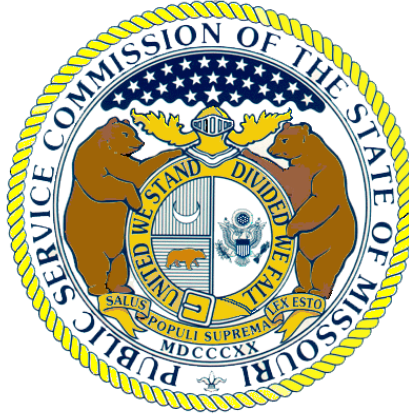


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Staff of the Missouri Public Service Commission,

Petitioner,

vs.

St. Louis County Water Company, doing business
as Missouri-American Water Company,

Respondent.

Case No. WC-2002-146

REPORT AND ORDER

Issue Date: July 23, 2002

Effective Date: August 2, 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission,)	
)	
Petitioner,)	
)	
vs.)	<u>Case No. WC-2002-146</u>
)	
St. Louis County Water Company, doing business)	
as Missouri-American Water Company,)	
)	
Respondent.)	

APPEARANCES

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for Petitioner the Staff of the Missouri Public Service Commission.

Richard T. Ciottone, of Counsel, Brydon, Swearingen & England, P.C., Post Office Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102, for Respondent Missouri-American Water Company.

David P. Abernathy, Vice-President, General Counsel and Secretary, Missouri-American Water Company, 535 North New Ballas Road, St. Louis, Missouri 63141-6875, for Respondent Missouri-American Water Company.

Robert H. Grant, Deputy County Counselor, Office of the County Counselor, St. Louis County Government Center, 41 South Central, Clayton, Missouri 63105, for St. Louis County, Missouri.

Ruth O'Neill, Legal Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

REGULATORY LAW JUDGE: **Kevin A. Thompson, Deputy Chief.**

REPORT AND ORDER

Procedural History

The Staff of the Missouri Public Service Commission filed its Complaint on September 13, 2001, against St. Louis County Water Company, doing business as Missouri-American Water Company, stating that tariff sheet P.S.C. Mo. No. 6, Original Revised Sheet No. RT 17.0, is unauthorized and unlawful because it purports to add a surcharge of \$1.00 monthly, or \$3.00 quarterly, to the bill of each residential customer residing in a structure containing four or fewer units for the purpose of service line repair whereas the statute and ordinance authorizing the surcharge impose it upon each service line, that is, upon the owner or owners of each such service line. Staff states that Company's residential service customers are not, in every case, the owners of the service lines that serve them. Staff further complains that Company's contract with the County of St. Louis makes no provision for the payment of Company's administrative costs from the collected funds and that Company is thus diverting ratepayer-supplied funds for an imprudent purpose. Staff further complains that the language of the above-referenced tariff sheet is misleading and confusing to ratepayers. Finally, Staff complains that the above-referenced tariff sheet was only permitted to become effective by operation of law because Staff relied upon Company's promise to withdraw the sheet prior to its effective date, a promise that Missouri-American did not keep. Staff states that it has conveyed its concerns to Company and that Company refuses to withdraw the tariff sheet. Staff prays that the Commission will order Company to stop collecting the surcharge, to refund all amounts already collected, and to rescind the above-referenced tariff sheet.

In response to the Commission's Notice of Complaint of September 19, Missouri-American timely filed its Answer on October 15. Therein, Missouri-American states that it is willing to prospectively revise the tariff sheet however the Commission desires. Missouri-American denies that it ever agreed to withdraw the sheet prior to its effective date; Missouri-American also denies Staff's insinuation that it obtained approval of the tariff through improper means. Company further denies that the language of the statute and ordinance require that the surcharge be collected from the owners of residential properties rather than from the occupants. Company further denies that the tariff sheet at issue is unauthorized or unlawful. Company also denies that its collection of the surcharge constitutes an imprudent use of funds derived from ratepayers. Missouri-American also denies that the language of the tariff is misleading or confusing. Company admits that it has refused Staff's request to withdraw the tariff. Finally, among certain further responses, Company advises the Commission that the amounts already collected pursuant to the tariff are unrecoverable under Missouri law.

The Commission, on October 25, set a prehearing conference for November 2 and directed that a proposed procedural schedule be filed by November 9. On November 2, the prehearing conference was held as scheduled. At that time, St. Louis County, Missouri, moved to intervene. As no party objected, the presiding officer granted this motion at the prehearing conference. On November 6, the Commission directed Intervenor St. Louis County to file a responsive pleading by November 19. On November 8, the Commission adopted the proposed procedural schedule filed jointly by the parties on November 7.

On November 19, Intervenor St. Louis County timely filed its Answer. In its Answer, St. Louis County denies that the language of the statute and ordinance require that the surcharge be collected from the owners of residential properties rather than from the occupants. St. Louis County also denies that the language of the tariff is misleading or confusing. Finally, among certain further responses, St. Louis County advises the Commission that the surcharge is popular among Company's customers and that nearly \$700,000 has already been spent from the collected funds to repair over 300 service lines.

Pursuant to the procedural schedule, the parties filed prepared testimony, an agreed list of issues, proposed findings of fact and conclusions of law, and statements of their positions on the issues. As scheduled, the Commission convened an evidentiary hearing on February 21, 2002. All of the parties were represented at the hearing. At the opening of the hearing, the parties advised the presiding officer that they had agreed to waive opening statements and cross-examination and to submit the case on the prefiled testimony. All of the prepared testimony was received into the record without objection. The presiding officer set a briefing schedule and those parties who desired to do so filed written briefs: Staff and Missouri-American filed initial briefs on March 22, and March 21, respectively; they filed reply briefs on April 5 and April 3, respectively.

Discussion

The parties submitted the following issues for determination. While all parties agreed on Issue 1, Staff suggests that Issue 2 is not a proper issue for determination.

1. Is the Company's tariff sheet P.S.C. MO No. 6 Original Revised SHEET No. RT 17.0 unjust, unreasonable, or more than allowed by law or by order or decision of the Commission, and, if so, what changes to the tariff would be proper?

2. Does Commission approval of a tariff also constitute approval of a contract that is filed with the tariff and on which the tariff is based?

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

St. Louis County Water Company, doing business as Missouri-American Water Company, is a Missouri corporation that provides water service to the public in St. Louis County, Missouri. After this case was filed, Missouri-American notified the Commission that St. Louis County Water Company has merged into Missouri-American Water Company.

In 1999, the Missouri legislature enacted a statute – Section 66.405, RSMo 2000 -- which permits the collection of a surcharge intended to defray the cost of water service line repairs:¹

1. If approved by a majority of the voters voting on the proposal, a county of the first classification having a population of over nine hundred thousand inhabitants may, by ordinance, levy and impose annually, upon water service lines providing water service to residential property having four or fewer dwelling units, on a countywide basis, including both the incorporated and unincorporated areas of such county, a fee not to exceed one dollar per month or an equivalent rate collected at some other interval.

¹ *Laws of Missouri* 1999, H.B. No. 450, § B, effective June 29, 1999; *Laws of Missouri* 1999, S.B. Nos. 160 & 82, § B, effective June 14, 1999.

2. The ballot of submission shall be in substantially the following form:

For the purpose of repair or replacement of water lines extending from the water main to a residential dwelling due to failure of the line or for road relocation, shall County be authorized to impose a fee not to exceed one dollar per month or an equivalent rate collected at some other interval upon all water service lines providing water service within the county to residential property having four or fewer dwelling units for the purpose of paying for the costs of necessary water service line repairs, replacements or relocations caused by improvements to public right-of-way?

☐ Yes

☐ No

3. For the purpose of this section, a water service line may be defined by local ordinance, but may not include the water meter or exceed that portion of water piping and related valves and connectors which extends from the water mains owned by the utility or municipality distributing public water supply to the first opportunity for a connection or joint beyond the point of entry into the premises receiving water service, and may not include facilities owned by the utility or municipality distributing public water supply. For purposes of this section, repair may be defined and limited by local ordinance, and may include replacement, repairs or relocation when made necessary by improvements to public right-of-way.

4. If a majority of the voters voting thereon approve the proposal authorized in subsection 1 of this section, the governing body of the county may enact an ordinance for the collection of such fee. The funds collected pursuant to such ordinance shall be deposited in a special account to be used solely for the purpose of paying for the reasonable costs associated with and necessary to administer and carry out the water service line repairs as defined in the ordinance and, if sufficient revenues are available, to reimburse the necessary costs of water service line repair, replacement or relocation made necessary by public right-of-way improvements.

5. The county may contract with any provider of water service in the county to bill and collect such fees along with bills for water service and to pursue collection of such amounts through discontinuance of service as may be directed by the county. The county may establish, as provided in the ordinance, regulations necessary for the administration of collections, claims, repairs,

relocations, replacements and all other activities necessary and convenient for the implementation of any ordinance adopted and approved pursuant to this section. The county may administer the program or may contract with one or more persons, through a competitive process, to provide for administration of any portion of implementation activities of any ordinance adopted and approved pursuant to this section, and reasonable costs of administering the program may be paid from the special account established pursuant to this section.

As permitted by Section 66.405, the matter was placed on the ballot and approved by a majority of the voters of St. Louis County on November 7, 2000. St. Louis County thereupon enacted a local ordinance, Section 502.195, to permit its residents to enjoy the benefits of the program authorized by the statute:²

A fee of One Dollar (\$1.00) per month is imposed upon all water service lines providing water service within the county to residential property having four or fewer dwelling units, to provide funds to pay for repair or replacement commencing July 1, 2001, of water lines extending from the water main to a residential dwelling due to failure of the line or for road relocation.

As authorized by Section 66.405.5, RSMo 2000, Missouri-American on January 19, 2001, entered into a contract with St. Louis County providing that, in exchange for a single payment of one dollar, Missouri-American would bill and collect the line repair surcharge from its residential customers in St. Louis County. Collection under the contract began on March 1, 2001. The contract provided that collected funds would be remitted to the county on a monthly basis. The contract also provided that uncollected funds would be pursued by Missouri-American in the normal course of its business, including service disconnection for nonpayment, if necessary. Missouri-American provided the contract to the Commission, requesting the Commission to approve it if approval is necessary.

² Ordinance 20,299, amending Chapter 502, Title V, SLCRO 1974.

On January 25, 2001, Missouri-American filed with this Commission a proposed tariff sheet, P.S.C. Mo. No. 6, Original Sheet No. RT 17.0, effective February 26, 2001, providing that Missouri-American would collect the surcharge from its customers on behalf of the County:

ST. LOUIS COUNTY SERVICE LINE REPAIR PROGRAM

AVAILABILITY – This rate is applicable from and after March 1, 2001 to residential customers in St. Louis County having four or fewer dwelling units, and only to the extent such charge shall continue to be authorized by and provided for in Chapter 502, Section 502.195, Title V of the St. Louis County Revised Ordinances 1974 as amended, and Section 66.405 RSMo 2000, and a contract between the Company and St. Louis County, Missouri heretofore filed with the Commission which governs the payment of amounts collected for St. Louis County for its Water Service Line Repair program.

RATE – One dollar (\$1.00) per month or three dollars (\$3.00) per quarter (and not pro-rata for periods of time less than one month or one quarter whichever is applicable) during which service is provided, to be billed and collected monthly, quarterly or otherwise in the due course of approved billing practices applicable to the customer. This tariff authorizes a reduction in this rate if and to the extent authorized by lawful actions of St. Louis County, but this tariff shall not authorize any increase without further filing with and approval by the Commission. (1)

PAYMENT TERMS – Bills are due and payable in the manner and at times applicable to bills for water service as provided in the Company's approved Rules and Regulations and 4 CSR-240-13, and discontinuance for non-payment shall be enforced to the extent and in the manner provided by such Rules.

(1) Exclusive of every tax or payment imposed upon the Company by political subdivisions of the State of Missouri, for the right to do business in such political subdivision. See tariff sheet No. RT 11.0.

This proposed tariff sheet became effective by its terms on February 26, 2001.

At some time prior to February 26, 2001, Wendell Hubbs of the Commission's Water and Sewer Department discussed the proposed sheet with Missouri-American's

attorney, Richard Ciottone. Hubbs told Ciottone that the Commission's Staff would seek suspension of the proposed sheet. Hubbs testified that later on the same day, Missouri-American's Treasurer, Jim Jenkins, advised Hubbs' supervisor, Dale Johansen, that Missouri-American would withdraw the proposed sheet. In fact, Missouri-American did not withdraw it and Staff never asked the Commission to suspend it. The proposed sheet became effective by operation of law on February 26, 2001. When Hubbs reminded Jenkins of his promise to withdraw the proposed sheet, Jenkins stated that he did not remember making such a promise. Although Hubbs requested that Missouri-American withdraw the sheet after it had become effective, the Company refused to do so.

Hubbs testified that Staff's concern with the tariff centers on who is to pay the surcharge. Hubbs testified that Staff's attorneys interpret Section 66.405, RSMo 2000, and Ordinance 502.195, SLCRO 1974 (as amended), as imposing the surcharge upon residential water service lines, that is, upon the *owners* of such lines. Missouri-American's tariff, on the other hand, imposes the surcharge upon the customer billed with respect to each residential water service line, whether or not that customer owns the line. Staff takes the position that the tariff and collection contract are inconsistent with Section 66.405, RSMo 2000, and Ordinance 502.195, SLCRO 1974 (as amended). Because Staff believes that Missouri-American must collect the surcharge from water service line owners, the collection contract will impose potentially costly administrative obligations upon Missouri-American.

Hubbs testified that Staff also had other concerns with the proposed sheet. First, Staff questioned whether a tariff sheet was necessary at all in view of Missouri-American's general pass-through tariff for taxes, P.S.C. Mo. No. 6, Original Sheet No. RT 11.0.

Second, Staff disliked some of the wording used on the proposed sheet. The title “St. Louis County Service Line Repair Program” made it appear to be a Commission-approved program, which it is not. The first paragraph is headed “Availability,” whereas the surcharge is imposed on certain persons as a tax. The second paragraph is headed “Rate,” but the surcharge is a county-imposed tax, not a Commission-approved rate. A provision in the second paragraph that purports to permit a reduction without further Commission action could lead to the amount of the tax being misstated in the tariff. Additionally, Staff believed that the Commission should not approve the collection contract between Missouri-American and St. Louis County.

Jenkins, Missouri-American’s Treasurer, had a different memory of his conversations concerning the proposed sheet. Jenkins testified that he never agreed to withdraw the sheet. Jenkins also testified that Hubbs’ concern at the time centered on his belief that no tariff was necessary. Jenkins further testified that the Company believed that it could not withdraw the tariff now “because that would retroactively invalidate the prior collections.” Despite Hubbs’ insistence to the contrary, Jenkins testified that Missouri-American believed a tariff was necessary for several reasons. First, sums collected pursuant to an approved tariff cannot be refunded. Second, an approved tariff renders the surcharge a “condition of service” and permits service disconnection for nonpayment. Third, primary jurisdiction over disputes arising from the surcharge would lie with the Commission rather than the courts. Finally, Missouri-American uses tariffs with respect to all “pass-through” fees and taxes in order to require that any questions of “cost allocations” be resolved in a general rate case.

In general, a water service line replacement program is very beneficial to property owners, who might otherwise find themselves responsible for extremely costly repairs. The program at issue in this case is modeled after that of the City of St. Louis, which program “is a huge success.” Jenkins testified that requiring Missouri-American to collect the surcharge from property owners only “would effectively kill the program.” In addition to the difficulty of determining who the owner of any given piece of property is, Missouri-American would lose the threat of service disconnection as an enforcement method. Jenkins testified that Missouri-American believes that the surcharge is imposed on service line *users*, not on service line *owners*. Jenkins testified that the surcharge is fair and equitable in its present form because it is, after all, the *occupants* of each residential property who benefit directly from the water service line.

Jenkins further testified that Staff’s position in this case is inconsistent with its position in other recent cases. In both Jefferson City and St. Joseph, two other service areas of Missouri-American, Staff insisted that the Company shoulder the burden of water service line repairs, with the costs to be defrayed from water service revenue rather than through a surcharge as in the present case. Staff expressed no concern for renters in those cases, Jenkins testified. Jenkins further testified that Missouri-American’s standing policy, as expressed in Rule R19.1 on P.S.C. Mo. No. 6, First Revised Sheet No. R19.1, is that service line repair and maintenance is the responsibility of the “owner or customer.”

Missouri-American also presented the testimony of State Senator Wayne Goode. Senator Goode sponsored the bill that was eventually enacted as Section 66.405, RSMo 2000. Senator Goode testified that most persons are shocked, upon failure of their water service line, to discover that repair is their responsibility. The repairs are “significant”

and “a real financial hardship.” Senator Goode testified that it was always intended that funding for the water service line repair program come from residential ratepayers, without regard to whether they owned or rented. The bill was intended to take advantage of the existing water service billing mechanism. Senator Goode expressed surprise that the Commission’s Staff was concerned about who paid the surcharge. Senator Goode explained that, because the legislature authorized the charge and St. Louis County imposed it, pursuant to a vote of the people, the Commission has no role. In any event, the ultimate liability for the surcharge, the Senator suggested, is a matter for negotiation between landlord and tenant in those cases in which the occupant of a residence is not the owner. The intended beneficiaries of the program include local government, the water company, and the owners and occupants of residences: “This legislation is a WIN-WIN for everyone.” Senator Goode noted that he has not received even a single complaint about the surcharge since it went into effect.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction:

St. Louis County Water Company, doing business as Missouri-American Water Company, and its successor, Missouri-American Water Company, are each a “water corporation” and a “public utility” within the intendments of Chapters 386 and 393, RSMo 2000, and are subject to the jurisdiction of the Missouri Public Service Commission.

Burden of Proof:

Staff's burden in a case, such as this one, in which it alleges that a tariff approved by the Commission is unreasonable or unlawful, is to establish its position by "clear and satisfactory evidence."³

The Tariff:

Missouri-American's proposed tariff sheet, P.S.C. Mo. No. 6, Original Sheet No. RT 17.0, became effective by operation of law on February 26, 2001, 30 days after it was filed with the Commission.⁴ Whatever concerns Staff may have had about the wording of the proposed sheet were waived when Staff failed to take any action to bring those concerns to the attention of the Commission prior to the sheet's effective date. Once effective, the tariff became the law of the land as though enacted by the legislature.⁵

Is the Tariff Lawful?

Staff insists that the tariff herein at issue is unlawful because it collects from residential tenants a tax imposed by county ordinance on owners. Staff concludes that the surcharge is a tax, not a fee, and that as a tax on property, the party liable for payment is necessarily the owner of that property. Staff relies in its analysis entirely upon principles drawn from the *Taxation* article in the *Corpus Juris Secundus*. Staff urges the Commission to order Missouri-American to rescind the tariff. Staff takes this step with regret, stating that it "recognizes that it would be impractical to collect the taxes as prescribed by the ordinance" and "Staff also believes that the ordinance has a good purpose and that it is a

³ Section 386.430, RSMo 2000.

⁴ Section 393.140(11), RSMo 2000; Regulation 4 CSR 240-50.010, (6) and (7).

⁵ *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109, 114, 57 S.Ct. 345, 347, 81 L.Ed. 540, ____ (1937).

reasonable solution to a significant problem.” Staff suggests that amendment of both Section 66.405, RSMo 2000, and Ordinance 502.195, SLCRO 1974 (as amended), would be required to legalize the water service line repair program contained in Missouri-American’s tariff. “But the issue is not what is expedient; the issue is what is lawful.”

Missouri-American’s brief expresses amazement that the Commission’s Staff would attempt to thwart the will of the people, as expressed at the ballot box by the voters of St. Louis County in November 2000, as well as the will of the Missouri General Assembly and the St. Louis County Council. Missouri-American states that everyone is pleased with the St. Louis County Water Service Line Replacement Program except, unaccountably, the Commission’s Staff. Missouri-American asserts that no prospective change in the tariff is necessary because it is consistent with state statute and county ordinance, it is in the public interest, and it correctly implements both legislative intent and public policy.

Staff, in reply, states that Missouri-American must collect the tax actually imposed by the St. Louis County ordinance and that tax, Staff asserts, is unambiguously imposed upon the owners of residential water service lines. “The question . . . is not whether the company’s objective is commendable, or whether the collection of this charge would serve a good and useful purpose. The question is whether the Company is collecting the tax the St. Louis County ordinance imposes.”

Although Staff insists that the meaning of Section 66.405, RSMo 2000, is irrelevant to this case, the Commission believes a review of that statute would be helpful. Turning to Section 66.405, RSMo 2000, the Commission notes that subsection 1 authorizes the imposition “upon water service lines providing water service to residential property

having four or fewer dwelling units . . . [of] a fee not to exceed one dollar per month or an equivalent rate collected at some other interval.” Although denominated a “fee” rather than a tax in the statute, Staff is correct that this surcharge is “a tax denominated as a fee.”⁶ However, that does not end the analysis.

Section 66.405, RSMo 2000, has five subsections. All of these subsections were enacted at the same time and all are part of the original enactment. “Statutory provisions relating to the same subject matter are considered *in pari materia*”⁷ “[S]tatutes *in pari materia* are intended to be read consistently and harmoniously.”⁸ Likewise, the provisions of a single legislative act must be considered together and, if possible, all provisions must be harmonized and every clause given some meaning.⁹ Provisions enacted in the same legislative act must be construed together.¹⁰ Thus, our understanding of the tax authorized by subsection 1 of Section 66.405, RSMo 2000, must be guided by the fact that subsection 5 authorizes an enacting county to contract with a local water utility to “bill and collect such fees along with bills for water service and to pursue collection of such amounts through discontinuance of service as may be directed by the county.” When viewed in context, the Commission determines that, contrary to Staff’s position, Section 66.405, RSMo 2000, authorizes a tax upon residential water service customers.

⁶ *Avanti Petroleum, Inc. v. St. Louis County*, 974 S.W.2d 506, 510 (Mo. App., E.D. 1998). See the five factors drawn from *Keller v. Marion County Ambulance Dist.*, 820 S.W.2d 301, 303 n. 10 (Mo. banc 1991).

⁷ *EBG Health Care III, Inc. v. Mo. Health Facilities Review Comm’n*, 12 S.W.3d 354, 360 (Mo. App., W.D. 2000).

⁸ *Id.*

⁹ *Wollard v. City of Kansas City*, 831 S.W.2d 200, 202 (Mo. banc 1992).

¹⁰ *Cronin v. State Farm Fire & Casualty Co.*, 958 S.W.2d 583, 584 (Mo. App., W.D. 1997).

Staff insists, as noted above, that Section 66.405, RSMo 2000, is irrelevant to this proceeding. Missouri-American, Staff asserts, can only collect the tax imposed by the County ordinance. The County ordinance, Section 501.195, SLCRO 1974 (as amended), enacts a tax upon residential water service lines, using essentially the same language as Section 66.405.1, RSMo 2000. Unlike the state statute, Ordinance 501.195, SLCRO 1974 (as amended) contains no provision authorizing collection of the tax along with bills for water service.¹¹ However, the title of the enacting ordinance, No. 20,299, 2000, includes these words: “and authorizing the County Executive to enter into contracts with water service providers for collection of the fee.” The text of the ordinance included in the present record, however, conspicuously lacks any such provision. It is a rule of construction that “[h]eadings or titles of a section that appear in the original act as passed by the legislature are ‘considered as part of that act and [are] weighed when construing the act.’”¹² The title of the enacting ordinance thus supplies a provision similar to subsection 5 of Section 66.405, RSMo 2000, in that it demonstrates that the enacting body intended to collect the tax from water service customers along with their bill for water service. As Staff has eloquently argued, such a collection mechanism simply does not work if the intention is to collect the tax from property owners. The inclusion in the enactment of this highly specific collection device is sufficient, consequently, to show that the tax is *not* imposed on property owners. The Commission determines that the county ordinance, like the state statute that authorized it, imposes a tax upon certain residential water service customers.

¹¹ It is not clear whether Schedule 3-1 to Exhibit 1, the Testimony of Wendell Hubbs, in fact includes the entire text of the ordinance.

¹² *State ex rel. Atmos Energy Corporation v. Public Service Commission*, 2001 WL 1806001 (Mo. App., W.D. 2001) at *6.

Based upon the foregoing analysis, the Commission concludes that the tariff herein at issue accurately reflects the intention of St. Louis County, and of the legislature, that the tax be imposed upon certain residential water service customers. Nonetheless, the Commission must direct Missouri-American to withdraw the tariff because of the following defects. First, the tariff does not specify that, where multiple water service customers are served by a single service line, each such customer will be billed only a *pro rata* share of the surcharge. Second, the tariff, as well as the contract between Missouri-American and St. Louis County, does not provide for reimbursement to the Company of its additional collection costs referable to collection of the surcharge, whatever those additional costs may be. Any such costs shall not be charged to Missouri-American ratepayers and any reimbursement of such costs shall be pursuant to Section 66.405.4, RSMo 2000.¹³

As to the question concerning the contract entered into between Missouri-American and St. Louis County, the Commission agrees with Missouri-American that it need not determine that question. The contract certainly does not require Commission approval -- it is specifically authorized by statute. The issue of the prudence of the contract's terms necessarily remains for consideration in Missouri-American's next general rate case.

¹³ The Commission is also concerned, but makes no determination, about a possible defect in both Section 66.405, RSMo 2000, and Ordinance 502.195, SLCRO 1974 (as amended), which is the diversion of public funds for a private purpose. Because the water service line repair surcharge is a tax, the proceeds are public funds. Yet, the funds are used under the program to repair private property, that is, the water service lines belonging to the owners of residential property. The Missouri Constitution prohibits counties, such as St. Louis County, from "grant[ing] public money or property to any private individual[.]" Mo. Const., Art VI, Sec. 25. For example, it was not permissible under this provision, upon annexation of a public water supply district by a city, to distribute the proceeds derived from the purchase of the system assets by the city to the landowners within the former district. See *State ex rel. Public Water Supply District No. 7, Jackson County, v. James*, 361 Mo. 814, 822, 237 S.W.2d 113, 118 (banc 1951).

IT IS THEREFORE ORDERED:

1. That the Complaint filed on September 13, 2001, by the Staff of the Missouri Public Service Commission is found after full hearing and briefing to be without merit and is therefore dismissed.

2. That St. Louis County Water Company, doing business as Missouri-American Water Company, shall nonetheless withdraw the tariff at issue in this case, P.S.C. Mo. No. 6, Original Sheet No. RT 17.0, "St. Louis County Service Line Repair Program," for the reasons discussed above.

3. That St. Louis County Water Company, doing business as Missouri-American Water Company, may submit a proposed tariff in compliance with this Report and Order for Commission approval.

4. This Report and Order shall become effective on August 2, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, Lumpe,
Gaw, and Forbis, CC., concur and
certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 23rd day of July, 2002.