

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

In the Matter of the Tariff Filing of)	
Algonquin Water Resources of)	
Missouri, LLC, to Implement a General)	<u>Case No. WR-2006-0425</u>
Rate Increase for Water and Sewer)	
Customers in its Missouri Service)	
Areas.)	

PUBLIC COUNSEL’S RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Order Directing Filing states as follows:

I. Public Counsel’s position on what legal authority, if any, the Commission has to order Algonquin to file emergency tariffs to permit it to immediately charge for the water it supplies to Holiday Hills golf course for irrigation.

The Missouri Public Service Commission (Commission) has the authority to grant emergency interim rate increases which are requested by a regulated utility and also to order emergency interim rate increases it deems necessary after investigation or hearing. Therefore, the Commission has the authority to order Algonquin to file emergency tariffs imposing charges for irrigation water use.

In its March 1, 2007 Order Directing Filing, the Commission stated that in Algonquin’s filing for a general rate increase, Algonquin alleged that it cannot charge for the water it supplies its Holiday Hills golf course because it has no rate schedule to do so. The Commission also noted that Holiday Hills golf course may consume vast quantities of water at no charge pending the Commission’s Report and Order in this case. Because of this, the Commission directed the parties to

file their position on whether the Commission has the legal authority to order Algonquin to file emergency tariffs to permit it to immediately charge for the water it supplies to Holiday Hills golf course for irrigation.

The Commission has broad discretion to authorize an interim rate increase requested by a utility and no standards are specified to control the exercise of that discretion.¹ The Commission also has supervisory authority over all regulated utilities within its jurisdiction. While the PSC cannot micromanage utilities or otherwise usurp the management function, the Commission has a duty to prevent waste of a utility's assets (here revenues) and known and clear and irreparable harm that threatens the immediate ability of the utility to provide safe and adequate service at reasonable prices.

The Commission in previous cases has determined an interim rate increase is appropriate if (1) the evidence shows the utility is operating at a deficit and (2) to disallow the interim rate relief would result in damage to the company's financial integrity and ability to render safe & adequate service.² An argument can be made that the Staff's audit of Algonquin in the general rate increase case shows that the utility is operating at a deficit, especially where the irrigation water is concerned since there is currently no charges for the water it supplies to Holiday Hills golf course for irrigation. Also, an argument could be made that Algonquin's financial integrity and ability to render safe & adequate service would be in jeopardy if Holiday Hills golf course were to attempt to use or even hoard vast quantities of water in its ponds, etc while the water is free. There is a

¹ *State ex rel Laclede Gas Co. v. Missouri Public Service Commission*, 535 S.W.2d 561 (1976)

² *In the matter of Terre Du Lac Utilities Corporation*, 25 Mo. P.S.C (N.S.) 327 (1982)

possibility that this vast water use over such a short period of time could result in residential customers suffering from low water supply and low pressure problems preventing safe and adequate service from being provided. Therefore, an emergency interim rate increase would be appropriate for the water provided to Algonquin's Holiday Hills golf course irrigation.

There is no question that Commission may authorize an interim rate increase that is requested by a regulated utility. However, even though an interim rate increase might be appropriate, Algonquin has not requested an interim rate increase for irrigation in this case. Algonquin has only applied for a general rate increase which included a charge for irrigation water. This very issue is part of the Staff and Public Counsel arguments that rate case expense should be disallowed since Algonquin had the ability to request and receive immediate rate relief for the water supplied for the Holiday Hills golf course irrigation, but refused to do so. In this situation, the question is whether the Commission may order an interim rate increase when one was not requested by the utility.

The Missouri Supreme Court has given recognition to *May Department Stores Co. v. Union Electric Co.*³ which stated "The [Commission] has exclusive jurisdiction to establish public utility rates and may do so either by approval of rate schedules filed with it or by order after investigation or hearing."⁴ This indicates that a contested case consisting of an investigation or hearing is required in order for the Commission to establish public utility rates. But, the Court does

³ 341 Mo. 299, 107 S.W.2d 41 (1937)

⁴ *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 28 (1975)

not indicate whether that contested case must be specific to an interim rate increase.

Unlike the situation in recent case where the Western District Court of Appeals determined that filing a Stipulation and Agreement did not initiate the required contested case,⁵ Algonquin has a contested case filed with the Commission in which an evidentiary hearing has been completed. In the *Sierra Club* case, the Western District stated that filings based on seeking approval for a merger, in a pre-existing case, or in an effort to avoid a contested case already involved an existing contested case and were not in conflict with that opinion.⁶ These filings did not create a contested case, one had previously been filed and created. In much the same way, Algonquin's previous filing of its rate increase request was a contested case which had gone to evidentiary hearing. There is no need for a contested case filed specifically for an interim rate increase since a related contested case was already pending. Any orders of an interim rate increase to be imposed by Algonquin would be sufficiently based on this existing contested case and its evidentiary hearing and therefore, do not create the need for another contested case.

Since the Commission has the authority to grant emergency interim rate increases which are requested by a regulated utility and also to order emergency interim rate increases it deems necessary after investigation or hearing, the Commission has the authority to order Algonquin to file emergency tariffs imposing charges for irrigation water use.

⁵ *State of Missouri ex rel. Sierra Club v. Missouri Public Service Commission; Kansas City Power and Light*, 2007 Mo. App. LEXIS 333 (2007)

⁶ *Id.* at 41-42

II. Public Counsel does not object to such an emergency tariff.

Public Counsel has no objections to the Commission ordering Algonquin to file emergency tariffs to permit it to immediately charge for the water it supplies to Holiday Hills golf course for irrigation.

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 5th day of March 2007:

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