

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 10th
day of November, 2005.

The Staff of the Missouri Public
Service Commission,)
)
)
Complainant,)
)
v.)
)
S.K. & M. Water and Sewer Company,)
)
Respondent.)

Case No. WC-2006-0063

DETERMINATION ON THE PLEADINGS

Issue Date: November 10, 2005

Effective Date: November 20, 2005

On August 4, 2005, the Staff of the Commission filed a complaint against S.K. & M. Water and Sewer Company, a public utility authorized to provide water and sewer service. Staff's complaint alleged that S.K. & M. had failed to file its Annual Report for 2004, and sought authority from the Commission to bring a penalty action against the company in circuit court. S.K. & M. filed a timely answer to Staff's complaint on August 17. Thereafter, on October 3, Staff filed a motion for determination on the pleadings.

Commission rule 4 CSR 240-2.117(C) provides that a party is allowed not more than thirty days to file respond to a motion for summary determination. S.K. & M. has not responded to Staff's motion.

Staff's complaint is based on an allegation that S.K. & M. failed to file its 2004 annual report by April 15, 2005, as required by Commission regulation. S.K. & M.'s

answer admitted that it mailed its 2004 annual report to the Commission for filing on August 17, 2005. Staff contends that the filing of a report in August that was due in April is not timely. On that basis, Staff asks for summary determination that S.K. & M. is subject to a penalty action in circuit court.

Commission rule 4 CSR 240-2.117(E) provides that the Commission may grant a motion for summary determination if the pleadings show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law, and the Commission determines that summary determination is in the public interest.

Section 393.140(6), RSMo 2000, requires that every person and corporation under the Commission's supervision file an annual report. That statute also provides that any person or corporation that fails to file an annual report within the time established by the Commission is liable to a penalty of \$100 per day until the report is filed. Section 386.600 authorizes the Commission's general counsel to file an action in any circuit court of this state to recover the authorized penalty.

Commission rule 4 CSR 240-3.640 requires all water companies to file an annual report on or before April 15 of each year. 4 CSR 240-3.335 imposes the same requirement on all sewer companies. S.K. & M., as a water and sewer company, was obliged to file its 2004 annual report on or before April 15, 2005. In its answer, S.K. & M. admitted that its annual report was not filed until sometime after August 17, 2005. Therefore, S.K. & M.'s 2004 annual report was filed late.

Since S.K. & M. filed its 2004 annual report late, it is liable to the penalties prescribed by law and Staff is permitted to bring an action in circuit court to collect those penalties. That is the relief sought by Staff in its complaint, and the facts establish that Staff is entitled to that relief under the controlling statutes. Furthermore, the Commission

finds that granting Staff's motion for determination on the pleadings is in the public interest because conducting a hearing when there is no dispute about any material fact or controlling law would be a waste of resources of the Commission and the parties.

IT IS THEREFORE ORDERED:

1. That Staff's Motion for Determination on the Pleadings is granted.
2. That S.K. & M. Water and Sewer Company failed, omitted, or neglected to timely file its 2004 annual report as required by the statutes of Missouri and the regulations of this Commission.
3. That the general counsel of the Commission is authorized to bring a penalty action against S.K. & M. Water and Sewer Company in any circuit court of this state as permitted by Section 386.600, RSMo 2000.
4. That this order shall become effective on November 20, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Jones, Regulatory Law Judge