

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day
of August, 2006.

| | | |
|-------------------------------|---|-------------------------------------|
| Erik M. Thomas, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. WC-2006-0423</u> |
| |) | |
| Evergreen Lake Water Company, |) | |
| |) | |
| Respondent. |) | |

**ORDER GRANTING RELIEF AND
DENYING MOTION TO SET ASIDE DEFAULT**

Issue Date: August 31, 2006

Effective Date: September 10, 2006

On May 2, 2006, Erik M. Thomas filed a complaint seeking adjustments from Evergreen Lake Water Company to the bill for installation of five water tap-ons at Lots 1 & 2, Lots 3 & 4, Lot 5, and Lot 6 of Block P, Plat 3 of Evergreen Lakes Subdivision and Lots 18 & 19 of Block K, Plat 3 of Evergreen Lakes Subdivision. The Commission issued its Notice of Complaint on May 2, 2006. Evergreen Lake failed to respond to Mr. Thomas' complaint.

On June 13, 2006, the Commission issued an Order Granting Default in favor of Mr. Thomas, as provided for under 4 CSR 240-2.070 (9). In its Order Granting Default the Commission advised Evergreen Lake that under Commission Rule 4 CSR 240-2.070 (9):

If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the

issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause.

The order advised Evergreen Lake that, if it did not petition the Commission within seven days to set aside the default, the Commission would find as facts the allegations in the Complaint and could grant Mr. Thomas the relief requested in the Complaint. Evergreen Lake did not petition the Commission to set aside the default. Based upon Evergreen Lake's failure to respond to the complaint and failure to petition the Commission to set aside the default, the Commission found that the allegations made by Mr. Thomas in his Complaint were deemed admitted by Evergreen Lake.

On July 24, 2006, the Commission's Staff filed a Motion to Set Aside Default Order and Request for Staff Investigation. In support of its motion, the Staff contended that ordering the Respondent to charge Mr. Thomas \$75 per "tap on" would violate Respondent's tariff and be contrary to the "Filed Tariff Doctrine."

Having reviewed all the verified pleadings filed in this case, which are hereby admitted into evidence, the Commission finds that the "Filed Tariff Doctrine" does not prevent the Commission from granting the Complainant the relief he requested in this case. Evergreen Lake's tariff governing tap-ons provides:

Rule 4 APPLICATIONS FOR SERVICE

- (b) The applicant for original introduction of water service into premises will be required to pay the tap-on fee for the connection. The tap-on fee will be deposited in full at the water company's office before the tap on and connection will be made. ...

This provision makes plain that the customer's obligation is fulfilled upon completion of the application and payment of the prescribed tap-on fee and the service is effectively sold. At the time of Complainant's application that fee, by tariff, was \$75.

The Company waived the tariff provision requiring pre-payment of the tap-on fee, and also apparently waived its tariff provision prohibiting installation of tap-ons on vacant lots. Waiving the tariff provision requiring pre-payment of the \$75 tap-on fee does not change the fact that the services were effectively sold when the service was requested and the fee should have been required. Both the United States Supreme Court and the Western District Court of Appeals have held that utilities may not impose a rate increase for items already sold.¹ Specifically, these courts have held, the filed tariff doctrine ... "explicitly prohibits an entity from 'imposing a rate increase for gas already sold.'" (*Id.*)

The Commission further finds that two of the five tap-ons were not installed in the correct locations. The Commission finds that Evergreen Lake must reinstall the two improperly placed tap-ons in the appropriate locations.

This case resulted, at least in part, from the failure of the Company to conform its practices to the provisions of its tariff. Mr. Thomas should only be required to pay the appropriate rate of \$75 per tap-on.

¹ *Arkansas Louisiana Gas Co. v. Hall et al.*, 453 U.S. 571, at p. 578 (U.S. 1981). *State of Missouri ex rel. Associated Natural Gas Company v. Public Service Commission of the State of Missouri*, 954 S.W.2d 520, at p. 530 (Mo. App. WD 1997).

IT IS ORDERED THAT:

1. The Staff's motion to set aside the default order issued in this case is denied.
2. Evergreen Lake Water Company will adjust Mr. Erik M. Thomas' bill for installation of the five (5) water tap-ons at Lots 1 & 2, Lots 3 & 4, Lot 5, and Lot 6 of Block P, Plat 3 of Evergreen Lakes Subdivision and Lots 18 & 19 of Block K, Plat 3 of Evergreen Lakes Subdivision to \$75.00 per tap-on.
3. Evergreen Lake Water Supply will relocate the two tap-ons installed in the wrong locations to the locations originally requested by Mr. Erik M. Thomas.
4. This order shall become effective on September 10, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton,
and Appling, CC., concur.
Murray, C., absent.

Voss, Regulatory Law Judge