

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the Missouri-American Water)
Company Contract with Premium Pork, L.L.C.)
(now known as Triumph Food, L.L.C.), for the) **File No. WO-2009-0303**
Retail Sale and Delivery of Potable Water)

ORDER ESTABLISHING TIME FOR RESPONSES

Issue Date: February 25, 2009

Effective Date: February 25, 2009

On February 20, 2009, the Office of the Public Counsel ("Public Counsel") filed a request for the Commission "review" a Contract for Retail Sale and Delivery of Potable Water between Missouri-American Water Company and Premium Pork, L.L.C. allegedly authorized in File No. WT-2004-0192. The Commission shall set a deadline for responses.

Additionally, the Commission directs that the caption of this file be appropriately titled as being "File No. WO-2009-0303." No "case", in the proper sense of adjudication, has been initiated with Public Counsel's filing, and should a case ultimately result, there has been no determination as to what type of case it would be, i.e. contested or non-contested.

Nor has any other action begun, like an investigation, workshop or rulemaking. Assigning a number to a docket entry, or to a filing or pleading, is a purely ministerial act,¹ indeed, "[a]

¹ "A ministerial act is "one which a public officer is required to perform upon a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed." *State ex rel. Killingsworth v. George*, 168 S.W.3d 621, 623 (Mo. App. 2005); *State ex rel. Morris Bldg. & Inv. Co. v. Brown*, 72 S.W.2d 859, 862 (Mo. App. 1934), citing to, *State ex rel. v. Meier*, 143 Mo. 439, 447, 448, 45 S. W. 306, 308; *State ex rel. v. Cook*, 174 Mo. 100, 118, 119, 120, 73 S. W. 489. In contrast, "[a] discretionary act is one requiring the exercise of reason in determining how or whether the act should be done." *Id.* "There is no question but that ministerial, as distinguished from judicial, acts may be performed by the clerk." *Id.* See also 11 C. J. pp. 886, 887; *Carter v. Louisiana Purchase Exposition Co.*, loc. cit. 537, 538 of 124 Mo. App., 102 S. W. 6; *Cabanne v. Spaulding*, 14 Mo. App. 312, 313, 314; *Norton v. Griffin*, 221 Mo. App. 834, 837, 286 S. W. 144; *Huff v. Shepard*, 58 Mo. 242, 245; *State ex rel. v. Sheppard*, 192 Mo. 497, 513, 514, 91 S. W. 477. Whether a certain

court, [and an administrative agency], must have some mechanism to track [proceedings] for administrative purposes.”²

To further illustrate, the general rule is that “the deposit or lodgment of the instrument for filing, in the proper office and its acceptance for that purpose by the proper officer constitutes a filing within the meaning of the law.”³ However, stamping a document with the filing date and time is purely a ministerial act, and does not actually constitute the filing of the document, and is not even conclusive as to the actual date and time the document was filed.⁴ File-stamping a document does not constitute a judicial ruling on the contents of the document or the relief requested in the document. “The writing up of the docket is a ministerial act, not a judicial one.”⁵

All new filings in the Commission’s Electronic and Information System automatically generate a number to facilitate filing, essentially an electronic version of the clerk in the

act is ministerial or judicial depends upon the nature and character of the act itself and upon the things necessarily involved therein rather than upon what the applicant may claim for the act. *State ex rel. Howe v. Hughes*, 123 S.W.2d 105, 111 - 112 (Mo. 1938). Ministerial acts include the power to make records and transcripts of proceedings, and the certification of the transcripts. *State ex rel. Morris Bldg. & Inv. Co. v. Brown*, 72 S.W.2d 859, 862 (Mo. App. 1934).

² *State ex rel. Stickelber v. Nixon*, 54 S.W.3d 219, 223 (Mo. App. 2001).

³ *Labrier v. Anheuser Ford, Inc.*, 621 S.W.2d 51, 54 (Mo. banc 1981).

⁴ *Id.* Another example would be the entry of a judgment as opposed to the act of rendering a judgment. “The rendition of a judgment is the judicial act of the court, whereas the entry of a judgment by the clerk on the records of the court is a ministerial, and not a judicial, act.” *Stoddard v. Stoddard*, 549 S.W.2d 354, 355 (Mo. App. 1977); *State ex rel. M. J. Gorzik Corp. v. Mosman*, 315 S.W.2d 209, 211 (Mo. 1958); Black’s Law Dictionary, Third Edition, page 1528: The judgment is rendered when it is ordered by the court; it is entered when it is spread on the docket. *McLaughlin v. Doherty*, 54 Cal. 519. [See, also, 49 C.J.S. Judgments § 100, page 222.] “To say otherwise would be to hold, in effect, that the clerk, a mere ministerial officer, by misprision or mistake, could exercise judicial functions, and thereby obstruct and pervert the proper and orderly administration of justice.” *State v. Phillips*, 186 S.W. 559, 560 (Mo. App. 1916), citing to, *Saxton v. Smith*, 50 Mo. 490; *Jones v. Hart*, 60 Mo. 351; *K. C. Pump Co. v. Jones*, 126 Mo. App. 536, 104 S. W. 1136; *Kreisel v. Snavely*, 135 Mo. App. 156, 115 S. W. 1059. The entry of the judgment upon the record is a mere ministerial act evidencing the judicial act, but not essential to its validity, or giving to the judgment any additional force or efficacy. *Pelz v. Bollinger*, 79 S.W. 146, 147 (Mo. 1904).

Data Center performing the ministerial act of assigning a number to that filing. Failure to assign a number would ultimately prevent the filing. To execute the relief that is requested in a filing requires a judicial act, or in the case of the Commission a quasi-judicial act. To hold otherwise would mean that the clerk in the Data Center had the power to rule upon and execute requested relief independently from the Commissioners.

IT IS ORDERED THAT:

1. Any interested person, group or entity wishing to respond to the "Office of the Public Counsel's Request for Review" shall file its response no later than March 31, 2009.
2. All pleadings and documents submitted pursuant to file number WO-2009-0303 shall be appropriately captioned by use of the words "File No."
2. This order shall become effective immediately upon issue.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 25th day of February, 2009.

⁵ *Loth v. Faconesowich*, 1886 WL 5090, *1 (Mo. App. 1886); citing to, *Morse v. Brownfield*, 27 Mo. 224; *Cabanne v. Spalding*, 14 Mo. App. 312; *Slemman v. Carey*, 57 Mo. 222; *Jones v. Hart*, 60 Mo. 351.