

**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.)

**OFFICE OF THE PUBLIC COUNSEL’S MOTION FOR ORDER DIRECTING
RESPONDENT TO FILE INTERIM TARIFFS AND MOTION FOR EXPEDITED
CONSIDERATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Motion for Order Directing Respondent to File Interim Tariffs, states as follows:

1. “The Commission has power in a proper case to grant interim rate increases....” *State ex rel. Laclede Gas v. Pub. Svc. Comm’n*, 535 S.W.2d 561, 567 (Mo. App. K.C. 1976) (“*Laclede Gas*”). *Laclede Gas* found that such authority should be used sparingly to ameliorate exigent conditions impacting the utility’s ability to provide service to customers. *Id.* As outlined below, because Respondents have admitted to charging customers for utility service without rates approved by the Commission, in order to stop the illegal behavior while also ensuring continuation of service to customers, the Commission should order Respondent to file interim rates on an expedited basis.

2. A “public utility” is defined as “every...water corporation...as [that term is] defined in this section, and...is hereby declared...to be subject to the jurisdiction, control and regulation of the commission....” Mo. Rev. Stat. § 386.020(42) (2000 & Supp.).

3. A “water corporation” is defined as “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.” Mo. Rev. Stat. § 386.020(58) (2000 & Supp.).

4. A “water system” is defined as “all reservoirs, tunnels, shafts, dams dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and person property, owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.”

5. In their Answer, Respondents Ridge Creek Development, LLC, and Mike and Denise Stoner admit to the creation of a “water system” by Ridge Creek Development to serve the Ridge Creek Subdivision. *See* Document Number 8, ¶ 12.

6. The aforementioned respondents further admit that Ridge Creek Development charges customers money for “water service connections.” *Id.*

7. As a result, Respondents admit that Ridge Creek Development, LLC, is a water corporation, in that Ridge Creek Development owns, operates, controls or manages a water system which is distributing, selling or supplying for gain water to customers for public use in the Ridge Creek Subdivision. *See generally Hurricane Deck Holding Co. v. Pub. Svc. Comm’n,*

289 S.W.3d 260, 264-5 (Mo. App. W.D. 2009) (citing *Osage Water Co. v. Miller County Water Auth., Inc.*, 950 S.W.2d 569, 573-5 (Mo. App. S.D. 1997)).

8. Respondents Ridge Creek Development, Mike and Denise Stoner, further admit that their charge “is not approved by the Missouri Public Service Commission.” *See* Doc. No. 8, ¶ 22 and Complaint, Doc. No. 1 ¶ 22.

9. “No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time.” Mo. Rev. Stat. § 393.140(11).

10. Further, a public utility may not charge or collect any rates other than those properly filed with the appropriate regulatory agency. *State ex rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997).

11. “Every 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).

12. On May 5, 2015, Public Counsel filed the above-captioned complaint with the Commission alleging that Respondents have charged and currently charge for water service in violation of Missouri Statute. *See* Doc. No. 1, *passim*.

13. On May 19, 2015, the Commission’s Staff filed its Response wherein Staff States, “Staff agrees that these Respondents are providing water services or water and sewer services without authorization from this Commission and are both billing for those services and collecting payments despite having no Commission-approved tariffs.” *See* Doc. No. 3, ¶ 2.

14. In this unique circumstance, where Respondent owns and operates a water system and receives monetary compensation through “water service connection” charges to distribute water through that system for public use to customers in the Ridge Creek Subdivision, and without any authorization for those charges from the Commission, Public Counsel requests the Commission order the Respondent to file interim tariffs with the Commission. To do so will stop further violations of Missouri law and will curtail the accrual of any refunds, penalties or other damages which may apply to Respondents’ unlawful activity. Public Counsel believes under this set of circumstances, an exigent need exists to get customers of Respondent onto rates which are tariffed as quickly as possible.

15. A tariff need not be particularly complicated in this circumstance. Missouri Public Service Commission Rule, 4 CSR 240-3.010 (28) states:

Tariff means a document published by a public utility, and approved by the commission, that sets forth the services offered by that utility and the rates, terms and conditions for the use of those services.

16. Public Counsel is aware that financial stability is crucial to a utility’s ability to provide safe and adequate service to its customers. However, financial stability cannot be afforded to the utility through acquiescence to continued unlawful behavior. In order to correct the unlawful behavior going forward while protecting the utility’s ability to provide service, it is essential that Respondents submit and have approved lawful rates as quickly as reasonably possible.

17. Public Counsel asks the Commission to issue an order directing Respondents to file interim tariffs for its review and approval on an expedited basis with an order designed to put rates in effect on July 1, 2015, the beginning of the next quarter.

18. Further, Public Counsel respectfully suggests that the process of approving a new tariff will be greatly expedited if Respondent files a tariff which comports with the charges customers

already experience, which Public Counsel believes to be a flat \$33/quarter charge. Such an approach will preserve the status quo from the customer's perspective, foster rate continuity, avoid potential rate shock, and permit the parties to work through in due course the proper level of rates which may be necessary in the future and after an appropriate level of historical information has been accrued regarding this utility's cost of service.

19. Public Counsel requests the Commission consider this motion no later than at its June 2, 2015, agenda meeting so that, if the motion is granted, sufficient time exists for the utility to file an interim tariff on an expedited basis with an effective date on July 1, 2015. To the extent necessary to ensure the matter is fully briefed and ready for a Commission decision on June 2, 2015, Public Counsel seeks expedited treatment of this motion. Substantial harm will be avoided by expeditious action and this motion is presented as soon as it could have been after Respondents' Answer was filed. *See* 4 CSR 240-2.080(14).

WHEREFORE, Public Counsel submits its Motion for Order Directing Respondents to File Interim Tariffs and Motion for Expedited Treatment.

Respectfully submitted,

THE OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 22nd day of May, 2015:

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