

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Hickory Hills Water & Sewer Co.'s)	<u>Case No. WR-2006-0250</u>
Request for a Small Company Rate Increase)	Tariff Nos. YW-2006-0449 and YS-2006-0448

ORDER CONCERNING OFFICE OF THE PUBLIC COUNSEL'S
MOTION FOR RECONSIDERATION AND FOR EXPEDITED
TREATMENT

Issue Date: April 14, 2006

Effective Date: April 14, 2006

On April 7, 2006, the Commission denied Staff's motion to allow it to file surrebuttal testimony. The Commission left open the possibility of allowing live surrebuttal testimony at the hearing. On April 10, the Staff filed its Statement of Position, List of Witnesses, and Order of Witnesses, and included a paragraph designating three potential surrebuttal witnesses at the hearing. On April 10, Hickory Hills also filed a List of Witnesses listing eight potential witnesses for the hearing. On April 12, the Office of Public Counsel filed a Motion for Reconsideration and Motion for Expedited Treatment, asking the Commission to reconsider the possibility of allowing live surrebuttal witnesses. The Staff filed a response to that motion reaffirming the possibility of calling three surrebuttal witnesses, but advising that it could not make its determination of whether or who would testify until after the Staff has completed its cross-examination of Public Counsel's witnesses.

The Commission adopted the procedural schedule proposed by the parties in order to provide some certainty to the way this case would be heard. The procedural schedule required that all testimony be prefiled as provided by Commission rule and provided for

only direct and rebuttal testimony. Should the Commission leave open the possibility of live surrebuttal testimony, the Staff and Hickory Hills may well seek to call the three witnesses proposed by Staff and some of the witnesses on Hickory Hills' List of Witnesses. This would place Public Counsel in a more severe position than had the Commission allowed the Staff to prefile surrebuttal testimony. Additionally, the Staff advises that it cannot determine whether it will present live surrebuttal testimony until it cross-examines Public Counsel's witness. Though this may be the common strategic practice in courts of law, such a practice is not usual in Commission hearings. Surrebuttal testimony is generally prefiled without the benefit of having cross-examined rebuttal witnesses at a hearing.

Apparently the Staff and Public Counsel failed to reach a meeting of the minds by proposing only direct and rebuttal testimony. Staff claims it assumed that Public Counsel would file direct testimony that it could rebut. Public Counsel claims that it always intended to file rebuttal. Fortunately for all, the issues in this case are limited and appear to be sufficiently definite to be determined by the Commission.

The Commission did not intend to grant any party an unfair advantage by ruling as it did regarding the possibility of live surrebuttal testimony. But its ruling may have done so. To allow the Staff, or Hickory Hills, to present even one live surrebuttal witness begs the Commission to allow two, or three, or more. This would definitely place Public Counsel at a disadvantage not intended by the Commission.

The Commission will reaffirm its ruling in the Order Adopting Procedural Schedule which required that all testimony be prefiled. Further, the Commission will grant Public Counsel's Motion for Reconsideration and Motion for Expedited Treatment and will not allow any party to present live surrebuttal testimony.

IT IS ORDERED THAT:

1. The Motion for Reconsideration and Motion for Expedited Treatment filed by the Office of the Public Counsel on April 12, 2006, is granted.
2. No party will be allowed to present surrebuttal testimony at the hearing.
3. This order shall become effective on April 14, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Steven C. Reed, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 14th day of April, 2006.