

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
October, 2009.

In the Matter of the Application of Noel Water Company,)
Inc. for a General Increase in Water Revenues through) **File No. WR-2009-0395**
the Informal Rate Proceedings for Small Companies as) Tariff No. YW-2010-0234
Provided for in Rule 4 CSR 240-3.050)

**ORDER APPROVING COMPANY/STAFF DISPOSITION AGREEMENT,
REJECTING TARIFFS AND AUTHORIZING TARIFF FILING**

Issue Date: October 7, 2009

Effective Date: 16, 2009

On May 6, 2009,¹ Noel Water Company ("NWC")² initiated a small company rate increase proceeding pursuant to Commission Rule 4 CSR 240-3.050. On September 23, the Commission's Staff filed a Company/Staff Disposition Agreement ("Agreement") executed by it and NWC, and on September 28, NWC filed revised tariff sheets that it intended to be in conformity with the Agreement bearing an effective date of November 12.³ Also on September 28, Public Counsel filed its position statement.

Public Counsel states that although it agrees with most of Staff's audit positions, it has concerns regarding the management fees, employee payroll, director's fees, rent, insurance and transportation expenses. Public Counsel believes that some of these costs

¹ All dates throughout this order refer to the year 2009 unless otherwise noted.

² NWC provides service to approximately 665 customers, the majority of which are residential customers. Staff reports that NWC has no significant service quality issues.

³ NWC had originally requested an increase of \$75,000 to \$80,000, representing an increase of approximately 30-33%. After the Commission's Staff completed a full audit of the company, NWC and Staff agreed that NWC's annualized water system operating revenue should be increased by \$68,307, representing an overall increase for all of its rate classes of approximately 27.423.%. Under this increase, an average residential

should not be included in the utility's cost of service; however, Public Counsel believes the dollars amounts are so small that opposition to the Agreement and the related tariff revisions would not be in the best interests of ratepayers. Public Counsel states that while it does not agree with the Agreement and related tariff revisions, it will not oppose their approval by the Commission. Public Counsel also asks that, in the event the Commission decides to approve the Agreement, the Commission should waive the second customer notice required by Commission Rule 4 CSR 240-3.050(14) and simply require the final notice as contemplated in Commission Rule 4 CSR 240-3.050(22). To require both notices would be burdensome and costly to NWC and its customers.

The Commission finds the unopposed Agreement reasonable and shall approve it.⁴ The Commission finds that the tariffs filed on September 28 are **not** in compliance with the Agreement and will reject NWC's current tariff filings and authorize NWC to file tariffs in compliance with the Agreement. The Commission further finds that reducing the cost and burden to NWC and its customers constitutes good cause⁵ for waiving the second customer notice requirement in Commission Rule 4 CSR 240-3.050(14).

customer would experience an increase in their water bill of \$5.20 per month (\$11.56 currently to \$16.76 [or 44.98%] following the increase).

⁴ The Commission has the legal authority to accept stipulations and agreements as offered by the parties pursuant to Section 536.060, RSMo 2000. The requirement for a hearing is met when the opportunity for hearing has been provided and no party requests the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

⁵ Although the term "good cause" is frequently used in the law, the Commission's rules do not define it. "Good cause" is defined as a substantial reason or cause which would cause or justify the ordinary person to neglect one of his legal duties. *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm'n*, 575 S.W.2d 889, 892 (Mo. App. 1978); *Black's Law Dictionary*, 692 (6th ed. 1990); *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). To constitute *good cause*, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical." *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. 1977). And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney. See *generally Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

THE COMMISSION ORDERS THAT:

1. The unopposed Company/Staff Disposition Agreement regarding Noel Water Company's request for an increase in water revenues is approved.
2. The signatories shall comply with the terms of the Company/Staff Disposition Agreement. A copy of the Agreement is attached to this order as Appendix A.
3. Noel Water Company is granted a waiver of the second customer notice, as required by Commission Rule 4 CSR 240-3.050(14), for good cause shown.
4. The following revised tariff sheets filed by Noel Water Company on September 28, 2009, and assigned Tariff File No. YW-2010-0234, bearing an effective date of November 12, 2009, are rejected. The tariff sheets rejected are:

P.S.C. MO No. 3

2nd Revised Sheet No. 6, Canceling 1st Revised Sheet No. 6
2nd Revised Sheet No. 7, Canceling 1st Revised Sheet No. 7
2nd Revised Sheet No. 8, Canceling 1st Revised Sheet No. 8
2nd Revised Sheet No. 9, Canceling 1st Revised Sheet No. 9
2nd Revised Sheet No. 13, Canceling 1st Revised Sheet No. 13

5. Noel Water Company is authorized to file tariffs in compliance with the Company/Staff Disposition Agreement.
6. This order shall become effective on October 16, 2009.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge