

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Hickory Hills Water & Sewer Co.'s)	<u>Case No. WR-2006-0250</u>
Request for a Small Company Rate Increase)	Tariff Nos. YW-2006-0449 and YS-2006-0448

ORDER DENYING IN PART STAFF'S
MOTION TO MODIFY PROCEDURAL SCHEDULE

Issue Date: April 7, 2006

Effective Date: April 7, 2006

This consolidated case relates to Hickory Hills Water & Sewer Company's request for a rate increase for water and sewer operations. Hickory Hills and the Staff of the Commission have agreed that a rate increase for both systems is just and reasonable. The Office of the Public Counsel opposes the rate increases. This is a contested case set for evidentiary hearing on April 19, 2006.

The original procedural schedule proposed by the parties and adopted by the Commission provided for direct testimony to be filed by March 28, and rebuttal testimony to be filed by April 5. There was no proposal for surrebuttal testimony, therefore, none was ordered by the Commission. Both Hickory Hills and the Staff filed direct testimony on or before March 28, 2006. The Office of the Public Counsel filed rebuttal testimony on April 5, 2006.

On April 5, the Staff of the Commission filed a Motion to Modify Procedural Schedule in order to allow surrebuttal testimony and to change the dates for submission of other matters. The Staff of the Commission now complains that it labored under the

misunderstanding that all parties, including the Office of the Public Counsel, would file direct testimony. But because Public Counsel filed rebuttal instead of direct, the Staff is now precluded from rebutting the assertions of Public Counsel in its rebuttal.

The Office of the Public Counsel filed a response in opposition to Staff's motion to modify on April 7. In its response, Public Counsel points out that Section 393.150.2, RSMo 2000, states that "at any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate...is just and reasonable shall be upon the...water or sewer corporation." Public Counsel also cites rule 4 CSR 240-2.130(7) and Black's Law Dictionary for the proposition that the burden of proof is met by a party offering direct testimony in its case-in-chief.

The Commission finds that Hickory Hills has the burden of proof in this case, and that it may meet its burden by filing direct testimony in its case-in-chief. Hickory Hills must prove its proposed rates are just and reasonable. Other parties who support Hickory Hills' position may join its case-in-chief by filing direct testimony as well. Those who oppose Hickory Hills' position may file rebuttal testimony, defined as "testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case." 4 CSR 240-2.130(7)(C).

The parties have filed direct and rebuttal testimony as contemplated by Commission rules and the applicable statute and the issues are sufficiently joined for Commission determination. The Commission finds no need for additional prefled testimony. The Commission will not change the procedural schedule at this late date.

The Commission notes that Staff alternatively requested permission to call surrebuttal witnesses at the evidentiary hearing on April 19, 2006. The Commission will take that request under advisement and rule before the conclusion of the hearing.

IT IS ORDERED THAT:

1. The Motion to Modify Procedural Schedule is denied to the extent it requests leave to allow prefiled surrebuttal testimony and changes filing deadlines.
2. This order shall become effective on April 7, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Steven C. Reed, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 7th day of April, 2006.