

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of I.H. Utilities, Inc.,)
Small Company Rate Increase)

File No. WR-2010-0048
Tracking No. YW-2010-0068

ORDER GRANTING LOCAL PUBLIC HEARING, APPROVING TIMELINE AND SUSPENDING TARIFF; AND NOTICE OF CONTESTED CASE

Issue Date: August 14, 2009

Effective Date: August 14, 2009

The Missouri Public Service Commission is:

- granting a local public hearing,
- approving the proposed timeline with one change,
- suspending the tariff, and
- giving notice that a contested case has begun.

The local public hearing's time and place will be the subject of a separate order.

1. Background

The Commission received a letter under 4 CSR 240-3.635 ("the old regulation") from I.H. Utilities, Inc., ("the company") asking for small water company rate relief on August 25, 2006. On May 30, 2008, 4 CSR 240-3.050 ("the new regulation") became effective, which also provides rate relief for small utilities. The old regulation and the new regulation ("the regulations") provide for proposed relief by agreement of the parties.¹

¹ 4 CSR 240-635(1)(C) and 4 CSR 240-2.060(10).

The Commission's staff ("Staff") filed a notice of disposition agreement between Staff and the Company on August 3, 2009, under the new regulation,² with the disposition agreement and a tariff effective on September 30, 2009.³ Such notice was the first filing under this file number.⁴ That notice included a motion for a procedural conference. On August 4, 2009, the Office of the Public Counsel ("OPC") filed a motion for a local public hearing. The regulatory law judge assigned to this action convened the conference on August 6, 2009.

On August 10, 2009, Staff filed a Timeline and Request for Order Approving Timeline, which included proposed dates for an order suspending the tariff and notice of a local public hearing.

2. Rulings

The Commission rules on those pending matters as follows.

a. Local Public Hearing

In its motion for a local public hearing, and at the conference, OPC supported such motion with allegations related to operation, maintenance, service, and billing. At the conference, Staff stated that it had no objection to a local public hearing. The Commission will grant the request for a local public hearing and separately issue notice scheduling the local public hearing.

² 4 CSR 240-3.050(11). Filing a disposition agreement, and even writing it down, is not necessary under the old regulation unless OPC is a signatory.

³ On August 10, 2009, the company filed a substitute tariff sheet, also bearing a September 30, 2009, effective date.

⁴ The new regulation provides that the initial letter "initiate[s] a rate case" at 4 CSR 240-3.050(1), but the old regulation has no such provision.

b. Timeline

Staff models its proposed timeline in part on the new regulation's provisions⁵ and offers it for the following purpose:

to clearly set out the timeline to be followed in light of the sometimes conflicting but guiding rules[.]

The Commission agrees that the regulations set forth conflicting procedures, and that the Commission may depart from those constraints on a showing of good cause.⁶

Good cause includes a remedial purpose to avoid a threatened injustice,⁷ which is clearly possible under the regulations' conflicting provisions. Also, Staff represents that OPC supports the proposed timeline. Therefore, the Commission will waive any provision in the old regulation or the new regulation that conflict with the proposed timeline.

The Commission will adopt the proposed timeline, with one exception. The proposed timeline calls for an effective date of October 27, 2009, for the tariff. The proposed timeline also calls for the Commission to issue an "Order Approving Tariff Sheet(s)" no later than Thursday, October 22, 2009. But Wednesday, October 21, 2009, will more likely be the Commission agenda meeting just before the proposed effective date. Also, the Commission may elect to approve the tariff in an order approving the disposition agreement. With that reservation, the Commission will adopt the proposed timeline.

c. Tariff Suspension

The timeline proposes suspending the tariff, which the statutes allow as follows:

Whenever there shall be filed with the commission by any . . . water corporation [a tariff], the commission [may] enter upon a **hearing concerning the propriety** of such [tariff], and **pending such hearing and the decision** thereon, the

⁵ 4 CSR 240-3.050(5).

⁶ 4 CSR 240-3.015(1) and 4 CSR 240-2.060(4)(B).

⁷ *Bennett v. Bennett*, 938 S.W.2d 952, 957 (Mo. App., S.D. 1997).

commission . . . **may suspend** the operation of such [tariff]; and **after full hearing** . . . , the commission **may make such order** in reference to such [tariff] as would be proper in a proceeding initiated after the [tariff] had become effective.⁸

The reasons for suspending the tariff include issues that may arise at the local public hearing, which the Commission may be unable to address under the tariff's effective date, and OPC's support of the timeline that suggests the suspension. Therefore, the Commission will suspend the tariff until the effective date set forth in the timeline: October 27, 2009.

d. Notice of Contested Case

Suspending the tariff is within the Commission's authority only pending a "full" hearing and decision on the tariff's propriety.⁹ The full, pre-decision hearing provision signifies that this action is now a "contested case."¹⁰ A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities¹¹ and a decision without a hearing,¹² including by stipulation and agreement.¹³ This notice does not require any party to file an answer.¹⁴ The Commission's discovery regulations are at 4 CSR 240-2.090.¹⁵

THE COMMISSION ORDERS THAT:

1. The request for a local public hearing is granted.
2. The proposed timeline is adopted, except as to the proposed "Order Approving Tariff Sheet(s)."

⁸ Section 393.150.1, RSMo 2000.

⁹ *Id.*

¹⁰ Section 536.010(4), RSMo Supp. 2008.

¹¹ Sections 536.060(3) and 536.063(3), RSMo 2000.

¹² Sections 536.060, RSMo 2000.

¹³ 4 CSR 240-2.115.

¹⁴ Section 536.067(2)(d), RSMo 2000.

¹⁵ Section 536.067(2)(f), RSMo 2000.

3. The following tariff, tracking no. YW-2010-0068, is suspended until October 27, 2009:

P.S.C. MO. No. 3, Cancelling P.S.C. No. 2

4. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Daniel Jordan, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240.

Dated at Jefferson City, Missouri,
on this 14th day of August 2009.