

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day
of July, 2009.

In the Matter of Oakbrier Water Company, Inc.'s)	<u>File No. WR-2009-0229</u>
Small Company Rate Increase)	Tariff No. YW-2009-0766

**ORDER FURTHER SUSPENDING TARIFFS AND SETTING
EVIDENTIARY HEARING**

Issue Date: July 24, 2009

Effective Date: July 24, 2009

On November 26, 2008, Oakbrier Water Company, Inc.¹ initiated a small sewer company rate increase action pursuant to Commission Rule 4 CSR 240-3.050. On April 27, 2009,² Staff and Oakbrier filed a Disposition Agreement ("Agreement") that included comprehensive accounting schedules, a review of Oakbrier's customer service and business operations and example tariffs designed to implement the agreed upon revenue requirements. On April 30, Oakbrier filed revised tariff sheets reflecting certain rate and language changes to bring the tariffs into full conformity with the Agreement. The tariff was assigned tracking number YW-2009-0766 and bear an effective date of June 15.

The Office of the Public Counsel ("Public Counsel") did not join in the Agreement. Instead, on May 29, Public Counsel filed motions requesting the Commission suspend Oakbrier's tariff and schedule a local public hearing, or in the alternative, an evidentiary

¹ Oakbrier provides service to approximately 57 customers in its certificated service area under the provision of its Commission-approved tariff.

² All dates from this point forward refer to the year 2009 unless otherwise noted.

hearing. The Commission suspended Oakbrier's tariff until August 14 and held a local public hearing on July 1.

On July 16, Public Counsel filed its request for an evidentiary hearing. Public Counsel states it believes a resolution has been achieved and that a unanimous disposition agreement is forthcoming. However, to preserve its right to an evidentiary hearing, Public Counsel requested an evidentiary hearing should negotiations between the parties fail to reach resolution. Public Counsel included a specified list of issues that the public counsel believes should be the subject of the hearing in compliance with Commission Rule 4 CSR 240-3.050(20).

There is no question that the public policy of Missouri favors settlements.³ However, while settlement is preferred, public policy and judicial and administrative economy also favors finality; that there be an end to litigation.⁴ Because of the limited time frame allowed in the small rate increase procedure, the Commission shall set an evidentiary hearing. In the event an agreement is reached by all of the parties, the Commission shall cancel the evidentiary hearing.

Commission Rule 4 CSR 240-2.110(1) requires the Commission to set the time and place for hearings and serve notice as required by law. Section 536.067(4), RSMo 2000, and Section 386.390.5, RSMo 2000, require at least ten days notice be given prior to a hearing. In complying with its statutory mandate, and taking into consideration the

³ *Williams v. Preman*, 911 S.W.2d 288, 298 (Mo. App. 1995); *Parks v. Union Carbide Corp.*, 602 S.W.2d 188, 202 (Mo. banc 1980).

⁴ *Sprung v. Negwer Materials, Inc.*, 775 S.W.2d 97, 106 (Mo. banc 1989).

expedited nature of the small water company rate increase procedure, the Commission shall set the date for the evidentiary hearing for Tuesday, August 11, 2009.⁵

The Commission finds that the following conditions should be applied:

- (A) The evidentiary hearing shall be live. No party shall pre-file testimony.
- (B) The parties shall jointly file a list of the witnesses to appear at the hearing, the proposed order in which they shall be called and examined.
- (C) The transcript shall be expedited.
- (D) The Commission will allow one round of post-hearing briefs.
- (E) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 4 CSR 240-2.080.
- (F) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has not been prefiled, the party offering it should bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.
- (G) Each party may prepare and file proposed findings of fact and conclusions of law, including citations to testimony and other evidence, to be filed on the same deadline for filing post-hearing briefs.
- (H) Filings with the Commission shall be considered timely if made through EFIS by no later than 11:59 p.m. of the day that they are due.
- (I) In the event that the parties reach a settlement of all factual issues, such settlement shall not be grounds for a continuance of the hearing unless the agreement is final, has been submitted to the Commission in writing, and there are no objections to the agreement.

Because the Commission shall not have sufficient time to hear this case and make a decision prior to the effective date of Oakbrier's tariff, i.e. August 14, it shall suspend the

⁵ Commission Rule 4 CSR 240-3.050(24) sets a deadline of nine months to complete the presentation of small company rate increase requests, i.e. August 26, 2009. The Commission's final order must become effective no later than eleven months after the case is opened; in this case October 26, 2009.

tariffs until October 26, the date a final order from the Commission must be effective.⁶ However, if the parties reach a unanimous agreement, compliance tariffs may be implemented at an earlier date.

THE COMMISSION ORDERS THAT:

1. The revised tariff sheets filed by Oakbrier Water Company, Inc., on April 30, 2009, and assigned Tariff File No. YW-2009-0766, previously suspended until August 14, 2009, are suspended until October 26, 2009, or until otherwise ordered by the Commission. The tariff sheets suspended are:

P.S.C. MO No. 1

1st Revise Sheet No. 5, Canceling Original Sheet No. 5
1st Revised Sheet No. 6, Canceling Original Sheet No. 6

2. The Commission gives notice that it shall hold an evidentiary hearing on Tuesday, August 11, 2009, beginning at 8:00 a.m.

3. The following procedural schedule for the evidentiary hearing is established:

List and Order of Witnesses	–	August 3, 2009
Live Evidentiary Hearing	–	August 11, 2009 beginning at 8:00 a.m.
Transcripts Filed	–	August 17, 2009
Posthearing Briefs	–	August 26, 2009
Proposed Findings of Fact	–	August 26, 2009
Proposed Conclusions of Law	–	August 26, 2009

4. The hearing shall be held in the offices of the Missouri Public Service Commission at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This hearing will be held in a building that meets accessibility

⁶ Commission Rule 4 CSR 240-3.050(24).

standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

5. In the event that the parties file a unanimous disposition agreement the evidentiary hearing and associated procedural schedule shall be canceled.

6. This order shall become effective upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is written over a faint, circular embossed seal of the Missouri Public Service Commission.

Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.

Jones, Senior Regulatory Law Judge