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Missouri Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission, Complainant,	)	
vs.	)	Case No. WC-2002-146
St. Louis County Water Company, d/b/a Missouri-American Water Company, Respondent.	)	

BRIEF OF RESPONDENT MISSOURI-AMERICAN WATER COMPANY

Respectfully submitted,

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Copies of the foregoing have on the date below written been provided to the Office of Public Counsel, to the General Counsel of the Missouri Public Service Commission and to the attorney for St. Louis County, Missouri, by electronic transmission and by first class prepaid U.S. Mail.

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1. Introduction

This Complaint is about the meaning of the words "a fee upon water service lines" in §66.405 RSMo 2001. The Commission Staff asserts that when the Missouri General Assembly enacted §66.405 RSMo 2001, they were collectively not competent to realize that their words "*a fee upon water service lines*" actually mean "*a tax on the owners of water service lines.*" The Company has a filed and approved tariff sheet (the "Tariff") P.S.C.MO No. 6 Original Revised SHEET No. RT 17.0 authorizing collection of the fee from all customers regardless of ownership, so at issue is the reasonableness and lawfulness of this tariff in light of Staff's insistence that the statutory language authorizes that only "owners" of service lines may be charged the fee.

It is of no matter to Staff that neither the words "owners" nor "tax" appear in the statute[1]. It is of no matter to Staff that the Senator who sponsored the bill testified under oath that a charge on all customers for funding service line repairs to lines used by all

[1] While the Staff continually replaces the word "fee" with the word "tax" in their allegations, the reason for this is unclear. The definition of the word "tax" is no more significant than "money for support of government." (Webster's New World Dictionary, Black's Law Dictionary, etc.) Money from this fee does indeed go first to County government, but it is isolated in a separate fund for the single purpose authorized by the statute and does not actually go to "support of government." Either way, the label "tax" does not seem to advance the Staff's position with respect to the "owners only" contention.

customers was both intended by the drafters and openly discussed in legislative committee and other discussions. It is of no matter to Staff that their representatives were party to these legislative discussions and that either they chose to remain silent about this drafting mistake, or more likely, this theory of mistake had not yet been devised. It is of no matter to Staff that insertion of the word "owner" into the statute or its interpretation would make collection of the fee impossible and destroy the program. It is of no matter that the Staff itself has for years consistently insisted upon service line repair funding by all customers regardless of ownership. It is of no matter that no other human beings have yet found this "owners only" meaning in the wording chosen by the General Assembly.

No, all that matters is that the Staff has *divined* that the wording of §66.405 RSMo 2001 mandates, apparently unintentionally, something that Staff concedes is unworkable and contrary to the public interest. Staff asserts the statute must be read to require that ownership of service lines would have to be somehow tracked prior to every billing, that non-owner customers would be exempt from the billing, and that the Company would have to send bills to service line owners regardless of whether they are customers, and regardless of where they may reside.

The only explanation offered for this conclusion is the imaginary "**that is**" rule of statutory interpretation. This reasoning is disclosed in paragraph 12 of the Complaint (and is not explained further in evidence) as follows:

> 12. The statute, §66.405, authorizes St. Louis County to impose *a fee upon water service lines* providing water service to certain residential property – that is, upon the *owners* of the said water service lines. Likewise, the ordinance, §502.195, SLCRO, imposes *a fee upon all water service lines* providing water service to certain residential property – that is, upon the owners of the said water service lines – *commencing July 1, 2001.* (emphasis in original).

The only evidence of why this "that is" interpretation is necessary is Mr. Hubb's testimony that this is what the Staff's legal department decided. (Direct Testimony W.R. Hubbs, Ex. 1 p.11; Surrebuttal Testimony W.R. Hubbs, Ex. 2 p. 19). And of course, should the Company fail to do this accurately, and inevitably terminate service for non-payment of a bill by customer John Doe, when John Doe Jr. is instead the property owner, the Company would be liable.

Company's position is first, that the Tariff has been filed with and effectively approved by the Commission, and Respondent's collections of fees pursuant thereto, unless and until the Tariff is changed by Order of the Commission, are thus lawful:

> "A tariff that has been approved by the Public Service Commission becomes Missouri law and has the same force and effect as a statute enacted by the legislature." Bauer v. Southwestern Bell Telephone Company 958 S.W.2d 568, 570 (Mo.App.19978)." A.C. Jacobs & Co., Inc. v. Union Electric Company, 17 SW3d 579, 582 (Mo.App.W.D. 2000). See also State ex rel. Louis County Gas Co. v. Public Service Commission, 286 S.W. 82 (Mo. Sup. 1926).

Second, Complainant has failed to meet its burden of proof to show by clear and satisfactory evidence that the Tariff is unreasonable or unlawful as the case may be, Section 386.430 RSMo, and thus no prospective change is warranted. The Tariff is reasonable and lawful because the Tariff is consistent with the permissive statutory provisions of §66.405 RSMo and the legislative intent of that statute, it is consistent with public policy for the funding of service line repairs by all customers regardless of ownership as actively promoted by Complainant itself, and it is otherwise in the best interest of all. As the Staff witness Hubbs testified, "Again, like Senator Goode states, everyone is a winner with this program." (Surrebuttal Testimony of W.R. Hubbs, Ex. 2, p. 23).

Although this fee or tax is first determined by statute and ordinance, it is nevertheless a service charge, the collection of which by Respondent requires Commission approval. (Surrebuttal Testimony W.R. Hubbs, Ex. 2, pp. 6, 19). All utility rate matters, even constitutional questions, must come before the Commission before the courts may entertain them. County of Warren, v. Union Electric Company, 800 S.W.2d 814 (Mo.App. E.D. 1990). Accordingly, to determine whether Staff's allegation that the charge may not legally be collected from non-owner customers has any merit, the Commission should first look at the evidence of legislative intent, then the ramifications of the two opposite statutory interpretations, and then apply established rules of statutory construction. Although, statutory construction is ultimately the job of the court, an administrative tribunal must first interpret statutes in virtually every proceeding. (e.g. J.B. Vending Company Inc. v. Director of Revenue, 54 S.W.3d 183 (Mo. banc. 2001).

Here, the Commission must determine whether the Staff can prove that the Tariff is unreasonable or unlawful. To do this is must determine the merits of Staff's assertions that the tariff is inconsistent with the permissive language of the statute.

2. What the legislature intended

There does not seem to be any dispute that the legislature intended to authorize a fee applicable to all customers. Senator Wayne Goode made this certain. (Rebuttal Testimony Senator Goode, Ex. 4, pp. 2, 5). Senator Goode explained that the Senate was aware of the fact that billing only owners would not have been practical (Ex. 4, p. 7). He even stated that had the owners-only aspect been intended in the bill, it was his opinion that the bill would never have passed. (Ex. 4, p. 3).

Staff witness Hubbs testified that "I would not be disappointed with a decision that the legislative intent overrides the language of the law.""(Surrebuttal Testimony W.R. Hubbs, Exhibit 2, p. 23). Since his position is that the language of the law mandates an owner-only fee, for this sentence to make sense it is a concession that the legislative intent is indeed contrary to his owners-only statutory interpretation of the language. Furthermore, Hubbs states, "I have no reason to doubt any of the statements he [Senator Goode] makes in his testimony." (Surrebuttal Testimony W.R. Hubbs, Exhibit 2, p. 18).

3. The evidence that the statute permits a fee on "owners only."

There isn't any. We have only the unsupported allegation that this is what the words of the statute say in the opinion of the Staff's legal department. Staff witness Hubbs says only, "The General Counsel's office informed me that it interprets the Statute and the Ordinance as providing for the fee to be imposed on the affected property owners instead of utility customers." (Direct Testimony W.R. Hubbs, Ex. 1, p. 11). He also stated the following:

> Q. Would you recommend support for a statute as outlined in the testimony of Senator Goode, one that taxes the user of the utility service (the water utility customer)?
> A. Yes, I would. Like the Senator, I believe that the program he outlined is a win-win situation for everyone involved. The only problem is that the Commission's

Legal Department is of the opinion that the Statute and Ordinance do not provide for the billing of only utility customers, but that they provided for the billing of the property owners." (Surrebuttal Testimony, W.R. Hubbs, Ex. 2, p. 19).

It is curious that the Staff does not seem to contend that the statutory language is ambiguous. In fact, they seem to argue the contrary, that the "owners only" interpretation is plainly evident. It would seem that this is a preposterous assertion, given that no other party to this case, or for that matter no other party *anywhere* has come to this same conclusion. At best one would assume that they should be arguing ambiguity. But the Missouri Supreme Court has held that mere fact that litigants disagree over the meaning of a statutory term does not render the statute ambiguous. (J.B. Vending Company Inc. v. Director of Revenue, 54 S.W.3d 183 (Mo. banc. 2001). That court held that ambiguity means, "....duplicity, indistinctness or uncertainty of meaning of an expression...," and that ambiguity does not arise by simply an allegation (Supra. p. 188); but in this case, an allegation is all the Staff has.

4. The equities

a) The Company's interpretation

The equities of the two alleged interpretations are relevant, because the rules of statutory construction hereinafter explained mandate weighing whether any given interpretation leads to a result that might be absurd, that might be contrary to common sense, or that might defeat the intent of the legislature.

If we are to reject the Staff's contention, and conclude that the statute authorizes the imposition of the service line fee on all service line users regardless of ownership, we see the following:

- This is what the Staff has been insisting upon with this Company for many years. They even went to court to attempt to require the Company to maintain service lines. (Rebuttal Testimony J. Jenkins, Ex. 3, p. 6,7; St. Louis County Water Company v. Public Service Commission, 579 S.W.2d 633 (Mo.App. E.D. 1979).

- It is also what the Staff has recently insisted upon, and obtained, in both of Respondent's Jefferson City and St. Joseph water utilities. In both WR-95-205 and WR-99-326 the Staff argued and prevailed on the principle that service lines repairs should be paid for by all customers regardless of ownership. (Rebuttal Testimony J. Jenkins, Ex. 3, p. 8). Staff offered the following testimony explaining how the service line repair costs should be spread to all customers:

  > It is my opinion the Company should change its rules and regulations for service provided in the St. Joseph District so that the Company will be required to maintain the portion of each service pipe located between the water main and the customer's property line. Each **customer** would still be required to maintain the portion of the service pipe from the property line to the building." ... "...In my opinion it is reasonable, and easier for **customers,** if the company provides service at the property line, and maintains the facilities necessary to do so, with associated costs to be recovered **from all customers.** (Testimony of Jim Merciel referenced and included in Rebuttal Testimony of J. Jenkins, Ex. 3, Schedule A, pp. 4-5).

- It codifies the status quo with respect to repair responsibility. Company rules do not impose repair responsibility on owners; service line repair is simply a condition of service and therefore up to the "customer" to address. The Company's Rule R19.1, which is P.S.C.MO.No. 6 First Revised SHEET No. R19.1, states as follows:

  > All Water Service Line installations...are not the property of the Company and must be kept operational, maintained and repaired by the **owner or customer** as a condition of service...
  >
  > ...When a leak occurs on any portion of a Water Service Line between the Company's main and the premises being served, the Company, when made aware of the water leak, will notify the **owner, customer or tenant** of such leak. As part of the notification, the Company will inform the **owner, customer or tenant** that needed repairs must be made **at owner's, customer's, or tenant's expense....**

> ...If such repairs are not made within the 30 days specified, the Company will discontinue service and issue a bill to the **owner, customer, or tenant,** covering any appropriate combination of service charges and/or actual costs for Discontinuance of Service) leak or service line) as provided under Company's tariff for Miscellaneous Charges. These costs must be paid before service can be restored to the premises being served.
>
> (Rebuttal Testimony J. Jenkins, Ex. 3, p. 9, emphasis added)

- Service line maintenance is directly related to water use rather than to property value; it eliminates the health and safety concerns of water service discontinuance due to leaks, the benefit of which is to the customer in the first instance; and it helps the traveling public, municipal governments with road work and vacant house problems, and the public in general as opposed to only real estate owners. (Rebuttal Testimony J. Jenkins, Ex. 3, p. 6)

- Staff concedes benefits to non-owners. Witness Hubbs stated, "...I do not say this to imply that there are no benefits to the residential customer who rents from the residential landlord. The stability of continued water service, and of possibly not having to move because of a dramatic change in the residential landlord's economic position, can both be significant benefits to the renter. (Surrebuttal Testimony, W.R. Hubbs, Ex. 2, p. 22)

- Staff witness Hubbs also concluded his testimony by stating that billing all applicable residential customers is "the most efficient and cost-effective manner in which to assess the Program tax." (Surrebuttal Testimony, W.R. Hubbs, Ex. 2, p. 24)

b) <u>The Staff's interpretation.</u>

If we are to accept the Staff's contention and conclude that the statute authorizes the imposition of the service line fee on all customers regardless of ownership, we see the following:

- Staff Witness Hubbs testified that, "...if the Staff's interpretation is correct, it would be very difficult and costly for the utility to administer." (Surrebuttal Testimony, W.R. Hubbs, Ex. 2, p. 9). He also asserts that the Company's contract with the County has, "...nothing built into the Contract that provides for the Company to recover the extremely costly administrative costs of such tax collection services." (Direct Testimony, W.R. Hubbs, Ex. 1, p. 13)

- Senator Goode testified that, "...if we attempted to establish a new system of billing the property owner as opposed to the water customer/ratepayer the legislation probably would never have passed." (Rebuttal Testimony, Senator Goode, Ex. 4, pp. 3-4).

- Company witness Jenkins explained that billing owners is not simply difficult, it is not "possible":

> It is not possible to police the difference between customers who own the real estate at the service address and those who don't. If you picked a specific point in time, you might be able to research title records and determine ownership which could then be matched against customer names at that instant; but this information would be inaccurate almost immediately because it changes continually. Also, customers can be changed by a phone call under both Chapter 13 of CSR and the Company's rules, and the change to a different family member or a name spelling could and would cause faulty conclusions. Then, in the case where you have a renter, how would you collect from a property owner who was a non-resident since the only collection device available to the Company other than law suits is service termination to the customer? (Rebuttal Testimony, J. Jenkins, Ex. 3, p. 5).

- Jenkins candidly explains that not only is the Staff's suggestion be "cost-prohibitive," but "...it would be effectively impossible to do correctly. If this would be deemed necessary, ***it will kill the program.***" (Rebuttal Testimony, J. Jenkins, Ex. 3, pp. 14-15, emphasis added).

5. Rules of Statutory Interpretation

There many principles of statutory interpretation, but those most relevant to this case are the following:

a) Use plain meaning of the terms, but in context.
b) Give affect to the intent.
c) Do not defeat the intent, even in the face of literal meaning.
d) Do not allow the interpretation to lead to an absurd or illogical result.
e) Do not add provisions under the guise of "construction."

a) Use plain meaning of the terms, but in context.

Enforcing intent is the goal, but in searching for that intent you are to look at words "...in the context of the entire statute in which it [the words] appears." J. B. Vending Co. v. Director of Revenue, 54 S.W. 3d 183, 187 (Mo.banc. 2001); Household Finance Corp. v. Robertson, 364 S.W. 2d 595, 602 (Mo.banc. 1963). Section 66.405 RSMo 2000 authorizes a fee "upon water service lines providing water service to residential property." (Ex. 1, Schedule 2). It does not say "upon owners." But it does also say the following:

> 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. (Section 66.405.5 RSMo 2000).

Logically, how could the Company bill non-customer owners with "bills for water service?" And, what would "discontinuance of water service" mean for a non-customer? Conversely, this all makes sense if we acknowledge the intent of the law, which was to bill and collect the fee from all customers. Taken further, there is no statutory authorization to pursue non-customer owners, since utility billing and service discontinuance is the only collection methodology provided.

So Staff's position applied to this additional statutory language would lead to the conclusion that non-customer owners might not have to pay the fee, and that non-owner customers would not have to pay the fee. This would leave only the owner-customers to

carry the load. This makes no sense at all. It would serve only to encourage every customer to put his or her account in the name of a friend or relative (which is permitted by Chapter 13 of CSR), and thus avoid the fee altogether.

b) Give affect to the intent.

The intent of this statute, to bill all customers including non-owners, has been made perfectly clear by the testimony of Senator Goode. It has been effectively conceded by Staff. Staff apparently claims simply that the wording chosen fails to codify the intent.

It is also effectively uncontested that interpreting the statute so as to require billing only owners regardless of whether or not they are customers is at least "costly" and more probably "not possible." The fundamental rule of construction, if the "plain meaning" rule does not suffice, is to implement the intent:

> When the intent of the statute cannot be determined from the plain and ordinary meaning of the words used and the statute is ambiguous, it should be given a reasonable reading and construed consistent with the legislatures' purpose in enacting it. *Sullivan v. Carlisle*, 851 S.W.2d 510, 512 (Mo. banc. 1993). Blue Cross and Blue Shield of Kansas City v. Nixon, 26 S.W.3d 218, 228 (Mo.App. W.D. 2000).

c) Do not defeat the intent, even in the face of literal meaning.

The Supreme Court of Missouri has held that the goal in interpreting a statute is "to determine the legislative intent." J.B. Vending Company, v. Director of Revenue, 54 S.W.3d 183, 187 (Mo.banc. 2001). While Respondent does not accept (or comprehend) Staff's argument that its interpretation is merely the unambiguous purport of the statutory wording, the Supreme Court also held that interpretation should not defeat legislative intent, *even in the face of* literal meaning of terms:

> ...in 82 C.J.S. Statutes § 323, p. 607, the general rule is thus stated: "If a statute is susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, ..."

Household Finance Corporation v. Robertson, 364 S.W.2d 595, 602 (Mo.banc. 1963).

d) Do not allow the interpretation to lead to an absurd or illogical result.

This Commission was recently the recipient of the court's pronouncement that statutory interpretation will not allow one to assume that the legislature intended an absurd or unreasonable construction of the statutes. In State ex rel. County of Jackson v. Public Service Commission, 14 S.W.3d 99 (Mo.App. W.D. 2000) the court said:

> "This Court will not assume the legislature intended an absurd or unreasonable construction of the statutes." *Dierkes v. Blue Cross and Blue Shield of Missouri*, 991 S.W.2d 662, 669 (Mo. banc. 1999). To construe § 386.510 in the way urged by the respondents would require us to assume that the General Assembly intended an unreasonable, if not absurd, process of judicial review ... We reject the notion as an absurd interpretation of the statute. (County of Jackson, Supra. p. 99).

And in Boone County v. County Emp. Retirement Fund, 26 S.W.3d 257, 261 (Mo.App. W.C. 2000), the court quoted the following holding from Missouri Com'n. on Human Rights, v. Red Dragon Restaurant, Inc. 991 S.W.2d 161, 166 (Mo.App. W.D. 1999):

> If the language of the statute is unambiguous, there is no basis for construction of the statute and the court must give effect to the statute as it as written. [Citation omitted.] Courts, however, look beyond the plain and ordinary meaning of the statute when its meaning is ambiguous or will lead to an illogical result which defeats the intent of the legislature.

In this instant situation, it is both illogical and unnecessary to render the statute unworkable and unusable by a forced interpretation of the terms that was never intended. This is especially true when it is an interpretation that no one other than the Staff legal department seems to have been able to find.

e) Do not add provisions under the guise of "construction."

The Company is imposing a fee "upon water service lines," and is collecting that fee from every customer. It is not necessary to add anything to this wording to arrive at the conclusion that this is permitted. Nothing in the literal wording of the statute prohibits

collecting a fee from every user of a service line. But Staff's interpretation requires the insertion by implication of the words "owners of" before the words "water service lines" to reach the restriction they contend is mandatory.

If this restriction was intended, it would have been easy enough to accomplish. But we have already established that this was not intended. So to reach this interpretation we must follow the twisted logic that we are obligated to insert the words "owners only" because the legislature failed to instruct us that the words were not implied.

The leading case in Missouri on this "word insertion" exercise is Wilkinson v. Brune, 682 S.W.2d 107 (Mo.App. E.D. 1984):

> ...In construing a statute, we must give effect to the expressed intent of the legislature; we must not add provisions under the guise of construction if they are not plainly written or necessarily implied. *Missouri Public Service Co. v. Platte-Clay Elec. Coop.*, 407 S.W.2d 883 (Mo. 1966); *Wilson v. McNeal*, 575 S.W.2d 02 (Mo.App. 1979).

And in Coastal Mart, Inc. v. Department of Natural Resources, 933 S.W.2d 947 (Mo.App. 1966) the court recited the Wilkinson holding and refused to allow the DNR to conclude that the statutory prohibitions against "storing" or "disposal of" included accidental pooling of gasoline from a prior release.

6. Extraneous Issues

The Staff has "shotgunned" at least fifteen allegations of their irritations with the Tariff at issue. (Rebuttal Testimony, J. Jenkins, Ex. 3, pp. 11-51). Only those previously addressed are relevant to the issue of whether the tariff at issue is reasonable and lawful. But two other issues need mention:

a) Refunds

The Staff has requested that the Commission order refunds to non-owner customers. It would be even more difficult after-the-fact to ascertain who these parties might be. Besides, all charges were collected pursuant to a legally effective tariff. Nevertheless, the Commission has no power to order refunds. State ex rel. Kansas City Power & Light Company v. Buzard, 168 S.W.2d 1044 (Mo.Sup.Ct. 1943).

b) Is the Contract "approved"

Whether or not the Contract between Respondent and St. Louis County referenced in the Tariff has been "approved" by the Commission, is not material to this case. Neither is it relevant to the issue of whether or not the Tariff is reasonable and lawful.

Staff anoints the word "approved" with a definition that is not codified in PSC law. Staff apparently fears that "approved" might mean "irrevocably accepted" or "immune from prudence review and consequences." Using this definition, the theoretical question is not a frivolous concern. For example, in the instant situation, Staff originally complained that the Contract did not adequately provide for administrative expense recovery from the County. If Respondent were to claim that its submission of the Contract to the Commission along with the Tariff, coupled with the inclusion by-reference of the Contract, means that the Commission has determined this allocation of administrative expense to be reasonable, Respondent could claim in the next rate case that the issue of administrative expense allocation had been "approved" by the Commission. Using this definition of "approved," Staff fears that the Respondent might argue something like estoppel or res judicata. In this sense, Staff's concern is technically significant from the point of view of PSC law, generally.

But in this case, the Contract *expressly* recites the following in paragraph 7:

> 7. The parities hereto understand and agree that this Contract does not seek to invade, bypass or supersede the jurisdiction of the Missouri Public Service Commission, and accordingly this Contract shall be submitted to the Missouri Public Service Commission for its information, and if deemed necessary by such Commission, for its approval. This Contract shall at all times be subject to the actions of such Commission. (See Exhibit 1, Schedule 1-6).

So the Respondent's definition of "approved," if indeed the word is even worthy of discussion, means to Respondent only that the Respondent may implement the Contract without contention that the Commission was not informed, and without retroactive sanction. It does not mean, nor does Respondent contend that it means, that the Commission is foreclosed from challenging any aspect of the Contract in a rate case or any other proceeding.

Taking this theoretical exercise a step further, there is another reason that the Contract was referenced in the Tariff and filed with the Commission. That reason is to protect the Company from finding itself in a situation where the Commission makes an allocation of expense in a rate case, and the Company is *unable* to adjust its relationship with the County to compensate for that allocation. In other words, instead of a revised allocation in a rate case going to Respondent's bottom line, the Tariff and Contract will simply change with all the other tariffs in the case so that all costs are recovered from the appropriate payer. The Staff realizes this, when they talk of "sanctions" to which the Company could be exposed in a rate case once a contractual relationship is established if that contract is not flexible:

> The appropriateness of the Company's decision not to bill the County for services performed or provided, should be determined in a general ratemaking proceeding. In such future ratemaking proceedings, to the extent that the Commission determines that the Company did not enter into a prudent contract, it should be subject to the related Commission *sanctions.* (Surrebuttal Testimony, W.R. Hubbs, Ex. 2, p. 16, emphasis added).

So the Staff wants a determination that the Contract has not been "approved" so that, using its definition, the contract can be reviewed and its terms can be challenged in a rate case. But this concern is not appropriate in this case, because the Contract specifically allows this review and challenge.

Conversely, the Respondent cannot accept Staff's suggestion that, "If Mr. Jenkins' statements are correct [that the contract will be changed if the Commission makes a negative determination about it in a rate case], then the Company should have no problem with my recommendation that the Commission state that the Contract has not been approved and will be subject to prudence and ratemaking reviews in future rate case proceedings." (Surrebuttal Testimony, W.R. Hubbs, Ex. 2, p 17). This is because while the second part of Mr. Hubbs' contention in this sentence is true, the first part about "approval" cannot be conceded because there is no accepted definition of the word "approval." Consequently, such a concession by the Company could imply that its implementation of the contract terms, i.e. a charge for service, could be considered to have been without the necessary Commission authorization. In this situation, the word

"approved" means to Respondent only that the Contract was submitted and "not disapproved."

This is an interesting issue, but a parochial one that is not material to this case. The only issue is whether the Tariff is reasonable and lawful. The Contract has been referenced in the Tariff and has thus been fully disclosed to the Commission. The Commission's approval of the Tariff renders the implementation of the Contract terms lawful. No party is making any contention beyond that. The question of whether the Commission might be foreclosed from future prudence reviews is not material because the Contract specifically allows such reviews.

For the Commission to deal with this as an "issue" in this case, it would have to deal with the sticky problem of the multiple definitions of the word "approved." The word may have multiple meanings in different situations. For example, no one argues that effective tariffs are not "approved"; but nowhere in the statutes prescribing the process for tariff submission does the word "approve" appear. Fortunately, the issue has no place in this case, as it is unnecessary to a resolution of the question of whether the Tariff is reasonable and lawful.

7. Conclusion.

It is difficult to comprehend why the Staff feels that a fee "on water service lines" necessarily must be collected from owners. Collection of the fee from each customer was not only intended by the General Assembly, but it is the logical purport of the words chosen. This is obvious because the evidence shows that billing owners only and absolving non-owner customers is literally impossible to do accurately. The fee is a charge for use of the line that guarantees that service will not be interrupted for failure of that line. Besides, there is nothing that prohibits a tenant from seeking recovery of the fee back from a landlord. And there is nothing that prohibits the Commission from authorizing a utility to collect even the utility's own property taxes from customers as a condition of service.

It is not insignificant that no one else has been able to find this "owners-only" mandate in the language of the statute. This list includes the government of St. Louis

County that represents all of the involved customers who voted on the proposition and have not complained of its implementation by Respondent, and the Office of the Public Counsel that similarly represents all of the involved customers in Commission matters. OPC has filed a pleading stating that, "...the Company's collection of the 'tax' from its customers, is beneficial to the public interest..." and that, "Public Counsel believes that the program should continue." (OPC Position Statement).

The Staff has failed to meet its burden of proof. The Tariff is reasonable and lawful. The Complaint has no merit and should be dismissed.

Respectfully submitted,

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