

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

The Staff of the Missouri Public Service Commission,

Complainant,

v.

The Willows Utility Company,

Respondent.

Case No. WC-2005-_____

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and initiates its complaint pursuant to Section 386.390, RSMo (2000) and 4 CSR 240-2.070, against The Willows Utility Company (the “Company”) for violation of the Commission’s statutes and rules relating to annual assessment payments and annual report submissions. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. The Commission granted The Willows Utility Company a certificate of convenience to provide water and sewer services in Case No. WA-80-86 on December 27, 1979.

2. The company is a “water corporation,” a “sewer corporation” and “public utility” as defined in Section 386.020, RSMo (2000) and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250, RSMo (2000).

3. The Company has provided the following contact information to the Commission:

The Willows Utility Company
c/o Waterman Management Corporation
P.O. Box 3413
New York, NY 10163.

The Company is a Missouri corporation and the Missouri Secretary of State website indicates that the company is in good standing.

4. Section 386.390.1, RSMo (2000) authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision” of the Commission.

5. Commission Rule 4 CSR 240-2.070(1) provides that the Commission’s Staff, through the General Counsel, may file a complaint.

6. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the Division cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)). See also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo.banc 1940). If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to file its annual report and/or pay its annual assessment, the Commission may then authorize its General Counsel to bring a penalty action in the circuit court as provided in Section 386.600, RSMo (2000).

7. Section 386.370, RSMo (2000) authorizes the Commission to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. This statute provides that the public utility shall pay the amount assessed by July 15 or may at its election pay the assessment in four equal installments not later than July 15, October 15, January 15 and April 15.

8. Pursuant to Section 386.370, RSMo (2000) the Commission promulgated its *Assessment Order for Fiscal Year 2005* in Case No. AO-2004-0610, “In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2004.”

9. As called for by the *Assessment Order* in Case No. AO-2004-0610, the Budget and Fiscal Services Department calculated the amount of the 2005 Fiscal Year annual assessment for the Company and the Commission’s Director of Administration rendered the statement of its assessment on behalf of the Commission by letter on June 25, 2004. This letter was not returned by the U.S. Post Office.

10. Also in the *Assessment Order*, the Commission directed “[t]hat each public utility shall pay its assessment as set forth herein.”

11. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2004; October 15, 2004; January 15, 2005 and April 15, 2005. As of this date, no quarterly installments have been made; thus, the Company is delinquent on its 2005 annual assessment.

12. On November 9, 2004, the Commission’s General Counsel sent The Willows Utility Company a letter reminding them that the Company failed to pay its unpaid assessment and warning them that such failure to file will subject the Company to legal action under state law. Such letter was not returned. See Exhibit A.

13. The Company, as of the date of this pleading, has not paid its Fiscal Year 2005 assessment and therefore has not complied with the Commission’s *Assessment Order*. See Affidavit of Helen Davis, attached to this Complaint as Exhibit B.

14. Any public utility that fails, omits, or neglects to obey an order of the Commission “is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars” for each offense, if there is no penalty otherwise provided. Section 386.570.1, RSMo (2000). The statute further states that “in the case of a continuing violation each day’s continuance thereof shall be and be deemed to be a separate and distinct offense.” Section 386.570.2, RSMo (2000). No penalty for failing to pay annual assessments is otherwise provided in Chapter 386 or elsewhere in the Commission’s statutes.

15. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release information regarding the amount of the overdue assessment. As the assessment is derived from statements of revenue provided by regulated utilities and thus subject to the provisions of Section 386.480, RSMo (2000), wherein it states in part “No information furnished to the Commission by a ... public utility ... shall be open to public inspection or made public except on order of the Commission” Staff is concerned that in the absence of a Commission order directing its release, the revelation of the assessment amounts in circuit court or elsewhere may be improper.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission (1) open a complaint case pursuant to Section 386.390; and, after hearing, find that The Willows Utility Company failed, omitted, or neglected to pay its Fiscal Year 2005 annual assessment to the Commission as required by Missouri statute and Commission orders; (2) authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, RSMo (2000) based on the statutory penalties set forth in Sections 386.570 and 386.590 for failing to

pay assessments; and (3) order that information about the amount of the overdue assessment may be publicly released.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Mary E. Weston

Mary E. Weston
Assistant General Counsel
Missouri Bar No. 54669

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
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mary.weston@psc.mo.gov

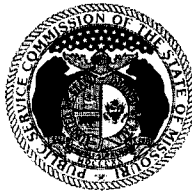
Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 17th day of June 2005.

/s/ Mary E. Weston

Lewis Mills, Esq.
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

The Willows Utility Company
c/o Waterman Management Corporation
P.O. Box 3413
New York, NY 10163



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

JEFF DAVIS

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

November 9, 2004

George H. Waterman III
Willows Utility Company, The
c/o Waterman Management Corporation
P.O. Box 3413
New York NY 10163

RE: Annual Assessment

Dear Mr. Waterman:

The Missouri Public Service Commission is authorized by Section 386.370 RSMo 2003 to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. The Commission staff calculates the annual assessment using the method required by statute at Section 386.370.2. RSMo 2003.

In June 2004, the Commission issued an order determining the amount of assessment owed by each utility. On June 25, 2004 the Commission notified you of the amount of your assessment for the fiscal year beginning July 1, 2004. Payment of that amount was due on July 15, 2004, with an option for four quarterly payments due July 15th, October 15th, January 15th and April 15th. To date, you have an unpaid annual assessment of \$955.09.


In accord with the authority granted to the Commission to make annual assessments to public utilities, the Commission hereby demands immediate payment of your annual assessment. Section 386.570 RSMo 2003 provides for penalties of \$100 to \$2,000 per day for failure to comply with any Commission order or demand. In addition, in serious cases of failure to comply with assessment obligations, the Commission may suspend or revoke your certificate to operate in this state.

PLEASE NOTE: If you do not, within thirty (30) days of the date of this letter, forward your check made payable to the Director of Revenue, State of Missouri to the Missouri Public

Exhibit A

Service Commission, Attn: Budget & Fiscal Services, P.O. Box 360, Jefferson City, MO 65102, my office will, without further notice, initiate appropriate legal actions as cited above. If you have questions concerning your balance or payment arrangements, contact Helen Davis, Budget & Fiscal Services Department, at 573-751-4274.

Sincerely,



Dana K. Joyce
General Counsel

DKJ:hd

c: Robert J. Quinn, Jr.
Helen Davis

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Helen Davis, Accountant II, of the Commission's Budget and Fiscal Services Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the Fiscal Year 2005 Assessment from The Willows Utility Company.

Helen Davis
Helen Davis

Subscribed and sworn to before me this 17th day of June, 2005.

D. Suzie Mankin
Notary Public

My commission expires: 07-01-2008

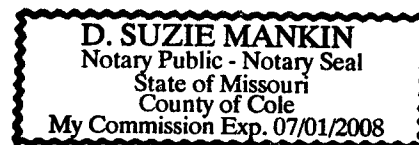


Exhibit B