

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

Guy Thomas,)
)
Complainant,)
)
v.) Case No. WC-2008-0248
)
Evergreen Lakes Water Supply,)
)
Respondent.)

**STAFF'S RECOMMENDATION REGARDING
THE RELIEF THE COMMISSION MAY GRANT**

COMES NOW the Staff of the Missouri Public Service Commission and submits its Recommendation Regarding the Relief the Commission may Grant.

1. On March 27, 2008, the Commission issued an order directing Respondent Evergreen Lake Water Supply to file, by no later than April 3, “a pleading showing good cause why the Commission should not *deem Complainant Guy Thomas’ averments to have been admitted* and enter an order granting default.” (Emphasis supplied.)
2. On April 10, 2008, the Commission issued its Order Granting Default, in which it ordered that “[t]he averments of Complainant Guy Thomas’ Complaint are deemed admitted, and an order of default is hereby entered” against Evergreen Lakes. (Emphasis supplied.)
3. On April 29, 2008, the Commission issued an Order Directing Filing, in which it directed the Staff to file a pleading concerning what relief, if any, Mr. Thomas is entitled to under the governing law, “given that *all the allegations of his complaint have been found to be facts* by the Commission.” The Staff files this pleading in response to the April 29 order. (Emphasis supplied.)

4. Rule 4 CSR 240-2.070 (9), on which the Commission relied in issuing its Order Granting Default, provides that if the respondent fails to file a timely answer, “the complainant’s averments may be deemed admitted and an order granting default entered.” This rule does not, however, authorize the Commission to find that all allegations of the complaint are “facts.” That is, the rule authorizes the Commission to deem that the averments of Mr. Thomas are admitted by Respondent Evergreen Lake, but it does not authorize the Commission to find that the allegations are factual and true.

5. The Staff was not required to file, and did not file, an answer to Complainant’s Complaint, nor any other response to the Complaint. The Staff did not admit, and hereby specifically denies, that it told Complainant that “there was nothing he could do about [his complaint],” and specifically denies that it failed to tell Complainant that he “could file a formal complaint.” The averments of the Complaint are deemed admitted *by the Respondent only*.

6. Complainant said he initially wanted to obtain two connections at a fee of \$75 per connection. However, in his Complaint he sought a connection fee of \$75 for only one connection, that being the connection serving his residence. Complainant also stated that he wants the hazards in his yard repaired.

7. The Commission does not have authority to enter a money judgment against a utility or in favor of a utility. *May Department Stores Company v. Union Electric Light & Power Company, et al.*, 107 S.W.2d 41, 58 (Mo. 1937). However, it can make factual determinations as to what the applicable connection fee is at the time that a connection is made. See § 393.270.2, RSMo 2000. The Commission can also order a company to make improvements to its system for the purpose of safety. See § 393.270.2, RSMo 2000; see also § 393.140 (2), RSMo 2000.

8. Attached hereto as Attachment A and incorporated herein by reference is the Staff Report of Investigation, prepared by Steve Loethen of the Staff's Water and Sewer Department.

9. The Staff recommends that the Commission find that the applicable connection fee, as set forth in the Company's tariff at the time that Complainant requested the connection was \$75.00. The Staff further recommends that the Commission order the Company to dig up the unused meter setting and cap the service line at the main.

10. The Staff also notes that, although Eunice Jones, the owner of Evergreen Lake Water Supply did not file an answer to Complainant's Complaint in this case (possibly because of the expense the Company would have incurred in retaining an attorney to represent it), Ms. Jones did forward to the General Counsel's Office a response to Mr. Thomas's Complaint. The General Counsel's Office has filed a copy of that letter in the case file for this case.

WHEREFORE, the Staff submits its Recommendation Regarding the Relief the Commission May Grant, for the Commission's consideration in this case.

Respectfully submitted,

/s/ Keith R. Krueger

Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9285 (Fax)
keith.krueger@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 9th day of May 2008.

/s/ Keith R. Krueger

Staff Report of Investigation

Case No. WC-2008-0248
Guy Thomas v. Evergreen Lake Water Company

Prepared By:
Steve Loethen
Utility Operations Technical Specialist
Water & Sewer Department

May 9, 2008

Introduction and Background

Mr. Guy Thomas filed a formal complaint (WC-2008-0248) on January 29, 2008. Mr. Thomas states that in August of 2005 he requested water service for his property from Evergreen Lake Water Company (Company). He stated he was told the tap fee was \$75. After some time had passed, he called the Company again regarding this matter and was told there is a new rate for a tap fee, which is \$800.

Mr. Thomas believes that the Company purposely waited to install his service until after the rate increase went into effect. He also stated that during final landscaping of his yard he found a meter setting (i.e. a tap, service line, meter horn, ring and lid) in his yard that had previously been set up. Therefore, an actual tap was apparently already on his property before he called, and he wondered why he could not have used it.

Mr. Thomas filed an informal compliant (C200603873) regarding this matter on November 7, 2005, in which he stated he had been requesting water service since early October of 2005. This statement contradicts the formal complaint, in which Mr. Thomas states he requested the water service in August of 2005.

Also, in the formal complaint, Mr. Thomas states that there are two open pipes in his yard which are a hazard and he asked the Company to fix them, which has not been done.

Water & Sewer Dept. Staff's Findings

I talked to Eunice Jones at the Company and requested information as to when exactly the water tap was requested and when it was made. I have not received any information from the Company about this, but Ms. Jones did state that the meter setting was not installed until after the new rates went into effect.

Both the Company and Mr. Thomas stated no application for service was filled out. The only documentation about a request for service is the informal complaint that Mr. Thomas filed on November 7, 2005, where Mr. Thomas stated that he had been trying to get water service to his

property since early October, 2005. The current tariff has an effective date of October 27, 2005 for the \$800 rate.

I visited Mr. Thomas' property on March 3, 2008. I saw the meter setting that is currently being used. There was also another meter setting in his yard, but without a meter in it. It appeared that this latter setting was installed when the main was put in, because the adjacent lot also has a meter setting on it and this is a vacant undeveloped lot.

I also saw one hole, which appeared to be a valve box with no lid on it, and another valve box sticking approximately eight inches out of the ground with no lid on it either.

Water & Sewer Dept. Staff's Conclusions

Mr. Thomas should pay the \$75 tap fee for his residence. There are two reasons for Staff's recommendation. First, Mr. Thomas requested the tap before the \$800 rate went into effect. Second, a meter setting had already been installed on the property during the time the tap fee was \$75, and this setting could have been used.

The Company should put a lid on the valve box that is open. The box that is sticking out of the ground should be lowered to grade and it should have a lid installed on it. This assumes that these are, in fact, active valve locations. If they are not active valve locations, then the inactive valve boxes should be removed or buried completely.

I also recommend that the Company dig up the unused meter setting and cap the service line at the main. A meter horn without a meter in it is a possible source of contamination and the meter setting can also be reused at another time to save the Company money.