

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN THE MATTER OF THE REQUEST FOR AN INCREASE IN SEWER
OPERATING REVENUES OF EMERALD POINTE UTILITY COMPANY;

Respondent

PUBLIC SERVICE COMMISSION OF MISSOURI,

Respondent

v.

OFFICE OF PUBLIC COUNSEL.

Appellant

DOCKET NUMBER WD76996

DATE: August 12, 2014

Appeal From:

PUBLIC SERVICE COMMISSION

Appellate Judges:

Division Two

Victor C. Howard, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

Christina Baker, Jefferson City, MO

Counsel for Appellant

Attorneys:

Shelley Brueggemann, Jefferson City, MO

Counsel for Respondent, Public Service Comm.

Joshua Harden, Jefferson City, MO

Co-Counsel for Respondent, Public Serv. Comm.

Dean Cooper, Jefferson City, MO

Counsel for Respondent, Emerald Point

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

IN THE MATTER OF THE REQUEST FOR AN INCREASE IN SEWER OPERATING REVENUES OF EMERALD POINTE UTILITY COMPANY, RESPONDENT; PUBLIC SERVICE COMMISSION OF MISSOURI, RESPONDENT V. OFFICE OF PUBLIC COUNSEL, APPELLANT.

WD76996

Public Service Commission

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

When Emerald Pointe Utility Company filed a request with the Missouri Public Service Commission asking for an increase in its annual sewer and water system operating revenues, the Office of Public Counsel alleged that Emerald Pointe was overcharging its customers through the collection of a "sewer commodity charge." The Commission noted that the overcharging issue was an issue that could have been brought in a complaint case, which would have been a separate action from the rate case. However, by agreement of the parties, the Commission allowed the complaint case to be litigated concurrently with the rate case. After a hearing, the Commission issued a Revised Report and Order, which authorized an increase in Emerald Pointe's annual sewer and water system operating revenues and which concluded that the Office of the Public Counsel failed to meet its burden of proving that the tariff presented to the Commission for approval in 2000 was Emerald Pointe's lawful tariff and, therefore, failed to prove that Emerald Pointe violated its tariff by collecting a sewer commodity charge from its customers. The Office of Public Counsel appeals from that Revised Report and Order complaining only about the Commission's resolution of the sewer commodity charge. The Office of Public Counsel contends that the Commission's actions constituted improper retroactive ratemaking and that the Commission improperly applied a presumption that a previously approved tariff was unlawful.

Affirmed

Division Two holds:

(1) The doctrine prohibiting retroactive ratemaking is not applicable in this complaint case involving the sewer commodity charge because the Commission did not set any rates.

(2) Although the Office of Public Counsel asserts that the Commission "improperly applied a presumption that the approved tariff was unlawful," the Commission did no such thing. Instead, the Commission determined that the Office of Public Counsel did not meet its burden of persuasion of establishing that the tariff submitted by the Commission's staff, which did not include the sewer commodity charge, was Emerald Pointe's lawful tariff. The Commission's order was not unlawful or unreasonable.

Opinion by James Edward Welsh, Judge

August 12, 2014

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