

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

Eric C. Larson,  
Complainant

v.

Woodland Manor Water Company, LLC,  
Respondent.

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**Case No. WC-2011-0409**

**STAFF'S COMMENTS AND RESPONSE**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and submits its comments on the *Recommended Report and Order (Recommended Decision)* of August 3, 2012, and its response to the comments of Eric C. Larson, stating:

Introduction

Staff is filing its *Comments and Response* to address some factual issues in the *Recommended Decision* and to highlight the far-reaching impact such an order would have on all regulated water utilities in the state of Missouri and on the manner in which Staff works with each of these utilities. First, Staff will address several points of fact in the *Recommended Decision* with which Staff disagrees. For the sake of clarity, Staff has tried to focus on the most important points and to explain why these points are not inconsequential. Second, Staff will respond to the *Recommended Decision's* Conclusions of Law, specifically directing its comments to interpretation of the tariffs and the applicable statutes. Next, Staff will briefly discuss the potential ramifications of the *Recommended Decision* for utilities and for Staff. Staff will then discuss its view of the *Recommended Decision's* directions for system improvements. Finally, Staff will

respond to Mr. Larson's *Comments on the Recommend Report and Order*, filed August 6, 2012.

### Findings of Fact

Staff noted several points with which it disagrees in the *Findings of Fact* section of the *Recommended Decision* and determined that the easiest way to address those points was to highlight the paragraph number from the *Recommended Decision* and provide a response. Using that method, Staff's response follows:

On Page 8, paragraph 11, the *Recommended Decision* states that "The tariff is an off-the-shelf draft and was not designed specifically for the Company."

Staff asserts that each company's tariff is specific to the operations of that specific company and that system's specific rates. Staff advocates for and often uses consistent terminology in tariff definitions and has created a template for small water and sewer company tariffs, but that template is reviewed in detail when each company applies for a certificate of convenience and necessity or files a rate case with the Commission. Staff and the utilities use the template as a starting point for the creation of the utility's tariff and modify the template as necessary and appropriate for each utility's circumstances and operational requirements. The applicable tariff for this Company was created specifically for this system and was not simply taken "off-the-shelf" without further thought, as indicated in paragraph 11. Staff requests that a correction be made to clarify this information.

Also on Page 8, paragraph 14, the *Recommended Decision* correctly notes that Mr. Larson connected the new cabin to the west meter. In Paragraph 15, the *Recommended Decision* also correctly notes that Mr. Larson was responsible for

running the connection for the new eastern buildings to the east pipe between the east meter and east valve box. Yet, as a result of the *Recommended Decision*, the Company would now be responsible for the same type of connection Mr. Larson has willingly and correctly made in the past, as demonstrated in paragraphs 14 and 15 of the *Recommended Decision*.

In the past, Mr. Larson and the Company have agreed on the reading and application of the tariffs: the customer is responsible for the piping that leads from the meter to the premises.<sup>1</sup> However, the *Recommended Decision* would require the Company to connect Mr. Larson's buildings to water service on his side of the property line and on his side of the meters. This change in tariff application appears to be based on the facts that this pipe was laid fifty years ago and the pipe happens to curve under the roadway to avoid tree roots. While the placement of this particular leaking pipe is unfortunate, it should not result in a new interpretation of the tariff. Staff argues that this proposed inconsistent result is unjustified.

On Page 9, paragraph 15, the *Recommended Decision* states, "The old pipe of the east curve and east valve box was not adequate to supply the new house." Staff asserts that this finding is incorrect, and Staff is unable to find anything in the record from which such a finding could be inferred.

Also on pages 9-10, paragraph 17 states, "At the Company's direction, Mr. Larson connected the new house to the east new 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."

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<sup>1</sup> Sheet 11, Rule 5(a)

When he built the new house, Mr. Larson needed to install a customer service line to reach from the new house to a location where he could tap into water service, and there were several options that he could have chosen, with the consultation of the company. Any of the options available at the time would have required more investment from Mr. Larson. One option was to use the east valve box to provide service to the new house, which would require installing a new valve, but instead, the customer and the utility chose a different option. Ten years ago, the parties involved in that decision determined that it was best for a new connection to be located between the valve box and the meter, rather than installing a third meter for the property. This decision was based on a cost consideration for the customer and to fit the needs of the utility.<sup>2</sup> There is no record that the choice was made due to the inadequacy of the east curve or east valve box.

Even if the assertion that the east curve was inadequate to serve the new construction was supported by the record, that information is unrelated to serving the new eastern construction because the water now flows through the east curve from east to west; it does not flow from west to east toward the new construction. In short, there was no issue regarding adequate service to the new house or the new connection to the old house.

Incidentally, paragraph 17, mentioned above, supports the positions posed by every party other than Mr. Larson: the customer is responsible for the connections that provide water to his facilities and can upgrade them at his discretion. These facts seem to go against the conclusions reached in the *Recommended Decision* – that the Company is responsible for these connections.

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<sup>2</sup> See *Answer, paragraph 6*, filed with the Commission on August 4, 2011.

Page 10, paragraph 21 states, “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.” Additionally, the *Recommended Decision* states the “only support”<sup>3</sup> for Staff’s position and the Company’s position is that the duty to maintain the east curve ended when the Company placed the east meter. This language suggests that reliance on the tariff language is insufficient or inappropriate.

If such an interpretation stands, Staff is left with a conundrum. Staff routinely informs companies that they have to comply with their tariff, which is approved by the Commission. As Staff argued in its brief, it is well-established that the tariffs of regulated utilities have the force and effect of law, until suspended or set aside.<sup>4</sup> Missouri courts have long recognized this doctrine, stating that “a tariff that has been approved by the Commission becomes Missouri law. As a result, the tariffs have the same force and effect as a statute directly prescribed from the legislature.”<sup>5</sup> The Filed Rate Doctrine “conclusively presumes that both a utility and its customers know the contents and effect of the published tariffs.”<sup>6</sup> If “relying solely on the tariff” is interpreted negatively by the Commission, then Staff is left at a loss as to what to tell companies. Likewise, companies will be at a loss because the long standing legal precedent that applies to their tariff may no longer be controlling.

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<sup>3</sup> in the Section *Duty to Maintain: Tariff* page 17

<sup>4</sup> See *Keogh v. Chicago & Northwestern Railway*, 260 U.S. 156, 162–163.

<sup>5</sup> *Allstates Transworld Vanlines, Inc. v. Sw. Bell Tel. Co.*, 937 S.W.2d 314, 317 (Mo. Ct. App. 1996). See also, *Carter's Custom Tile*, 834 S.W.2d at 893.

<sup>6</sup> *Bauer v. Sw. Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. Ct. App. 1997)

## Responses to Conclusions of Law

### TARIFFS – DUTY TO MAINTAIN

Staff's first response to the "Conclusions of Law" section of the *Recommended Decision* is that it relies in part on Mr. Larson's interpretation of the tariff's purpose, rather than the detailed testimony provided on the tariff's language. Mr. Larson did not present any evidence to support his interpretation of the tariff's purpose, and since he was not party to the creation of the tariff, his interpretation of its purpose should not be relied upon. Like a statute, the intent of a tariff provision is determined from its plain language using the well-known canons of construction. The "Conclusions of Law" section also provides a detailed analysis of the tariff definitions and their application to the *prior* owner, rather than focusing on what is currently in effect and the responsibilities of the current owner. This focus is detrimental because it imposes duties on the Company that are not apparent by reading and applying the tariff to the situation that exists in the system currently, thereby failing to direct the reader to the current situation.

The *Recommended Decision* focuses on definitions of the currently effective tariff found on Sheet No. 6, Rule 1, which states as follows:

(a) A "Main" is a pipeline which is owned and maintained by the Company, located on public property or private easements, and used to transport water throughout the Company's service area.

(e) 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. If the property line is in a street, then the said customer's water service line shall be deemed to begin at the edge of the street abutting the customer's property.

(f) 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. If the property line is in the street, the said service connection shall be deemed to the end at the edge of the street abutting the customer's property.

The *Recommended Decision's* analysis of these definitions focuses on the uses of the past system and applies it to the current upgraded system, but that application is misleading because the system has changed. The current tariff must apply to the current system. While Staff understands that the current owners adopted the prior tariffs and system when they purchased the Company, the *Recommended Decision* appears to overlook the fact that the Company also made improvements to the system that changed the operations. Just as we would not apply a new tariff approved tomorrow to the old system as it was before improvements and changes of circumstance, we should not apply the circumstances of the old system to the current tariff after improvements and changes of circumstances.

The testimony regarding the tariff language that applies to this situation also included a discussion of the following tariff sheet, not focused on in the *Recommended Decision* but equally applicable:

Sheet 11, Rule 5 (b) “The Service Connection from the water main to the Customer’s property line, the meter installation and setting shall be constructed, owned and maintained by the Company. **Service line construction and maintenance from the property line or meter setting, including the connection to the meter setting, to the building shall be the responsibility of the Customer**, and is subject to the inspection by the Company. Customers shall be responsible for the cost of repairing any damage to the Company’s lines meters, and meter installations caused by the customer, his agent, or tenant. Customer shall be responsibility for the cost of repairing any damage to the Company’s lines, meters, and meter installations caused by the Customer, his agent, or tenant. Customer shall be responsible for a fee to Company for inspection of the initial connection of service. (Emphasis Added)

The *Recommended Decision* does not address the discussion in the record regarding the applicability of this part of the tariff to the situation at hand. This tariff provision is briefly mentioned in the *Recommended Decision*, but there is no analysis to support a conclusion that it is not applicable. The east curve is located after the meter and provides service to this customer only, therefore, Sheet 11, Rule 5(b) provides further support for Staff’s and the Company’s position that the east curve is a customer service line.

Staff disagrees that the only difference between the west curve and the east curve is that the east curve touched the resort’s property line once more than the east curve did as stated on Page 17 of the *Recommended Decision*. Staff is unable to locate

this assertion in the record. What is clear from the record is that the west service line was not providing water to Mr. Larson's property, as evidenced by the Company's ability to cap off that line without disrupting service to Mr. Larson. Furthermore, the west service line was not on the customer's side of a meter. In contrast, the east curve is a customer service line; it supplies water only to Mr. Larson, and it is on his side of a meter. This is a very important difference for tariff purposes as, under the tariff, service lines and mains are the Company's responsibility while customer service lines are the customer's responsibility.

#### STATUTE – "ABANDONMENT and PUBLIC USE"

The *Recommended Decision* relies on Section 393.190.1, RSMo, to assert that the Commission's approval is necessary to dispose of any necessary or useful part of the Company's system.<sup>7</sup> This statute is typically applied when entire systems or portions of systems are going to be removed or transferred from the current owner to a new owner.<sup>8</sup> Applying the statute to the situation at hand is a unique and novel application and is also quite problematic. If this statute applies to the Company's situation, then a regulated utility would conceivably be required to obtain Commission approval to make routine system changes or upgrades, rather than allowing the utility to make such a decision on its own.

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<sup>7</sup> Page 18 of *Recommended Decision*

<sup>8</sup> For recent examples of the application of this statute, see *In the Matter of the Joint Application of Valley Woods Water Company, Inc. and Valley Woods Utility, LLC for Authority of Valley Woods Water Company, Inc. to Sell Certain Assets to Valley Woods Utility, LLC*, WM-2012-0288; *In the Matter of the Application of Highway H Utilities, Inc., for Authority to Sell Certain Water System Assets to the City of Waynesville, Missouri, and in Connection Therewith, Certain Other Related Transactions*, WO-2012-0211; *In the Matter of the Joint Application of Missouri-American Water Company and Roark Water & Sewer, Inc., for Authority for Missouri-American Water Company to Acquire Certain Assets of Roark Water & Sewer, Inc., and, in Connection Therewith, Certain Other Related Transactions*, WO-2011-0213; *In the Matter of the Application of S.T. Ventures, LLC for Authority to Transfer Certain Assets to Table Rock Lake Community Service, Inc. d/b/a Table Rock Lake Water Quality, Inc. and, in Connection Therewith, Certain Other Related Transactions*, SO-2011-0020.

More specifically, in this case, the Company did not dispose of any portion of its system; therefore it was unnecessary for the Company to follow the statutes related to disposing of or transferring necessary or useful parts of the system. The east curve is not necessary or useful in the performance of the Company's duties to the *public*. This line only serves one customer, Mr. Larson. In fact, the east curve ceased to serve the public when the new main was constructed on the south side of the road sometime before 1991, long before any meters were installed for Mr. Larson.<sup>9</sup> At that time, the east curve served only the lots on which Mr. Larson's resort sits. Therefore, by the time the Company installed the east and west meters, the east curve had not been utilized by the Company for its service to the general public for some time. The Company should not be penalized for updating its systems in the most efficient and cost-effective manner for both the Company and Mr. Larson, but rather encouraged because there are many small water and sewer systems facing substantial problems because the owner has not upgraded or invested in the system appropriately.

Finally, contrary to the statements on page 23 of the *Recommended Decision*, improving the east curve does not promote the public interest or preserve the public health, and Mr. Larson's repairs were not for the sake of safe and adequate service because the customer's service lines and the valve boxes the *Recommended Decision* instructs the Company to repair, construct, and replace do not serve the public. This water line is only in service to serve one single customer, as is apparent throughout the record. The focus on public interest and public health is noble, but the more accurate focus in this case is the specific service to this one customer.

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<sup>9</sup> Respondent's Answer, Attachment date July 21, 2011 page 1 of 1.

### Potential Ramifications of *Recommended Decision*

The *Recommended Decision* creates contingencies that place a greater burden on water companies who are responsible for prior systems, as many are. Additionally, it deems the tariff language null and void and inapplicable in situations where the current owner is abiding by a currently effective tariff, approved by the Commission. It also places a burden on water companies in that it, by no exception, requires water companies who are taking over prior, often outdated systems, to continue to be responsible for those systems as they are found, no matter what changes in circumstances later follow. Staff argues that setting such a precedent now based on one set of very specific circumstances is not in the public interest.

The results of the *Recommended Decision* place a burden on companies to apply for approval to transfer from the utility to the customer all lines installed by predecessor companies every time they place a meter. If the records for predecessor systems no longer exist, the *Recommended Decision* seems to require companies to dig up customers' property, either methodically or randomly, to discover what the design of the system already in place is so that they know if they must file a request to transfer assets with the Commission. In order to avoid such a problem, companies could reasonably conclude they should simply apply to transfer any and all assets that currently exist past the meter to customers. Essentially, this is the very result the *Recommended Decision* critiques, that "anything on the customer's side of the meter is the customer's responsibility."<sup>10</sup> Whether companies apply to the Commission for transfer of assets having discovered the extent of their system by system records or by excavation, or having chosen to apply for a blanket transfer of all assets beyond the

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<sup>10</sup> See Page 18 of the *Recommended Decision*

meter, such an outcome would create additional burdens on companies and Staff to file and process applications for transfer of assets. It also broaches the utility's management authority as discussed more fully below.

Comments on the *Recommended Decision's* Orders for System Improvements

The *Recommended Decision* orders the Company to make improvements to the water system on Mr. Larson's property.<sup>11</sup> However, even if the Commission determines the east curve should not be part of Mr. Larson's water system, the customer service lines and valves on the customer's side of the meter are in fact in use only by this customer and not for the public service, and should not be the Company's responsibility.<sup>12</sup> If the Company had capped the east curve when placing meters, it would have been Mr. Larson's responsibility, under the tariff, to install any desired valve boxes and connect his customer service lines to both the west meter and the east meter. That responsibility continues and should be Mr. Larson's.

Also, Staff notes that there is no dispute regarding the appropriate placement of the west meter, which was installed for the benefit of Mr. Larson and at his request. If the east curve had been disconnected at the time the west meter was placed on the west side, there is no scenario under which Mr. Larson would have been relieved of the responsibility to connect the west valve box to the west meter. Therefore, the *Recommended Decision's* order that the Company extend the customer service line (which the *Recommended Decision* incorrectly terms a "service connection") is inappropriate.

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<sup>11</sup> See Page 23 and 24 of *Recommended Decision*

<sup>12</sup> See Sheet no 6 and 11

As for the east meter, if the east curve were disconnected at the time the meter was placed on the east side, Mr. Larson would have borne the responsibility of connecting some of the cabins to the east meter through other piping arrangements. If he did not wish to do so, the Company could have placed the meter where the valve box is and removed the valve box, as Mr. Larson argues should have been done. However, the result would be that Mr. Larson would be responsible for additional connections to the valve box, as the east curve would still be considered to be after the Company's meter, and thus the customer's responsibility. The Company could even have placed the meter on Mr. Larson's side of the valve box, as the *Recommended Decision* states, though that would have placed the meter some distance from the property line, which is contrary to the language of the tariff. In both cases, without the use of the existing valve box, Mr. Larson would either have been unable to connect additional lines to the ones in place and been unable to shut off water to the various sections of his resort, or he would have had to install new valve boxes, the responsibility for which would have been his under the tariff. In short, the placement of the meters, in any scenario, would have required Mr. Larson to connect to the meters on his side and connect to or replace valve boxes on his side. To now require the Company to bear this expense contradicts the applicable tariff language.

Furthermore, Staff is concerned about being directed to order the company to replace valves as it sees fits.<sup>13</sup> First, the valves are not the Company's to install or maintain, as they serve no purpose in providing service to the public, only to its customer, Mr. Larson. Second, aside from being a violation of the tariff to require a Company to install and maintain valves on the customer's side of the meter, instructing

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<sup>13</sup> Pg 24 of *Recommended Decision*, ordered paragraph 5.

them how to do this is interfering in Company management decisions. As stated by the United States Supreme Court, “The commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation.”<sup>14</sup> The State of Missouri follows this doctrine that the Commission “has no authority to take over the general management of any utility.”<sup>15</sup> Staff asserts that decisions about how many valves to install and where to install them is precisely the kind of decision, which will have a financial impact on the Company, that is not within the authority of the Commission or its Staff.

The Commission’s authority over such decisions lies rather with “the power to determine what items should be included in a utility’s operating expense and what items should be excluded . . . in order that the commission may arrive at a reasoned determination of the issue of ‘just and reasonable’ rates.”<sup>16</sup> Moreover, on the issue of determining reasonable rates, Staff points out that directing the Company to incur costs on behalf of one customer by installing system improvements on that customer’s property may not be viewed favorably by other parties in the Company’s future rate cases. Generally, the Commission reviews such costs for prudence in a rate case proceeding. Implementing this burden on the Company may be viewed negatively in the next rate case, as some parties might conclude that the cost to install valves on one customer’s property is not prudent, that those costs should not be forced on other customers, and may argue that such costs should be disallowed.

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<sup>14</sup> *State of Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm’n of Missouri*, 262 U.S. 276, 289, (1923).

<sup>15</sup> *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n*, 600 S.W.2d 222, 228 (Mo. Ct. App. 1980).

<sup>16</sup> *Id.* at 229, citing *State ex rel. Hotel Continental v. Burton*, 334 S.W.2d 75, 80 (Mo.1960).

### Alternative Resolutions and System Improvements

Staff recommends the Commission find that it is Mr. Larson who is responsible for the portion of the customer's service line that leaked. However, if the Commission issues a Report and Order including directions for improvement of the water system, Staff recommends such improvements be conducted similarly to the parties' original cooperation on the 2001 additions to the resort and water system. At that time, Mr. Larson built a home/office/laundry building on the eastern side of his property and requested water service. The Company installed a new line and meter, leaving room for Mr. Larson to connect a line between the meter and east valve, and, while onsite, allowed Mr. Larson to use the backhoe the Company had just used. Mr. Larson paid for the time of the backhoe, with no delivery fee, and installed a pipe from his new construction to the east line.<sup>17</sup>

If the Commission determines the Company should participate in improvements to Mr. Larson's property, Staff suggests that the Company might deliver the machinery Mr. Larson will need for his project and perhaps pay for its use, while Mr. Larson could be responsible for whatever pipe, valves, and connections he needs to improve his service to his liking. Of course, this requires that the parties be able to work together to coordinate such a project.

This plan has the benefit of removing Staff from management decisions of the Company and the Company from decisions about the design of the water system on Mr. Larson's side of the meter. It also avoids the problem of who will be liable in the future for repairs of the lines and appurtenances installed in these improvements. For instance, if Mr. Larson makes the improvements on his system, he will be

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<sup>17</sup> Company Response Attachment Page 2 of 3.

responsible if anything goes wrong with those improvements. Staff submits that requiring the Company to do work on Mr. Larson's property and on the water system on Mr. Larson's side of the meter could place the Company in an unjustifiable position of liability toward Mr. Larson for an indeterminate time in the future. If the Company participates in any improvements on Mr. Larson's property, Staff recommends that the Commission's Report and Order make clear that any pipeline, valves, or connections installed would then be Mr. Larson's property and that any future maintenance of those pipes, valves, or connections would be Mr. Larson's responsibility in the future.

#### Staff's Response to Mr. Larson's Comments

On August 6, 2012, Mr. Larson filed *Comments on the Recommended Report and Order* addressing two issues that were possibly overlooked: Mr. Larson seeks to determine how to get the street repaired and obtain remuneration for the water he was forced to pay for, if applicable.

Staff's position on whether the Company should refund to Mr. Larson the cost of the water that leaked: The Commission is limited to evidence on the record.<sup>18</sup> There was no discussion during the hearing about the cost of the leak. Therefore, Mr. Larson is not entitled to a refund of the cost of the leak.

Staff's position on Mr. Larson's inquiry about fixing the roadway: The Commission did not make any determination on which party, if any, should fix the roadway, and there is little evidence in the record on which to base any such determination. The Commission's Staff lacks the authority to authorize or direct such repair in the informal process, and only provides a recommendation to the parties. In this instance, Mr. Larson filed a formal complaint prior to the informal complaint being

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<sup>18</sup> *Hartley v. Spring River Christian Village*, 941 S.W.2d 4, 7 (Mo. App., S.D. 1997)

officially closed. While it is not detailed in the official record,<sup>19</sup> in the context of the informal case, Staff spoke to the City's Public Works Director during the investigation and was informed that Mr. Larson would be responsible for fixing the street. This information was then conveyed to Mr. Larson and the Company in a letter dated June 15, 2011. This formal complaint followed.

The Commission does not have jurisdiction over the dispute regarding who should be responsible for the City's street. Therefore, if Mr. Larson wishes to pursue this matter, he should do it within the municipality's procedures or in circuit court. He may also discuss the situation with the Company and see if they determine a satisfactory resolution to that concern.

### Conclusion

Staff argues that the Commission should find that Mr. Larson is responsible for the repair of the leak because the leak was in a customer service line, located past the Company's meter and therefore is the customer's responsibility. The outcome of the *Recommended Decision* has far reaching results and incorrectly applies the current tariff language to the system as it existed in the beginning, not as the system is operated today. The *Recommended Decision* creates confusion for water and sewer companies because it does not direct companies to the law that applies – it should be clear to the companies and Staff that the currently effective tariff, approved by the Commission, is the controlling law for each company. Staff requests that the Commission correct certain "*Findings of Facts*" so that the findings are accurate in its Report and Order, namely that the tariff was not "off-the-shelf." Staff further asserts

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<sup>19</sup> Transcript Pgs 14 lines 11-15 and pg 144, lines 14-16 indicate Mr. Spratt contacted the City and the City's instructions to Mr. Larson.

that any final Report and Order should be supported by the evidentiary record of this case.

If, however, the Commission determines the Company, and the rest of its customers, should bear some of the burden of improving Mr. Larson's system, Staff recommends that such a project be conducted in a way that 1) does not place the Company in a position of future liability or responsibility for pipes or appurtenances on the customer's side of the meter, and 2) does not place Staff in a position of making management decisions for the Company.

**WHEREFORE**, Staff respectfully submits these comments and recommends the Commission issue an order that concludes that Mr. Larson is responsible for the leak and making any changes regarding the continued use of the east curve. If, in the alternative, the Commission issues an order directing the Company to make improvements to the system, in the interest of fairness, Staff respectfully recommends the Commission issue an order directing the parties to make improvements as detailed above.

Respectfully submitted,

**/s/ Rachel M. Lewis**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 16<sup>th</sup> day of August, 2012.

**/s/ Rachel M. Lewis**

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