

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

In the Matter of Hickory Hills Water & Sewer Co.'s Request for a Small Company Rate Increase.)))	Case No. <u>WR-2006-0250, et al.</u> Tariff File Nos. YW-2006-0449 & YS-2006-0448
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MOTION TO MODIFY PROCEDURAL SCHEDULE

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its Motion to Modify Procedural Schedule ("Motion") states the following to the Missouri Public Service Commission ("Commission").

PROCEDURAL HISTORY

1. On December 12, 2005, Hickory Hills Water & Sewer Company, Inc. ("Company") filed revised sewer and water tariff sheets to implement rate increases for sewer and water service. Upon the filing of the subject revised tariff sheets, Tariff File No. YS-2006-0448 was assigned to the sewer tariff filing and Tariff File No. YW-2006-0449 was assigned to the water tariff filing. Additionally, Case No. SR-2006-0249 was opened for the proposed sewer rate increase and Case No. WR-2006-0250 was opened for the proposed water rate increase.

2. The Company's tariff filings of December 12, 2005 were the result of "disposition agreements" executed by the Company and the Staff of the Commission ("Staff") pertaining to small company rate increase requests that the Company submitted on July 28, 2005. Generally, the Company/Staff disposition agreements provide for increases in the Company's annual operating revenues of \$2,500 per year and \$2,000 per year for sewer and water service, respectively.

3. On December 15, 2005, the Staff filed the above-referenced Company/Staff disposition agreements in the sewer and water cases, respectively.

4. During a Prehearing Conference held for the subject cases on December 21, 2005, the Office of the Public Counsel ("OPC") requested that the Commission hold a local public hearing for the subject cases.

5. On December 23, 2005, the Commission issued an order setting January 19, 2006 (unless noted otherwise, all dates hereafter refer to the year 2006) as the date for a local public hearing for the Company's proposed rate increases. The local public hearing was held as scheduled.

6. On January 25, the OPC filed Public Counsel's Motion to Consolidate, Request for Hearing and Motion to Suspend Tariff ("Motion for Hearing") in the sewer and water rate cases. In this filing, the OPC stated that it did not believe the Commission should approve the rate increase requests agreed to by the Company and the Staff, that it disagreed with the proposed increases reflected on the Company's pending revised tariff sheets, and that the Commission should schedule an evidentiary hearing in the subject cases.

7. On January 26, the Commission issued its **Order Suspending Tariff and Setting Prehearing Conference** in the sewer and water rate cases, in which it suspended the Company's pending tariff revisions until June 1 and set February 9 as the date for a Prehearing Conference, to provide the parties the opportunity to explore settlement of the cases and to establish a procedural schedule for the cases. The Prehearing Conference was held as scheduled.

8. On February 10, the Commission issued its **Order Consolidating Cases** in the sewer and water cases, in which it consolidated the cases and designated the water case as the remaining, lead case on a going-forward basis.

9. On March 3, in compliance with a previously issued Commission order, the Staff filed a proposed procedural schedule for this consolidated case. As noted in that filing, the schedule offered by the Staff had been agreed to by the Company, the Staff and the OPC.

10. By an order issued on March 7, the Commission adopted the proposed procedural schedule filed by the Staff.

11. On March 28, in accordance with the procedural schedule adopted by the Commission, the Company and the Staff filed prepared Direct Testimony in this consolidated case. However, the OPC did not file prepared Direct Testimony.

SUPPORT FOR MOTION TO MODIFY SCHEDULE

12. Absent the OPC's stated disagreement with the Company/Staff agreements pertaining to the resolution of the Company's rate increase requests and request for a hearing, as set forth in its Motion for Hearing, there would be no issues in this consolidated case for the Commission's determination and there would be no need for the filing of testimony or for a hearing.

13. Based on the discussions leading up to the Staff's filing of the proposed procedural schedule on March 28, the Staff was of the understanding, and believes the Company was also of the understanding, that all the parties to this consolidated case (the Company, the Staff and the OPC) would file prepared direct testimony, even though the schedule did not explicitly state that.

14. In its **Order Adopting Procedural Schedule**, the Commission stated the requirement that testimony be prefiled as defined in Commission Rule 4 CSR 240-2.130, and further stated that all parties must comply with this rule.

15. Commission Rule 4 CSR 240-2.130(7)(A) defines Direct Testimony as follows:

Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

16. By not filing prepared Direct Testimony in this consolidated case, the OPC, *which is the party that has put this case at issue*, must make its case-in-chief in its Rebuttal Testimony. While this approach may be within "the letter" of the procedural schedule, the Commission's order adopting the schedule and the subject rule, it is the Staff's opinion is that this approach is not within

"the spirit" of the subject schedule, order or rule. More importantly, as the procedural schedule now stands, the Staff and the Company are not permitted an opportunity to rebut any assertions that the OPC may make in its Rebuttal Testimony.

17. Based on the above, the Staff believes it is necessary for the Commission to issue an order modifying the procedural schedule for this consolidated case as set out below. (No change is suggested for the established hearing date.)

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| * Filing of Company & Staff Surrebuttal Testimony | April 12, 2006 |
| * Filing of List of Issues | April 14, 2006 |
| * Filing of Statements of Position, List
of Witnesses and Order of Witnesses | April 14, 2006 |

18. As an alternative to the proposed modification of the procedural schedule set forth in Paragraph 16 above, an order specifying that the Staff and the Company may call surrebuttal witnesses during the evidentiary hearing would be acceptable to the Staff.

19. Staff counsel has conferred with counsel for the Company, and the Company is in agreement with this Motion.

WHEREFORE, in the interests of fairness and efficiency, the Staff respectfully moves the Commission to issue an order modifying the procedural schedule for this consolidated case consistent with Paragraph 17 above , or alternatively, respectfully moves the Commission to issue an order consistent with Paragraph 18 above.

Respectfully Submitted,

/s/ Robert S. Berlin

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CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 5th day of April 2006.

/s/ Robert S. Berlin