

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

In the Matter of the Application of Peaceful Valley )  
Service Company Request for Increase in Sewer ) **File No. SR-2014-0153**  
Operating Revenues. )

In the Matter of the Application of Peaceful Valley )  
Service Company Request for Increase in Water ) **File No. WR-2014-0154**  
Operating Revenues. )

**RESPONSE TO NOTICE OF COMMUNICATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Notice of Communication states as follows:

1. The August 28, 2014, *Notice of Communication* claims that the communications identified by Public Counsel only pertained to procedural issues and therefore are not considered prohibited ex parte communications. Public Counsel disagrees.

2. In the Notice, Judge Burton states:

On August 20, 2014, after the conclusion of the Missouri Public Service Commission's weekly agenda meeting at the Governor Office Building, I talked with Kevin Thompson, Chief Staff Counsel of the Missouri Public Service Commission about procedural issues in File Nos. SR-2014-0153 and WR-2014-0154. I informed him that the Commission would like to ask the president<sup>1</sup> of Peaceful Valley Service Company ("company") some questions and was considering either subpoenaing him directly or issuing an order directing the Staff of the Commission to subpoena him to appear before the Commission. I informed Mr. Thompson that I was considering three possible dates –September 18, 22, or 23 – and would like to know what dates would work for the witness.

3. 4 CSR 240-4.020 (1) (O) defines substantive issue as:

The merits, specific facts, evidence, claims, or positions which have been or are likely to be presented or taken in a contested case. The term substantive issue

---

<sup>1</sup> The footnote stated: "The President of Peaceful Valley Service Company is August B. Hoernschemeyer."

does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case.

Based on that definition, it is clear that the discussion described by Judge Burton is not merely procedural in nature.

4. Subpoena of a utility representative in a small company rate case proceeding in order to answer Commission questions in what is assumed to be an under-oath, on-the-record hearing is not normal procedure in a small company rate case proceeding. Issuing a subpoena is no small matter. If the Commission finds it necessary to subpoena a utility representative to answer its questions, then the clear intention of the Commission is to utilize the answers the utility representative gives as evidence in the determination of the case before it. Therefore, the discussion between Judge Burton, Mr. Thompson and Mr. Busch goes far beyond a mere procedural discussion and pertains directly to the substantive issues including the “merits, specific facts, evidence, claims, or positions which have been or are likely to be presented or taken” in this case.

5. The ex parte discussion also provided Staff, and presumably the utility, with advanced knowledge that such an on-the-record hearing is to be held where the utility, and presumably the other parties, are to provide evidence to the Commission. Public Counsel was not provided that same knowledge until over a week later. As a result, Staff and the utility were given extra time to prepare for the on-the-record hearing that Public Counsel was not given. Staff and the utility were also given the opportunity to weigh in regarding the date the on-the-record hearing is to be held. Public Counsel was not given that same opportunity. Therefore, Public Counsel was not given the same opportunity as Staff and the utility to ensure counsel preparation and witness availability. As a result, Public Counsel has been unduly prejudiced in the on-the-record hearing by this discussion.

6. When filing these cases, Peaceful Valley requested to collect money in rates to pay for future construction. This request is not a part of the July 10, 2014, Corrected Company/Staff Agreements which Public Counsel has stated it will not oppose. The Commission's July 29, 2014, *Order Directing Staff To Submit Report* indicates the Commission's desire to pursue the utility's original request further:

At a July 23<sup>rd</sup> Agenda meeting the Commission discussed the disposition agreement and its failure to address upgrades to the sewer system. Members of the Commission were interested in exploring rate mechanisms that could provide funding for any improvements, but wanted additional information on DNR's requirements, how much money Company needed, and the time-frame for improvements in the form of a compliance plan as outlined below.

If the Commission finds it necessary to hear evidence, potentially under coercion of a subpoena, then the intention of the Commission is to utilize the answers the utility representative gives to make a determination regarding Peaceful Valley's request to collect money in rates to pay for future construction.

7. Further, the definition of substantive issue in 4 CSR 240-4.020 (1) (O) "does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case." The inclusion of costs for plant that has not been constructed in rates is a contested issue in what is now a contested case. Because of the ex parte discussion, Staff and the utility were given extra time to prepare for the on-the-record hearing regarding the Company's request; time which Public Counsel was not given. Public Counsel was not given the same opportunity to ensure counsel preparation and witness availability as Staff and the utility were given because of the ex parte discussion. As a result, the ex parte discussion could "materially impact the outcome" of this contested case as contemplated in 4 CSR 240-4.020 (1) (O).

8. Public Counsel has been unduly prejudiced by this ex parte discussion of substantive issues in this case and the ex parte discussion could materially impact the outcome of this contested case. This is unjust and unreasonable.

**WHEREFORE,** Public Counsel respectfully submits its Response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

Christina L. Baker (#58303)

Deputy Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 29<sup>th</sup> day of August 2014:

General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounselservice@psc.mo.gov

Kevin Thompson  
General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
Kevin.Thompson@psc.mo.gov

Peaceful Valley Service Company  
3408 B Peaceful Valley Road  
Owensville, MO 65066  
pvsc@fidmail.com

**/s/ Christina L. Baker**

---