

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

In the Matter of Lake Region Water & Sewer	)	
Company's Application to Implement a General	)	File No. WR-2013-0461
Rate Increase in Water and Sewer Service	)	

**THE OFFICE OF THE PUBLIC COUNSEL'S SUGGESTIONS**  
**IN OPPOSITION TO MOTION TO QUASH**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Suggestions in Opposition to the Motion to Quash states as follows:

On January 13, 2014, RPS Properties, L.P. (RPS) filed its Objections to Subpoena(s) and Motion to Quash with the Missouri Public Service Commission (Commission) seeking to quash a Subpoena Duces Tecum Order to Produce Documents, Business Record Affidavit, and Notice of Subpoena for Production of Documents served on RPS by the Staff of the Missouri Public Service Commission (Staff). The motion by RPS claims that the subpoena should be quashed because the documents sought by Staff's subpoena relate or pertain solely to an entity that is not regulated by this Commission, not a party to this case, has not filed testimony in this case, not a public utility under the jurisdiction of the Commission and not a water company nor a sewer company. The motion by RPS also claims that the request for production of documents is improper under the Missouri Rules of Discovery, mainly MO Rule Civ. Pro. Rule 57 -- Interrogatories and Depositions and Rule 58 -- Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

The Motion to Quash has no basis under the statutory powers of the Commission to require production of any documents from any person or entity. Section 386.450, RSMo 2000, states:

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**, by order served upon **any corporation, person or public utility** in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of **any books, accounts, papers or records** kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or **by the commission or under its direction**. (emphasis added)

Section 368.450, RSMo, specifically provides the Commission the right, on its own initiative including through the initiative of its own Staff, to order “any corporation, person or public utility” to produce “any books, accounts, papers or records” kept either within the State of Missouri or outside the State of Missouri for examination by the Commission and its Staff. The Commission has stated that the statute does not require a showing that the requested documents are relevant to any particular issue in a contested case.<sup>1</sup> 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.<sup>2</sup>

The right of the Commission through Section 386.450, RSMo, 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 through Section 386.450, RSMo, if not relevant, may well lead to other information which is relevant.<sup>3</sup> The Commission has determined that the Staff as well as Public Counsel may 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.<sup>4</sup>

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<sup>1</sup> *Order Regarding Public Counsel’s Motion to Compel Discovery*, Case No. ER-2007-0002, March 15, 2007.

<sup>2</sup> *Id.*

<sup>3</sup> *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

<sup>4</sup> *Id.*

Therefore, the statutory ability of the Staff as well as Public Counsel to obtain discovery is broader than the discovery authority permitted other litigants under Commission Rules.<sup>5</sup>

Under the statutes of Missouri, the Commission most certainly has the authority to require RPS to produce the documents requested by Staff in its subpoena. RPS is a “corporation, person or public utility” and Staff through its subpoena has requested the production of “books, accounts, papers or records” as contemplated by Section 386.450, RSMo. It makes no difference that RPS is not regulated by this Commission, is not a party to this case, has not filed testimony in this case, is not a public utility under the jurisdiction of the Commission and is not a water company nor is it a sewer company. The Commission has the authority to require RPS to produce the documents requested under subpoena and it is just and reasonable to do so to. Therefore, the Motion to Quash should be denied.

Public Counsel would point out that while Section 386.450, RSMo, **allows** the Commission to act on its own initiative, that very same statute **requires** the Commission, upon a showing of good cause by the Public Counsel, to order a “corporation, person or public utility” to produce papers or records for examination by the Public Counsel. Public Counsel wishes the Commission to know that Public Counsel did not submit its own subpoenas because its actions would have only duplicated the actions of Staff and caused increased expense. But, Public Counsel can certainly make a showing of good cause for the production of these documents. The Commission has found a nexus between the availability fees, rate base and utility rates. The Commission is well aware that both Staff and Public Counsel have faced continuing and significant problems in their quest to obtain information regarding availability fees so that just and reasonable rates may be set in this case. As a shareholder of Lake Region, RPS has a self-

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<sup>5</sup> 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).

serving reason to try to hide information regarding availability fees from Staff, Public Counsel and ultimately the Commission. If Lake Region and its shareholders are successful in hiding this information, Lake Region is more likely to be able to charge higher rates and provide a higher rate of return for its shareholders. As a result, it is imperative that this information be disclosed. Therefore, if the Commission determines that acting on Staff's initiative is not sufficient to allow it to use its discretion to act per Section 386.450, RSMo, Public Counsel is more than willing to issue the exact same subpoenas so that the Commission could then have a statutory requirement to act.

**WHEREFORE**, the Office of the Public Counsel respectfully submits its Suggestions in Opposition to the Motion to Quash.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

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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 17<sup>th</sup> day of January 2014:

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**/s/ Christina L. Baker**

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