

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

In the Matter of S.K.&M. Water and)	<u>Case Nos. WR-2007-0460</u>
Sewer Company's Rate Increase Request)	Tariff No. YW-2007-0864

In the Matter of S.K.&M. Water and)	<u>Case Nos. WR-2007-0461</u>
Sewer Company's Rate Increase Request)	Tariff No. YW-2007-0865

**PUBLIC COUNSEL'S MOTION TO COMPEL DISCOVERY
AND REQUEST FOR EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel and for its Motion to Compel Discovery and Request for Expedited Treatment states as follows:

The Office of the Public Counsel (Public Counsel) certifies that it has complied with all requirements of 4 CSR 2.090(2). Public Counsel has faced continuing and significant problems with S.K.&M. Water and Sewer Company (SK&M) failing to respond to proper data requests made to SK&M. Public Counsel now invokes the Commission's authority to enforce discovery under the Missouri Public Service Commission (Commission) rules and seeks the Commission's intervention in these unresolved discovery matters so that Public Counsel can receive full and complete answers to its data requests and other discovery which Public Counsel has a clear and unambiguous right to receive from SK&M.

Public Counsel asks the Commission to: (1) consider and issue appropriate orders in favor of Public Counsel and against SK&M on Public Counsel's request to compel SK&M to fully and completely respond to the data requests sent to SK&M on April 10, 2007 which are overdue; and (2) expedite consideration as soon as possible since the

responses are overdue, the effective date of the proposed tariffs filed by SK&M is July 16, 2007 and Public Counsel has been ordered to file a pleading stating whether it agrees or disagrees with the proposed tariffs by July 2, 2007.

(1) Background

On April 10, 2007, Public Counsel sent a series of data requests to SK&M requesting information designed to clarify concerns of improper charges to the utility. The accompanying letter directed SK&M's attention to 4 CSR 240-2.090(2) and stated that if SK&M had any objections or was unable to answer these data requests within twenty (20) days, the objection or inability to answer must be served in writing within ten (10) days of receipt of these data requests.

When no response to the April 10, 2007 data requests was received by May 10, 2007, Public Counsel mailed a follow up letter to SK&M again seeking answers to the data requests. On May 16, 2007, SK&M sent a letter stating that Public Counsel's data requests were improper as part of the small utility rate request procedure and SK&M had no obligation to respond to them. On May 17, 2007, Public Counsel mailed yet another letter to SK&M stating that any objection to Public Counsel's data requests were untimely as they were not served in writing within the required ten (10) days, that Public Counsel's data requests were proper under Section 386.450, RSMo 2000, and yet again seeking answers to the April 10, 2007 data requests.

When, again, no response to the April 10, 2007 data requests were received, Public Counsel requested an informal Discovery Conference be held. This informal Discovery Conference was held on June 21, 2007 with Judge Stearley, SK&M, the Staff of the Public Service Commission (Staff) and Public Counsel present.

(2) Request for Motion to Compel

Section 386.450, RSMo 2000, requires the Commission, upon a showing of good cause by the Public Counsel, to order a public utility to produce papers or records of the utility for examination by the Public Counsel. The Commission has stated that the statute does not require Public Counsel to show that the requested documents are relevant to any particular issue in a contested case.¹ The Commission has also stated that the statute allows the Commission to require the production of the requested documents even if there were no contested case in existence.²

This right is not conditioned on considerations of relevance under MO Rule Civ. Pro. 56.01(b)(1) and PSC Rule 4 CSR 240-2.090(1). The Commission has recognized that information sought by the Public Counsel, if not relevant, may well lead to other information which is relevant.³ Therefore, the Commission has determined that Public Counsel and the Staff can request records they want in their investigation without any showing that it is otherwise discoverable or is relevant to a specific case even if it is no more admissible in a hearing in their hands than in those of any other party.⁴

Public Counsel's right to pose data requests seeking information from any utility and the right to inspect and obtain copies of any utility's records or documents in its possession is coequal to that of the Staff of the Missouri Public Service Commission (Staff) and is broader than the discovery authority permitted other litigants under

¹ *Order Regarding Public Counsel's Motion to Compel Discovery*, Case No. ER-2007-0002, March 15, 2007.

² *Id.*

³ *Staff of the Missouri Public Service Commission, v. Union Electric Company, doing business as AmerenUE*, Case No. EC-2002-1, 2002 Mo. PSC LEXIS 31

⁴ *Id.*

Commission Rules.⁵ Therefore, the fact that Public Counsel is requesting production of these documents in the context of small water and sewer company rate increase requests does not in any way diminish Public Counsel's right to examine those documents.

Missouri Regulation 4 CSR 240-2.090 (1) states that sanctions may be imposed for the abuse of the discovery process or failure to comply with commission orders regarding discovery. Public Counsel has filed written responses to SK&M's failure to respond and objections and made a good faith effort to resolve the discovery dispute in an informal Discovery Conference held with Judge Stearley on June 21, 2007. Due to the fact that the effective date of the proposed tariffs filed by SK&M is July 16, 2007 and Public Counsel has been ordered to file a pleading stating whether it agrees or disagrees with the proposed tariffs by July 2, 2007, time is of the essence to obtain the information sought in these data requests and Public Counsel seeks expedited treatment.

Therefore, Public Counsel requests that the Commission act on its motion in an expedited manner so that Public Counsel may receive SK&M's responses to the April 10, 2007 data requests by no later than 5:00 pm on Friday, June 29, 2007.

(3) Grounds for expedited treatment

Public Counsel requests expedited treatment in this motion due to the fact that the effective date of the proposed tariffs filed by SK&M is July 16, 2007 and Public Counsel has been ordered to file a pleading stating whether it agrees or disagrees with the proposed tariffs by July 2, 2007. This motion was filed promptly on the afternoon following the Discovery Conference. Thorough discovery is necessary to Public Counsel in its efforts to present its position to this Commission. Without these documents Public

⁵ RSMo. Section 386.450 and *In the Matter of Missouri-American Water Company's Tariff* (Case No. WR-2000-281, et al.)(2-2-2000).

Counsel will be unable to clarify concerns of improper charges to the utility and present a complete and well documented position to the Commission.

Therefore, Public Counsel requests that the Commission act on its motion in an expedited manner so that Public Counsel may receive SK&M's responses to the April 10, 2007 data requests by no later than 5:00 pm on Friday, June 29, 2007.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission issue an Order to Compel Responses to Public Counsel's April 10, 2007 data requests, in full and completely, no later than 5:00 pm on Friday, June 29, 2007, and for such other and additional relief that is necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 21st day of June 2007:

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