

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

The Office of the Public Counsel,  
An agency of the State of Missouri,

Complainant,

vs.

Ridge Creek Development, LLC,  
Ridge Creek Water Company, LLC,  
Mike Stoner, Denise Stoner,  
A Missouri water corporation,

Respondents.

**Case No. WC-2015-0290**

**STAFF'S RESPONSE TO OPC'S MOTION FOR  
ORDER DIRECTING RESPONDENTS TO FILE INTERM TARIFFS  
AND MOTION FOR EXPEDITED TREATMENT**

**COMES NOW** the Staff of the Missouri Public Service Commission, and for its *Response to OPC's Motion for Order Directing Respondents to File Interim Tariff and Motion for Expedited Treatment*, states as follows:

***Introduction***

1. On May 22, 2015, the Office of the Public Counsel ("OPC") moved the Commission to order Respondents Mike and Denise Stoner, Ridge Creek Development, LLC, and Ridge Creek Water Company, LLC, to file an interim tariff on an expedited basis; so expedited, in fact, that the Commission might take it up at its June 2, 2015, Agenda meeting and approve it for service rendered on and after July 1, 2015.

***Interim Tariffs***

2. None of the several Respondents in this case has a Certificate of Convenience and Necessity ("CCN") authorizing it – or them – to act as a public utility by distributing water to the public for gain. In the absence of a CCN, while the

Respondents may propose a tariff to the Commission and the Commission may approve it, the Respondents still may not lawfully distribute water to the public for gain. Chapters 386 and 393, RSMo., do not contemplate the Commission approving tariffs that might be filed by an uncertificated entity. “Since it is purely a creature of statute, the Public Service Commission's powers are limited to those conferred by the . . . statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted[.]”<sup>1</sup> “Whatever power the [Commission] has must be warranted by the letter of law or such clear implication flowing therefrom as is necessary to render the power conferred effective.”<sup>2</sup>

3. Section 393.140(11), RSMo., authorizes the Commission to approve tariffs proposed by “water corporations”; that is, “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]” This statute certainly includes the Respondents. However, OPC overlooks § 393.170, RSMo., subsections 1 and 2, which prohibit water corporations from either constructing a water system or exercising “any right or privilege under a franchise” without first obtaining authorization from the Commission. Without a CCN, the sale of water service by the Respondents is unlawful, whether or not they have tariffs.

---

<sup>1</sup> *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979) (“*UCCM*”).

<sup>2</sup> *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 335 Mo. 448, 457-58, 73 S.W.2d 393, 399 (banc 1934).

4. OPC purports to find authority for the relief it seeks in a comment by the Missouri Court of Appeals, “[t]he Commission has power in a proper case to grant interim rate increases[.]”<sup>3</sup> Of course, the Court was talking about something utterly different than the matter at hand; namely, the Commission’s undoubted power to grant an emergency rate increase to a properly certificated utility that is facing financial ruin. Nothing in that case has any relation to this case. The Court was not talking about interim tariffs for uncertificated entities.

5. In its *Motion*, OPC states:

In this unique circumstance, where Respondent owns and operates a water system and receives monetary compensation through “water service connection” charges to distribute water through that system for public use to customers in the Ridge Creek Subdivision, and without any authorization for those charges from the Commission, Public Counsel requests the Commission order the Respondent to file interim tariffs with the Commission. **To do so will stop further violations of Missouri law and will curtail the accrual of any refunds, penalties or other damages which may apply to Respondents’ unlawful activity.** Public Counsel believes under this set of circumstances, an exigent need exists to get customers of Respondent onto rates which are tariffed as quickly as possible. (Emphasis added).

As already seen, due to § 393.170, RSMo., tariffs **would not stop further violations of Missouri law.** Only the combination of a CCN plus approved tariffs will achieve that.

6. OPC again refers to refunds. Staff has already explained that there can be no refunds, at least, not by order of the Commission.<sup>4</sup> Perhaps a Court could order refunds, but neither OPC nor the Commission has the necessary standing to pursue such a claim.

---

<sup>3</sup> *State ex Rel. Laclede Gas Company v. Public Service Commission*, 535 S.W.2d 561, 567 (Mo. App. 1976); see also *UCCM*, *supra*, 585 S.W.2d at 48.

<sup>4</sup> *In re Request for an Increase in Sewer Operating Revenues of Emerald Pointe Utility Co.*, 438 S.W.3d 482, 490 n. 8 (Mo. App., W.D. 2014).

### ***Expedited Treatment***

7. OPC requests expedited treatment based upon its mistaken belief that interim tariffs will cure the unlawfulness of Respondents' conduct. As explained above, it will not; therefore, there is no need for expedited treatment.

8. Staff objects to expedited treatment in any event. Section 393.150.1, RSMo., explains the process required when a new schedule of charges is filed – and any tariff filed by Respondents would necessarily be a “new” schedule of charges because they have never had an approved tariff. The process required by statute is:

Whenever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or sewer corporation any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested gas corporation, electrical corporation, water corporation or sewer corporation, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation or practice, and pending such hearing and the decision thereon, the commission upon filing with such schedule, and delivering to the gas corporation, electrical corporation, water corporation or sewer corporation affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, form of contract or agreement, rule, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective.

9. As is apparent from the above, the establishment of the initial tariffs by a newly certificated water company is, in fact, a general rate case. Staff's practice is to

undertake this work within the application case leading to the grant of a CCN. As stated previously, it is only with the grant of both the CCN and the establishment of approved tariffs that utility operations become lawful.

10. But this is not a process that can be expedited. It takes time for Staff to audit the company and establish its rate base and revenue requirement, upon which tariffs must be based. How can the Commission approve tariffs before this work is done, given that an approved tariff is presumptively just and reasonable and the “law of the land”?<sup>5</sup>

**WHEREFORE**, Staff prays that the Commission will **DENY** OPC’s request for an order directing the Respondents to file interim tariffs and **DENY** OPC’s request for expedited treatment; and grant such other and further relief as is just in the circumstances.

---

<sup>5</sup> Cf. § 386.430, RSMo.; like a duly-promulgated administrative rule, a tariff has the force and effect of law and is binding on the utility, the public and the PSC. This is the “Filed Rate Doctrine” or “Filed Tariff Doctrine.” “As developed for purposes of the Federal Power Act, the ‘filed rate’ doctrine has its genesis in **Montana-Dakota Utilities Co. v. Northwestern Public Service Co.**, 341 U.S. 246, 251-252, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951). There, this Court examined the reach of ratemakings by FERC’s predecessor, the Federal Power Commission (FPC). \* \* \* [M]any state courts have applied the filed rate doctrine of **Montana-Dakota** to decisions of state utility commissions and state courts that concern matters addressed in FERC ratemakings.” **Nantahala Power and Light Co. v. Thornburg**, 476 U.S. 953, 962, 964, 106 S.Ct. 2349, 2354-55, 2356, 90 L.Ed.2d 943, \_\_\_\_ (1986). Missouri courts have uniformly applied the Filed Rate Doctrine to decisions of the PSC, see, e.g., **Public Service Com’n of State v. Missouri Gas Energy**, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012); **State ex rel. AG Processing, Inc. v. Public Service Commission**, 311 S.W.3d 361 (Mo. App., W.D. 2010); **State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n**, 210 S.W.3d 330, 337 (Mo. App., W.D. 2006); **Bauer v. Southwestern Bell Tel. Co.**, 958 S.W.2d 568 (Mo. App., E.D. 1997).

Respectfully submitted,

**/s/ Kevin A. Thompson**

Kevin A. Thompson  
Missouri Bar Number 36288  
Chief Staff Counsel

Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102  
Tel. 573-751-6514  
FAX 573-526-6969  
[kevin.thompson@psc.mo.gov](mailto:kevin.thompson@psc.mo.gov)

Attorney for the Staff of the  
Missouri Public Service Commission

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing has been served electronically, or by hand-delivery, or by First Class United States Mail, postage prepaid, upon all parties and counsel of record as shown in the Service Lists maintained for each of these cases by the Commission's Data Center on this 27<sup>th</sup> day of May, 2015.

**/s/ Kevin A. Thompson**