STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of May 2007.

In the Matter of the Extension of Time for U.S. Water Company to File the 2006 Annual Report	)))	**Case No. WE-2007-0412**

ORDER GRANTING EXTENSION OF TIME TO FILE ANNUAL REPORT

Issue Date: May 15, 2007 Effective Date: May 25, 2007

On April 20, 2007,[1] U.S. Water Company ("USW"), by and through its attorney, filed a very brief pleading requesting that the Missouri Public Service Commission extend the time within which it may file its 2006 annual report respecting its regulated water operations from April 15 to June 15. On April 24, the Commission issued a Notice of Deficiency, which identified the pleading's most significant omissions and procedural deficiencies and stated that they had to be corrected before the Commission would take any further action on or give any further consideration to USW's request.

In response to the Notice of Deficiency, USW filed revised versions of its original "Request for Extension of Time" on April 30 and May 3, which remedied the vast majority of the problems with USW's initial pleading. In these pleadings, USW agreed to pay a penalty of $100 for late-filing its annual report, but requested a waiver and relief from any additional

[1] Unless specified otherwise, all dates specified in this order refer to the year 2007.

charges or penalties.[2] USW also asked for leave to file the extension request out of time, since it was *itself* late-filed.[3] In this regard, counsel for USW explained that because April 15 fell on a Sunday, he prepared and mailed the application to the Commission on the first business day thereafter (April 16), even though the Commission did not actually receive it until April 20. In part because counsel mailed the pleading during a time when, due to the IRS filing deadline of April 17 this year, postal volume was undoubtedly unusually high, the Commission granted USW's request to accept its late-filed application for an extension of time to file its 2006 annual report by order dated May 3.[4]

Also on May 3, the Commission ordered its Staff to file, by no later than May 10, a recommendation as to whether the extension should be granted and under what conditions, if any. In its recommendation, which was filed on May 9, Staff advises that while USW's pleading meets the substantive filing requirements set forth in Commission Rule 4 CSR 240-3.640(7), it is not in full compliance with the requirements of Chapter 2 of 4 CSR 240, as mandated by 4 CSR 240-3.640(7)(A). In particular, Staff notes that USW's pleading does not comply with all the procedural provisions of Commission Rule 4 CSR 240-

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[2] Any water utility that does not timely file its annual report is subject to a penalty of $100, as well as an additional penalty of $100 for each day the utility is late in filing the report. *See* 4 CSR 240-3.640(9); Section 393.140(6), RSMo 2000. USW has agreed to pay the initial penalty of $100.

[3] As the Commission observed in the Notice of Deficiency, Commission Rule 4 CSR 240-3.640(1) requires all water utilities to "submit an annual report to the commission on or before April 15 of each year." However, Section 393.140(6), RSMo 2000, authorizes the Commission to "extend the time prescribed for cause shown." RWC's request for an extension was filed after the deadline established in Commission Rule 4 CSR 240-3.640(7)(A), which requires all water utilities seeking extensions of greater than thirty days to file appropriate pleadings with the commission "prior to April 15."

[4] *See* Commission Rule 4 CSR 240-2.050(3)(B), which provides that when a Commission Rule requires that an act be done within a specified time, the Commission, at its discretion, may, after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

2.060(1)[5] in that it: (1) does not include the company's electronic mail address and a clear statement of the company's principal office or place of business, as required by 4 CSR 240-2.060(1)(A); (2) does not include a Certificate of Good Standing from the Missouri Secretary of State, as required by 4 CSR 240-2.060(1)(B); and (3) does not include a statement that no annual report or assessment fees are due from USW, as required by 4 CSR 240-2.060(1)(L).

Nevertheless, Staff further notes that under Commission Rule 4 CSR 240-2.015, any rule in the 4 CSR 240-2 series may be waived by the Commission for good cause. Staff believes that under the circumstances here, good cause exists to waive the requirements of 4 CSR 240-2.060(1)(A), (B), and (L) as they apply to USW's request. Staff observes, for example, that USW later provided Staff with a certificate of good standing, and that Staff was able to ascertain that USW owes no overdue annual report or assessment fees.

As to the issue of penalties, Staff states that the $100 penalty USW has agreed to pay "is in proportion to the harm caused, because the Company has had minimal revenues during the short period of time between the date that the annual report was due and the date on which the Company filed its Request for Extension of Time." Staff also suggests that this amount is reasonable and will encourage USW and other similarly situated water utilities to timely file their annual reports and/or extension requests in the future. Therefore, Staff recommends that USW be ordered to remit a penalty in the amount of $100, payable to the Director of Revenue, to be deposited into the Public School Fund. Under this

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[5] This regulation sets forth the filing requirements for *any* application to the Commission requesting relief under statutory or other authority. Those filing requirements are *in addition to* those imposed by 4 CSR 240-3.640(7). *See* 4 CSR 240-2.060(6) ("In addition to the general requirements set forth above, the requirements found in Chapter 3 of the commission's rules pertaining to the filing of various types of applications must also be met.")

condition, Staff reports that it has no objection to granting USW the 60-day extension it has requested.

The Commission agrees with Staff that there is good cause to waive 4 CSR 240-2.060(1)(A), (B), and (L) in this case, as the Commission already has most if not all of that information now, USW's pleading substantially (although not totally) complies with the procedural rule in question, and USW has satisfied all of the *substantive* regulatory prerequisites for an extension. The Commission further agrees with its Staff that the $100 penalty USW has agreed to pay is reasonable and proportionate and will encourage USW and other similarly situated water utilities to timely file their annual reports and/or extension requests in the future. Accordingly, the Commission will extend the date by which USW's 2006 annual report is due to June 15.

IT IS ORDERED THAT:

1. Commission Rule 4 CSR 240-2.060(1)(A), (B), and (L) are waived in this case, and U.S. Water Company's request for an extension of the time within which it may file its 2006 annual report respecting its regulated water operations to June 15, 2007 is granted.

2. U.S. Water Company shall comply with all terms and conditions recited by Staff in its recommendation, including the payment of $100 to the Director of Revenue for deposit to the Public School Fund, within ten days after the Commission enters this order. Staff shall file an appropriate pleading in this case when the payment has been received.

3. U.S. Water Company shall include a copy of this order when it files its 2006 annual report.

4. This order shall become effective on May 25, 2007.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Lane, Regulatory Law Judge