

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

ERIC C. LARSON)	
Complainant,)	
vs.)	Case No. <u>WC-2011-0409</u>
WOODLAND MANOR WATER, LLC,)	
Respondent.)	

POST-HEARING BRIEF

COMES NOW Respondent Woodland Manor, and files the following Post-hearing Brief and argument:

On May 24, 2012, all parties to the above proceeding filed stipulated facts. On May 30, 2012, an evidenciary hearing was held in Blue Eye, Missouri, at which time all parties presented evidence and the ALJ granted time for the parties so file post-trial briefs. The Respondent submits that taking into account all pleadings, admissions, tariffs, and stipulated facts and evidence which are presently of record, the Petitioner has failed to meet his burden of proof of a violation of tariffs and liability for repairs on the part of Respondent water company.

FACTS IN EVIDENCE

In approximately 1958, a small resort consisting of cabins and associated buildings, and currently known as Kimberling Oaks Resort, was built on the North side of East/West-running Holiday Drive in what is now Kimberling City, Missouri. A CTS "black plastic pipe" was laid generally along the North side of Holiday Drive, but partly within the lane, which provided water service to the resort, along with other customers in the area. With respect to

the resort, the CTS pipe tied into two valve boxes just inside the resort property line, a Westerly and Easterly valve box, from which service lines fed the cabins and other improvements on the resort. In 1991 a new main line was installed running parallel to and on the South side of Holiday Drive, which had three service lines running under Holiday drive serving the resort, and in 1992 the tariffs under which all parties hereto are operating were adopted and placed into effect.

In the late 1990's Petitioners purchased Kimberling Oaks Resort, and in 1999 Respondent Woodland Manor, LLC purchased the water company from the previous owner. The PSC had been encouraging the water company to move away from flat rate and to install meters for all customers, so Woodland Manor accelerated this process, and in 2000 (also in response to a new building constructed by Mr. Larson and request for service) Woodland Manor brought a service line from the main, across Holiday Drive, and to the edge of Petitioner's property at the new cabin and near the Westerly valve box. Because it was anticipated Mr. Larson would be tying that valve box and the Westerly cabins into that meter, a 2" meter was placed; however, Mr. Larson to date has not connected the Westerly valve box to the Westerly meter. While installing the company's service line to the meter, the company crossed the old CTS line. As it still was connected to other customers further West, and was apparently tied in to the resort lines to the East, the CTS line was cut and capped in both directions to isolate those respective lines. Although irrelevant, a few weeks later a City sewer excavation crossed this CTS line again further West of the Larson property and West

of this cap, and so the CTS line was again cut and capped in both directions, leaving a completely abandoned section between the recently completed cap and the subsequent cut and cap further West.

In 2001 Mr. Larson requested another connection further East, and the water company was desiring to complete its work to meter all customers. The preferred method was one meter per customer, but in order to shorten the length of service line Mr. Larson would have to dig, Woodland Manor agreed to utilize a service line running under Holiday Drive further to the East near the old Easterly valve box. In order to ease the connection by the new customer service line being dug from the East, it was decided to place the Easterly meter box near the road to leave an approximately 12 foot piece of customer service line running on North to the old valve box, so the new service line could T into it without a complicated series of 90° elbows to hit the valve box (Transcript pp. 111, 157). The old CTS line still ran from the Easterly valve box to the Westerly valve box. The 1991-installed third service line was cut and capped, so that Petitioner's water service was now connected to the main solely through the two meters (Stip. Fact ¶7, Transcript pp. 82-83, 109), completing Woodland Manor's abandonment of the CTS line.

In June 2011 a leak developed in the old CTS line approximately half-way between the valve boxes at a point where it ran under Holiday Drive. When the Easterly meter was shut off, the leak visibly slowed or stopped, so Woodland Manor advised Mr. Larson since the leak was on his side of the meter, it was his customer service line and his responsibility to repair.

Mr. Larson shut off the water supply at the Easterly valve box, and hand excavated to the break and repaired it at his expense (Complaint p.2, Stip. Fact ¶8). Mr. Larson filed an informal complaint, asking that Woodland Manor be required to reimburse him for the repairs. David Spratt, acting as investigator for the Commission, investigated the matter and concluded that the leak occurred on the customer side of the meter, and that according to the applicable tariffs this would be the customer's responsibility (Trans. p.139). Mr. Larson filed the instant appeal. The issue before the Commission is whether Woodland Manor is liable for these repairs, and if so, for exactly what portions of the service lines on the customer side of the meter(s) Woodland Manor is liable (Stip.Facts ¶9).

ARGUMENT

Appellant has the burden of proving that, under the applicable tariffs, regulations, and laws, Woodland Manor is responsible for the costs of repair incurred by Mr. Larson. Mr. Larson has submitted no admissible evidence of the reasonableness or cost of repairs. An unsworn page titled "Invoice #0611" accompanied the copy of Mr. Larson's Petition provided Respondent, but it was not marked as an exhibit nor in any way referenced by or incorporated into the Petition. At hearing, the "Invoice" was never mentioned or offered as an exhibit, nor for that matter was any reference made to any costs being incurred in the repair, nor any testimonial or other evidence as to any costs incurred or the reasonableness of any such costs. There was no evidence presented to cross-examine or impeach. Accordingly as a matter of law Petitioner has failed to meet his burden of proving any costs were in fact

incurred, or what they might have been, and the Commission is left with nothing upon which to rule in favor of Petitioner.

Should the Commission desire to proceed to review the broader question of whether any of the service lines on the customer's side of the water meter(s) should be the responsibility of Woodland Manor, Respondent respectfully submits that, again, Petitioner has failed to meet his burden of proof that Woodland Manor should be responsible for any portion of the service lines on the customer's side of the meters, and further, on the merits the customer is responsible for all lines on his side of the meters.

As noted, the tariffs were in effect at the time Mr. Larson purchased the subject property, so he is deemed to have knowledge of them and is bound by them. He was owner when the first, Westerly meter box was placed, and knew that he chose to defer making a connection from the Westerly valve box to the Westerly meter box at that time (and has to date). He was also present at the time of the setting of the second, Easterly meter box and was told at that time the valve box was his responsibility (Trans. p.60). In fact, neither his pleadings nor any evidence presented at hearing offer any legal grounds upon which to base a finding that any service lines on his side of the meter are owned by Woodland Manor; in fact when asked directly whether he had any such legal theory, or believed any particular tariff, regulation, or rule had been violated, Petitioner admitted he had none and did not believe any tariff had been violated (Trans. p.68). He further stated that had the CTS line ran close to his buildings it would have clearly been his (Trans. p.88).

Mrs. Fennema, manager for Woodland Manor, was clear throughout that one of the primary purposes of setting meters was to provide a known and consistent point at which a service line became a customer's responsibility, and Mr. Spratt, for the Commission, testified unequivocally that after two investigations, including studying the tariffs and his expertise and several years' experience in dealing with similar situations, he concluded that any line used as a service line by the customer, on the customer's side of the meter (once placed), was the customer's responsibility (Trans. p.139). He noted that the water, once past the meter, belonged to the customer, so the lines would as well.

Mr. Larson raised certain issues with the placement of the Easterly meter box (a decade after its placement). The implication seemed to be that he thought had the Easterly meter been placed at or in the Easterly valve box, he would have understood better that the lines from that point on were his, and that one might suspect the water company had placed the meter box 12 feet from the valve box to force him to be responsible for more service line on his side of the meter. However, this point is without merit. As noted above, the placement was for his benefit in lessening the cost of connecting to the meter, as testified to by both Mrs. Fennema and Mr. Spratt. Furthermore, the only difference in increased responsibility would be that 12 foot line from the meter to the valve box (which has never leaked). The CTS line which developed a leak was not only on the customer's side of the meter, but on the customer's side of his valve box (Cp. Ex.1; *customer shut off water at the valve box to repair line*, Complaint p.2). As Mr. Spratt confirmed at being questioned by Mr. Larson at hearing,

even before the installation of meters, under these facts the “old” starting point of the customer's service line would probably have been considered to be at the valve boxes (Trans. p.177). Mrs. Fennema also testified that prior to the installation of meters, the customer line began at the valve box or where the service line connected to the main, depending on the circumstances (Trans. p.129).

Mr. Larson cannot necessarily be faulted for making the decision to continue to utilize the CTS line connecting the Easterly valve box with the Westerly one and all the cabins that line serves—it was presumably a business decision—but neither does that choice relieve him of the responsibility of repairs that line may require. He does not assert that Woodland Manor directed him to use the CTS line as one of his service lines, and Mrs. Fennema confirmed in her testimony that they did not ask him to do so (Trans. pp.133-4).

In this case, the Petitioner has presented no factual grounds or legal theory upon which the Commission can find that any part of the CTS or other lines on the customer's side of the meter would be Woodland Manor's responsibility.

Finally, it should be noted that although not part of Mr. Larson's original informal complaint, which raised only the issue of responsibility and reimbursement for repairs to the CTS line resulting from the 2011 break, the Complaint on appeal proposes to require Respondent Woodland Manor to make install a customer service line from his Westerly valve box to the Westerly meter. Respondent will just note that (a) this issue is not properly before the Commission on appeal, as it was not raised at the outset, and the parties have stipulated

it is not at issue (Stip.Facts ¶9); (b) there is no allegation or evidence that the Westerly meter was improperly set in any way, nor is it in any way connected to the leak or the CTS pipe; and (c) no legal or factual grounds were presented by Petitioner to justify a remedy of this nature, and the tariffs have always stated that the customer is responsible for making his or her service connection to the meter.

WHEREFORE, Respondent respectfully requests that the Commission affirm the previous ruling that the Petitioner is responsible for all service lines on his side of the meter(s), and is responsible for the costs of maintenance and repair thereof, and for such other and further relief as the Commission deems just and proper.

/s/ Gregory R. Gibson
Gregory R. Gibson, MBN 44725
Attorney for Respondent
P.O. Box 108
Blue Eye, MO 65611
(417) 779-2226
(fax) 779-2226
GRGibsonLaw@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above pleading was served upon Complainant and Staff Counsel by email and/or by depositing same in the US Mails, postage prepaid, to 31 Holiday Drive, Kimberling City, MO 65686, this 2nd day of July, 2012.

/s/ Gregory R. Gibson
Gregory R. Gibson