

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

Eric C. Larson,
Complainant

v.

Woodland Manor Water Company, LLC,
Respondent.

Case No. WC-2011-0409

STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and respectfully states the following to the Missouri Public Service Commission (Commission):

Introduction

On June 27, 2011, Mr. Eric C. Larson filed a formal *Complaint* with the Commission against Woodland Manor Water Company (Woodland Manor or Company). On February 21, 2012, after several pre-hearing motions and conferences, the Commission issued an *Order Setting Schedule*, which directed the parties to file a *Joint Stipulation of Undisputed Facts* by May 23, 2012. The Commission also issued a *Notice of Hearing*, stating it would convene an evidentiary hearing on the merits of the complaint on May 30, 2012. On May 23, 2012, the parties filed their *Joint Stipulated Facts*, and on May 30, 2012, a hearing was held, at which the parties presented evidence and testimony for the record. At hearing, Mr. Larson represented himself as a pro se complainant under the Commission rule that provides that a natural person may

represent himself or herself.¹ All other parties were represented by counsel at the hearing.

Parties

The Complainant, Mr. Larson, is a Missouri resident whose home and resort business are located within the State of Missouri.² The Respondent, Woodland Manor, is a water corporation and public utility³ subject to the jurisdiction of the Commission. Staff is represented by Staff Counsel's office in investigations, contested cases, and other proceedings before the Commission.⁴ The Commission's General Counsel, with whom Staff Counsel's office is affiliated, shall represent and appear for the Commission in all actions and proceedings involving any question under this or any other law, or in reference to any act, order, decision or proceeding of the Commission.⁵

Jurisdiction

The Commission has jurisdiction to hear and determine Mr. Larson's *Complaint* against Woodland Manor, pursuant to Section 386.390.1 RSMo (2000),⁶ which states as follows:

Complaint may be made by . . . any corporation or person . . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . .

¹ 4 CSR 240-2.040(5)

² *Joint Stipulated Facts*, filed May 23, 2012.

³ Section 386.020 (59) and (43), RSMo (2000), respectively, as currently supplemented.

⁴ 4 CSR 2.040 (1)

⁵ Section 386.071, RSMo, as currently supplemented

⁶ All statutory references are to RSMo (2000) as currently supplemented unless otherwise specified.

Statement of Facts

Woodland Manor provides water service to Mr. Larson, and a dispute has arisen regarding repairs to a water line that is part of that service.⁷ Holiday Drive is a paved road running generally East and West.⁸ The water main nearest to this property runs along the South right-of-way parallel to the road. Mr. Larson's property entails a home, a home/office/laundry, and Kimberling Oaks Resort, which has nine lots, approximately ten cabins, and a pool, all of which lie on the North side of Holiday Drive.⁹

In 2000, at Mr. Larson's request, Woodland Manor ran a service line off the main line under Holiday Drive to the Southwest portion of Mr. Larson's property and set a 2" meter¹⁰ on Mr. Larson's property within a foot of his cabin.¹¹ A service connection was made to this meter, servicing the new cabin on the Southwest portion of the property.¹² In 2001, at Mr. Larson's request and in an effort to comply with Commission metering requirements, Woodland Manor set a 1½ inch meter on the North side of Holiday Drive in the City right-of-way, twelve feet from the edge of Mr. Larson's property line.¹³ The meter placement was suggested by Woodland Manor, and Mr. Larson did not dispute the placement of the meter at that time.¹⁴ An existing valve box (not a meter box) controlling service to a portion of the resort is within one foot of the property line.¹⁵ A connection was made to span the distance between the existing valve box and the newly-set meter, servicing the home/office/laundry on the Southeast portion

⁷ *Joint Stipulated Facts*, filed May 23, 2012.

⁸ *Joint Stipulated Facts*, filed May 23, 2012.

⁹ *Joint Stipulated Facts*, filed May 23, 2012; Tr. 142, Lines 16-23.

¹⁰ In the Parties *Joint Stipulated Facts*, filed May 23, 2012, the parties referred to it as both a meter box and meter, for purposes of this brief Staff will refer to it as meter.

¹¹ *Joint Stipulated Facts*, filed May 23, 2012.

¹² *Joint Stipulated Facts*, filed May 23, 2012.

¹³ *Joint Stipulated Facts*, filed May 23, 2012.

¹⁴ Tr. 79-80, lines 19-25 and 1-23.

¹⁵ *Joint Stipulated Facts*, filed May 23, 2012.

of his property, as well as all of the cabins and the pool in the center portion of the property.¹⁶ Mr. Larson receives all of his water service to those structures through this meter.¹⁷ A portion of the line providing water service to Mr. Larson's cabins was installed by a predecessor water company.¹⁸ Neither Mr. Larson nor Woodland Manor installed this line.¹⁹ The line, a 1" black Copper Tubing Size (CTS) pipe,²⁰ runs generally along the road, with sections of the line running under the paved Holiday Drive and portions in the City right-of-way.²¹ This CTS pipe is only connected to the main line (which runs along the South right-of way of Holiday Drive) by virtue of being connected to the Easterly valve box.²² For a visual representation of the system described herein, refer to Exhibit D.

In June of 2011, a leak developed in a portion of the CTS pipe at a point where it ran under Holiday Drive.²³ Mr. Larson contacted Woodland Manor about the leak, and the Company informed him that the leak was beyond the meter and would be his responsibility to repair.²⁴ Mr. Larson dug up and repaired the leak at his own expense and sought reimbursement for that expense from Woodland Manor.²⁵ Woodland Manor asserted that according to the applicable tariffs, Mr. Larson was responsible for maintaining and repairing any leaks occurring on his side of the water meter, as well as for water used prior to the leak being repaired.²⁶

¹⁶ *Joint Stipulated Facts*, filed May 23, 2012.

¹⁷ Tr. 85-86, lines 17-25 and 1-4; Tr. 119, lines 10-16.

¹⁸ *Joint Stipulated Facts*, filed May 23, 2012; Tr. 86, lines 5-16; Tr. 109, lines 10-15.

¹⁹ Tr. 86, lines 5-16; and Tr. 109, lines 10-15.

²⁰ Tr. 103, line 10; Tr. 112, lines 24-25; and Tr. 170, lines 8-9.

²¹ *Joint Stipulated Facts*, filed May 23, 2012.

²² Tr. 149, lines 4-10.

²³ *Joint Stipulated Facts*, filed May 23, 2012.

²⁴ Tr. 140, lines 17-21.

²⁵ *Joint Stipulated Facts*, filed May 23, 2012.

²⁶ *Joint Stipulated Facts*, filed May 23, 2012.

Issue

The parties agree that the issue before the Commission can be stated as follows: Under the stipulated facts and the applicable tariffs, is Woodland Manor responsible for maintaining and repairing any portion of the water service lines providing water to Mr. Larson's homes or business, which run between those structures and the water meter connected to the main? If so, for which portions of the lines on Mr. Larson's side of the water meter is Woodland Manor responsible, and, in particular, is it liable for costs of repairing the break that occurred in June of 2011?²⁷

Applicable Law and Analysis

Resolution of this case turns on interpretation of Woodland Manor's Commission-approved tariffs and application of those tariffs to the above facts. First, the Commission approves a water company's tariffs pursuant to Section 393.140, RSMo, which states:

"The Commission shall: Have power to require every . . . water corporation . . . to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such . . . water corporation. . . ."

It is well-established that the tariffs of regulated utilities have the force and effect of law, until suspended or set aside.²⁸ Missouri courts have long recognized this doctrine, stating that "a tariff that has been approved by the Commission becomes Missouri law. As a result, the tariffs have the same force and effect as a statute directly

²⁷ *Joint Stipulated Facts*, filed May 23, 2012.

²⁸ See Keogh v. Chicago & Northwestern Railway, 260 U.S. 156, 162–163.

prescribed from the legislature.”²⁹ The filed rate doctrine “conclusively presumes that both a utility and its customers know the contents and effect of the published tariffs.”³⁰

Upon examination, Woodland Manor’s tariffs are clear. The Company’s tariffs were approved by the Commission and became effective on December 12, 1992, and have not been suspended or set aside since that time.³¹ Though there was some argument in this case that Mr. Larson should not be expected to know the terms of a tariff, ignorance does not negate the tariff.³² Tariff P.S.C. MO. No. 1, Original Sheet No. 6, Effective Date December 12, 1992, provides pertinent definitions of “Customer” and “Customer’s Water Service Line.”³³ Mr. Larson clearly is a customer under the tariff. “Customer’s Water Service Line” is defined as “a pipe with appurtenances installed, owned and maintained by the customer, used to conduct water to the customer’s unit from the property line or outdoor meter setting, including the connection to the meter setting. If the property line is in a street, then the said customer’s water service line shall be deemed to begin at the edge of the street abutting the customer’s property.”³⁴ In this case, neither party installed the pipe in question, thus that language is inapplicable. Furthermore, as there is a meter installed, the language indicating a customer’s line begins at the property line is also inapplicable. Thus, the remaining applicable language could be restated as follows: A Customer’s Water Service Line is a

²⁹ Allstates Transworld Vanlines, Inc. v. Sw. Bell Tel. Co., 937 S.W.2d 314, 317 (Mo. Ct. App. 1996). *See also*, Carter’s Custom Tile, 834 S.W.2d at 893.

³⁰ Bauer v. Sw. Bell Tel. Co., 958 S.W.2d 568, 570 (Mo. Ct. App. 1997)

³¹ Exhibit G – Tariffs of Woodland Manor Water Company

³² Bauer at 570. “[N]either the customer’s ignorance nor the utility’s misquotation of the applicable tariff provides refuge from the terms of the tariff.”

³³ Exhibit G - Tariff – Sheet 6, Rule 1; Sheet 11, Rule 5

³⁴ Exhibit G - Tariff – Sheet 6, Rule 1; Sheet 11, Rule 5

pipe owned and maintained by the customer, used to conduct water to the customer's unit from the outdoor meter setting, including the connection to the meter setting.

Staff's investigation, as represented in *Staff's Recommendation* and during testimony at the hearing, concluded that, based on the Company's tariffs, the CTS pipe is a Customer Service Line because it is used to conduct water solely to Mr. Larson's property from his side of the meter setting. Therefore, it is Mr. Larson's responsibility to maintain the CTS pipe. He is responsible for the repair of the leak that occurred on the CTS pipe and also for the repair of the pavement he excavated to access the leak.³⁵

Tariff 13 P.S.C. MO. No. 1, Original Sheet No 11, Effective Date December 12, 1992, specifies that the customer, Mr. Larson, is responsible for service line maintenance.³⁶ Specifically, it states, in part:

(b) The Service Connection from the water main to the Customers' property line, the meter installation and setting shall be constructed, owned and maintained by the Company. *Service line construction and maintenance from the property line or meter setting, including the connection to the meter setting, to the building shall be the responsibility of the Customer, and is subject to inspection by the Company. Customers shall be responsible for the cost of repairing any damage to the Company's lines, meters, and meter installations caused by the Customer, his agent, or tenant.* Customer shall be responsible for a fee to Company for inspection of the initial connection of service. (Emphasis added.)

³⁵ Exhibit F – *Staff's Recommendation*.

³⁶ Transcript, 154, Lines 16-21.

This portion of the Company's tariff also provides an explanation of where the customer's service begins, which is after the meter.³⁷ In this case, the eastern valve, which is beyond the meter on the customer's side, was turned off, and the leak stopped, confirming that the leak originated from Mr. Larson's side of the meter.³⁸

Staff recognizes that this case accentuates the sometimes inequitable aspect of the law since neither party installed the CTS pipe.³⁹ To make matters worse, the leak happened to occur under several layers of asphalt on Holiday Drive, making repairs more costly. Still, the Commission is charged to apply the law to the facts in each decision it makes, and the law that has been in effect since December 12, 1992, for Woodland Manor supports a finding that Mr. Larson was responsible for owning and maintaining the Customer's Water Service Line, which is the CTS pipe. The Company made a good-faith effort to place the meter in the most efficient location for all parties, particularly taking into account the needs of the customer at the time of installation. In fact, the Company consulted with Mr. Larson in the placement of these meters.⁴⁰ If the meters would have been placed elsewhere, Mr. Larson would have had to install additional valves or connections to the system.⁴¹ In its conclusion, Staff highlighted that the Customer's Water Service Line, regardless of its origination, is in fact in use today as a Customer's Water Service Line for the sole benefit of Kimberling Oaks Resort and Mr. Larson's surrounding property; therefore, Mr. Larson, as the customer,

³⁷ Transcript, 154, Lines 12-15.

³⁸ Transcript, 160, lines 23-25 through 162, lines 1-2.

³⁹ Tr. 86, lines 5-16; and 109, lines 10-15.

⁴⁰ Tr. 79-80, lines 19-25 and 1-23.

⁴¹ Tr. 146, lines 6-25; 162, lines 17-23; and 163, lines 2-9.

is responsible for that Customer's Water Service Line.⁴² Because the leak that occurred is the Customer's responsibility, any loss of water is also Mr. Larson's responsibility.⁴³

Mr. Larson argues that the tariffs read in his favor, but during hearing he did not cite to the tariff for support of his position. His reading of the tariff is completely different from the interpretation Woodland Manor made the day of the leak. Likewise, it is different from Staff's independent review and interpretation of the matter. While it appears unfair at first blush due to the age of the CTS pipe and the surrounding circumstances, including many layers of asphalt, the result argued by Staff is the lawful result.

To avoid this or a similar situation occurring in the future, the Company's tariffs allow Mr. Larson to dig a line connecting the meter to the valve box, which would bypass the CTS pipe that had the leak.⁴⁴ Therefore, although it is unfortunate that Mr. Larson found himself in possession of a water service line of which he was not aware and does not approve, there are options to alleviate this frustration and concern and prevent it from occurring in the future. Still, in this instance, while Staff is sympathetic to Mr. Larson's situation,⁴⁵ it would be unreasonable and arbitrary to disregard the applicable tariffs and require the Company to assume the burden of repairing a service line for which it bears no legal responsibility, and the consequent burden upon other customers if such an expense incurred by the Company were to be included in its rates for water service.

⁴² Exhibit F, *Staff's Recommendation*

⁴³ Exhibit F, *Staff's Recommendation*

⁴⁴ Tr. 149, lines 1-3.

⁴⁵ Tr. 146, lines 6-25; 162, lines 217-23 and 163, lines 2-9

Conclusion

The Commission should find that Woodland Manor's tariffs state that Mr. Larson, not Woodland Manor, is responsible for maintaining and repairing any portion of the water service lines providing water to Mr. Larson's homes or business, which run between those structures and the water meter connected to the main and for all portions of water service lines that are on Mr. Larson's side of the water meter, and in particular, is liable for costs of repairing the break that occurred in June of 2011.

WHEREFORE, Staff respectfully submits this Brief in compliance with 4 CSR 240-2.140 and 4 CSR 240-2.050 and recommends the Commission issue an order supporting *Staff's Recommendation* and expert testimony previously and find that under the Company's tariffs, the line where the break occurred was Mr. Larson's responsibility to maintain and repair and any other relief the Commission deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 2nd day of July, 2012.

/s/ Rachel M. Lewis