

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

The Staff of the Missouri Public Service  
Commission, )  
 )  
 )  
Complainant, )  
 )  
v. )  
 )  
Missouri Utilities Company, )  
 )  
Respondent. )

Case No. WC-2005-\_\_\_\_\_

**COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and initiates its complaint pursuant to Section 386.390, RSMo (2000) and 4 CSR 240-2.070, against Missouri Utilities Company (the “Company”) for violation of the Commission’s statutes and rules relating to annual assessment payments and annual report submissions. In support of its complaint, Staff respectfully states as follows:

**GENERAL ALLEGATIONS**

1. The Commission granted Missouri Utilities Company a certificate of convenience to provide water and sewer services in Case No. WA-92-291 on November 24, 1992.

2. The company is a “water corporation,” a “sewer corporation” and “public utility” as defined in Section 386.020, RSMo (2000) and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250, RSMo (2000).

3. The Company has provided the following contact information to the Commission:

Missouri Utilities Company  
328 S. Frontage Road  
Osage Beach, MO 65065

The Company is a Missouri corporation and the Missouri Secretary of State website indicates that the company is in good standing.

4. Section 386.390.1, RSMo (2000) authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision” of the Commission.

5. Commission Rule 4 CSR 240-2.070(1) provides that the Commission’s Staff, through the General Counsel, may file a complaint.

6. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the Division cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)). See also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo.banc 1940). If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to file its annual report and/or pay its annual assessment, the Commission may then authorize its General Counsel to bring a penalty action in the circuit court as provided in Section 386.600, RSMo (2000).

#### **COUNT ONE**

7. Section 386.370, RSMo (2000) authorizes the Commission to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. This statute provides that the public utility shall pay the amount

assessed by July 15 or may at its election pay the assessment in four equal installments not later than July 15, October 15, January 15 and April 15.

8. Pursuant to Section 386.370, RSMo (2000) the Commission promulgated its *Assessment Order for Fiscal Year 2005* in Case No. AO-2004-0610, “In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2004.”

9. As called for by the *Assessment Order* in Case No. AO-2004-0610, the Budget and Fiscal Services Department calculated the amount of the 2005 Fiscal Year annual assessment for the Company and the Commission’s Director of Administration rendered the statement of its assessment on behalf of the Commission by letter on June 25, 2004. This letter was not returned by the U.S. Post Office.

10. Also in the *Assessment Order*, the Commission directed “[t]hat each public utility shall pay its assessment as set forth herein.”

11. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2004; October 15, 2004; January 15, 2005 and April 15, 2005. As of this date no quarterly installments have been made; thus, the Company is delinquent on its 2005 annual assessment.

12. On June 20, 2005, the Commission’s General Counsel sent the Company, a letter reminding them that the Company failed to pay its unpaid assessment and warning them that such failure to file will subject the Company to legal action under state law. Such letter was not returned. See Exhibit A.

13. The Company, as of the date of this pleading, has not paid its Fiscal Year 2005 assessment and therefore has not complied with the Commission's *Assessment Order*. See Affidavit of Helen Davis, attached to this Complaint as Exhibit B.

14. Any public utility that fails, omits, or neglects to obey an order of the Commission "is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars" for each offense, if there is no penalty otherwise provided. Section 386.570.1, RSMo (2000). The statute further states that "in the case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense." Section 386.570.2, RSMo (2000). No penalty for failing to pay annual assessments is otherwise provided in Chapter 386 or elsewhere in the Commission's statutes.

15. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release information regarding the amount of the overdue assessment. As the assessment is derived from statements of revenue provided by regulated utilities and thus subject to the provisions of Section 386.480, RSMo (2000), wherein it states in part "No information furnished to the Commission by a ... public utility ... shall be open to public inspection or made public except on order of the Commission ...." Staff is concerned that in the absence of a Commission order directing its release, the revelation of the assessment amounts in circuit court or elsewhere may be improper.

## **COUNT TWO**

16. Section 393.140 (6), RSMo (2000) states that it is the "duty of each person or corporation [under the Commission's supervision] to file with the Commission an annual report."

17. Commission Rule 4 CSR 240-3.640 requires all water companies and Commission Rule 4 CSR 240-3.335 requires all sewer companies to file their annual reports on or before April 15 of each year.

18. On January 15, 2005, the Executive Director of the Commission, in compliance with Section 392.210.1, RSMo (2000) sent all regulated utilities, including Missouri Utilities Company, a letter notifying them of the requirement to file, on or before April 15, 2005, an annual report covering the calendar year 2004, together with the appropriate form for the Company to complete and return to the Commission, and instructions on how the Company may complete its filing electronically. The letter that was sent to the Company was not returned.

19. The Company never returned a completed form, nor did it file its annual report electronically; and as of the date of this pleading, has not filed its 2004 Annual Report. See Affidavit of Janis Fischer, attached to this Complaint as Exhibit C.

20. Section 393.140 (6), RSMo (2000) provides that “Any such person or corporation...which shall neglect to make any such report...within the time prescribed by the Commission shall be liable to a penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file...to be sued for in the name of the state of Missouri.”

21. The Commission’s Rule at 4 CSR 240-2.070(5)(E), requires “a statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made.” In addition to the letter and accompanying form the Executive Director sent in January 2005, the Commission’s General Counsel sent Missouri Utilities Company a letter on May 2, 2005, reminding them that the Company failed to file an annual report by the April 15<sup>th</sup> deadline and warning them that such failure to file will subject the

Company to legal action under state law that allows a penalty of one hundred dollars for each day that it is late in filing. See Exhibit D.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Staff now requests that the Commission (1) open a complaint case pursuant to Section 386.390; and, after hearing, find that Missouri Utilities Company failed, omitted, or neglected to file its 2004 Annual Report and pay its Fiscal Year 2005 annual assessment to the Commission as required by Missouri statute and Commission orders; (2) authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, RSMo (2000) based on the statutory penalties set forth in Sections 392.210.1 (for failing to file annual reports) and 386.570 and 386.590 (for failing to pay assessments); and (3) order that information about the amount of the overdue assessment may be publicly released.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Mary E. Weston**

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Mary E. Weston  
Assistant General Counsel  
Missouri Bar No. 54669

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-6726 (Telephone)  
(573) 751-9285 (Fax)  
mary.weston@psc.mo.gov

## **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 22<sup>nd</sup> day of July 2005.

**/s/ Mary E. Weston**

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Lewis Mills, Esq.  
Office of the Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102

Mr. William Mitchell  
Missouri Utilities Company  
328 S. Frontage Road  
Osage Beach, Mo 65065



**Commissioners**

**JEFF DAVIS**  
Chairman

**CONNIE MURRAY**

**STEVE GAW**

**ROBERT M. CLAYTON III**

**LINWARD "LIN" APPLING**

***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**WESS A. HENDERSON**  
Executive Director

**ROBERT SCHALLENBERG**  
Director, Utility Services

**COLLEEN M. DALE**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

June 20, 2005

William Mitchell  
Missouri Utilities Company  
328 S. Frontage Rd.  
Osage Beach, MO 65065

RE: Annual Assessment

Dear Mr. Mitchell:

The Missouri Public Service Commission is authorized by Section 386.370 RSMo 2004 to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. The Commission staff calculates the annual assessment using the method required by statute at Section 386.370.2. RSMo 2004.

In June 2004, the Commission issued an order determining the amount of assessment owed by each utility. On June 25, 2004 the Commission notified you of the amount of your assessment for the fiscal year beginning July 1, 2004. Payment of that amount was due on July 15, 2004, with an option for four quarterly payments due July 15<sup>th</sup>, October 15<sup>th</sup>, January 15<sup>th</sup> and April 15<sup>th</sup>. To date, you have an unpaid annual assessment of \$928.41.

In accord with the authority granted to the Commission to make annual assessments to public utilities, the Commission hereby demands immediate payment of your annual assessment. Section 386.570 RSMo 2003 provides for penalties of \$100 to \$2,000 per day for failure to comply with any Commission order or demand. In addition, in serious cases of failure to comply with assessment obligations, the Commission may suspend or revoke your certificate to operate in this state.

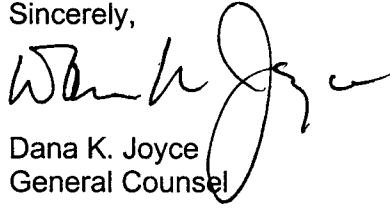
**PLEASE NOTE:** If you do not, within thirty (30) days of the date of this letter, forward your check made payable to the Director of Revenue, State of Missouri to the Missouri Public

**Exhibit A**



Service Commission, Attn: Budget & Fiscal Services, P.O. Box 360, Jefferson City, MO 65102, my office will, without further notice, initiate appropriate legal actions as cited above. If you have questions concerning your balance or payment arrangements, contact Helen Davis, Budget & Fiscal Services Department, at 573-751-4274.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dana K. Joyce', with a large, stylized loop at the end.

Dana K. Joyce  
General Counsel

DKJ:hd

c: Wess A. Henderson  
Helen Davis

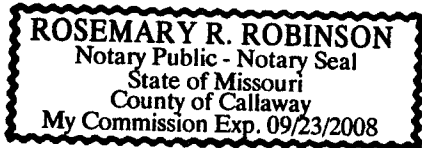
## AFFIDAVIT

STATE OF MISSOURI     )  
                                      )  
COUNTY OF COLE        )

I, Helen Davis, Accountant II, of the Commission's Budget and Fiscal Services Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the Fiscal Year 2005 Assessments from Missouri Utilities Company

Helen Davis  
Helen Davis

Subscribed and sworn to before me this 22<sup>nd</sup> day of July, 2005.



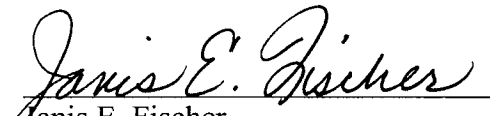
Rosemary R. Robinson  
Notary Public

**Exhibit B**

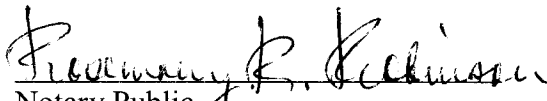
## AFFIDAVIT

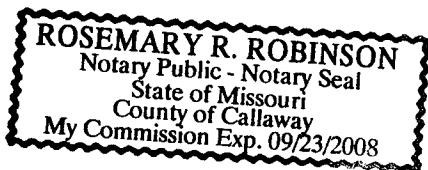
STATE OF MISSOURI    )  
                                  )  
COUNTY OF COLE     )

I, Janis E. Fischer, Utility Regulatory Auditor IV, of the Commission's Auditing Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the 2004 Annual Reports from Missouri Utilities Company.

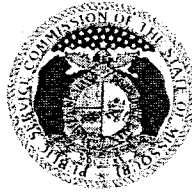
  
Janis E. Fischer

Subscribed and sworn to before me this 22<sup>nd</sup> day of July, 2005.

  
Notary Public



**Exhibit C**



**Commissioners**

**JEFF DAVIS**  
Chairman

**CONNIE MURRAY**

**STEVE GAW**

**ROBERT M. CLAYTON III**

**LINWARD "LIN" APPLING**

***Missouri Public Service Commission***

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**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

May 2, 2005

William Mitchell  
Missouri Utilities Company - Sewer/Water  
328 S. Frontage Road  
Osage Beach, MO 65065

Dear Mr. Mitchell:

Pursuant to Section 392.210, RSMo Section 393.140, RSMo and the rules at 4 CSR 240-3.165 (Electric Utilities), 4 CSR 240-3.245 (Gas Utilities), 4 CSR 240-3.335 (Sewer Utilities), 4 CSR 240-3.435 (Steam Heating Utilities), and 4 CSR 240-3.640 (Water Utilities), public utilities are required to submit an annual report to the Missouri Public Service Commission on or before April 15th.

**This letter is a notification and warning that the Missouri Public Service Commission has not received from your company its required 2004 Annual Report as of the date of this letter.**

If your company does not immediately file its report, it will be subject to legal action under state law for failure to submit an annual report on time. A utility that does not timely file its annual report is subject to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day that it is late in filing its annual report.

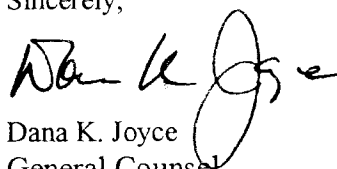
Questions about the annual report form or its content may be submitted to:

Janis Fischer (573) 751-4257 or by email at [Janis.Fischer@psc.mo.gov](mailto:Janis.Fischer@psc.mo.gov).

The completed document should be submitted under EFIS (accessible from the Commission's Web page <http://www.psc.state.mo.us/>) or mailed to:

Manager of the Data Center  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, MO 65102-0360

Sincerely,

  
Dana K. Joyce  
General Counsel

**Exhibit D**