

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

In the Matter of the Joint Application of)
Missouri-American Water Company and)
Aqua Missouri, Inc., Aqua Development, Inc. and)
Aqua /RU, Inc. d/b/a Aqua Missouri, Inc. for) **File No. WO-2011-0168**
Authority for Missouri-American Water Company)
to Acquire Certain Assets of Aqua Missouri, Inc.,) **File No. SO-2011-0169**
Aqua Development, Inc. and Aqua /RU, Inc. d/b/a)
Aqua Missouri, Inc. and, in connection therewith,)
Certain Other Related Transactions)

ORDER WAIVING NOTICE OF INTENT

Issue Date: January 4, 2011

Effective Date: January 4, 2011

The Missouri Public Service Commission waiving is any notice of intent requirement because the applicants have shown good cause. The applicants filed a contingent request for waiver (“motion”) as part of the application.¹ No party has filed a response within the time provided by regulation.²

In the motion, the applicants seek a waiver of the pre-application notice requirement under 4 CSR 240-4.020(2) (“regulation”):

Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission.

(A) Any case filed which is not in compliance with this section shall not be permitted and the secretary of the commission shall reject any such filing.

¹ On December 13, 2010.

² 4 CSR 240-2.080(15).

(B) A party may request a waiver of this section for good cause.

Good cause means a good faith request for reasonable relief.³

In support of the motion, the applicants argue that the regulation does not apply because the application is not “likely to be a contested case.” The application seeks an order authorizing one applicant to purchase the other’s system under Section 393.190.1, RSMo 2000. Under that standard, the Commission grants the application if it is not detrimental to the public.⁴ In such actions, the Commission’s experience shows that contested cases are rare. For that reason, the applicants made the motion contingent on whether notice of intent is required.

But the Commission need make no blanket statement as to whether all applications under Section 393.190.1, RSMo 2000, are subject to the regulation. That is because, for this application, the applicants have established that a waiver is reasonable. In the application, the applicants allege:

Sixty days prior to the filing, the parties did not have an agreement. In fact, this Joint Application has been filed the next business day following the execution of the Agreement. It would serve no purpose to wait sixty days before filing the application for Commission approval. [⁵]

That allegation has evidentiary support in the affidavits accompanying the application. No party has disputed the applicants’ allegations of good cause, contested the grant of a waiver, or sought relief based on the regulation.

³ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. W.D. 1996).

⁴ *State ex rel. City of St. Louis v. Public Service Comm’n of Missouri*, 73 S.W.2d 393, 400 (Mo.1934).

⁵ Application, page 6, paragraph 14.

Therefore, the applicants have shown good cause for a waiver, and the Commission will grant any necessary waiver.

THE COMMISSION ORDERS THAT:

1. The contingent request for waiver is granted.
2. Any necessary waiver under 4 CSR 240-4.020(2) is granted.
3. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Daniel Jordan, Regulatory Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 4th day of January 2011.