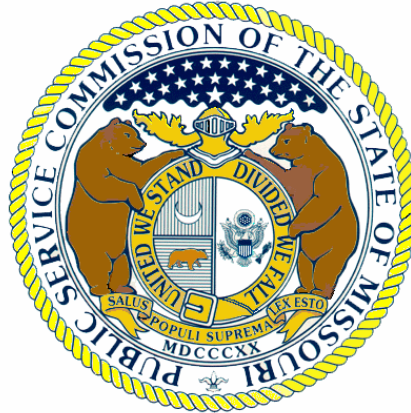


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



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

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**Case No. WC-2006-0029**

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**REPORT AND ORDER**

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**Issue Date: April 13, 2006**

**Effective Date: April 23, 2006**

This order directs the Commission's Staff to file a petition in circuit court seeking the appointment of a receiver to take charge of the water and sewer system of Missouri Utilities Company. The order also appoints an interim receiver to immediately take charge of that system while Staff's action is pending in the circuit court.

## **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

### **Procedural History**

On July 21, 2005, the Staff of the Commission filed a complaint against Missouri Utilities Company. Staff's complaint alleged that Missouri Utilities is unable or unwilling to provide safe and adequate service to its water and sewer customers. Staff requests authority to pursue an action in circuit court to have a receiver appointed to take charge of Missouri Utilities. Staff further alleged that because of the company's failures, Missouri Utilities' customers are in imminent danger of losing their water and sewer service. As a result, Staff requested that the Commission appoint an interim receiver to immediately take charge of Missouri Utilities while the action to appoint a receiver is pending in circuit court. Staff also asked that the Commission consider its complaint in an expedited manner.

On July 22, the Commission issued a Notice of Complaint and Order Directing Response and Scheduling Evidentiary Hearing, which was served on Missouri Utilities by certified mail on July 25. The Commission ordered Missouri Utilities to file an answer to Staff's complaint no later than August 5. The Commission also scheduled an evidentiary hearing to take place on August 15.

Missouri Utilities did not file an answer. A hearing was convened on August 15. Missouri Utilities did not appear for the hearing. Staff presented testimony in support of its complaint.

### **The Service Provided by Missouri Utilities**

Staff presented testimony by Dale Johansen, Manager of the Commission's Water and Sewer Department. Johansen established that Missouri Utilities is a public utility providing water and sewer service to a subdivision, located near Sedalia in Pettis County, Missouri. The company provides sewer service to approximately 135 customers and water service to approximately 160 customers. Missouri Utilities has owned this water and sewer system since 1993. William P. (Pat) Mitchell is the owner of Missouri Utilities, and he is the President, Secretary and only Director of that company.<sup>1</sup> In addition, Mitchell is the only employee of Missouri Utilities.

Missouri Utilities has had problems in delivering service to its customers at least since July 2003. At that time, Mitchell sent a letter to the company's customers complaining that the company was facing major costs to maintain operation of the water and sewer systems and that the company did not have the money needed to make those repairs. Mitchell also indicated that he would not be willing to personally guarantee any loans made to the company. Mitchell suggested at that time that the customers should purchase the water and sewer system and operate it as a co-op style company.<sup>2</sup>

Missouri Utilities continued to operate the water and sewer system, but on April 1, 2005, Mitchell sent another letter to his customers, again complaining that the company did not have enough money to make needed repairs to the water well. The letter states "the well could quit any day," and warns, in large bold letters, **"YOU MAY NOT HAVE ANY WATER SOON IF YOU DO NOT DO SOMETHING!"** Mitchell again urges his customers to

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<sup>1</sup> Exhibit 2.

<sup>2</sup> Exhibit 3.

take over and operate the system, and indicates that he will give the system to the customers if they will operate it.<sup>3</sup>

After he became aware of the April 1 letter, Dale Johansen, on behalf of the Commission's Staff, contacted Mitchell and told him that he would be required to live up to his responsibilities as the owner and president of Missouri Utilities. At that time, Mitchell told Johansen that he wanted to get out of the utility business.

On July 15, 2005, the water pump serving Missouri Utilities' customers did indeed fail. Mitchell and Missouri Utilities took no action to deal with the failure of the pump. After several days without water, the customers pooled their resources and purchased a new pump for the water well at a cost of \$9,648.<sup>4</sup> No arrangements have been made to reimburse the customers for this expenditure, although they hope to recoup their costs if the system is sold.

The water and sewer system continued to operate thanks to the actions of the customers. One customer in particular, Bob Gautreaux, attempted to maintain the new water pump, but he did not have the expertise required to properly operate and maintain the entire water and sewer system. To the best of Staff's knowledge, neither Mitchell, nor anyone else, is currently collecting the environmental samples required by the Department of Natural Resources.

Staff's complaint asked the Commission to appoint an interim receiver to take charge of the water and sewer system while Staff sought the appointment of a receiver in circuit court. Johansen testified that Staff had not yet found a qualified receiver willing to serve in that position. After months of searching, Staff filed a pleading on April 7, 2006, indicating

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<sup>3</sup> Exhibit 4.

<sup>4</sup> Exhibit 5.

that it had finally identified a person qualified and willing to serve as interim receiver. Staff recommends that Robert K. Meyer of Sedalia, Missouri, be appointed as interim receiver. Staff indicates that Meyer is a responsible person knowledgeable in the operation of utilities and therefore meets the statutory requirements for an interim receiver.

### **CONCLUSIONS OF LAW**

The Missouri Public Service Commission has reached the following conclusions of law.

Missouri Utilities is a public utility as defined by Section 386.020(42), RSMo 2000. Furthermore, Missouri Utilities is a sewer corporation and a water corporation, as those terms are defined in Subsections 386.020(48) and (58), RSMo 2000. As such, Missouri Utilities is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Subsection 393.145.1, RSMo Supp. 2005, provides as follows:

If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service, has been actually or effectively abandoned by its owners, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. The venue in such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.

Furthermore, Subsection 393.145.2, RSMo Supp. 2005, provides as follows:

If the Commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the same order appoint an interim receiver for the sewer or water corporation. The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section, except that the commission cannot authorize the interim receiver to transfer by sale or liquidate the assets of the

utility. The interim receiver shall be compensated in an amount to be determined by the commission. The interim receiver shall serve until a judgment on a petition for writ of review of the commission's order, if any, is final and unappealable, and until the circuit court thereafter determines under subsection 5 of this section whether to grant the commission's petition for appointment of receiver.

In addition, Subsection 393.145.3, RSMo Supp. 2005, provides as follows:

When the commission files its petition for appointment of receiver in the circuit court, it shall attach to its petition an official copy of its determination under subsection 1 of this section. The commission shall not file such action until its determination under subsection 1 of this section is final and unappealable.

Subsection 393.145.7, RSMo Supp. 2005, provides as follows:

Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. However, if the commission or other interested party petitions and the court determines, after hearing, that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provided by law.

Subsection 393.145.5, RSMo Supp. 2005, requires that a receiver appointed under that section be "a responsible person, partnership, or corporation knowledgeable in the operation of utilities."

## **DECISION**

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions. The evidence presented by Staff clearly demonstrated that Mitchell and Missouri Utilities have effectively abandoned that company's water and sewer systems. The customers of this public utility had to raise the money needed to make vital repairs to the company's water system to restore their service when the company and its owner refused to make those repairs. That is a situation that should never have happened, and must not be allowed to happen again. As a result, there

is a clear and immediate need for the appointment of a receiver to take charge of this company to ensure that its customers are able to receive safe and adequate water and sewer service.

There is also a need for the appointment of an interim receiver to take immediate control of the operation of this water and sewer system. The person identified and recommended by Staff to serve as interim receiver is a responsible person knowledgeable in the operation of utilities, and will be appointed as interim receiver.

It is also clear that the best interests of the customers dictate that control of the water and sewer system should not be returned to Mitchell and Missouri Utilities. Therefore, Staff will be authorized to seek a finding from the circuit court that control and responsibility of Missouri Utilities should not be returned to its current owner. Instead, Staff will be directed to seek an order from the circuit court directing the receiver to proceed to transfer by sale or liquidate the assets of the company.

**IT IS ORDERED THAT:**

1. The General Counsel of the Commission is directed to petition the Circuit Court of Cole County for an order attaching the assets of Missouri Utilities Company, and placing that company under the control and responsibility of a receiver.

2. The General Counsel of the Commission is directed to seek a finding from the Circuit Court of Cole County that control and responsibility for Missouri Utilities Company should not, in the best interest of the company's customers, be returned to the owners of the company and that the receiver should be directed to transfer by sale or liquidate the assets of the company in the manner provided by law.



3. Robert K. Meyer is appointed as interim receiver for Missouri Utilities Company.
4. This report and order shall become effective on April 23, 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 )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,  
concur and certify compliance with the provisions  
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 13th day of April, 2006.