

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of January, 2013.

In the Matter of a Working Case to Investigate Solutions to)
Problems Facing Small Water and Sewer Public Utilities) **File No. WW-2009-0386**

ORDER GRANTING MOTION TO CLOSE FILE

Issue Date: January 23, 2013

Effective Date: January 23, 2013

On May 1, 2009, the Commission opened File Number WW-2009-0386 to investigate solutions to problems facing Missouri's small water and sewer public utilities. On August 19, 2010, the Commission opened files numbers SW-2011-0042 and WW-2011-0043 to investigate appropriate methods for ratemaking treatment of fees and other mechanisms used for capital recovery of sewer and water infrastructure investment. On June 16, 2011, the Commission consolidated these investigatory files.

On November 1, 2012, the Commission's Staff filed a motion to close this file. In support of its motion Staff states:

At various times in 2009 and 2010, Staff conducted meetings with interested parties to discuss these problems. Participants to these meetings included Staff, the Office of the Public Counsel (Public Counsel), the Department of Natural Resources, Missouri-American Water Company (MAWC), various small water and sewer companies, and other interested parties. It was helpful to have these parties involved in a focused communication to discuss some of the issues that impact small water and sewer companies from each perspective represented at the meetings. Those meetings have ceased at this time.

After this case was opened, the Commission received a few comments from some small water and sewer companies; and from July 2010 to August 2010,

MAWC, Timber Creek Sewer Company, Staff and Public Counsel filed information in various forms regarding the Commission's Annual Assessment. Since that time, no substantive actions have been taken in this matter.

On August 23, 2010, the Commission issued its *Order Directing Notice of Working Case and Directing Filing* to explore all proper options for ratemaking treatment of certain revenues and to ultimately formalize a proper policy in a subsequent rulemaking. That working case was assigned File Numbers WW-2011-0043 and SW-2011-0042.

On June 16, 2011, the Commission issued an *Order Consolidating Investigations* that consolidated this case with File Numbers WW-2011-0043 and SW-2011-0042 and closed File Numbers WW-2011-0043 and SW-2011-0042, mentioned above.

The last filing made by any party to this case was on December 30, 2011, wherein Staff filed its *2011 Status Update*, requested that the matter remain open, and sought permission to file a yearly status update for 2012 by the first working day of 2013. On January 3, 2012, the Commission granted Staff's request.

To date, this case has been substantively inactive most of 2011 and 2012, with the only 2012 activities relating to Notice of Communications, Extra-Record Communications and the recent tour of Missouri-American Water Company in St. Louis, Missouri.

Staff asserts that problems remain for small water and sewer companies. While many of those problems are common within the industry, each individual water and sewer company presents its own unique situation and solutions are easier to reach by focusing on the individual company. Therefore, Staff states that, at this time, those problems are better addressed in the context of a company's rate case or other company-specific filing with the Commission, as opposed to maintaining an open workshop that is not active or productive to address those problems.

Based upon these assertions, Staff requests that this file be closed at this time and removed from the Commission's docket. Staff observes that in the future, if necessary or appropriate, another docket could be opened to facilitate discussions and ideas regarding industry-wide concerns. No other participant or interested person filed any response to Staff's motion.

After reviewing Staff's request, the Commission directed Staff to file a comprehensive report identifying the issues discussed at the workshops, the proposed solutions and the entities participating in the discussions. Staff filed its report on January 2, 2013. No other participant or entity filed a response to Staff's report.

In its report, Staff states that it is difficult for it to make a filing asserting all positions discussed and proposed because Staff does not want to misrepresent any other party's position, particularly if Staff disagrees with such a proposal. Bearing that in mind Staff noted that the issues ultimately identified in the workshop and addressed were as follows:

- (1) Surcharges
- (2) PSC Assessment
- (3) Contingency/Emergency Funds
- (4) Rate Cases

Two sub-committees were formed – one to examine the emergency/contingency fund issue and one to explore rate case education for smaller utilities. The two sub-committees conducted various meetings over the course of 2010 and 2011, but the participation changed over time as focuses shifted and various small utility leaders left the industry and no longer participated in the discussions.

In July 2010, various parties filed reports outlining their respective positions on the PSC assessment and eventually presented their proposals to the Commission during an Agenda held on November 9, 2010. The main issue with the PSC assessment stems from the fact that there are a small number of customers who take sewer service from a PSC regulated sewer entity. The percentage of revenues that the PSC Assessment takes from small sewer utilities can be anywhere from 6 – 10% compared to it being under 1% for the other utilities. The assessment is also subject to yearly fluctuations to the sewer utilities, making it difficult to budget for this expenditure. Based upon the information garnered

during these discussions Staff has proposed legislation over the past few years to combine the water and sewer utilities into one group for purposes of the PSC assessment. To date, the Missouri Legislature has not enacted the proposed legislation.

Other than the proposal for the PSC Assessment, according to Staff, the participants were unable to reach a consensus regarding the other issues identified above. Staff concludes that although rate case education is an admirable goal, trying to provide appropriate training and finding the money and time to spread the information is difficult. Further, requiring or advocating educational events to small utility owners is difficult because the time it would take for them to attend the educational events shifts their focus away from the daily requirements of being a small utility owner – providing safe and adequate service to its customers. This concept is something that Staff would like to pursue at some point in the future, but Staff maintains that the timing has not been right to appropriately address it to date.

Staff claims that the idea of an emergency/contingency fund is controversial at best. Many parties have differing opinions on the concept and there is debate as to the overall legality of it. The basic premise is to build into rates an amount that would allow small utilities to have access to cash in case of emergencies or new Department of Natural Resources or Environmental Protection Agency requirements. However, reaching agreement on what types of items the contingency fund could be used for, interest payments, treatment of collected dollars, controls on access to the dollars, etc. has proven to be difficult, according to Staff. Thus, this concept is still very much alive in the water and sewer industries, but Staff believes that it is probably best addressed on a case-by-case basis. At this time, Staff prefers this approach.

Surcharges, much like with the emergency/contingency fund, were a highly controversial issue, according to Staff, and there is debate on the viability of any generic surcharge. Surcharges can take various forms and are unique to the companies that need them or are eligible for them. Making those determinations on a case-by-case basis is most beneficial at this time. Currently, Staff's approach is to review the concept of surcharges on an individually requested basis, based upon the specific circumstances at that time.

Staff further states that workload considerations hampered work on any of these specific questions in the context of a larger group, because other items became more critical to handle on a company-specific basis. Thus, the working docket has remained relatively quiet since 2011.

During the Missouri Bar Fall Committee meetings on November 16, 2012, a representative from Washington University gave a presentation on an Environmental Clinic that hopes to assist small water and sewer utilities with legal compliance. Staff Counsel's office was made aware of the proposal at that fall meeting and has followed up with a clinic attorney to discuss the possibility of Staff working with the Environmental Clinic on some project(s) related to regulated water and sewer companies. Staff states that this discussion will continue without this working docket.

Staff finally concludes by stating it "will continue to be available to discuss the issues discussed in this docket with interested parties, as they request or as needed, and will notify the Commission if a new working docket is needed in the future. However, at this time, Staff asserts that this docket may be closed."

Having reviewed Staff's verified report, the Commission finds Staff's request to close this file reasonable and will grant it.

THE COMMISSION ORDERS THAT:

1. This file shall be closed.
2. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Shelley Brueggemann
Acting Secretary

Gunn, Chm., Jarrett, R. Kenney, Stoll
and W. Kenney, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge