boundary. There, Mr. Connell installed a valve box (“west valve box”). The west valve box served the cabins on the west side of the resort (“west cabins”).
- b. From the west valve box, old pipe continued east, dipping south under the middle of the street, then curving north again (“east curve”) to within one foot of the subdivision’s boundary. There, Mr. Connell

<sup>23</sup> Also depicted in the Appendix at paragraph A for comparison with later configurations.

<sup>24</sup> Called “CTS” in the record.

installed another valve box (“east valve box”). The east valve box served the cabins on the east side of the resort (“east cabins”), the pool, and the old house.

10. In the mid-1970s, the City of Kimberling, Missouri, (“the city”) incorporated. The city’s boundaries included the subdivision and the street. The street now has several layers of pavement and the city has right-of-way to the north and south.

11. Mr. Connell transitioned the system from an unregulated private service to a regulated public service. On December 12, 1992, the Company’s “Rules and Regulations Governing Rendering of Water Service,” P.S.C. MO No. 1 (“tariff”) became effective. The tariff is an off-the-shelf draft and was not designed specifically for the Company. Mr. Connell began installing meters and pipe made of metal (“new pipe”), including new pipe parallel to the street on the street’s south side (new south pipe”).

12. Effective April 19, 1999, Mr. Connell transferred the system to Stephen T. Fennema<sup>25</sup> and Mona L. Fennema as husband and wife (“the Fennemas”) doing business as Woodland Manor Water Company, and the Fennemas adopted the tariff.

#### B. Alterations by Company and Mr. Larson<sup>26</sup>

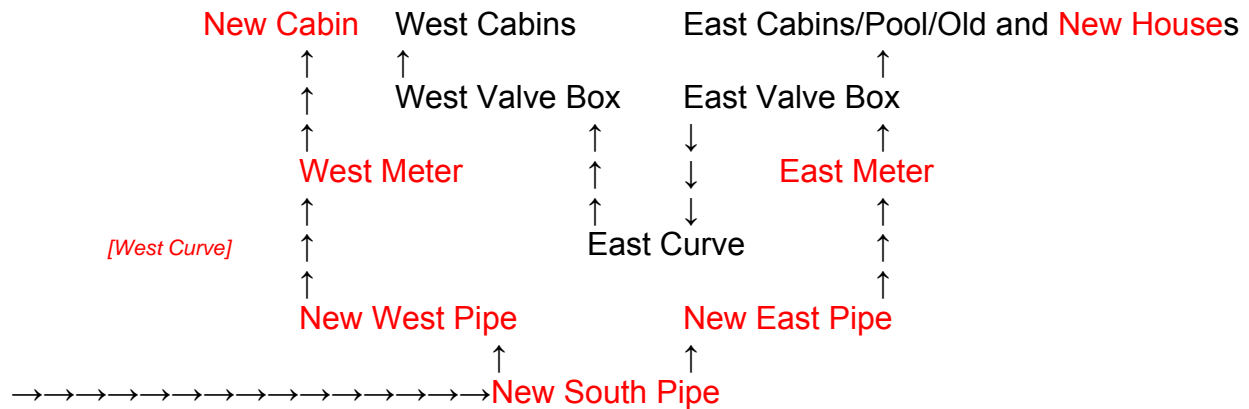
13. The Company installed more new pipe and more meters. As to the resort, the Company’s intention was to develop service in a manner that would be most economical for Mr. Larson. The Company did not act with willful misconduct.

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<sup>25</sup> The record is otherwise silent as to Stephen T. Fennema.

<sup>26</sup> Also depicted in the Appendix at paragraph B for comparison with other configurations.





*i. New West Pipe*

14. In 2000, Mr. Larson built a cabin (“the new cabin”) on subdivision lot 2 (at the west end of the resort), and requested water service. The company ran new pipe (“new west pipe”) from the new south pipe to the west valve box. The Company installed a meter (“the west meter”) at the subdivision boundary, ten feet from the new west valve box, and Mr. Larson connected the new cabin to the west meter.

*ii. New East Pipe*

15. In November 2001, Mr. Larson added a new building on lot 9 (“new house”). The new house includes space for a residence, office, and laundry facility. The old pipe of the east curve and east valve box was not adequate to supply the new house, so the Company installed new pipe (“east new pipe”) from the new south pipe to the east valve box.

16. On the east new pipe, the Company installed a meter (“east meter”) within the city’s north right-of-way, twelve feet south of the east valve box.

17. At the Company’s direction, Mr. Larson connected the new house to the new east pipe. Incident to that project, Mr. Larson also upgraded the connection to the old house, to which the supply was a separate old pipe that also ran under the street.

Mr. Larson ran the connection for the old house and new house to the east new pipe between the east meter and east valve box.

*iii. The Leak*

18. With the west new pipe serving the new cabin and the east new pipe serving the rest of the resort through the east curve, the west curve was of no more use. The west curve was severed twice, during street-related work by the Company and the city, and each time the Company fixed it. The second time, the Company capped the west curve's severed ends so that water no longer flowed through it from the west to the resort.

19. The east curve could be eliminated from the system, if the west cabins connected to the west meter, which the Company assumed that Mr. Larson would do. But Mr. Larson did not see any right or duty under the tariff for him to cap off the east curve, and did not know the system's details, so he did not connect the west cabins to the west meter. Therefore, the west cabins continue to receive their supply from the east curve.

20. In June 2011, beneath the street, the east curve leaked. The leak cut off water to the west cabins, and threatened the resort's structures and threatened the resort's water supply. Mr. Larson called the Company.

21. When the Company responded to Mr. Larson's service call, Mr. Larson turned off the water at the east meter, and the leak stopped, which proved that the leak was on the far side of the east meter from the Company. Relying solely on the tariff, the Company concluded that placing a meter divested the Company of all duties as to

(“abandoned”) any pipe beyond the meter. On that basis, the Company refused to fix the leak.

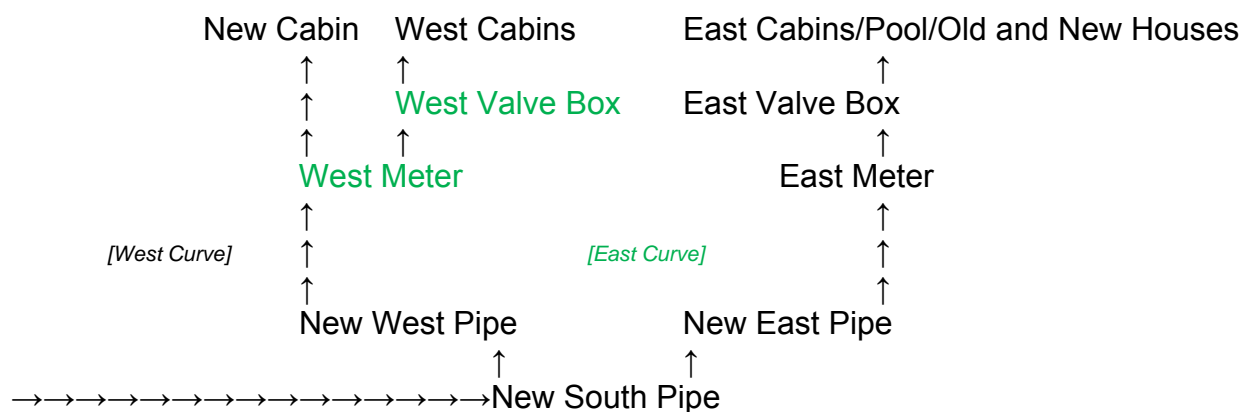
22. Mr. Larson dug up the street and fixed the leak at his own expense. Mr. Larson sought reimbursement from the Company, in the form of a credit against his water bill, in the following amounts:

<i>Item</i>	<i>Detail</i>	<i>Amount</i>
Labor	nine man-hours @\$35.00/hour	\$315.00
Materials	one compression fitting @ \$3.49	\$ 3.49
Total		\$318.49

Those amounts are reasonable. The Company denied liability. This complaint followed.

### C. Staff’s Solution<sup>27</sup>

23. The entire system may suffer contamination from a leak, which is likely in the east curve because it is almost 55 years old, and subject to the shifting of the rock bed beneath the street. The east curve could be out of the system—disconnected at both ends—if the west meter connected to the west cabins.



### **Conclusions of Law**

The Commission independently concludes as follows.

<sup>27</sup> Also depicted in the Appendix at paragraph C for comparison with earlier configurations.

## I. Jurisdiction

The Commission has subject matter jurisdiction because the statutes provide that the Commission shall hear a complaint against any “public utility.”<sup>28</sup>

The Commission has personal jurisdiction because it served the complaint as the statutes require:

Service in all hearings, investigations and proceedings pending before the commission may be made upon any person upon whom summons may be served in accordance with the provisions of the code of civil procedure of this state, and may be made personally or by mailing in a sealed envelope with postage prepaid. [<sup>29</sup>]

The Commission’s file shows certified mailing to “Woodland Manor Water Company [,]” which is Mona L. Fennema’s trade name for selling water service, and the signature of Mona L. Fennema. Mona L. Fennema filed an answer and appeared at the evidentiary hearing. And Mona L. Fennema is the public utility subject to the complaint because, according to the record, she is the water corporation supplying Mr. Larson.

### *a. Who is the Public Utility?*

The parties assert that the LLC supplies Mr. Larson in the complaint, in Mona L. Fennema’s answer, in the LLC’s answer, and in the parties’ stipulation. The stipulation names the LLC as respondent and states:

Complainant is provided water service by Respondent, which is a Missouri public utility [<sup>30</sup>]

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<sup>28</sup> Section 386.390.1, RSMo 2000. The LLC argues that the passage of time since the placement of meters should bar the complaint but cites no supporting authority.

<sup>29</sup> Section 386.390.4, RSMo 2000.

<sup>30</sup> *Joint Stipulated Facts*, filed on May 23, 2012.

But the identity of the public utility is not subject to the parties' control by stipulation because it is not solely an issue of fact. It is a question of law because the statutes define a public utility.

Public utility:

. . . includes every . . . water corporation [as] defined in this section.[<sup>31</sup>]

That section defines a "water corporation" beyond general business corporation to include other entities including individuals:

"Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water [<sup>32</sup>]

"The parties' stipulation cannot change the words of the statute. Nor can it 'bind or circumscribe a court in its determination of questions of law.' *State v. Biddle*, 599 S.W.2d 182, 186 n. 4 (Mo. banc 1980)."<sup>33</sup>

Contrary to their stipulation, the parties presented uncontroverted evidence showing that the public utility supplying water to Mr. Larson is Mona L. Fennema. Mona L. Fennema is named on the tariff's adoption notice. Mona L. Fennema holds the certificate that the statutes require for anyone to sell water for gain.<sup>34</sup> The LLC appears in neither of those documents. The LLC's only connection to the water business is in the conclusory allegations described, not in any substantial evidence.

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<sup>31</sup> Section 386.020(43), RSMo Supp. 2010.

<sup>32</sup> Section 386.020(59), RSMo Supp. 2010.

<sup>33</sup> *La-Z-Boy Chair Co. v. Director of Econ. Dev.*, 983 S.W.2d 523, 525 (Mo. banc 1999).

<sup>34</sup> Section 393.170.2 and .3, RSMo 2000.

Therefore, the Commission concludes that Mona L. Fennema, doing business as Woodland Manor Water Company, (“the Company”) is the water corporation supplying Mr. Larson and the public utility subject to the complaint, notwithstanding contrary allegations in the stipulation.

*b. What is this Action?*

In the stipulation, the parties also characterize the complaint as an appeal from an earlier decision:

The Complainant has duly appealed a prior unfavorable determination pursued within the Commission's informal complaint resolution process, and this complaint is therefore properly before the Public Service Commission of Missouri. No other parties have an interest in the dispute which is before the Commission nor are needed for full and final resolution of the dispute. [<sup>35</sup>]

That characterization has no basis in any authority<sup>36</sup> and is not controlling under the authorities cited above. No determination as to any violation occurs until the Commission makes its final decision as the statutes provide.

II. Merits

A complaint determines whether the Company has committed a violation.<sup>37</sup> To show a violation, Mr. Larson focuses on the tariff's purpose. As detailed below, the tariff provides the Company's duty to maintain any pipe according to the pipe's classification. Classification of any pipe depends on its relation to geographical features including customer units,<sup>38</sup> public property lines, and an intervening meter or customer property

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<sup>35</sup> *Joint Stipulated Facts*, paragraph 2.

<sup>36</sup> Including the Commission's regulation 4 CSR 240-2.070(1) on an “informal complaint.”

<sup>37</sup> Section 386.390.1, RSMo 2000.

<sup>38</sup> Units are the customer's buildings. Tariff, Original Sheet 6, Rule 1(c).

line.<sup>39</sup> The property line/meter dichotomy reflects the tariff's context: a developing water system. No meter is necessary for a pipe to carry water so, when no meter is in place, classification defaults to the customer property line. The reverse of that premise—that placing a meter on an existing pipe re-classifies that pipe—constitutes the Company's and Staff's argument. That argument is contrary to statute as follows.

*a. Duty to Maintain: Tariff*

All parties correctly begin their analysis with a history of the system because that is where the tariff's purpose becomes plain. The system began its life unregulated as a public service—without any of the duties associated with a public utility. There being no such duties, the tariff's purpose was not to divest such duties, but to impose them.

The east curve was in the exclusive care of Mr. Connell because he installed it entirely on public property. Because it was on public property, the tariff classified the east curve as either a main:

A "MAIN" is a pipeline which is owned and maintained by the Company, located on public property . . . , and used to transport water through the Company's service area . . .<sup>40</sup>

or as a service connection because it ran to the customer property line:

A "SERVICE CONNECTION" is the pipeline connecting the main to the customer's water service line at the property line, or outdoor meter setting including all necessary appurtenances.

This service connection will be installed, owned, and maintained by the company. [<sup>41</sup>]

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<sup>39</sup> Property lines that run through a street, and private easements, also feature in those provisions but do not appear in the record.

<sup>40</sup> Tariff, Original Sheet No. 5, Rule 1(d).

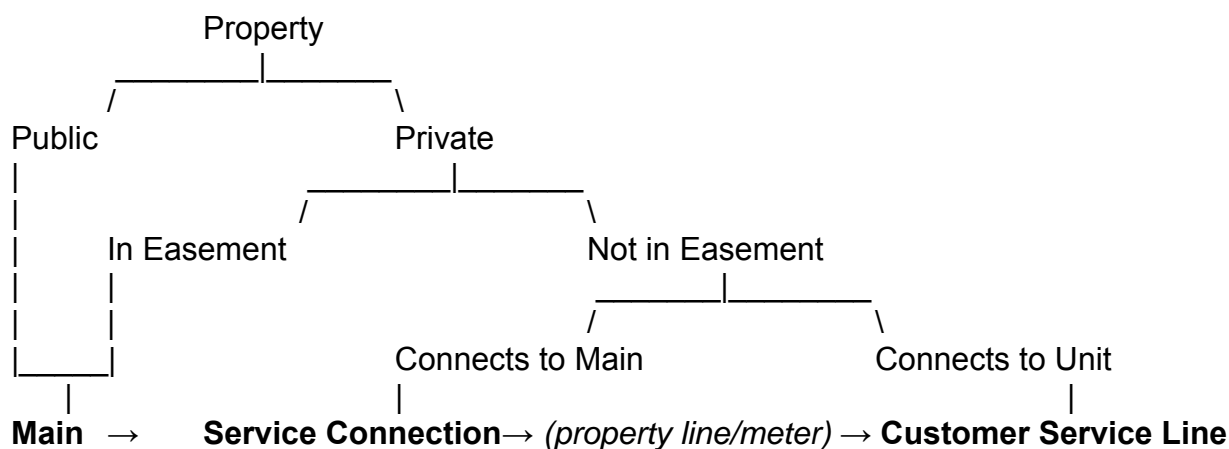
<sup>41</sup> Tariff, Original Sheet No. 5, Rule 1(f).

In any event, the east curve was not a customer service line because it did not connect to a building:

A “CUSTOMER’S WATER SERVICE LINE” is a pipe with appurtenances installed, owned and maintained by the customer, used to conduct water to the customer’s unit from the property line or outdoor meter setting, including the connection to the meter setting.<sup>[42]</sup>

The customer service line was thus the only pipe outside Mr. Connell’s duty to maintain.

The tariff’s classification of water lines was therefore as follows.



Because there were no meters, Mr. Connell’s maintenance duty covered everything south of the resort’s property line.<sup>43</sup>

Those are the duties to which the Company succeeded as the adoption notice provides:

[The Company] hereby adopts, ratifies, and makes its own in every respect as if the same had been originally filed by it [the tariff] filed with the Public Service Commission, State of Missouri, by Bob Connell, d/b/a Woodland Manor Water

<sup>42</sup> Tariff, Original Sheet No. 5-6, Rule 1(e).

<sup>43</sup> Unless an easement carried it through private property. The LLC cites a provision allowing the customer service line to extend outside the customer property line. But that applies only when necessary to reach a service connection in a utility easement. Original Sheet No. 11, Rule 5(i). Here, the service connection extends to the resort property line.



Company currently on file with and approved by the Commission.<sup>[44]</sup>

The Commission approved that tariff sheet when it canceled Mr. Connell's certificate and issued a certificate to the Company in 1999. Therefore, the Company's maintenance duty includes the east curve unless something has altered that duty.

The Company, the LLC, and Staff argue that the Company's duty to maintain the east curve ended when the Company placed the east meter. This is the only support offered for treating the east curve differently from the similarly situated west curve. The west curve differed from east curve, for tariff purposes, only in that the latter touched the resort's property line once more than the east curve did. As Mr. Larson notes, the Company did not hesitate to fix the west curve, not once but twice.

*b. Abandonment: Statute*

The Company, the LLC, and Staff argue that placing a meter, changes ("abandons") any pipe beyond that meter into a customer service line, divesting the Company of ownership and associated duties, and transferring the pipe to the customer's involuntary ownership. They cite the tariff's provisions relating the customer service line to the meter:

. . . a pipe . . . owned and maintained by the customer, used to conduct water to the customer's unit from the property line or outdoor meter [<sup>45</sup>]

and:

. . . Service Line construction and maintenance from the . . . meter . . . to the building shall be the responsibility of the Customer [<sup>46</sup>]

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<sup>44</sup> Tariff, Original Sheet No. A.

<sup>45</sup> Tariff, Original Sheet No. 11, Rule 5(b).

<sup>46</sup> Tariff, Original Sheet No. 5-6, Rule 1(e).

The Company, the LLC, and Staff argue that, because the east curve is now between Mr. Larson's units and the east meter, the east curve is now a customer service line that Mr. Larson must own and must maintain.

That argument is summarized in Staff's maxim: anything on the customer side of the meter is the customer's responsibility. That maxim is correct under certain facts but not others. The law voids any unauthorized disposition of the east curve as follows.

The statutes provide that a Commission order is necessary for disposing of any necessary or useful part of any system:

No . . . water corporation . . . shall . . . transfer . . . or otherwise dispose of . . . any part of its . . . works or system,<sup>[47]</sup> necessary or useful in the performance of its duties to the public, . . . without having first secured from the commission an order authorizing it so to do. Every such . . . transfer [or] disposition . . . made other than in accordance with the order of the commission authorizing same shall be void. <sup>[48]</sup>

That procedure is also the subject of a Commission regulation describing the application for the order.<sup>49</sup>

The statute's only exemption is for unnecessary and non-useful parts of the system:

Nothing in this subsection contained shall be construed to prevent the . . . disposition by any . . . public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public <sup>[.50]</sup>

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<sup>47</sup> The statutes provide that the system ". . . includes all . . . pipes . . . owned, operated, controlled or managed in connection with or to facilitate the . . . supply, distribution, sale, furnishing or carriage of water for . . . domestic or other beneficial use." Section 386.020(60), RSMo Supp. 2010.

<sup>48</sup> Section 393.190.1, RSMo 2000.

<sup>49</sup> 4 CSR 240-2.605.

<sup>50</sup> Section 393.190.1, RSMo 2000.

For example, the west curve ceased to be necessary and useful when the Company installed the east new pipe. Therefore, no authorization was necessary to abandon the west curve.

Also, the statute excludes any pipe that has never been part of the system. For example, the line that Mr. Larson ran from the west cabin to the west meter began was always his property, always a customer service line, and never part of the Company's system under the tariff. Likewise, when a system is built under the tariff with meters from the beginning, Staff's maxim is correct: anything on the customer side of the meter is the customer's responsibility.

But neither the exclusion nor the exception applies to the east curve because the east curve has always been part of the system. The tariff does not substitute for the statute because the tariff lacks the statute's procedure. That procedure includes the filing of information:

Any person seeking any order under this subsection authorizing the . . . transfer . . . or other disposition, direct or indirect, of any . . . water corporation . . . shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such . . . transfer . . . or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the corporations involved in such disposition are located.

The statute also requires notice:

The commission shall send a copy of all information obtained by it as to what, if any, impact such . . . transfer . . . or other disposition will have on the tax revenues of various political subdivisions to the county clerk of each county in which any portion of a political subdivision which will be affected by such disposition is located.

And, by requiring an order, the statute requires the Commission to make a decision. The information, notice, and decision-making due under the statute is absent from the tariff, so merely placing a meter does not substitute for the Commission's order.

After the placement of the east meter, the east curve continued to serve the resort, so it remained necessary and useful in the performance of the Company's duties to the public. The Commission never authorized the abandonment of the east curve. Absent that authorization, abandonment of the east curve is void, so the east curve remained within the Company's system and duty to maintain.

That conclusion is consistent with the public interest because the public interest generally includes "substantial justice between patrons and public utilities [.]"<sup>51</sup> Substantial justice on these facts appears in the statute. The statute provides that the Company shall not reduce its service without disclosure, notice, and the Commission's decision on the public interest as a whole.

### *c. Summary as to the Complaint's Merits*

As the system went from private service to public service the tariff's purpose was to impose public duties. Using the tariff to deny those duties stands the tariff on its head. To prevent the argument of the Company, the LLC, and Staff from becoming reality is among the statute's purposes. Factoring in the statutes restores the tariff's purpose. Therefore, the Commission concludes that the Company violated its duty to maintain the east curve.

### III. Remedy: Improvement and Extension

As recompense for that violation, Larson asks for relief in several forms.

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<sup>51</sup> Section 386.610, RSMo 2000.

*a. Set-Off or Refund*

Mr. Larson asks that his labor and expense, valued as set forth in the findings of fact, be set off against his water bill. Mr. Larson cites the tariff's requirement that meters shall be at least "near" the customer property line.<sup>52</sup> Mr. Larson alleges that all he wanted out of the east meter was to connect the new house and if the Company had set the east meter on Mr. Larson's side of the east valve box, there would have been no confusion over the east curve. That is true. Nevertheless, the tariff bars any refund without proof of the Company's willful misconduct.<sup>53</sup> Mr. Larson states, and the Commission has found, that willful misconduct did not occur.

The LLC argues that Mr. Larson failed to enter the amounts into evidence and testify that the amounts are reasonable. The Commission's expertise in public utilities includes the cost of maintenance, and the Commission concludes that the amounts that Mr. Larson seeks are reasonable. The Commission also concludes that it is unfair for the Company retain the benefit that Mr. Larson conferred on the Company without the Company paying the reasonable value of that benefit.

But Mr. Larson did not enter into evidence the amounts he alleged in his complaint. The findings of fact must stand on the record.<sup>54</sup> Therefore, the Commission has made findings and conclusions on the matter but will not order a payment or billing adjustment.

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<sup>52</sup> Tariff, Original Page 26, Rule 11(f).

<sup>53</sup> Tariff, Original Page 26, Rule 11(f).

<sup>54</sup> *Hartley v. Spring River Christian Village*, 941 S.W.2d 4, 7 (Mo. App., S.D. 1997).

*b. Improve System*

Mr. Larson also asks for a connection from the west meter to the west valve box. That connection would eliminate the east curve from the system. Mr. Larson also asks for a new east box, west valve box, and valves.

The Commission may order that remedy under the following statutory provisions.

The commission shall:

\* \* \*

(2) . . . have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such . . . water . . . , and have power to order reasonable improvements and extensions of the works, . . . pipes, lines, conduits, . . . and other reasonable devices, apparatus and property of . . . water corporations [.]

\* \* \*

(5) [W]henver the commission shall be of the opinion, after a hearing had . . . upon complaints, that the property, equipment or appliances of any [public utility] are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law [.<sup>55</sup>]

The tariff also addresses old system components:

Pre-existing facilities that do not comply with applicable regulations may remain [if] their existence does not constitute a service problem or improper use, and reconstruction is not impractical.<sup>56</sup>

Those provisions apply to the east curve as follows.

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<sup>55</sup> Section 393.140, RSMo 2000.

<sup>56</sup> Tariff, Original Sheet No. 8, Rule 2(d).

Mr. Larson expended considerable toil in fixing the leak. It is fortunate that he did so for the sake of safe and adequate service, because the record shows that a leak may contaminate the system. The next customer may not know about a leak, possess the resources to fix it, and have urgent commercial interest to do so. The Commission concludes that the east curve is unsafe, insufficient, inadequate, and constitutes a service problem, which call for the improvement to the system as Mr. Larson asks.

To promote the public interest, preserve the public health, and protect the people using the Company's water, the Commission will order the Company to improve the system by disconnecting the east curve. That reconstruction is not impractical because it requires only extending the service connection from the west valve box ten feet to the west meter, by disconnecting the east curve from the west valve box, and capping the east curve's disconnected end.

The need for new valve boxes and valves is not immediately apparent from the record so the Commission will order those improvements only upon Staff's conclusion that the current valve boxes and valves do not meet the standard for old components set forth above.

**THE COMMISSION ORDERS THAT:**

1. The complaint is granted.
2. Mona L. Fennema d/b/a Woodland Manor Water Company ("the Company") violated its duties to maintain its water system.
3. No later than 30 days from the effective date of this decision, the Company shall perform the following.

4. From the west valve box (as described in the body of this order) the Company shall:

- a. Disconnect the east curve (as described in the body of this order) from the west valve box and cap the disconnected end of the east curve;
- b. Extend the service connection to the west meter (as described in the body of this order).

5. The Company shall replace the east valve box (as described in the body of this order), west valve box, and any associated valve as Staff directs.

6. This order shall become effective on [issue + 30d].

**BY THE COMMISSION**

( S E A L )



Steven C. Reed  
Secretary

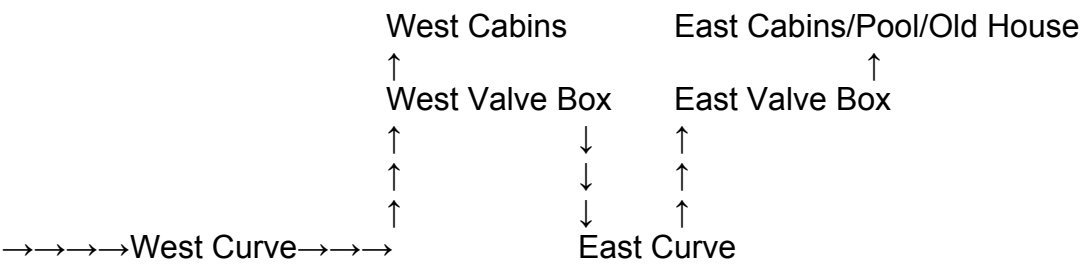
Daniel Jordan, Senior Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 8<sup>th</sup> day of August, 2012.

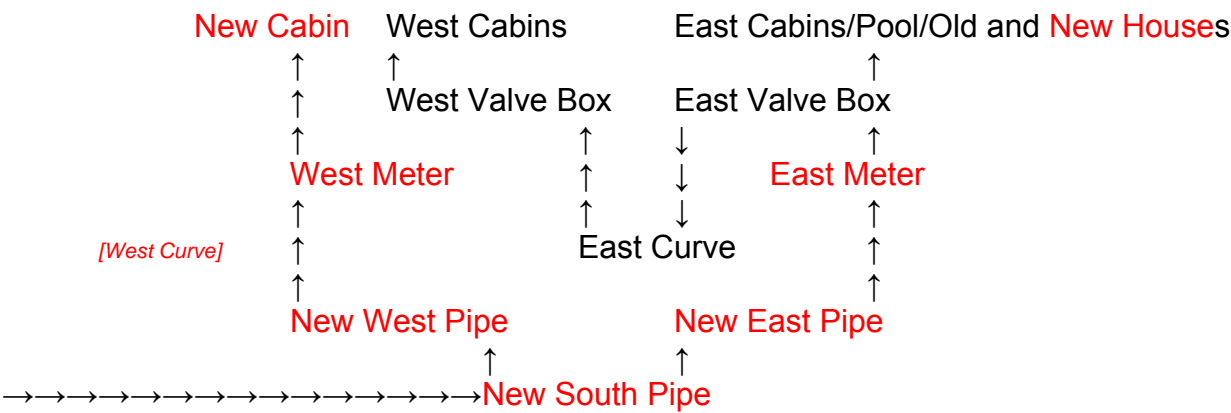


Appendix

A. Mr. Connell’s System



B. Alterations by Mr. Larson and the Company (in red)



C. Staff's Solution (in green)

