

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

In the Matter of Small Company Rate)
Increase of Oakbrier Estates)

Case No. WR-2009-0229

**STAFF'S RESPONSE TO OFFICE OF THE PUBLIC COUNSEL'S REQUEST FOR
EVIDENTIARY HEARING AND MOTION TO SUSPEND TARIFF**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Response to Office of the Public Counsel's* ("OPC") *Request for Evidentiary Hearing and Motion to Suspend Tariff* respectfully states the following:

1. On November 26, 2008 Oakbrier Water Company, Inc. ("Oakbrier" or "Company") initiated a small company rate increase proceeding with the Missouri Public Service Commission ("Commission") requesting an increase in its annual water system operating revenues of \$5,472.

2. On April 27, 2009, Staff filed its *Notice of Company/Staff Agreement regarding Disposition of Small Water Company Revenue Increase* ("Disposition Agreement") acknowledging an agreement between Staff and Company for a water operating revenue increase of \$2,530 annually.

3. On April 30, 2009 Oakbrier filed proposed revised tariff sheets reflecting the agreements in the Disposition Agreement. The proposed revised tariff sheets have an effective date of June 15, 2009, pursuant to 4 CSR 240-3.050(14).

4. On May 29, 2009 OPC filed a *Request for Local Public Hearing, or in the Alternative, Request for Evidentiary Hearing*.

5. Also, on May 29, 2009 OPC filed a *Motion to Suspend Tariff* pursuant to Section 393.150 RSMo (2000) requesting the Commission suspend Oakbrier's filed tariff sheets for a maximum period of 120 days plus six months.

6. Section 393.150 RSMo (2000) does allow for tariffs to be suspended for a period of 120 days plus six (6) months to allow the Commission time to conduct a rate case hearing and issue a decision upon the rate request. This is in conjunction with Section 393.140(11) RSMo which requires that a utility's proposed tariff sheets give thirty (30) days notice and plainly state the rates and changes. Therefore, a total of eleven (11) months is allotted for the Commission to review a rate increase request, hold a hearing, and issue its decisions. The large utilities file proposed tariff sheets along with an application for a rate increase to begin a Commission rate case. However small water or sewer companies file a rate increase request pursuant to the Small Water Utility Rate Case Commission Rule 4 CSR 240-3.050.

7. Commission Rule 240-3.050 was created as an informal alternative to a formal rate case for large utilities. However, 3.050 still requires a Commission decision on a small water or sewer company rate increase within eleven (11) months. Rule 3.050(24) states:

The proposed full resolution of a small utility rate case must be finally presented to the commission no later than nine (9) months after the case is opened, regardless of how it is presented, and the commission's decision and order regarding the case shall be issued and effective no later than eleven (11) months after the case was opened.

8. Commission Rule 240-3.050(20) reiterates the importance of abiding by the eleven (11) month deadline for final Commission determination of a utility's rate increase request by referencing 3.050(24) and stating:

If the public counsel files a request for an evidentiary hearing, the request shall include a specified list of issues that the public counsel believes should be subject of the hearing. The **utility's pending tariff revisions shall then be suspended**, and the utility's case shall be **resolved through contested case procedures conducted in the time remaining in the rate case process, consistent with the requirements of section (24)**, the requirements of due process, and fairness to the participants in the matter and the utility's ratepayers. (emphasis added)

As highlighted above, 3.050(20) already mandates that, upon an evidentiary hearing request including a specified list of issues, the “utility’s pending tariff revisions shall then be suspended” by the Commission to allow time to conduct a hearing, complete any post-hearing procedure, and allow time for a Commission decision within the eleven (11) month timeframe.

9. Oakbrier initiated this small utility rate case proceeding on November 26, 2008, over six (6) months ago. Pursuant to subsections 3.050(20) and (24), the case must be fully presented to the Commission by August 26, 2009, and the Commission must make its decision and an order shall be issued and effective no later than October 26, 2009. Thus, OPC’s alternative request for the tariffs to be suspended for 120 days plus six (6) months is outside the scope of the Commission Rule 3.050 regarding the timeframe in which a small utility rate case should be disposed, even within the context of contested case procedure.

10. Staff notes it does not oppose OPC’s request for a local public hearing, and will fully participate in any local public hearing ordered by the Commission. Staff notes that if a local public hearing is held after June 15, 2009, the revised tariffs filed in this case will have gone into effect.

WHEREFORE, Staff respectfully submits its response to OPC’s *Request for Evidentiary Hearing and Motion to Suspend Tariff*.

Respectfully Submitted,

/s/ Jaime N. Ott

Jaime N. Ott

Missouri Bar No. 60949

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360

Jefferson City, MO 65102

(573) 751-8700 (Telephone)

(573) 751-9285 (Fax)

jaime.ott@psc.mo.gov (e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Recommendation has been provided, either by first-class mail, by electronic mail, by facsimile transmission or by hand-delivery, to each attorney and/or party of record for this case on this 1st day of June 2009.

/s/ Jaime N. Ott