

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

The Office of the Public Counsel,)
An agency of the State of Missouri,)
COMPLAINANT)

v.)

Case No. WC-2015-0290

)
Ridge Creek Development, LLC,)
Ridge Creek Water Company, LLC,)
Mike Stoner, Denise Stoner,)
A Missouri water corporation,)
RESPONDENTS)

THE OFFICE OF THE PUBLIC COUNSEL’S REPLY TO STAFF’S RESPONSE

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Reply, states as follows:

1. On May 22, 2015, Public Counsel filed its *Motion for Order Directing Respondents to File Interim Tariffs and Motion for Expedited Treatment* (Doc. No. 10).
2. On May 28, 2015, the Staff of the Missouri Public Service Commission (Staff) filed its *Response* wherein it asks the Commission to deny Public Counsel’s request (Doc. No. 12). Staff’s response misapplies the law and is unreasonable, serving to delay and obstruct the only lawful and expeditious solution to the problem of illegal rates offered by any party in this case, and so, should not be well taken. However, despite the Staff’s opposition to Public Counsel’s motion, Staff and Public Counsel agree on many of the underlying facts.
3. Public Counsel agrees with the Staff that none of the respondents in this case has a Certificate of Convenience and Necessity (CCN).

4. Public Counsel agrees with the Staff that Mo. Rev. Stat. § 393.140(11) authorizes the Commission to approve tariffs proposed by water corporations. Further, Public Counsel agrees with Staff that this statute includes the Respondents. And, all the parties seem to concur that at least Respondent Ridge Creek Development LLC is charging for utility services.

5. The law establishes that “[e]very unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.” Mo. Rev. Stat. § 393.130.1 (emphasis added). At present, no filed tariff or Commission order exists, thus *any* amount charged by the utility is prohibited.

6. Contrary to Staff’s assertion in its response, Public Counsel does not overlook Mo. Rev. Stat. § 393.170 in making its motion for order directing respondent to file interim tariffs. Instead, Staff misinterprets the law.

7. Mo. Rev. Stat. § 393.170 requires that public utilities obtain “permission and approval from the Commission” prior to construction of a water or sewer system and prior to “...exercis[ing] any right or privilege under any franchise hereafter granted.” Public Counsel’s motion seeks the Commission to order Respondent to file tariffs which would be permitted to take effect on an interim basis. Public Counsel’s request does nothing to undermine the currently pending CCN case.

8. Nor does the CCN statute limit the Commission’s authority to determine rates. Certainly, the existence or non-existence of a CCN does not afford or deprive an entity of public utility status. Rather, the entity’s actions do that if those actions meet the statutory definition for a public utility. And it is the entity’s status as a public utility – one that exists independent of any Commission-approved franchise – that brings it within the Commission’s rate approval authority.

The CCN process is not a prerequisite to the exercise of Commission's authority over public utilities. A CCN serves as a check and limitation on the *utility's* authority to act, it does not prohibit the *Commission* from taking action to circumscribe or stop a utility's *ultra vires* acts as quickly as possible, and to fulfill its responsibility to protect the public when it is presented with a public utility operating without approved rates.

9. Public Counsel has requested that the Commission order the Respondents to file interim tariffs, which is entirely consistent with the Commission's powers under Mo. Rev. Stat. § 393.150.1. Interpreting Mo. Rev. Stat. § 393.170 to limit the Commission's ability to approve interim rates, as Staff suggests, would undermine the Commission's rate review authority. Following Staff's interpretation would subordinate the Commission's authority regarding rates to a separate authority focused on the grant of the franchise, one which is at best tangentially-related and which includes no mention of rate review. Staff's interpretation neuters the Commission from being able to exercise its responsibility to protect the public (particularly financially), is contrary to the plain language and intent of the statute, and is entirely unreasonable.

10. Instead, the Commission should rely on its specific statutory authority to fix rates when granting Public Counsel's motion. *See* Mo. Rev. Stat. 393.150.1. Public Counsel agrees with Staff's position that Mo. Rev. Stat. § 393.150 applies to new rates and charges filed with the Commission (Doc. No. 12, p. 4). However, in opposing Public Counsel's motion, here too, the Staff's argument would lead the Commission astray.

11. Section 393.150 gives the Commission authority to review utility-filed rates, and, after notice and a hearing, order changes to those rates. Staff argues against expedited treatment because "it takes time for Staff to audit the company and establish its rate base and revenue

requirement, upon which tariffs must be based.” Again, as Staff has done in the past, Staff elevates its role in the rate-making process above those of all other parties. Nothing in § 393.150.1 requires the completion of a Staff audit prior to the initiation of any rate, much less an interim rate. Section 393.150.1, as staff extensively quotes, outlines the process for establishing a new rate, and it begins with the utility filing the rate schedule, not any other party and certainly not Staff.

12. When, as here, truly exigent circumstances exist, the Commission may order emergency tariffs to become effective consistent with § 393.150.1. *State ex rel. Laclede Gas v. Pub. Svc. Comm’n*, 535 S.W.2d 561, 567 (Mo. App. K.C. 1976).

13. Interim rates will serve to 1) stop further violations of Missouri law and 2) maintain the financial stability of the utility so that it may provide safe and adequate service to its customers in the period before permanent rates are established.

14. Staff’s opposition to interim rates does not provide a solution to either issue. If it is Staff’s position that the *status quo* is acceptable, the Staff is wrong. The Commission cannot willfully turn a blind eye to unlawful behavior and allow the utility to continue to collect unlawfully charged money from Missouri citizens. Neither should the Commission simply seek to prohibit the utility from collecting any money at all, which would threaten the utility’s financial viability and ability to provide safe and adequate service to the customers. Public Counsel has presented the only lawful and reasonable path forward to remedy this situation expeditiously.

15. Lastly, Staff’s assertion that OPC contends an interim tariff will “cure the unlawfulness of Respondent’s conduct” is mistaken. Public Counsel has never stated Respondent’s conduct would be cured, Respondent will remain responsible and accountable to ratepayers for the

unlawfully charged tariffs up to the date a lawful tariff takes effect. Public Counsel merely seeks to stop the unlawful activity as quickly as possible. Moreover, nothing Public Counsel offers herein will undermine the currently pending CCN case, which Public Counsel agrees must proceed and wherein the Commission will determine whether it is in the public interest to grant Respondent a franchise at all.

WHEREFORE, Public Counsel submits its Reply for the Commission's consideration.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 1st day of June 2015:

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