

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of November, 2016.

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	<u>File No. WC-2017-0007</u>
)	
v.)	
)	<u>File No. SC-2017-0008</u>
Missouri Utilities Company,)	
)	
Respondent.)	

**ORDER GRANTING MOTION TO SET ASIDE ORDER GRANTING
MOTION FOR DEFAULT DETERMINATION**

Issue Date: November 30, 2016

Effective Date: November 30, 2016

On November 17, 2016, the Commission issued an *Order Granting Motion for Default Determination* based on the failure of Missouri Utilities Company ("Missouri Utilities" or "the Company") to submit an answer to a complaint filed by the Commission's Staff. The Order set a November 24 deadline for Missouri Utilities to file a motion to set aside the order of default. On November 21, Missouri Utilities, through its Court-Appointed Receiver, Gary Cover, filed such a motion. Mr. Cover was appointed the Receiver after the system was abandoned, with limited funds for its operations. Mr. Cover states in the *Motion to Set Aside Order Granting Motion for Default Determination* that the Company has limited resources and does not have the ability to hire an accountant to assist in preparation of its Annual Reports.

Mr. Cover also states a contract to sell the Company's assets was previously approved by the Circuit Court of Cole County, Missouri in 2015. However, due to delays on the part of the purchaser, an application for approval of the sale of the Company's assets was not filed with the Commission until November 22, 2016 (File Nos. SM-2017-0150 and WM-2017-0151). Mr. Cover states that his duties as the Company's Receiver will be complete upon the Commission's approval of the sale of assets.

This Commission issued an order setting a November 28 deadline for responses to the *Motion to Set Aside Order Granting Motion for Default Determination*. On November 28, the Commission's Staff filed *Staff Response to Motion to Set Aside Order Granting Motion for Default Determination*. Staff asserts that the statutory and regulatory requirement to submit Annual Reports and pay assessments is known by Mr. Cover, who has performed both functions for the company in the past. Staff also points out that it is unnecessary to hire an accountant since Staff has made itself available on numerous occasions to answer questions and assist the Company. Staff also asserts that Missouri Utilities could have submitted a request for a rate increase. While Staff asserts arguments that, if true, may strengthen its complaint against Missouri Utilities, it does not provide a reason to deny the *Motion to Set Aside Order Granting Motion for Default Determination*.

A default determination is a procedural determination, not a ruling on the merits of the complaint. Where feasible, the Commission prefers to determine a contested case based on the evidence and arguments presented by all parties. If a party submits proper grounds, the Commission may set aside the default order and evaluate the allegations of a complaint on the merits. Staff does not state in its response that it

opposes Missouri Utilities' motion. Rather, Staff recommends that Mr. Cover and the Company resolve the Annual Reports issue before the sale of the Company. Commission Rule 4 CSR 240-2.070(9) allows the Commission to set aside a default order upon a finding of good cause. Based upon Mr. Cover's timely filed motion, his credible statements about delays of the sale of the system, and the recently filed application for Commission approval of the sale of the Company's system to Elm Hills Utility, the Commission finds good cause exists to grant the *Motion to Set Aside Order Granting Motion for Default Determination*.

THE COMMISSION ORDERS THAT:

1. Missouri Utilities Company's *Motion to Set Aside Order Granting Motion for Default Determination* is granted.
2. The Commission's *Order Granting Motion for Default Determination*, issued on November 17, 2016, is hereby set aside.
3. No later than December 16, 2016, Missouri Utilities Company shall file an answer to Staff's Complaint.
4. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Rupp, and Coleman, CC., concur;
Kenney, C., absent.

Burton, Senior Regulatory Law Judge.

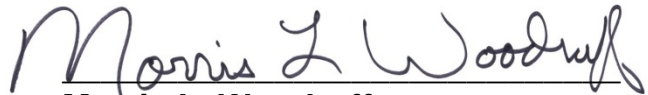
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 30th day of November 2016.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 30, 2016

File/Case No. WC-2017-0007 and SC-2017-0008

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

James Owen
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

**Missouri Public Service
Commission**

Marcella Forck
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
marcella.forck@psc.mo.gov

Missouri Utilities Company

Gary V Cover
137 West Franklin
PO Box 506
Clinton, MO 64735
gary@coverhiltonlaw.com

Missouri Utilities Company

Wesley Hilton
137 West Franklin
Clinton, MO 64735
wes@coverhiltonlaw.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.