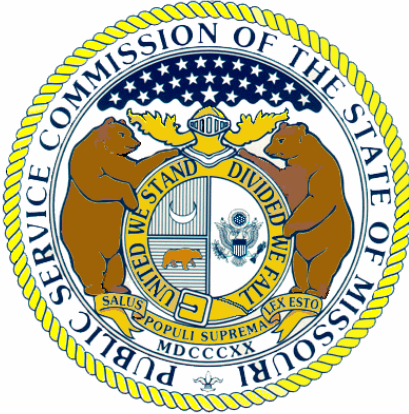


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Metropolitan St. Louis Sewer District,)
)
Complainant,)
)
v.)
)
Missouri-American Water Company,)
)
Respondent.)

Case No. WC-2007-0040

REPORT AND ORDER

Issue Date: May 22, 2007

Effective Date: June 1, 2007

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Metropolitan St. Louis Sewer District,)	
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Complainant,)	
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v.)	<u>Case No. WC-2007-0040</u>
)	
Missouri-American Water Company,)	
)	
Respondent.)	

APPEARANCES

Jacqueline Ulin Levey and J. Kent Lowry, Attorneys at Law, Armstrong Teasdale, LLC,
One Metropolitan Square, Suite 2600 St. Louis MO 63102:
For Metropolitan St. Louis Sewer District.

Kenneth C. Jones, Corporate Counsel, Missouri-American Water Company, 727 Craig
Road, St. Louis, MO 63141:
For Missouri-American Water Company.

Christina L. Baker, Assistant Public Counsel, Office of the Public Counsel, P.O. Box 2230,
Jefferson City, Missouri 65102:
For the Office of the Public Counsel and the public.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, Governor
Office Building, Suite 800, 200 Madison Street, Post Office Box 360, Jefferson City,
Missouri 65102:
For the Staff of the Missouri Public Service Commission.

JUDGE: Kennard L. Jones

REPORT AND ORDER

Summary

In this Report and Order the Missouri Public Service Commission concludes that Section 249.645 RSMo 2000 allows private water companies to charge sewer districts for meter-reading data.

FINDINGS OF FACT

The Commission notes that the parties have filed a Joint Statement of Facts. To facilitate reference to those facts, the Commission will hereunder recite a portion thereof.

Procedural History

Metropolitan St. Louis Sewer District filed a complaint against Missouri-American Water Company alleging that the meter-reading data gathered by Missouri-American should, under Missouri law, be provided to MSD at no charge. Missouri-American disagrees and asserts that MSD must continue to compensate Missouri-American for the information. The parties filed a Joint Statement of Facts and the Commission heard oral argument. Thereafter, the parties, including the Office of the Public Counsel and the Staff of the Commission, filed post hearing briefs.

Joint Statement of Facts

1. MSD is a sewer district, as referenced in Section 249.645 RSMo 2000, and provides sewer service in the city and county of St. Louis, Missouri.
2. Missouri-American is a public utility, regulated by the Commission, which provides water service to customers in St. Louis County.
3. Missouri-American has approximately 348,000 quarterly-read meters and 1,000 monthly-read meters in St. Louis County, for a total of approximately 1,404,000 reads per year.
4. In order to read its meters, Missouri-American must physically read each meter.

5. Missouri-American's budgeted cost for meter reading in St. Louis County for 2007 is \$1,926,210 (which includes labor and labor-related expenses of \$1,792,506, vehicle expense of \$107,256, and meter-reading equipment expense of \$26,448).

6. In 1993, MSD and St. Louis Water Company (Missouri-American's predecessor) entered into an agreement whereby St. Louis Water Company agreed to provide to MSD certain water usage and customer identification data for a fee.

7. MSD sought the Water Usage Data to develop a new billing procedure for residential sewer service based on water usage rather than a flat rate, which had been used through the effective date of the 1993 Agreement.

8. The Water Usage Data provided to MSD under the terms of the 1993 Agreement was gathered through readings and estimates done by St. Louis County Water Company for its own billing purposes.

9. In the 1993 Agreement, the parties agreed that MSD would compensate approximately 50% of St. Louis Water Company's cost of obtaining the necessary data.

10. This amount of compensation was included in St. Louis Water Company's tariff which the parties agreed must be approved by the Commission.

11. The tariff rate proposed by the parties and subsequently approved by the Commission was \$1.24 per residential customer per year.

12. The term of the Agreement was from July 1993 to July 1995 and from year to year thereafter subject to termination by either party at any time on 30 days written notice.

13. Thereafter, the Commission approved an amendment to the agreement adjusting for winter usage data, to more accurately reflect just compensation.

14. The amount that MSD paid to St. Louis Water Company continued to increase through 1998.

15. In 2002, MSD and Missouri-American entered into a new agreement whereby MSD would compensate Missouri-American approximately 50% of Missouri-American's cost of obtaining the Data.

16. The term of the 2002 Agreement was until the end of 2003 and from year to year thereafter subject to termination by either party at any time upon 30 days notice.

17. By way of correspondence between the parties in September of 2003, the parties terminated the 2002 Agreement effective on December 31, 2003.

18. To date the parties have been unable to finalize a new agreement regarding the provision of Water Usage Data.

19. Pending the parties' dispute, Missouri-American has continued to provide MSD with the data and MSD has continued to compensate Missouri-American according to their 2002 Agreement.

20. Missouri-American represents, and MSD has no reason to dispute, that since 1999, MSD has paid Missouri-American the following amounts for Water Usage Data: \$444,059.921 (1999); \$445,415.75 (2000); \$447,830.09 (2001); \$701,860.68 (2002); \$759,823.74 (2003); \$756,194.40 (2004); \$764,900.56 (2005); and \$766,930.14 (2006).

21. If MSD does not pay the fee required by Missouri-American, it has no way of calculating its charges for sewer service, other than conducting its own water meter readings or estimates.

23. In its last rate proceeding¹, Missouri-American submitted a revised tariff to the Commission seeking approval for a flat annual rate of \$760,000 for the provision of Water Usage Data to MSD based on MSD's payment of \$759,823.74 for such Data in 2003.

24. Because MSD and Missouri-American were still negotiating a new agreement, the parties agreed that Missouri-American would withdraw those sheets pertaining to the charge to MSD.

DISCUSSION

The parties do not dispute that Section 249.645 RSMo 2000 controls. The relevant portion of that statute, from subsection 1, is as follows:

Any private water company, public water supply district, or municipality supplying water to the premises located within a sewer district shall, upon reasonable request, make available to such sewer district its records and books so that such sewer district may obtain therefrom such data as may be necessary to calculate the charges for sewer service.

The question is whether Missouri-American can charge MSD for meter-reading data. As is apparent, the statute does not explicitly address compensation for the information supplied by water suppliers to sewer districts.

MSD argues that under proper statutory construction, the Commission must conclude that the legislature's intention is that Missouri-American supply its water usage information to MSD free of charge. MSD reasons that the legislature, while enacting a

¹ Commission Case No. WR-2003-0500.

similar statute² and during other sessions, had the opportunity to add language explicitly permitting Missouri-American to charge for the information. MSD concludes that because the legislature is presumed to know the state of the law when it passes legislation,³ and chose not to add language explicitly allowing a charge, then the information must be provided free of charge.

As pointed out by Missouri-American, the Commission has “a duty to read statutes in their plain, ordinary, and usual sense. Where there is no ambiguity, we cannot look to any other rule of construction.”⁴ Hence, before looking to other statutes to determine the meaning of Section 249.645.1, the Commission must find that it is ambiguous. As noted above, Section 249.645 does not contain explicit language regarding charges for the relevant information. Missouri-American contends that the language is not ambiguous and that the phrase “upon reasonable request”, assumes a reasonable charge.⁵ Further, Missouri-American contends that the parties’ and the Commission’s past behavior should be given great consideration in interpreting the statute.

This point is well taken. The parties have historically agreed to, and the Commission has approved, a charge for the water usage information. Thus, read in its “usual” sense, as is evidenced by the parties’ past practice, the Commission must find that the statute contemplates a reasonable charge for the information. However, MSD urges the Commission to look outside of §249.645 to find the statute ambiguous. The ambiguity is therefore created by breaking the rule first rule of construction set out in *Bosworth*.

² Section 250.233 RSMo 2000.

³ During oral argument, Tr. Page 36, lines 2-7, MSD refers to *Nicholi v. City of St. Louis*, 762 S.W. 2d 423 in support of this argument.

⁴ *Bosworth v. Sewell*, 918 S.W. 2d 773, 777 (Mo. 1996).

⁵ Missouri-American’s Post-Hearing Brief, Page 3, full paragraph 2.

As part of its argument concerning statutory construction, MSD compares the relevant statute to Section 250.233. Section 249.645 concerns sewer districts while Section 250.233 concerns cities, towns and villages. The relevant language is the same in both, except that Section 250.233 contains language concerning a charge for the information. As pointed out by Staff, MSD has cited no reason why the legislature would treat municipal sewer systems differently than sewer districts.⁶ Although MSD argues that the burden to show this different treatment lies with Staff and Missouri-American,⁷ it is MSD that proposes that there be different treatment. The burden to show this distinction therefore lies with MSD.

If the legislature was specifically aware that Section 249.645 did not have language regarding a charge for the information, the Commission must ask why, when enacting this legislation, didn't the legislature add language stating that the information should be provided *free of charge*? This is the converse of MSD's argument. Just as MSD argues that the legislature's inaction with regard to the disputed statutory language should be interpreted to mean the legislature intended the information to be free, the Commission can reason that the same inaction means the information should not be free. Hence, the Commission can not gather any legislative intent from the legislature's inaction with regard to adding language, in Section 249.645, having to do with compensation.

Without the benefit of specific legislative intent, the Commission must broadly "seek to ascertain the intention of the lawmakers by giving the words used their ordinary meaning, by considering the entire act and its purposes, and by seeking to avoid unjust,

⁶ Staff's Post-Hearing Brief, Page 6, paragraph 3.

⁷ MSD's Post-Hearing Reply Brief, Page 4.

absurd, unreasonable, confiscatory or oppressive results.”⁸ To adopt MSD’s interpretation of Section 249.645 would be to ensure, not avoid an unjust, unreasonable, absurd and confiscatory result.

MSD argues that it would be more unjust, unreasonable, absurd, confiscatory or oppressive to interpret the statute in such a way as to force a public entity to share a private entity’s total data collection costs.⁹ MSD’s argument bares absolutely no weight in this regard. First, MSD is not being forced to subsidize or share in Missouri-American’s costs. MSD can send its own workers out to gather the information it needs in order to bill its customers. The Constitutions of the United States and of Missouri, as pointed out by Staff, clearly state that “private property shall not be taken for public use without just compensation and that no person shall be deprived of . . . property without due process of law.”¹⁰ The meters and the water-usage information Missouri-American gathers from those meters is unquestionably Missouri-American’s property. Also, Missouri-American is a private entity. The data Missouri-American gathers is therefore private property. MSD is a public agency. The Commission finds that in order for a request under Section 249.645 to be reasonable, it must include a charge for the information. MSD must therefore give “just compensation” for the “private property” it receives from Missouri-American.

CONCLUSIONS OF LAW

Although the Commission entertains MSD’s argument of statutory construction, the Commission concludes that it need not look outside the relevant statute to determine its plain, ordinary and usual meaning.

⁸ *State ex rel. Killingsworth*, 168 S.W.3d 621 (Mo. App. E.D. 2005).

⁹ MSD’s Post-Hearing brief, Page 7, paragraph 3.

¹⁰ Amendment V to the U.S. Constitution and Article I, Section 10 of the Missouri Constitution.

The Commission also concludes that MSD, not Staff or Missouri-American, bears the burden of proof to show why the legislature chose to explicitly state in §250.233 that certain entities must pay a reasonable charge to water companies but did not explicitly include such language in Section 249.645.

DECISION

Within the context of Section 249.645, the Commission finds that a reasonable request for information includes a reasonable charge. Further, even going outside of the relevant statute and comparing it to Section 250.233 the Commission is unable to find that the legislature intended that there be no charge under Section 249.645. The words in Section 250.233 concerning a charge are not superfluous. Those words mean that there shall be a charge under that section. They do not, however, mean that there shall be no charge under Section 249.645. This result would be unreasonable, confiscatory and, not intending an unreasonable interpretation of its statutes, could be the reason the legislature did not see the necessity to add explicit language in Section 249.645 concerning a charge for water-usage information.

The Commission is aware that Missouri-American has a pending rate case.¹¹ MSD must compensate Missouri-American for its water-usage information. The amount of that compensation will be considered in the pending rate case.

IT IS ORDERED THAT:

1. Metropolitan St. Louis Sewer District shall compensate Missouri-American Water Company for Missouri-American meter-reading data.

¹¹ Commission Case No. WR-2007-0216.

2. This order shall become effective on June 1, 2007.
3. This case may be closed on June 2, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
and Appling, CC., concur;
Gaw, C., dissents, with separate
dissenting opinion to follow;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 22nd day of May, 2007.