

Paul Schaefer,)	
)	
Complainant)	
)	
v.)	File No. WC-2013-0357
)	
I.H. Utilities, Inc.,)	
)	
Respondent)	

Issue Date: [] Effective Date: []

Procedure

¹ Electronic Filing and Information Service (“EFIS”) No. 1, *Formal Complaint*.

² EFIS No.6, *Answer of Respondent*.

³ EFIS No.11, *Staff Report and Recommendation*.

⁴ EFIS No.16, *First Stipulation of Material Facts*.

2013.⁵ On May 28, 2013, the company filed a motion for summary determination⁶ with a supporting memorandum.⁷ On June 25, 2013, Staff filed a notice in lieu of further stipulations of fact on behalf of Mr. Schaefer and the company.⁸ On June 25, Staff filed an issues list on behalf of Mr. Schaefer and the company.⁹ On July 1, 2013, the company filed a position statement.¹⁰

The Commission's regulations provide that the Commission may decide the merits of any part of a complaint without hearing when (i) doing so is in the public interest, (ii) admissible evidence supports the facts determinative of a claim or defense ("material facts") and (iii) no counter-evidence raises a genuine dispute as to any material fact.¹¹ The regulation states:

The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to . . . any part of the case, and the commission determines that it is in the public interest. [¹²]

⁵ EFIS No.23, *Joint Notice of Material Error Contained in First Stipulation of Material Facts*.

⁶ EFIS No.25, *Respondent's Motion for Summary Determination*.

⁷ EFIS No.24, *Memorandum in Support of Respondent's Motion for Summary Determination*.

⁸ EFIS No. 26, *Notice in Lieu of Second Stipulation of Material Facts*.

⁹ EFIS No 27, *Issues List*.

¹⁰ EFIS No 29, *Respondent's Position Statement*.

¹¹ *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993). That case discusses Missouri Supreme Court Rule 74.04. That rule is similar to the Commission's regulation. Therefore, case law interpreting the rule is helpful in understanding the regulation. *Johnson v. Mo. Bd. of Nursing Home Admin'rs*, 130 S.W.3d 626 (Mo. App., W.D. 2004).

¹² 4 CSR 240-2.117(1)(E) (emphasis added).

The material facts depend on (i) the claim or defense on which the motion stands and (ii) the burden of proof. The burden of proof on any complaint is with the complainant¹³ to show that a public utility has committed a violation.¹⁴

The complaint and the stipulation establish the following facts. As to those facts, Mr. Schaefer filed no response within the time provided by regulation, so Mr. Schaefer raises no genuine dispute as to those facts. Therefore the Commission determines that it is in the public interest to decide this action by summary determination.

Findings of Fact

1. The company supplies water at retail.¹⁵

2. The company's service territory includes, but is not limited to, Indian Hills subdivision ("Indian Hills"), near Cuba, Missouri.¹⁶ Indian Hills is a recreational development.¹⁷ The company provides service to approximately 700 customers in Indian Hills.¹⁸ Most of the company's Indian Hills customers have single family residences.¹⁹ Others own lots, and use the subdivision's lake and other subdivision amenities, but do not have permanent residential structures.²⁰

¹³ State ex rel. Tel-Central of Jefferson City, Inc. v. Public Serv. Comm'n of Missouri, 806 S.W.2d 432, 435 (Mo. App., W.D. 1991).

¹⁴ Section 386.390.1, RSMo 2000.

¹⁵ EFIS No. 1, *First Stipulation of Material Facts*, page 2, paragraph 7.

¹⁶ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 8.

¹⁷ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 9.

¹⁸ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 8.

¹⁹ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 9.

²⁰ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 9.

3. Since at least 1985, under a tariff now superseded (“old tariff”), the company has provided service to vacant lots, including a ¾ inch connection to a vacant lot, which provides service to a house outside of Indian Hills, but inside the company’s service territory.²¹

4. In February 2012, Mr. Schaefer sought a service connection from the company.²² Mr. Schaefer owns a vacant lot at 2322 Itawamba in the Indian Hills subdivision,²³ in company service territory.²⁴ Mr. Schaefer also owns an adjacent 100 acres outside the company’s service territory.²⁵

5. Mr. Schaefer’s plan is to construct a water service line along his driveway through his vacant lot.²⁶ Initially, Mr. Schaefer intends to use the water for irrigation to vegetation and water service through an outdoor hydrant, and at a recreational shelter he constructed which is approximately 1000 feet from the lot.²⁷ Later, Mr. Schaefer intends to use the water for residential service to a home that Mr. Schaefer is proposing to build on the 100 acres.²⁸

²¹ EFIS No.23, *Joint Notice of Material Error Contained in First Stipulation of Material Facts*, page 2, paragraph 6.

²² EFIS No. 1, *Formal Complaint*, attachment, page 1.

²³ EFIS No.16, *First Stipulation of Material Facts*, page 1, paragraph 2.

²⁴ EFIS No.16, *First Stipulation of Material Facts*, page 1, paragraph 24.

²⁵ EFIS No.16, *First Stipulation of Material Facts*, page 1, paragraph 5.

²⁶ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 11.

²⁷ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 11.

²⁸ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 11.

6. Mr. Schaefer requested a one-inch meter,²⁹ which has a flow capacity of fifty (50) gpm.³⁰ On December 14, 2012, the company submitted an installation agreement to Mr. Schaefer.³¹ The agreement proposed that the company would provide service to the vacant lot via a three-quarter inch service connection to Mr. Schaefer's and three-quarter inch meter at a cost of \$650.³² In return, the agreement proposed, Mr. Schaefer would not extend water service off the vacant lot.³³

7. Mr. Schaefer did not sign the installation agreement.³⁴

Conclusions of Law

The Commission has authority to hear the complaint.³⁵ The complaint's allegations bring it within the Commission's procedure for small formal complaints.³⁶ Mr. Schaefer has the burden of proof.³⁷

Mr. Schaefer argues that the company must supply his vacant lot with service. Service is subject to the company's tariff, which--effective October 27, 2009³⁸—provides:

The Company will not install a service connection to a vacant lot. [³⁹]

²⁹ EFIS No.16, *First Stipulation of Material Facts*, page 2, paragraph 12.

³⁰ EFIS No.16, *First Stipulation of Material Facts*, page 4, paragraph 23.

³¹ EFIS No.16, *First Stipulation of Material Facts*, page 3, paragraph 20.

³² EFIS No.16, *First Stipulation of Material Facts*, page 4, paragraph 21.

³³ EFIS No.16, *First Stipulation of Material Facts*, page 4, paragraph 21.

³⁴ EFIS No.16, *First Stipulation of Material Facts*, page 4, paragraph 21.

³⁵ Section 386.390.1, RSMo 2000.

³⁶ 4 CSR 240-2.070(15).

³⁷ State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission, 116 S.W.3d 680 (Mo. App. 2003).

³⁸ The company's tariff, P.S.C. Mo. No. 3, Original Sheet No. 12, Rule 5 (f), eff. October 27, 2009.

³⁹ The company's tariff, P.S.C. Mo. No. 3, Original Sheet No. 12, Rule 5 (f), eff. October 27, 2009.

Mr. Schaeffer made his application after the effective date of that provision, so the company's denial of Mr. Schaefer's application is no violation of the company's tariff.

Mr. Schaefer also suggests that the Commission should require the company to file a new that would require the company to provide service to vacant lots. The standard for service instrumentalities and facilities is that they "shall be safe and adequate and in all respects just and reasonable."⁴⁰ Nothing in the record shows that the current tariff fails to meet that standard.⁴¹

Mr. Schaefer has not shown any violation, and has not shown that the current tariff is inadequate, so the Commission will deny all relief requested in the complaint.

THE COMMISSION ORDERS THAT:

1. All relief requested in the complaint is denied.
2. This order shall be effective on [].

BY THE COMMISSION

Morris L. Woodruff
Secretary

____, CC., concur.

Jordan, Senior Regulatory Law Judge

⁴⁰ Section 393.130.1, RSMo Supp. 2012. The complaint does not challenge the cost of service.

⁴¹ The company argues that a connection of the size that Mr. Schaefer seeks would make service inadequate because of reduced pressure. Mr. Schaefer did not carry his burden of proof, the Commission need not address that argument.