

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

In the Matter of S. K. & M. Water and Sewer)	<u>Case No. WR-2007-0460</u>
Company's Rate Increase Request)	

In the Matter of S. K. & M. Water and Sewer)	<u>Case No. SR-2007-0461</u>
Company's Rate Increase Request)	

**STAFF'S RESPONSE TO PUBLIC
COUNSEL'S MOTION TO COMPEL DISCOVERY**

COMES NOW the Staff of the Missouri Public Service Commission and, for its Response to Public Counsel's Motion to Compel Discovery, states to the Missouri Public Service Commission as follows.

The Small Company Rate Case Rules

These cases are small company rate increase cases. The procedure in such cases is governed by Rule 4 CSR 240-3.635 (for the water case) and Rule 4 CSR 240-3.330 (for the sewer case). Each of these rules includes, in paragraph (1) (A), the following provision:

When the [Staff's] investigation and audit are complete, the commission staff shall notify the company and public counsel whether the requested additional revenue is recommended in whole or in part, of the rate design proposal for the increase, and of any recommended operational changes. *If public counsel wishes to conduct an investigation and audit of the company, it must do so within the same time period as staff's investigation and audit;* (Emphasis supplied.)

The Staff completed its investigation and audit approximately February 20, 2007, and forwarded the results thereof to the Public Counsel. Ted Robertson, a CPA employed by the Public Counsel, acknowledged receipt of the audit results in an e-mail message that he sent to Staff members Jim Russo and Amanda McMellen on February 28, 2007. He stated in that message that he had some questions "regarding the audit results." A copy of that e-mail message is attached hereto as Exhibit A.

Clearly, the Staff completed its investigation and audit by no later than February 28, 2007. Pursuant to the rules quoted above, Public Counsel was required to conduct its investigation and audit of S.K. & M. by no later than February 28, 2007, as well. The Public Counsel did not issue its data requests until April 10, 2007. It did not even *initiate* its investigation and audit – much less complete it – until about six weeks after the deadline for conducting its investigation.

The Statute on Which Public Counsel Relies

The rules quoted above pertain specifically to the small company rate increase procedure. However, the Public Counsel carefully avoided mentioning these rules in its Motion to Compel Discovery. Instead, the Public Counsel relies upon a statute, Section 386.450, RSMo, as its authority to require S.K. & M. to provide the requested documents. Section 386.450 provides as follows:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require ... the production within this state ... of any books, accounts, papers or records kept by said corporation ...

It is noteworthy that the Company is only required to produce these documents if the Commission requires it to do so. The Commission has not done that in this case, although, of course, it is possible it may choose to do so in response to the Public Counsel's Motion.

However, according to the statute, the Commission should only require the production of these documents *upon good cause shown by [the Public Counsel]*. The Staff submits that the Public Counsel has not shown good cause in this case.

Rules 4 CSR 240-3.635 and 4 CSR 240-3.330 pertain specifically to small company rate increase cases, such as the instant case. Rules may not, of course, contradict or limit the provisions of a statute. In the event of a conflict between a rule and a statute, the statute will “trump” the rule.

However, to the extent that the rule does not conflict with the statute, the rule should be enforced, and the Commission should construe the rule in harmony with the statute, if possible.

The Purpose of the Small Company Rate Case Rules

The Commission adopted the small company rate increase case rules in order to ease the cost and burden on small companies that seek rate increases. The Commission also clearly sought to expedite the processing of these cases, for the rule includes numerous deadlines for action, including the requirement in Paragraph (1) (F) that “agreement must be reached and tariff sheets(s) filed based upon the agreement within one hundred fifty (150) days from the date the letter initiating the case is filed,” unless the company agrees to an extension. Anything that prolongs this process runs afoul of the purpose of the rules.

The Company filed its letter initiating these cases on October 19, 2006. The 150-day time period for reaching an agreement expired on March 19, 2007. The Public Counsel did not submit the disputed data requests until three weeks later, on April 10, 2007.

Public Counsel Has Failed to Show ‘Good Cause’

The Staff submits that the Public Counsel has failed to show “good cause” for the Commission to require the Company to respond to these data requests, because doing so would subvert the Commission’s purpose in adopting the small company rate increase procedures.

The Commission is rightly concerned about the time that is sometimes required to process small company rate increase requests. Where delays are caused by the company, the consequences are properly borne by the company. But the Commission should not condone a policy that permits the Public Counsel to prolong a small company rate increase case by failing to timely investigate the request.

If the Commission grants this Motion to Compel, it will render the above-quoted provisions of the small company rate increase rules utterly meaningless. Granting the motion would give the Public Counsel license to totally ignore the rules that govern rate cases by the mere expedient of saying it has the right to the information outside of a rate case. That does not serve the purpose of the small company rate increase case rules, and it could not have been the Commission's intent in enacting these rules. The rules do not conflict with the statute, should be construed in harmony with the statute, and should be enforced.

The Commission should overrule the Public Counsel's Motion to Compel Discovery.

WHEREFORE, the Staff respectfully submits this Response to Public Counsel's Motion to Compel Discovery for the Commission's consideration in this case.

Respectfully Submitted,

/s/ Keith R. Krueger

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CERTIFICATE OF SERVICE

I hereby certify that copies of this Response to Motion have been mailed with first-class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 25th day of June 2007.

/s/ Keith R. Krueger

tr questions SK M Audit

From: Robertson, Ted [ted.robertson@ded.mo.gov]
Sent: Wednesday, February 28, 2007 10:18 AM
To: Russo, Jim; McMellen, Amanda
Cc: Baker, Christina
Subject: SK & M Audit

Attached are some questions I have regarding the audit results. We can probably eliminate some as potential issues by meeting to discuss what and why, but some are going to require that I take a more detailed look.

Thanks,

Ted Robertson CPA

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