

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. WC-2006-_____
)	
Port Perry Service Company,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and initiates its complaint pursuant to Section 386.390, RSMo (2000) and 4 CSR 240-2.070, against Port Perry Service Company, (the “Company”) for violation of the Commission’s statutes and rules relating to annual report submissions and respectfully states as follows:

1. The Commission granted Port Perry Service Company, a certificate of convenience to provide water and sewer services in Case No. WR-94-123 on December 22, 1993.

2. The company is a “water corporation,” a “sewer corporation” and “public utility” as defined in Section 386.020, RSMo (2000) and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250, RSMo (2000).

3. The Company has provided the following contact information to the Commission:

Port Perry Service Company
P.O. Box 43
Perryville, MO 63775

The Company is a Missouri corporation and the Missouri Secretary of State website indicates that the company is in good standing.

4. Section 386.390.1, RSMo (2000) authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision” of the Commission.

5. Commission Rule 4 CSR 240-2.070(1) provides that the Commission’s Staff, through the General Counsel, may file a complaint.

6. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the Division cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)). See also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo.banc 1940). If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to file its annual report, the Commission may then authorize its General Counsel to bring a penalty action in the circuit court as provided in Section 386.600, RSMo (2000).

7. Section 393.140 (6), RSMo (2000) states that it is the “duty of each person or corporation [under the Commission’s supervision] to file with the Commission an annual report.”

8. Commission Rule 4 CSR 240-3.640 requires all water companies and Commission Rule 4 CSR 240-3.335 requires all sewer companies to file their annual reports on or before April 15 of each year.

9. Section 393.140 (6) provides that “Any such person or corporation...which shall neglect to make any such report...within the time prescribed by the Commission shall be liable to a penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file...to be sued for in the name of the state of Missouri.”

10. On January 15, 2005, the Chairman of the Commission, in compliance with Section 392.210.1, RSMo (2000) sent all regulated utilities, including Port Perry Service Company, a letter notifying them of the requirement to file, on or before April 15, 2005, an annual report covering the calendar year 2004, together with the appropriate form for the Company to complete and return to the Commission, and instructions on how the Company may complete its filing electronically. The letter that the Commission sent to the Port Perry Service Company, was not returned.

11. The Company never returned a completed form, nor did it file its annual report electronically; and as of the date of this pleading, has not filed its 2004 Annual Report. See Affidavit of Janis Fischer, attached to this Complaint as Exhibit A.

12. The Commission’s Rule at 4 CSR 240-2.070(5)(E), requires “a statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made.” In addition to the letter and accompanying form the Chairman sent in January 2005, the Commission’s General Counsel sent Port Perry Service Company, a letter on May 2, 2005, reminding them that the Company failed to file an annual report by the April 15th deadline and warning them that such failure to file will subject the Company to legal action under state law that allows a penalty of one hundred dollars for each day that it is late in filing. See Exhibit B.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission (1) open a complaint case pursuant to Section 386.390; and, after hearing, find that Port Perry Service Company, failed, omitted, or neglected to file its 2004 Annual Report to the Commission as required by Missouri statute and Commission orders; and (2) authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, RSMo (2000) based on the statutory penalties set forth in Sections 392.210.1.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Mary E. Weston

Mary E. Weston
Assistant General Counsel
Missouri Bar No. 54669

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)
mary.weston@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 4th day of August 2005.

/s/ Mary E. Weston

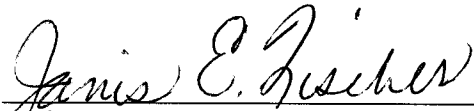
Lewis Mills, Esq.
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Port Perry Service Company,
P.O. Box 43
Perryville, MO 63775

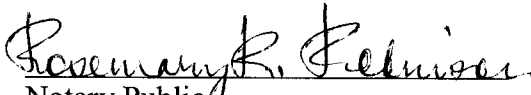
AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Janis E. Fischer, Utility Regulatory Auditor IV, of the Commission's Auditing Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the 2004 Annual Report from Port Perry Service Company.


Janis E. Fischer

Subscribed and sworn to before me this 4th day of August, 2005.


Notary Public

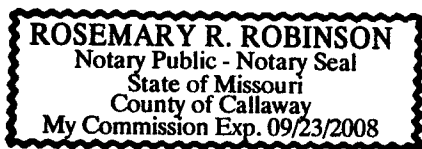
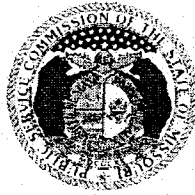


Exhibit A



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

May 2, 2005

E. Robert Horn
Port Perry Service Company - Sewer/Water
P.O. Box 43
Perryville, MO 63775

Dear Mr. Horn:

Pursuant to Section 392.210, RSMo Section 393.140, RSMo and the rules at 4 CSR 240-3.165 (Electric Utilities), 4 CSR 240-3.245 (Gas Utilities), 4 CSR 240-3.335 (Sewer Utilities), 4 CSR 240-3.435 (Steam Heating Utilities), and 4 CSR 240-3.640 (Water Utilities), public utilities are required to submit an annual report to the Missouri Public Service Commission on or before April 15th.

This letter is a notification and warning that the Missouri Public Service Commission has not received from your company its required 2004 Annual Report as of the date of this letter.

If your company does not immediately file its report, it will be subject to legal action under state law for failure to submit an annual report on time. A utility that does not timely file its annual report is subject to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day that it is late in filing its annual report.

Questions about the annual report form or its content may be submitted to:

Janis Fischer (573) 751-4257 or by email at Janis.Fischer@psc.mo.gov.

The completed document should be submitted under EFIS (accessible from the Commission's Web page <http://www.psc.state.mo.us/>) or mailed to:

Manager of the Data Center
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, MO 65102-0360

Sincerely,

Dana K. Joyce
General Counsel

Exhibit B