

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

In the Matter of the General Rate Increase)
for Water and Sewer Service Provided)
by Missouri-American Water Company.)

Case No. WR-2007-0216

MOTION FOR RECONSIDERATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Motion for Reconsideration, states as follows

1. The Commission set the Procedural Schedule herein on February 22, 2007, and that schedule provided that Rebuttal Testimony would be filed by all parties on July 10, 2007.

2. On July 6, 2007, Public Counsel moved that the date be set back to July 16, 2007, so that "Public Counsel may concentrate on settlement discussions with the other Parties during the week of July 9-13, 2007."

3. In support of its motion, Public Counsel stated that it "believes no one will be prejudiced by this request."

4. Also on July 6, 2007, AG Processing filed in support of Public Counsel's motion. AG Processing stated, "OPC correctly states that the non-utility parties (including Commission Staff) have been engaged in meaningful settlement discussions that have thus far been productive and that additional time may result in settlement of part or all of the issues in this case." AG Processing did not bother to address the issue of prejudice.

5. On July 9, 2007, Staff filed its Response in Opposition to Public Counsel's motion, stating that, contrary to the assertion of Public Counsel, Staff would most certainly be prejudiced if the date for Rebuttal Testimony were pushed back a week because Staff's ability to meaningfully respond to the other parties' Rebuttal Testimony in its Surrebuttal Testimony would be significantly compromised. Surrebuttal Testimony is due on July 27, less than three weeks after Rebuttal is due on July 10, and the preparation of Surrebuttal Testimony may require additional DRs. If Rebuttal is filed on July 16, Staff will have only 11 days in which to respond. Unlike Public Counsel and AG Processing, Staff must meet every issue raised by the Company and analyze and comment on every contention raised by the parties. Therefore, Staff must have a sufficient and reasonable opportunity to do so.

6. Staff further stated that it is unaware of any reason why settlement discussions, fruitful or not, cannot go forward even if Rebuttal Testimony is due on July 10. Staff, after all, has its testimony ready to file. The other parties should also be ready, having known this due date since February 22.

7. On July 9, 2007, the Commission – or rather, the Chief Judge – granted Public Counsel's motion, evidently without even reading Staff's response.¹ Staff is dumbfounded that a motion would be ruled without any opportunity for response from all parties. It is noteworthy that Public Counsel's motion did not recite that all parties had, after consultation, either consented to the motion or indicated that they would not object. In fact, the motion very properly stated as follows: "Public Counsel understands that the Staff of the Public Service Commission (Staff) opposes an extension of time, however

¹ In fact, it is certain that Staff's Response in Opposition was not considered because the Order was filed in EFIS at 4:17 p.m. and Staff's Response was filed two minutes later at 4:19 p.m.

Public Counsel has spoken to many other non-company Parties who state they do not oppose an extension of time.” Thus, the Chief Judge was on notice that the motion was contested. When the undersigned was a Regulatory Law Judge, not so very long ago, contested procedural motions were required to be brought into Agenda for ruling by the Commission.

8. Commission Rule 4 CSR 240-2.080(16) states, “Parties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.”

9. The Commission – or the Chief Judge – did not purport in its Order of July 9 to shorten the response time set by the above-cited rule, or to waive it. For that matter, Public Counsel did not even request that it be shortened. Therefore, the Order of July 9 was issued in violation of the Commission’s own practice rule. “Rules duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding on the agency adopting them.” ***State ex rel. Stewart v. Civil Service Com'n of City of St. Louis***, 120 S.W.3d 279, 287 (Mo. App., E.D. 2003), *citing* ***Martin-Erb v. Mo. Com'n on Human Rights***, 77 S.W.3d 600, 607 (Mo. banc 2002); ***Missouri Nat. Educ. v. Missouri State Bd.***, 695 S.W.2d 894, 897 (Mo. banc 1985); ***Page Western Inc. v. Community Fire Protection***, 636 S.W.2d 65, 68 (Mo. banc 1982). Agency action taken in violation of the agency’s own rules is necessarily arbitrary and capricious.

10. Even the Commission’s Staff is entitled to due process of law.

11. The prejudicial effect on Staff of the Order of July 9 is best appreciated when considered in the light of the fact that all of the non-Company parties rely upon Staff to investigate every aspect of the Company’s case and to oppose its efforts at

overreaching. Likewise, the Company depends on Staff to take a neutral and unbiased approach, favorable to the Company where that is appropriate. Only Staff has the resources and expertise to attempt to present a balanced and knowledgeable position on every issue. Therefore, by obstructing Staff's ability to usefully respond to whatever contentions the parties might make in their Rebuttal Testimony, the Order of July 9 has perhaps left the Commission at the mercy of the parties.

12. Staff doubts that the filing date of July 10 can be re-established at this date without creating the sort of procedural confusion that would render the Commission's ultimate decision particularly susceptible to reversal on appeal. Therefore, corrective action must be taken to eliminate the prejudicial effect of the Commission's Order of July 9. Staff proposes the following:

A. Response times for DRs should be immediately reduced to five days, with objections also due within five days.

B. The remaining dates on the Procedural Schedule, including the start date for the hearing, should be pushed back by one week.

C. Contested procedural motions should be referred to the Commission rather than determined by an RLJ.

WHEREFORE, Staff urges the Commission to set aside its Order of July 9, 2007, and, upon reconsideration, to DENY Public Counsel's request to extend the date for Rebuttal Testimony to July 16, 2007, or, in the alternative, to adopt the ameliorative measures herein proposed; and for such other and further relief as may be just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson

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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 **10th day of July, 2007**, to 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