

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
)	Case No. WC-2006-0029
v.)	
)	
Missouri Utilities Company)	
)	
Respondent.)	

STAFF’S RESPONSE TO QUESTIONS POSED AT HEARING

COMES NOW the Staff of the Missouri Public Service Commission (“Staff” and “Commission”), and for its *Response to Questions Posed at Hearing* states:

1. On August 15, 2005, an evidentiary hearing was conducted to gather information for the Commission to make a determination as to Staff’s request that the Commission direct its General Counsel to petition the circuit court for an order attaching assets of Missouri Utilities Company (Company) and place the Company under the control and responsibility of a receiver, and that the Commission direct its General Counsel to seek a finding from the circuit court that control and responsibility for the Company should not, in the best interest of the Company’s customers, be returned to the owners of the Company, and an order from the circuit court directing the receiver to proceed to liquidate the assets of the Company in the manner provided by law, as well as asking the Commission to appoint an interim receiver for the Company, pursuant to the provisions of Senate Bill 462, truly agreed to and finally passed, signed by Governor Blunt on June 29, 2005, (SB 462), Section 393.145.2.

2. During said hearing, Commissioner Gaw asked the following questions, with a request that answers be filed by the close of business on August 15, 2005. The Commissioner's questions are in italics.

a. *What authority provides for penalties for failure to provide for safe and adequate service?*

Section 393.130, RSMo (2000), states in part that "...every water corporation and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate..."

Any public utility that fails, omits, or neglects to obey an order of the Commission "is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars" for each offense, if there is no penalty otherwise provided. Section 386.570.1, RSMo (2000). The statute further states that "in the case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense." Section 386.570.2, RSMo (2000). No penalty for failing to provide safe and adequate service is otherwise provided in Chapter 386 or elsewhere in the Commission's statutes.

In a Missouri Court of Appeals case, the Public Service Commission brought an action in circuit court seeking penalties for failure to provide safe, adequate water supply, citing RSMo Sections 386.570 and 386.600. The circuit court imposed penalties of \$300.00 per day for 315 offenses for a total of \$94,500.00. The Court affirmed stating that "the penalties assessed by the trial court followed and were authorized by

Section 386.570, RSMo 1986.” State v. Davis, 830 S.W. 2d 27 (Mo.App S.D. 1992).

b. *What would be the process for filing a penalty action for failure to provide safe and adequate service?*

Section 386.390.1, RSMo (2000) authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision” of the Commission.

Commission Rule 4 CSR 240-2.070(1) provides that the Commission’s Staff, through the General Counsel, may file a complaint.

The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the Division cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo., 836 S.W.2d 23, 27 (Mo.App. W.D. 1992) (relying on State v. Carroll, 620 S.W.2d 22 (Mo. App. 1981)). See also State ex rel. Cirese v. Ridge, 138 S.W.2d 1012 (Mo.banc 1940). If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to provide safe and adequate service, the Commission may then authorize its

General Counsel to bring a penalty action in the circuit court as provided in Section 386.600, RSMo (2000).

c. *Is there any limitation as to the time at which the Commission must identify and appoint an interim receiver?*

SB 462, Section 393.145.2, states, in part “If the commission orders its general counsel to petition the circuit court for the appointment of a receiver...it may in the same order appoint an interim receiver for the sewer or water corporation.” It is not clear that the Commission has any authority to appoint a receiver at any time other than in the “same order” as that in which it directs the general counsel to seek appointment under SB 462, Section 393.145.1.

Furthermore, SB 462, Section 393.145.3 states, in part, “The commission shall not file such action until its determination...is final and unappealable.” Therefore, the general counsel cannot file a petition in the circuit court until all issues in the instant case are disposed of, including the decision as to whether to appoint an interim receiver and, if so, whom to appoint. Thus, if the Commission were to seek appointment of a receiver in circuit court without first identifying and appointing an interim receiver in this case, it might lose the ability to appoint an interim receiver.

d. *Are there any qualifications for an interim receiver?*

SB 462, Section 393.145, does not address any specific requirements for interim receivers, but it does provide that “A receiver

appointed pursuant to this section shall be a responsible person, partnership, or corporation knowledgeable in the operation of utilities.” Since there does not appear to be any reason to have a stricter standard for an interim receiver, it is logical that the requirements for a receiver should also apply to an interim receiver.

SB 462, Section 393.145, also does not address any restrictions to the appointment of an interim receiver. The lack of restrictions may allow the appointment of a member of the staff of a regulatory body to act as an interim receiver, since the interim receiver would, in essence, be acting on behalf of the regulatory body. In a Christian County Circuit Court case, the Regional Director of the Southwest Regional Office of the Department of Natural Resources was appointed receiver of the treatment facility. *State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, v. Jed Forrester and Ozark Water and Wastewater Management*, Christian County Circuit Court Case No. CV197-4CC. The difference between the Christian County case and the instant case, is that in the Christian County case, the appointment of the receiver was to provide for a very specific function, namely, to ensure environmentally safe operation until new collection lines could be built to connect the sewer operation to a city sewer system. That appointment was also premised on a very detailed Joint Stipulation for Receivership. The open ended nature of the instant case, makes it difficult to determine whether it would be appropriate to appoint if a staff person of a regulatory body as interim receiver.

e. *Could an interim receiver could buy the company or its assets?*

According to Blacks' Law Dictionary, Seventh Edition, a receiver is defined as "A disinterested person appointed by a court or by a corporation or other person for the protection or collection of property that is subject to diverse claims (for example, because it belongs to a bankrupt or is otherwise being litigated)." If an interim receiver would purchase the assets in the later receivership case, it may be seen as "self dealing." Therefore the appointment of an interim receiver should be of a person, corporation or other entity that would not have any interest in the future purchase of the company or the assets.

f. *What is the latest information from the Department of Natural Resources regarding access to the system for testing and sampling?*

On August 15, 2005, the Staff contacted the Department of Natural Resources (DNR) and has specifically asked for an update on any enforcement actions that DNR has taken, plans on taking, or is considering taking in regards to the Company's recent water outage. The DNR was also asked for previous general compliance issues from January 1, 2005 to date. Lastly, Staff has asked for possible qualified contract operators known to the DNR. The DNR has not yet responded to the request.

g. *What contract operators are available in the Sedalia area?*

Staff has contacted a contract operating company in Knob Noster, Missouri and will report any promising developments. Staff also plans on

contacting the Company's electrical service provider to determine if they would be willing to handle billing aspects of the Company.

h. *Does the municipality have an interest in the possible operation of the system?*

Staff has placed a call to the Director of the Public Works Department of Sedalia and left a message asking if they are interested in this system, but the call has not yet been returned.

WHEREFORE, Staff prays that the Commission accept *Staff's Response to Questions Posed at Hearing*.

Respectfully submitted,

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/s/ Mary E. Weston

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 15th of August 2005.

/s/ Mary E. Weston
