

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
vs.	)	<b><u>Case No. WC-2015 -</u></b>
	)	
Ridge Creek Development, L.L.C., and	)	
Mike Stoner and Denise Stoner,	)	
	)	
Respondents.	)	

**Staff Complaint**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its *Complaint*, states as follows:

**Introduction:**

1. This matter concerns the unauthorized provision of water service by Respondents Ridge Creek Development, L.L.C., and Mike Stoner.

**Complainant:**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

**Respondent:**

3. Ridge Creek Development, L.L.C., is a Missouri limited liability corporation in good standing. Its principal place of business is located at 20684 Lynwood Road, Waynesville, MO 65583-4604. Its registered agent is Mike Stoner, 18499 Highway 133, Dixon, MO 65459. According to the records of the Missouri Secretary of State,

Corporations Division, Ridge Creek Development, L.L.C., was created on February 22, 2005.

4. Mike Stoner and Denise Stoner are husband and wife. Their address is P.O. Box KK, 18499 Highway 133, Dixon, MO 65459. On information and belief, they are the owners and operators of Respondent Ridge Creek Development, L.L.C.

**Jurisdiction:**

5. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . . .

6. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel . . . ."<sup>1</sup>

7. Section 386.570.1, RSMo., provides for a penalty between \$100.00 to \$2,000.00, per offense, for "[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission . . . ." Each day that a continuing violation persists is

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<sup>1</sup> Rule 4 CSR 240-2.070(1).

counted as a separate offense.<sup>2</sup> In the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation.<sup>3</sup> All penalties are cumulative.<sup>4</sup>

### **Count I**

#### **Unauthorized Operation of a Public Utility:**

8. On information and belief, Staff states that Respondents are operating an unauthorized water utility with 140 to 150 customers near Waynesville in Pulaski County, Missouri, known as “Ridge Creek Well Service.” Attached as **Exhibit A**, and incorporated herein by reference, is Respondents’ *New Customer Application*. The application form states that a deposit of \$100 is required from new customers. It states that the rates for water are \$15.00 for 0 to 5,000 gallons and \$3.50 per 1,000 gallons thereafter. The application further states that payment is due by the 15<sup>th</sup> of each month, that water service is subject to shut off for non-payment, with a \$25.00 service restoration fee, and that payments should be mailed to Ridge Creek Development, P.O. Box KK, Dixon, MO 65459. Attached as **Exhibit B** are bills rendered by Respondents to customers for water service; a notice dated November 30, 2013, setting out rates<sup>5</sup> and regulations for water service; and a notice dated May 19, 2012, urging residents to limit water usage to avoid damage to the well pumps. The rate notice in **Exhibit B** directs that payments be mailed to Ridge Creek Development, L.L.C., P.O. Box KK, Dixon, MO 65459. Attached as **Exhibit C** is a printed webpage showing an

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<sup>2</sup> Section 386.570.2, RSMo.

<sup>3</sup> Section 386.570.3, RSMo.

<sup>4</sup> Section 386.590, RSMo.

<sup>5</sup> Different from the rates set out in Exhibit A.

advertisement of the Ridge Creek development for sale by Mossy Oak Properties.<sup>6</sup> The advertisement states, “Also included in the deal is [sic] 22 water wells that bring in 50,000 a year in water payments, in 7 years the water payments would pay off the land.” The contact person is listed as Mike Stoner.

9. When Staff learned of Respondents’ activities, it conducted an investigation. Attached as **Exhibit D** is a letter and other information sent by Staff to Mike Stoner on May 7, 2014. Staff has attempted to schedule a meeting with Mr. Stoner but has been unable to do so. Conversations with residents indicate the existence of significant service quality issues, including possibly contaminated water. Conversations with the Missouri Department of Natural Resources (“DNR”) indicate that Respondents have no permit from that agency and have evidently structured their operation in an effort to evade regulation.<sup>7</sup>

10. Section 386.020(59), RSMo., defines “water corporation” to include “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers . . . owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]”

11. Pursuant to § 386.020(43), RSMo., a water corporation is a public utility and is subject to the jurisdiction, control and regulation of this Commission.

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<sup>6</sup> Retrieved on July 10, 2014.

<sup>7</sup> Section 640.102(6), RSMo., provides that a “Public water system’, [is] a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per calendar year. Such system includes any collection, treatment, storage or distribution facilities used in connection with such system.” By serving less than 25 persons on each of 22 wells, Respondents have not reached the threshold at which regulation by DNR attaches for any single well.

12. Section 393.170.2, RSMo., provides in pertinent part, “[n]o such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised . . . without first having obtained the permission and approval of the commission.”

13. Missouri courts have held that entities act as public utilities when they sell water to the public for compensation and have undertaken the responsibility to provide water service to all members of the public within their capability.<sup>8</sup>

14. By the conduct described in Paragraph 8, above, Respondents have acted as a water corporation and a public utility within the intendments of § 386.020, RSMo., and have sold water to the public for compensation and have undertaken the responsibility to provide water service to all members of the public within their capability.

15. By the conduct described in Paragraph 8, above, Respondents have violated § 393.170.2, RSMo., which forbids any corporation from acting as a public utility without prior authorization from the Commission in the form of a certificate of convenience and necessity.

**WHEREFORE**, Staff prays that the Commission will give due notice to the Respondents and, after hearing, determine that Respondents have violated Missouri statutes as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

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<sup>8</sup> *Hurricane Deck Holding Co. v. Public Service Commission*, 289 S.W.3d 260, 264-5 (Mo. App., W.D. 2009); *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 573-5 (Mo. App., S.D. 1997).

## **Count II**

### **Failure to Provide Safe and Adequate Service and Violations of Commission Regulations:**

16. Staff repeats the allegations contained in Paragraphs 1 through 15, as though the same were set out at length herein.

17. On information and belief, Respondents have no permit from DNR and have structured their affairs in such a way as to evade regulation by DNR. So far as Staff is aware, Respondents do not engage in water quality testing or treatment to ensure its safety for human consumption. Conversations by Staff with residents indicate service quality issues and possible water contamination.

18. By the conduct set out in Paragraph 17, above, Respondents have violated § 393.130.1, RSMo., which requires every water corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

**WHEREFORE,** Staff prays that the Commission will give due notice to the Respondents and, after hearing, determine that Respondents have violated Missouri statutes as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

## **Count III**

### **Protection of the Public Health:**

19. Staff repeats the allegations contained in Paragraphs 1 through 18, as though the same were set out at length herein.

20. Section 386.310.1, RSMo., authorizes the Commission “after a hearing

had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every . . . corporation . . . and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand . . . .”

21. The circumstances set out in Count II, being Paragraphs 16 through 18, above, namely, Respondents’ lack of a DNR permit and failure to test or treat water to ensure its safety for human consumption constitute a threat to the public health and safety.

**WHEREFORE,** Staff prays that the Commission will give due notice to the Respondents and, after hearing, order that the Respondents forthwith submit to inspection by DNR and make such necessary and desirable improvements to its operation and system as DNR may recommend in order to safeguard the public health and safety; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

**KEVIN A. THOMPSON**

Missouri Bar Number 36288

Chief Staff Counsel

Missouri Public Service Commission

P.O. Box 360

Jefferson City, MO 65102

573-751-6514 (Voice)

573-526-6969 (Fax)

[kevin.thompson@psc.mo.gov](mailto:kevin.thompson@psc.mo.gov)

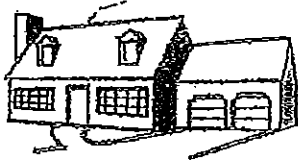
Attorney for Staff of the  
Missouri Public Service Commission

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **14<sup>th</sup> day of July, 2014**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

**/s/ Kevin A. Thompson**





P.O. Box KK  
Dixon, MO 65459

# *Ridge Creek Development, LLC*

*Mike & Denise Stoner*

*(573) 774-9775*

## **RIDGE CREEK WELL SERVICE**

### **NEW CUSTOMER APPLICATION**

**DATE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_

**ZIP CODE:** \_\_\_\_\_

**PHONE #:** \_\_\_\_\_

To all Ridge Creek Residents

We are in the process of starting our new water billing, and are requesting each homeowner to fill out a new water sheet, so we can make sure we have your right information. Please fill out and send back to us

There is a 100.00 Deposit on new customers starting January 1, 2013

Starting January 1, 2013 water is metered and bills will be sent out

Bi-monthly. The rate is as follows- 0-5000 gallons =15.00 this is a minimum charge. For every 1000 gallons after the first 5000 , price will be 3.50 per 1000 gallons. Payments will be due by the 15<sup>th</sup> of the month. If payment is not received by the next billing, water will be shut off, and a 25.00 fee will be charged to turn water service back on. Please make checks payable to

Ridge Creek Development P.O. Box K.K. Dixon, Mo 65459.

Ridge Creek Development, LLC

PO Box KK  
Dixon, MO 65459

# Invoice

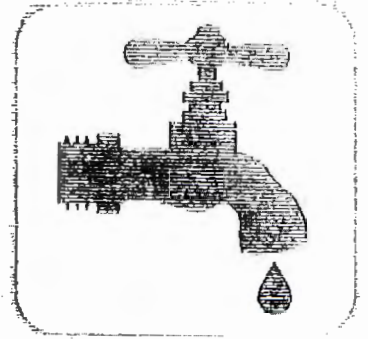
Date	Invoice #
10/12/2012	[REDACTED]

Bill To
[REDACTED]

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Jul & Aug \$33ea Sept \$28 garage water \$12ea  <i>pd 11-17-12</i>	130.00	130.00
If water has been paid for, please disregard this notice.		<b>Total</b>	<b>\$130.00</b>

**RIDGE CREEK DEVELOPMENT, LLC**  
**PO BOX KK**  
**DIXON, MO 65459**  
**573-774-9695**



November 30, 2013

**TO:** All Ridge Creek Residents

**FROM:** Ridge Creek Development Water Management

Dear Customers,

In January of this year, a notice was sent to all residents concerning the water system at Ridge Creek Subdivision. At that time, meters had been installed at each well in order to implement the reading of those meters and bill for water usage accordingly. After much preparation, installation, the purchase of a very costly computer program and studying of implementing this new billing system, we have come to the conclusion that it would be extremely costly to utilize such a system for billing purposes. This cost would, unfortunately, be passed on to you, the customer, in order to make it feasible for use. Therefore, we have decided to continue with the system in place and bill at a set rate for water usage, thus saving time and money for our customers.

At this time, the cost of water is \$28 per month, with the exception of June, July and August, which are billed at \$33 per month. These prices have remained the same since the subdivision opened in 2005. Due to the rising cost of electric and administration fees, we are forced to raise the monthly charge for water usage to \$33. This charge will be for all months of the year, with no additional charge for the summer months. This charge will begin in January of 2014 and will continue until further notice. There will be a \$15 minimum charge for water usage, should the residence be vacated and the water service left connected.

Billing will remain to be on a three month basis, for a total each billing period of \$99. Invoices will be mailed on the 1<sup>st</sup> of the month of the billing period. Payment is due by the 15<sup>th</sup> of the billing month. Payments may be mailed to the above address or dropped off at the black water box on the USPS mail receptacle at the corner of Lynwood Road & Laney Road as well as the corner of Lindsay Lane & Lynn Lane. Payments not received by the 25<sup>th</sup> of the billing month will be considered delinquent and subject to discontinuation of water service. It is the customer's responsibility to pay their water invoice. Should water service be disconnected, a \$25 service fee will be applied and must be paid, along with any past due invoices, before water service is reestablished. Should water service be disconnected during the weekend or a holiday, a \$50 service fee will be applied and must be paid, along with any past due invoices, before water service is reestablished.

For all new Ridge Creek residents, a \$100 deposit is required in order to receive water service. This deposit is refundable once the new resident moves and notifies us. Please notify us by letter or by calling Denise Stoner at 573-774-9695 or Mike Stoner at 573-774-9775 if you are vacating the residence so that we may establish the new owner or tenant and bill accordingly.

It is the resident's responsibility to notify Ridge Creek Development of establishment of water usage. Failure to do so will result in back charging for water usage at time of move in. It is also the resident's responsibility to notify Ridge Creek Development of interrupted water service, i.e., the vacating of the residence. Failure to notify us of nonresidence will not excuse non payment of water usage charges and may result in the use of a collection agency in order to receive payment.

Billing for the final months in 2013 will be for Sept., Oct., Nov., and Dec., due to the non billing of January of this year. The three month basis was disrupted, due to the installation of the water meters.

We hope this letter establishes all requirements for water usage at Ridge Creek Development. Thank you all so much for your cooperation and should you have any questions, please feel free to call.

Sincerely,

Ridge Creek Development

May 19, 2012

Ridge Creek Development

PO Box KK

Dixon, MO 65459

**RE: RIDGE CREEK WELLS**

Dear Ridge Creek Resident;

Due to the recent dry weather, many of the residents are watering their lawns excessively. This is, consequently, causing the water levels of the wells to drop. If the wells do not have time to refill, the well pump will burn out.

We are, therefore, asking that residents alternate watering their lawns. Please only water your lawn on Tuesday and Thursday, thereby giving the well time to refill.

If the well pump burns out, this not only affects you, it also affects your neighbor. Please be considerate with your water usage.

If we cannot get your cooperation on this matter, we will be forced to shut off the wells during certain hours of the day to allow them to fill up to the proper water level.

Thank you for your cooperation.





Property Agent Office

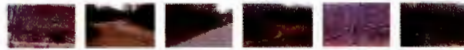
Unsave [PRINT A PDF](#)

## Development Land for Sale in Pulaski County, MO

**Property type:** Investment Land & Recreational Retreat  
**Price:** \$199,500  
**Location:** Lynwood Road  
 Waynesville, MO  
**County:** Pulaski  
**Acreage:** 150.00 Acres  
**MOPLS#** 15590

**School District:** Waynesville

**Description:**  
 150 acres Investment Land in Pulaski county, only a minute from Waynesville, Mo. This land is set up for a housing development, with streets and utilities to land already. Out of the 150 acres, there are 10 building lots ready to be built on. Roads are in place and owner has put several miles of paving into these areas, some are graveled as well. Good timber on lots, also great for hunting as well. Land for sale in Pulaski county and in the Waynesville school district, is very hard to find! Also included in the deal is 22 water wells that bring in 50,000 a year in water payments, in 7 years the water payments would pay off the land. Owner is motivated to sell, with business ventures in another area. If water wells are wanted as well, please add 150,000 for the wells. For more information contact Mike Stoner at 573-774-9775.



[VIEW SLIDESHOW](#)

### Contact:



Mike Stoner  
 6606684868

I have been an avid hunter all of my life. I have always wanted to be in the outdoor field, so we teamed up with Mossy Oak Properties and opened our own office. I really enjoy the Ozarks area, and am glad that we picked this area to put in our office. The area has a lot of recreational opportunity's, with Truman and Lake of the Ozarks in our covered territory's. My wife of 16 years, Denise Stoner is also an agent in the office. We have 4 beautiful daughters, and 2 grand children. Mossy Oak Properties of the Heartland Land & Lakes Properties, LLC



### Options:

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Name:

Email:

Message:

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Property Agent Office

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 State:  Acreage:

Exhibit C



Commissioners  
**ROBERT S. KENNEY**  
Chairman  
**STEPHEN M. STOLL**  
**WILLIAM P. KENNEY**  
**DANIEL Y. HALL**  
**SCOTT T. RUPP**

## *Missouri Public Service Commission*

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.pse.mo.gov>

**JOSHUA HARDEN**  
General Counsel  
**MORRIS WOODRUFF**  
Secretary  
**WESS A. HENDERSON**  
Director of Administration  
and Regulatory Policy  
**CHERYL D. VOSS**  
Director of Regulatory Review  
**KEVIN A. THOMPSON**  
Chief Staff Counsel

May 7, 2014

Mr. and Mrs. Mike and Denise Stoner  
P.O. Box KK  
Dixon, MO 65459  
573-774-9775

Dear Mr. and Mrs. Stoner:

As discussed in our telephone conversation regarding your development of Ridge Creek, it appears you are providing water and sewer services to the public, for gain, without certification from the Missouri Public Service Commission and without other authority. I am sending information on the process for obtaining a Certificate of Convenience and Necessity authorizing you or a client to operate a utility that provides water and/or sewer service to the public. After you review this information, if you would like to have a meeting or a discussion, please feel free to contact me.

Alternatives to regulation of your utility include transfer to another available existing utility if one exists and is willing to acquire the assets, formation of an association or other entity that will be owned and controlled by the customers, or formation of a nonprofit utility, as outlined under Section 393 RSMo., which would also be owned and controlled by the customers.

In order to pursue a Certificate of Convenience and Necessity, please see the attached pertinent pages from the Code of State Regulations. In Chapter 2, known as the Commission's Rules of Practice and Procedure, under the title "Applications," you will find details on what needs to be included in applications. An attorney licensed in Missouri needs to file the application.

Then, in Chapter 3, Filing and Reporting Requirements, you will find specific rules for filings for Certificates of Convenience and Necessity applying to water utilities and to sewer utilities.

Also included is a copy of the Water and Sewer Department's recommendations on what information should be included in an economic feasibility study, as required to be a part of an application for new service areas. The purpose of a feasibility study is to show the cost of service, which information is used to develop rates. The feasibility study should also include information on any existing system along with any proposed construction and improvements, a

Mr. and Mrs. Stoner  
May 7, 2014  
Page 2

customer growth forecast, contract operation proposals, and the utility's financial structure. Actual cost information should be used to the extent it is available, but pro-forma estimates will be likely be needed for at least some expenses. One of our auditors will likely be assigned to review actual expenses to the extent they are available. The utility also needs to show that there will be qualified people available to manage the business as well as the utility operation.

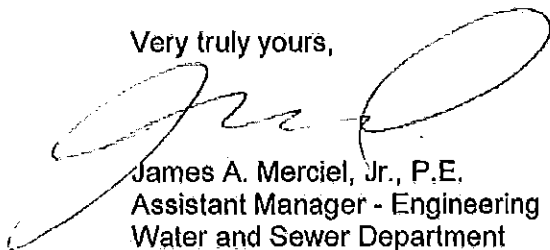
Another aspect of the feasibility study is reviewing the company's investment. The investment, which we call "rate base," is the amount of dollars the owners actually have invested, and on which a utility may earn a return. There is no return on plant that is contributed to the utility. Usually a water or sewer utility could invest in central items like wells, tanks, treatment plants and major lift or booster stations, while distribution and collecting systems pipelines are contributed by developers or individuals requesting service. Some portion of the investment should be equity. Rate base is normally original cost, less contributions, less depreciation. Depreciation is based on plant life. For an existing operation becoming certificated, there may not be a way for the utility to initially have a desirable capital structure and level of rate base that is conducive to a solid corporate financial structure; we would need to work with this on a case-by-case basis.

The remainder of the above chapters, and other information in the Code of State Regulations, are available on the internet at <http://psc.mo.gov/statutes-rules>. Within Chapter 10 are standards of service for water utilities, Chapter 13 are billing rules, and Chapter 60 are standards of service for sewer utilities.

**Please respond to this office stating your intentions by June 3, 2014.**

If you or an agent would like additional information, have questions or would like to discuss the regulations, or would like to have a meeting, please feel free to contact me.

Very truly yours,



James A. Merciel, Jr., P.E.  
Assistant Manager - Engineering  
Water and Sewer Department

(573) 751-3027  
[james.merciel@psc.mo.gov](mailto:james.merciel@psc.mo.gov)

enclosures



RECOMMENDATIONS OF WATER AND SEWER DEPARTMENT REGARDING INFORMATION TO  
BE INCLUDED IN ECONOMIC FEASIBILITY STUDIES TO ACCOMPANY WATER AND SEWER  
APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY

1. Description of company, its objectives, and area proposed to be served.
2. Plan or plat showing total proposed system and detailed estimate of costs.
3. Description of existing facilities (if any) and detailed costs.
4. Description of proposed facilities to be constructed immediately and estimate of costs.
5. Description of additional facilities proposed to be constructed in each of the next three years and estimates of costs.
6. Type of existing dwelling units, population, and actual water used, if applicable.
7. Type of dwelling units and population estimated to be added in each of the next three years and estimates of water usage, or sewage flow.
8. Proposed rates, connection fees, and other charges (also existing rates and charges if any).
9. Statement of current income from any existing facilities.
10. Detailed estimate of income per year for each of the next three years from water sales and other proposed charges, or from sewer service charges.
11. Statement of operating expenses in connection with existing facilities, if any.
12. Detailed estimate of operating expenses for each of the next three years.
13. Plans for financing and proposed capital structure of company.
14. Plans for protection of the financial integrity of the utility during the development years.
15. Name of the professional operator and his/her qualifications, or operation-management firm to be responsible for operation and maintenance of the facilities.
16. Name of the person or management firm to be responsible for managing the utility's business activities, and contact person for customer inquiries.
17. Copy of proposed management contracts.
18. Succession plan for future ownership of the company and the utility assets.

NOTE: Information requested in #3, #4, and #5 should also be indicated on the plat requested in #2.

This is a guideline -- some of this information may not be applicable, or additional information may be necessary depending on the individual circumstances.



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# Rules of Department of Economic Development

## Division 240—Public Service Commission Chapter 2—Practice and Procedure

4 CSR 240-2.010	Definitions .....	3
4 CSR 240-2.015	Waiver of Rules .....	3
4 CSR 240-2.020	Meetings and Hearings (Rescinded October 30, 2009).....	3
4 CSR 240-2.025	Commission Address and Business Hours .....	4
4 CSR 240-2.030	Records of the Commission .....	4
4 CSR 240-2.040	Practice Before the Commission .....	4
4 CSR 240-2.045	Electronic Filing (Rescinded October 30, 2011) .....	5
4 CSR 240-2.050	Computation of Time.....	5
4 CSR 240-2.060	Applications.....	5
4 CSR 240-2.061	Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest .....	6
4 CSR 240-2.062	Required and Permitted Notices for Telecommunications Companies and IVoIP or Video Service Providers that Reorganize or Change Names.....	7
4 CSR 240-2.065	Tariff Filings Which Create Cases .....	8
4 CSR 240-2.070	Complaints .....	8
4 CSR 240-2.075	Intervention.....	10
4 CSR 240-2.080	Pleadings, Filing, and Service .....	11
4 CSR 240-2.085	Protective Orders (Rescinded October 30, 2011) .....	12
4 CSR 240-2.090	Discovery and Prehearings.....	12
4 CSR 240-2.100	Subpoenas .....	13
4 CSR 240-2.110	Hearings .....	13



counsel;

3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record; and

4. The visiting attorney shall provide a receipt or a statement showing that he or she has complied with the requirement of Missouri Supreme Court Rule 6.01(m).

(4) An eligible law student certified under Missouri Supreme Court Rule 13 may appear before the commission as an attorney. The student must comply with any applicable rules or statutes.

(5) Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

(6) After an attorney has entered an appearance for any party, the attorney may withdraw only by leave of the commission.

**AUTHORITY:** section 386.410, RSMo 2000.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

\*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

*Smith v. Public Service Commission*, 336 S.W.2d 491 (Mo. 1960). Commission Rule 12.07 allowing individual party before commission held not to authorize non-lawyer individual to act as attorney for twenty-five other individuals. See also *Reed v. Labor and Industrial Relations*, 789 S.W.2d 19 (Mo. banc 1990) and *Clark v. Austin*, 340 Mo. 647, 101 S.W.2d 977 (Mo. 1937).

#### 4 CSR 240-2.045 Electronic Filing (Rescinded October 30, 2011)

**AUTHORITY:** section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001, effective May 30, 2002. Rescinded: Filed March 2, 2011, effective Oct. 30, 2011.

#### 4 CSR 240-2.050 Computation of Time

**PURPOSE:** This rule sets standards for computation of effective dates of any order or

time prescribed by the commission when no specific date is set by commission order.

(1) In computing any period of time prescribed or allowed by the commission, the day of the act, event, or default shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. This rule does not apply when the commission establishes a specific date by which an action must occur, nor does it operate to extend effective dates which are established by statute.

(2) Except when the issuance and effective date are the same, in computing the effective date of any order of the commission, the day the order was issued shall not be included, and the order is considered effective at 12:00 a.m. on the effective date designated in the order, whether or not the date is a Saturday, Sunday, or legal holiday. If the effective date and the issuance date are the same, the order shall be effective at the date and time the order is issued by the commission.

(3) When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission may—

(A) Order the period enlarged before the expiration of the period originally prescribed or as extended by a previous order; or

(B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect or for other good cause shown.

**AUTHORITY:** section 386.410, RSMo 2000.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

\*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

*State ex rel. Alton R. Co. v. Public Service Commission*, 536 S.W.2d 766 (Mo. 1941). The effective date of an order is at the beginning of that date, rather than at its close.

**PURPOSE:** Applications to the commission requesting relief under statutory or other authority must meet the requirements set forth in this rule.

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(A) The legal name of each applicant, a brief description of the legal organization of each applicant, whether a Missouri corporation, foreign corporation, partnership, proprietorship, or other business organization, the street and mailing address of the principal office or place of business of each applicant and each applicant's electronic mail address, fax number and telephone number, if any;

(B) If any applicant is a Missouri corporation, a Certificate of Good Standing from the secretary of state;

(C) If any applicant is a foreign corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(D) If any applicant is a partnership, a copy of the partnership agreement;

(E) If any applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(F) If any applicant is a political subdivision, a specific reference to the statutory provision and a specific reference to any other authority, if any, under which it operates;

(G) If any applicant has submitted the applicable information as set forth in subsections (1)(B)–(F) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct;

(H) A brief statement of the character of business performed by each applicant;

(I) Name, title, address, and telephone number of the person to whom correspondence, communications, and orders and decision of the commission are to be sent, if other than to the applicant's legal counsel;

(J) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;

(K) A statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of the application;

(L) A statement that no annual report or assessment fees are overdue; and

#### 4 CSR 240-2.060 Applications



(M) All applications shall be subscribed and verified by affidavit under oath by one (1) of the following methods: if an individual, by that individual; if a partnership, by an authorized member of the partnership; if a corporation, by an authorized officer of the corporation; if a municipality or political subdivision, by an authorized officer of the municipality or political subdivision; or by the attorney for the applicant if the application includes or is accompanied by a verified statement that the attorney is so authorized.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

(3) If the purchaser or any other necessary party to a transaction for which approval is sought under the provisions of 4 CSR 240-3.110, 4 CSR 240-3.115, 4 CSR 240-3.210, 4 CSR 240-3.215, 4 CSR 240-3.310, 4 CSR 240-3.315, 4 CSR 240-3.405, 4 CSR 240-3.410, 4 CSR 240-3.520, 4 CSR 240-3.525, 4 CSR 240-3.605, or 4 CSR 240-3.610 is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the transaction, the purchaser or other necessary party must comply with these rules.

(4) In addition to the requirements of section (1), applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived, shall contain information as follows:

(A) Specific indication of the statute, rule, or tariff from which the variance or waiver is sought;

(B) The reasons for the proposed variance or waiver and a complete justification setting out the good cause for granting the variance or waiver; and

(C) The name of any public utility affected by the variance or waiver.

(5) Except for telecommunications companies and providers of video services or interconnected voice over Internet protocol (VoIP) services, a name change may be accomplished by filing the items below with a cover letter requesting a change of name. Notwithstanding any other provision of these rules, the items required herein may be filed by a nonattorney. Applications for approval of a change of name shall include:

(A) A statement, clearly setting out both the old name and the new name;

(B) Evidence of registration of the name change with the Missouri secretary of state; and

(C) Either an adoption notice and revised tariff title sheet with an effective date which is not fewer than thirty (30) days after the filing date of the application, or revised tariff sheets with an effective date which is not fewer than thirty (30) days after the filing date of the application.

(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.

**AUTHORITY:** sections 386.250 and 386.410, RSMo 2000.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 3, 1987, effective May 1, 1987. Amended: Filed May 11, 1988, effective Aug. 11, 1988. Amended: Filed Feb. 5, 1993, effective Oct. 10, 1993. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 386.410, RSMo 1939, amended 1947, 1977, 1996.

*State ex rel. Kansas City Transit, Inc. v. Public Service Commission*, 406 S.W.2d 5 (Mo. banc 1966). Commission is an administrative body of powers limited to those expressly granted by statute or necessary or proper to effectuate statutory purpose. Commission's authority to regulate does not include right to dictate manner in which company conducts its business.

#### **4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest**

**PURPOSE:** The purpose of this rule is to implement a process for the commission to entertain requests for expanded local calling area plans that provide toll-free or discounted calling within a community of interest.

(1) Definitions. For the purposes of 4 CSR 240-2.061 the following definitions are applicable:

(A) Alternative local exchange telecommunications company is a local exchange telecommunications company certified by the commission to provide basic or nonbasic

local telecommunications service or switched exchange access service, or any combination of such services, in a specific geographic area subsequent to December 31, 1995.

(B) Community of interest is a group of people connected by a common calling interest or need. Community of interest includes, but is not limited to, community calling to medical services providers, educational institutions, governmental or social service offices, and commercial centers.

(C) Expanded local calling area plan(s) is a plan(s) that provides toll-free or discounted calling prices to designated exchanges within a community of interest.

(D) Illustrative tariff sheets are tariff sheets which comply with 4 CSR 240-3.545 except that such tariff sheets do not contain an issued and effective date.

(E) Incumbent local exchange telecommunications company is a local exchange telecommunications company authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such company.

(F) Intercarrier compensation describes the financial arrangement used to compensate other telecommunications carriers for the use of their respective facilities in transmitting a telecommunications call.

(G) Local exchange telecommunications service is telecommunications service between points within an exchange.

(H) Metropolitan calling area (MCA) is an expanded calling area in the three (3) metropolitan areas allowing calling within and/or to metropolitan exchanges around St. Louis, Kansas City and Springfield at tiered rates. MCA telecommunications traffic originates, transits, and/or terminates pursuant to terms and conditions the Public Service Commission established in MoPSC Case Numbers TO-92-306 and TO-99-483 or as subsequently modified by commission order or rule.

(I) Subscribers are persons or companies that have contracted to receive telecommunications services.

(2) An application filed with the commission shall initiate a request for an expanded local calling area plan. The specific provisions herein shall supersede general rules contained elsewhere in this chapter. An application may be filed on behalf of:

(A) At least fifteen percent (15%) of the incumbent local exchange telecommunications service subscribers within the requesting exchange; or

(B) A governing body of a municipality or school district within the requesting exchange.



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# Rules of Department of Economic Development

## Division 240—Public Service Commission

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(I) The address and telephone number of the Office of the Public Counsel and a statement of the function of that office; and

(J) Where provided, a prominent description of Lifeline and Link-up services.

**AUTHORITY:** section 386.250, RSMo 2000.\*  
Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed Jan. 28, 2004, effective Sept. 30, 2004.

\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996.

#### 4 CSR 240-3.560 Telecommunications Procedure for Ceasing Operations

**PURPOSE:** This rule describes the procedure for certificated telecommunications companies ceasing operations in the state of Missouri or discontinuing service to any geographic service area of the state.

(1) All telecommunications companies ceasing operation in Missouri or discontinuing basic local or interexchange telecommunications service to any geographic service area within the state shall provide to the commission at least thirty (30) days prior to cessation or discontinuance:

(A) A statement of reasons for ceasing or discontinuing service;

(B) Date of planned service cessation or discontinuance;

(C) Geographic areas affected by cessation or discontinuance of service;

(D) A brief description of the service(s) to be ceased or discontinued;

(E) A statement as to whether the company's tariff(s) and certificate shall remain in effect or be cancelled;

(F) A statement that all affected customers have been notified at least thirty (30) days prior to the cessation or discontinuance; and

(G) A statement that all affected customers have been informed as to how they can select a new service provider.

(2) If the information provided in section (1) above is submitted electronically, it will be submitted as a non-case related submission in the commission's Electronic Filing Information System (EFIS).

(3) If the information provided in section (1) above is submitted in paper format, it will be submitted to the manager of the Telecommunications Department.

**AUTHORITY:** section 386.250, RSMo 2000.\*

Original rule filed March 19, 2004, effective Nov. 30, 2004.

\*Original authority: 386.250, RSMo 1939, amended 1967, 1977, 1980, 1988, 1991, 1993, 1995, 1996.

#### 4 CSR 240-3.565 Procedure for Telecommunications Companies That File Bankruptcy

**PURPOSE:** This rule describes the procedure for certificated telecommunications companies and their affiliates that file bankruptcy.

(1) Any telecommunications company certificated in Missouri that files bankruptcy or has an affiliate that files bankruptcy shall, within ten (10) working days of filing bankruptcy, provide to the commission:

(A) A notice that the company or an affiliate has filed bankruptcy including:

1. The bankruptcy case number;
2. The bankruptcy filing date;
3. The bankruptcy chapter number; and,
4. The bankruptcy court.

(B) If Missouri certificated telecommunications companies have certificated or non-certificated affiliates that file bankruptcy, only one (1) of the Missouri certificated telecommunications companies need provide to the commission the items in paragraphs (1)(A)1.-4. The responsibility of providing the information in paragraphs (1)(A)1.-4. will fall to the carrier first certificated in Missouri. The certificated company providing these items shall also provide the name(s) of its other Missouri certificated affiliate(s).

(2) If the bankruptcy court approves the transfer of customers to another telecommunications company, a copy of the bankruptcy order shall be provided to the commission with the application for service authority or application for approval to transfer assets. An application for service authority or application for approval to transfer assets may be filed before, but shall be filed no more than ten (10) working days after the effective date of, the bankruptcy court's order approving the transfer of the customers.

(A) The application for service authority or application for approval to transfer assets shall contain a statement as to whether the existing company's tariff and certificate shall remain in effect or be cancelled.

(3) If the telecommunications company filing bankruptcy has telecommunications facilities that are located at the premises of another telecommunications company, the company filing bankruptcy shall, within seventy-five (75) days after filing bankruptcy, provide to

the commission:

(A) A statement identifying the telecommunications facilities and their locations;

(B) A statement identifying the entities with an interest in the telecommunications facilities;

(C) A statement describing the disposition of the telecommunications facilities and the entity conducting the disposition of the facilities; and

(D) A statement informing the commission of the date when the telecommunications facilities have been or will be disconnected and removed from the premises of the other telecommunications company and disposed of properly.

(4) If the information provided in sections (1)-(3) above is submitted electronically, it will be submitted as a non-case related submission in the commission's Electronic Filing Information System (EFIS).

(5) If the information provided in sections (1)-(3) above is submitted in paper format, it will be submitted to the manager of the Telecommunications Department.

**AUTHORITY:** section 386.250, RSMo 2000.\*  
Original rule filed March 19, 2004, effective Nov. 30, 2004.

\*Original authority: 386.250, RSMo 1939, amended 1967, 1977, 1980, 1988, 1991, 1993, 1995, 1996.

#### 4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers (Rescinded April 30, 2014)

**AUTHORITY:** sections 386.040, 386.250, 392.451, and 392.470, RSMo 2000. Original rule filed Oct. 31, 2005, effective June 30, 2006. Amended: Filed Aug. 28, 2007, effective March 30, 2008. Rescinded: Filed Aug. 7, 2013, effective April 30, 2014.

#### 4 CSR 240-3.600 Filing Requirements for Water Utility Applications for Certificates of Convenience and Necessity

**PURPOSE:** Applications to the commission requesting that the commission grant a certificate of convenience and necessity must meet the requirements set forth in this rule. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for a certificate of



convenience and necessity by a water company shall include the following information:

(A) If the application is for a service area—

1. A statement as to the same or similar utility service, regulated and nonregulated, available in the area requested;

2. If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

3. The legal description of the area to be certificated;

4. A plat drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

5. A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations;

(B) When no evidence of approval of the affected governmental bodies is necessary, a statement to that effect;

(C) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired; and

2. A certified copy of the required approval of other governmental agencies; and

(D) The facts showing that the granting of the application is required by the public convenience and necessity.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

**AUTHORITY:** section 386.250, RSMo 2000.\*  
Original rule filed Aug. 16, 2002, effective April 30, 2003.

\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996.

#### 4 CSR 240-3.605 Filing Requirements for Water Utility Applications for Authority to Sell, Assign, Lease or Transfer Assets

**PURPOSE:** Applications to the commission for the authority to sell, assign, lease or transfer assets must meet the requirements set forth in this rule. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to sell, assign, lease or transfer assets shall include:

(A) A brief description of the property involved in the transaction, including any franchises, permits, operating rights or certificates of convenience and necessity;

(B) A copy of the contract or agreement of sale;

(C) The verification of proper authority by the person signing the application or a certified copy of resolution of the board of directors of each applicant authorizing the proposed action;

(D) The reasons the proposed sale of the assets is not detrimental to the public interest;

(E) If the purchaser is subject to the jurisdiction of the commission, a balance sheet and income statement with adjustments showing the results of the acquisitions of the property; and

(F) A statement of the impact, if any, the sale, assignment, lease or transfer of assets will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in that sale are located.

(2) If the purchaser is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the sale, the purchaser must comply with these rules.

(3) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

**AUTHORITY:** section 386.250, RSMo 2000.\*  
Original rule filed Aug. 16, 2002, effective April 30, 2003.

\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996.

#### 4 CSR 240-3.610 Filing Requirements for Water Utility Applications for Authority to Merge or Consolidate

**PURPOSE:** Applications to the commission for the authority to merge or consolidate must meet the requirements set forth in this rule. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to merge or consolidate shall include:

(A) A copy of the proposed plan and agreement of corporate merger and consolidation, including organizational charts depicting the relationship of the merging entities before and after the transaction;

(B) A certified copy of the resolution of the board of directors of each applicant authorizing the proposed merger and consolidation;

(C) The balance sheets and income statements of each applicant and a balance sheet and income statement of the surviving corporation;

(D) The reasons the proposed merger is not detrimental to the public interest;

(E) An estimate of the impact of the merger on the company's Missouri jurisdictional operations relative to the merger and acquisition in question; and

(F) A statement of the impact, if any, the merger or consolidation will have on the tax revenues of the political subdivision in which any structures, facilities or equipment of the companies involved are located.

(2) If the purchaser is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the sale, the purchaser must comply with these rules.

(3) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

**AUTHORITY:** section 386.250, RSMo 2000.\*  
Original rule filed Aug. 16, 2002, effective April 30, 2003.

\*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996.

#### 4 CSR 240-3.615 Filing Requirements for Water Utility Applications for Authority to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness

**PURPOSE:** Applications to the commission for the authority to issue stock, bonds, notes or other evidences of indebtedness must meet the requirements set forth in this rule. As noted in the rule, additional requirements