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on

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 12 2012

by
State Corporation Commission
of Kansas

In the Matter of the Application of Suburban)	
Water, Inc., d/b/a Suburban Water Company,)	Docket No. 12-SUBW-359-RTS
for Approval of the Commission to Make)	
Certain Changes in its Rates for Water)	
Service, for Approval of an Amendment to a)	
Contract for Sale of Water with Board of)	
Public Utilities, an Administrative Agency)	
of the Unified Government of Wyandotte)	
County/Kansas City, Kansas ("BPU") and)	
for Approval of a Purchase Water)	
Adjustment ("PWA") Tariff.)	

Prehearing Brief of the Citizens' Utility Ratepayer Board

The Citizens' Utility Ratepayer Board (CURB), in response to the order issued on March 15, 2012, states as follows:

1. The Commission has asked the parties to address three issues concerning the legality and reasonableness of the wholesale water rates paid by Suburban Water to the Kansas City Board of Utilities (BPU). The *Prehearing Brief of Suburban Water Company* addresses these issues thoroughly, and, in CURB's view, reaches the correct conclusions. CURB therefore incorporates Suburban Water's arguments and conclusions as if set forth herein.

2. CURB only has a few other points to make in addition to those made by Suburban Water in its brief. First, as Suburban Water notes in its brief, the filed rate doctrine provides that a rate approved by a ratemaking authority is presumed reasonable and legal unless and until a court rules otherwise. That does not mean, however, that the Commission cannot raise a challenge to BPU's rates. If the Commission believes that BPU's imposition of "tax-like" fees on water sold to

customers outside Wyandotte County is illegal or unreasonable, then the appropriate venue for the Commission to raise a challenge to the unreasonableness or illegality of BPU's rates or fees is in a BPU proceeding, not at the KCC. If the challenge is unsuccessful, then the Commission can perfect its appeal and establish jurisdiction for the courts to consider the issue on appeal. The filed rate doctrine does not apply where a court with appropriate jurisdiction rules that a rate is illegal or unreasonable.

3. Second, as a state agency, the Commission also has the option to request an opinion from the Kansas Attorney General on these questions. While attorney general opinions do not have the legal force of a court opinion, they are respected and have persuasive value. If the attorney general were to find that BPU's imposition of "tax-like" fees on water sold to customers outside Wyandotte County is not consistent with Kansas law, it is possible that the BPU would choose to revise its practices rather than risk litigation. On the other hand, if the attorney general were to find that BPU's actions are consistent with Kansas law, then the Commission could reasonably determine that Suburban Water is entitled to recovery of the cost of fees that it is contractually obligated to pay to BPU. CURB believes that the Commission should request an attorney general opinion on these questions if the present round of filings does not alleviate the Commission's concerns.

4. Finally, by adopting Suburban Water's opinions on these three limited questions posed by the Commission, CURB is not in any way abandoning its objections to the overall reasonableness of its rate increase request. CURB believes the company's request is unreasonable, but for other reasons than the fact that the proposed rates include recovery of the BPU fees. CURB simply agrees with Suburban Water's arguments and conclusions regarding these particular legal questions posed by the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'David Springe', written over a horizontal line.

David Springe #15619

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C. Steven Rarrick #13127

Citizens' Utility Ratepayer Board

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

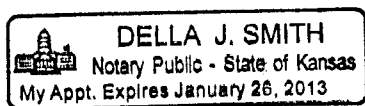
I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

That she is an attorney for the above named petitioner; that she has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



Niki Christopher

SUBSCRIBED AND SWORN to before me this 12th day of April, 2012.



Notary of Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

12-SUBW-359-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service this 12th day of April, 2012, to the following:

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