

Staff Report of Investigation

Case No. SC-2008-0409

House Springs Sewer Company

Prepared by:

James A. Busch and James A. Merciel, Jr, P.E.

August 1, 2008

BACKGROUND

This Formal Complaint was filed against House Springs Sewer Company (HSSC or the Company) by Christy and Michael Scrivner (Complainants), who are the owners of a restaurant named Pogolino's, a pizzeria, which will be operating in a building that is under construction.

Mr. Ed Boyer of E. A. Boyer Building & Design, Inc., the Scrivners' building contractor, called our office with an informal complaint about this matter on or about May 14, 2008, complaining about the amount of the Contribution-in-aid-of-Construction (CIAC) charge being assessed by HSSC; he believed that the tariff specifying the CIAC charge for "full service restaurants" does not reasonably apply. His reasoning was that this restaurant will have substantial carry out activity, and as a result will not use as much water as a full service restaurant, and that the actual water usage at the two other existing Pogolino's restaurants in other towns is in fact less than what is expected for full-service restaurants.

The Company's position is that this customer is a full-service restaurant as specified in its tariff. The Staff discussed with HSSC a compromise with the customer of using actual water usage in determining the CIAC amount. The Company's response was that it is following its approved tariff. Thus the Company believes any reduction in the CIAC amount would not be in compliance with its tariff, and it is not willing to make any adjustment on the amount to be charged. Mr. Boyer was informed of the discussion with HSSC, of the formal complaint process, that the Staff did not believe HSSC's position was a violation of the tariff, but that he or the owners could file a formal complaint and attempt to make a claim that their situation does not fit the provisions of the tariff. Jim Merciel of the PSC Water and Sewer Department handled Mr. Boyer's informal complaint.

Furthermore, HSSC contacted Steve Loethen of the Water and Sewer Department on or about May 13, 2008, inquiring as to whether or not the Staff would agree that the proposed restaurant could be considered a full service restaurant, and that the Company's position was in compliance with the tariff. The answer given to HSSC was that the Staff did not believe considering this restaurant a full service restaurant was a violation of the tariff.

STAFF'S INVESTIGATION

HSSC's tariff provides for a CIAC charge for commercial customers as specified in a table for various types of commercial customers. The table is on tariff Sheet No. 3A, included herein as Attachment A, with added markings to highlight the applicable text and numbers. The dollar amounts in the table were derived using estimated water usage for the various types of customers, multiplied by \$2.80 per gallon per day of water usage. The \$2.80 is a dollar amount that, very generally, represents the customer's share of treatment capacity capital cost on a per-gallon basis. There are two types of restaurants listed within the commercial customers. The two types are "Paper Service" and "Full-Service." The full-service category, to which the aforementioned \$85 per seat cost applies, was derived by using an estimated water usage for that type of customer of approximately 30 gallons per seat. The tariff also has a generic application of \$2.80 per gallon per day for commercial customers that are of a type not included in the table.

The Company calculated the CIAC charge to be \$10,880, based on \$85 per seat as specified in the tariff and 128 seats based on the customer's building plans. A \$35 inspection charge also applies. A \$3,000 additional charge for garbage grinders, also specified in the tariff, was not included in the Company's original calculation. It is unclear to the Staff whether HSSC ignored this charge, overlooked it, or was unaware that a garbage grinder was proposed.

The Complainants provided some water usage information for the two other Pogolino's restaurants located in Festus and De Soto in their Formal Complaint filing and had also sent this to the Staff through Mr. Boyer during the handling of the informal complaint. The Staff reviewed this information and contacted the managers of those restaurants by telephone for basic information about them.

STAFF'S FINDINGS AND CONCLUSIONS

One fundamental question in this case is whether or not the Complainants' business is a full-service restaurant. The tariff defines neither what a full-service restaurant is nor what a paper service restaurant is. The Staff believes that a true paper service restaurant would have little or no inside seating and would use disposable utensils, cups and food wrappers. The Complainants' proposed restaurant clearly does not fit this category. The Staff does believe that the proposed business has many characteristics of what would commonly be considered a full-service restaurant, because it serves food for consumption within its premises, and it uses plates, bowls, cups and silverware that require washing. However, as a pizzeria with much of its food prepared in an oven, the Staff would not expect the proposed business to use kitchen items and stove-top cooking activity, and subsequent required cleaning to the same extent as restaurants that serve more traditional types of meals. In addition, the proposed business expects to have substantial food carry-out activity, further decreasing the need for post-meal cleanup. On the other hand, the restaurant could provide service to 128 customers while also continuing to provide take-out service, which could increase usage. Thus, while the Staff

believes that the Complainants' business most closely fits the full-service restaurant category among the provisions in the tariff, the Staff also sees merit in the argument that the proposed business does not fit the categories listed in the tariff.

A method of determining CIAC charges for commercial customers based on actual water usage has also been used in Missouri. Rather than using a fixed table to determine CIAC, as is the practice with HSSC, many sewer utilities used a table similar to that in HSSC's tariff to calculate an initial estimate for the CIAC charge, which the customer would pay up front. Then, after some time, such as a year, the sewer utility would review actual water usage, adjust the CIAC amount, such that it was based on the actual water usage, and collect an additional amount or make a refund, as appropriate. An example of a tariff that used actual usage is included herein as Attachment B, it is from the tariff for St. Louis County Sewer Company, a sewer utility that is no longer in business.

Research of sewer utility tariffs, past and present, shows that approximately a dozen sewer utilities have used the actual water usage method. HSSC is among a few sewer utilities where an estimate of water usage for the type of commercial customer is used instead of actual water usage. A few other older tariffs are not clear how the determination is made, but for some there is mention of an "estimated" amount.

During the handling of the informal complaint when it suggested to HSSC that it consider using actual water usage for calculating the CIAC charge, the Staff relied on the rather common method of using actual water usage, and also the "catch-all" provision in the existing HSSC tariff which permits using "daily design waste discharge" for customers "not enumerated" in the table. Although the Staff does not believe it is in a good position to predict this customer's water usage with a great degree of accuracy, the water usage of the two other Pogolino's restaurants indicate that if the CIAC were calculated based on actual usage, the Complainants could end up paying approximately one-half of what it would pay if the fixed amount in HSSC's table for full service restaurants is used. Of course, actual water usage for the new restaurant is unknown at this time.

To illustrate the difficulty in predicting the new restaurant's usage, Staff reviewed the usage of the other two Pogolino's restaurants. The Pogolino's restaurant in De Soto has 92 seats, and had an average water usage of 639 gallons per day during its billings in January, February, March and April 2008, for an average daily usage of slightly less than seven gallons per seat.

The Pogolino's restaurant in Festus has 109 seats, and had an average water usage of 1,556 gallons per day during its billings that were due in December 2007, and each of the months January through May 2008, for an average daily usage of 14.28 gallons per seat.

The water usage of these two restaurants does not appear similar. If the new restaurant's water usage is similar to the Festus Pogolino's on a per-seat basis, the CIAC could be \$5,118

(14.28 gallons per day, times \$2.80 per gallon daily use, times 128 seats), versus \$10,880 (without the grinder) calculated by using the table in HSSC's current tariff.

The Staff's conclusion is that HSSC is not in violation of its tariff. However, the Staff does understand that this restaurant may not fit the exact definition of a full-service restaurant as was originally intended when this tariff was approved. Therefore, as an alternative, the Staff's suggestion, for this specific Formal Complaint and as a compromise, would be for HSSC to go ahead with its proposed charge of \$10,880 as an initial payment and as a maximum amount for the CIAC charge. This does not include inspection charges or other unrelated fees. Then, after one year, adjust the CIAC amount based on actual water usage, and add the \$3,000 garbage grinder CIAC charge. If this total is less than \$10,880, then the Complainants would be due a refund from HSSC.

STAFF'S RECOMMENDATION

The Staff does not believe that HSSC should be found to be in violation of its tariff with respect to this matter. Thus, with this reading of the tariff, the Company could charge \$10,880 as it originally told the customer.

In the alternative, the Staff believes that a compromise could be reached by applying the approved tariff rate of \$2.80 per gallon per day, and apply this charge to actual water usage, on the premise that the actual water usage of the proposed Pogolino's restaurant may not fit the usage for the full-service or paper service categories. The sequence of events would be as follows:

1. HSSC to charge \$10,880, as an initial estimated CIAC charge, and as a maximum amount to be paid by the Complainants.
2. HSSC to apply an adjustment to the initial CIAC charge based on one year of water usage data while the restaurant is operating, and the \$2.80 per gallon per day charge specified in HSSC's tariff.
3. HSSC to add the garbage grinder CIAC charge amount.
4. If the total amount of the adjusted CIAC plus the garbage grinder CIAC is less than \$10,880, then HSSC refund the amount within one month after the water usage data review.

This recommendation applies to the proposed Pogolino's 128 seat restaurant facility. If a different customer occupies the building, or if the operation is modified from its present plan, then another calculation of the appropriate CIAC amount may be necessary.

Attachments:

- A: House Springs Sewer Company Tariff Sheet with Commercial CIAC
- B: St. Louis County Sewer Company Tariff Sheet with Commercial CIAC

Report Attachment A

House Springs Sewer Company Tariff Sheet with Commercial CIAC

Cancelling P.S.C.MO. All Previous Tariffs**RECEIVED**

HOUSE SPRINGS SEWER COMPANY For _____

Name of Issuing Company

JUL 31 1997
Community, Town or City
JEFFERSON COUNTYRATE SCHEDULE "C"
COMMERCIAL ESTABLISHMENTSMISSOURI
Public Service Commission

RATE TABLE: The C.I.A.C. Fee shall be as enumerated for uses listed. If a facility is constructed which is not enumerated in the uses listed below, the C.I.A.C. fee shall be Two Dollars and Eighty Cents (\$2.80) per gallon, times the daily design waste discharge.

The C.I.A.C. fee paid shall be based upon the ultimate waste discharge design capacity of a Customer's facility. If modifications are made or additional facilities are constructed beyond the original ultimate design, an additional C.I.A.C. fee shall be due based upon the amount of increase in discharge capacity. In no event any C.I.A.C. fee be less than \$850.00.

C.I.A.C. Fee:

Boarding houses, person	\$ 110.00
Boarding schools, student	\$ 210.00
Country Clubs, member	\$ 60.00
Day Schools, student	\$ 45.00
Grocery Store, 1,000 sq.ft. of area	\$ 210.00
Hospitals, bed	\$ 420.00
Hotels, room	\$ 160.00
Laundromats, machine	\$ 530.00
Motels, room	\$ 160.00
Nursing Homes, resident	\$ 195.00
Restaurants - Paper Service	\$1,700.00
Restaurants - Full Service, seat	\$ 85.00
Service Station	\$1,060.00
Swimming pools, per 14 sq.ft. of pool area	\$ 35.00
Taverns/Bars and Cocktail Lounges seating cap.	\$ 20.00

Add estimates for public facilities associated therewith such as restaurants, stores, etc.

Garbage grinders \$3,000.00 additional.

FILED

*Indicates new rate or text
+Indicates change

JUL 31 1997
96-427
MO. PUBLIC SERVICE COMMISSION

DATE OF ISSUE July 21, 1997 DATE EFFECTIVE August 1, 1997
Month Day Year Month Day Year

ISSUED BY Eugene A. Fribis President 3800 Jeffco Blvd., Arnold, MO 63010
Name of Officer Title Address

Report Attachment B

St. Louis County Sewer Company Tariff Sheet with Commercial CIAC

Rules and Regulations Governing Rendering of Sewer Service		RECEIVED
Rule 3	<u>SERVICE CONNECTIONS</u> (Continued)	FEB - 8 1982 MISSOURI Public Service Commission
(A)	<u>RESIDENTIAL AND COMMERCIAL CONTRIBUTION IN AID OF CONSTRUCTION CHARGES</u>	+
	<u>RESIDENTIAL</u>	
	Single-Family	\$ 250.00
	Multiples - each swelling unit.	250.00
	Apartments - each dwelling unit	175.00
	<u>COMMERCIAL</u>	
	Minimum Commercial Contribution in Aid of Construction Charge shall be	\$ 500.00 +
<p>Commercial Contribution in Aid of Construction Charge shall be \$1.00 per gallon per day of <u>water actually consumed on the premise</u>. A <u>Deposit shall be required</u> based upon the Company's <u>estimate of water use</u>. Said deposit to be <u>adjusted after review of One (1) full year of water consumption data</u>. Water consumption guide-lines have been established by the Company for various Commercial and Industrial uses: (See attached table to be incorporated into Rule 3.)</p>		
<p style="text-align: center;">CANCELLED MAR 10 1987 BY <u>Memo 3-10-87</u> Public Service Commission MISSOURI</p>		
		<p style="text-align: center;">FILED MAR 10 1982 Public Service Commission</p>
<p>*Indicates new rate or text +Indicates change</p>		

DATE OF ISSUE February 8, 1982 DATE EFFECTIVE March 10, 1982
month day year month day year
ISSUED BY Steve B. Gellert Secretary 8460 Watson Road - Suite 240
name of officer title address
St. Louis, Missouri 63119

Cancelling P.S.C.MO. No.

ST. LOUIS COUNTY SEWER CO., a Corporation

For Certified area in St. Louis County

Name of Issuing Corporation

Community, Town or City

Rules and Regulations Governing Rendering of Sewer Service		RECEIVED
RULE 3	<u>SERVICE CONNECTIONS</u> (Continued)	FEB 8 1982
		MISSOURI
		Public Service Commission
ESTIMATED DAILY WATER CONSUMPTION FOR CONTRIBUTION IN AID OF CONSTRUCTION CHARGES DEPOSIT		+
Boarding houses, gal/person	50	
Boarding schools, gal/student	100	
Country Clubs, gal/member	30	
Day Schools, gal/student	20	
Factories, gal/person/shift	10	
Grocery Store, gal/1,000 Sq. Ft. of area	100	
Hospitals, gal/bed	200	
Hotels* gal/room	75	
Laundromats, gal/machine	150	
Mobile Home Parks, gal/parking lot	250	
Motels* gal/room	75	
Nursing Homes, gal/resident	90	
Restaurants - paper service, gal/patron served	10	
Restaurants - full service, gal/seat	40	
Service Station, gal/day	500	
Swimming Pools, gal/person (one Person per 15 Sq. Ft. of pool Area)	10	
Taverns, Bars, and Cocktail Lounges; gal/patron served	5	
* Add estimates for public facilities associated therewith such as Restaurants, Stores, etc....		
<p style="text-align: center;">CANCELLED</p> <p style="text-align: center;">MAR 10 1987</p> <p style="text-align: center;">BY <u>Memo 3-10 87</u></p> <p style="text-align: center;">Public Service Commission</p> <p style="text-align: center;">MISSOURI</p>		
<p>*Indicates new rate or text</p> <p>+Indicates change</p>		

DATE OF ISSUE February 8, 1982

month day year

DATE EFFECTIVE March 10, 1982

month day year

ISSUED BY

Don B. Lippert

name of officer

Secretary

8460 Watson Road - Suite 240

title

St. Louis, Missouri 63119

address