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July 17, 2003

FILED⁴

JUL 17 2003

Missouri Public
Service Commission

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

Re: Case No. AC-2003-0526
*In the Matter of Springfield City Utilities' Surcharges on Nonresidents of Springfield,
Missouri*

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies each of: 1) Answer To Complaint; and 2) Motion To Dismiss, both filed on behalf of the City of Springfield, Missouri.

Copies of the filing have on this date been mailed or hand-delivered to counsel for all parties of record. Thank you.

Sincerely,



Brent Stewart

CBS/bt

Enclosure

cc: William H. May
General Counsel
Office of the Public Counsel
Howard Wright
Andy Dalton

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Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Springfield City Utilities')
Surcharges on Nonresidents of Springfield,) Case No. AC-2003-0526
Missouri.)

ANSWER TO COMPLAINT

COMES NOW the City of Springfield, Missouri, through the Board of Public Utilities ("Respondent"), by and through counsel, and pursuant to 4 CSR 240-2.070(8) and the *Notice of Complaint* issued by the Commission in the above-captioned cause on June 18, 2003, respectfully states the following as its answer and affirmative defenses to the Petition filed with the Commission on or about May 22, 2003:

1. Respondent admits that the City of Springfield, Missouri, owns and operates a municipally-owned utility and provides utility services within and around the corporate municipal boundaries of the City of Springfield, Missouri but denies the balance of the allegations contained in paragraph one (1) of the Petition. Respondent states that on August 4, 1945 in Case No. 10,614 the Commission approved, as being in the public interest, the sale of the stock of the investor-owned Springfield Gas and Electric Company, a Commission-regulated public utility, to the City of Springfield, Missouri (hereinafter "the City"), which is a constitutional charter city existing and operating pursuant to Article VI, Sections 19 and 19(a) of the Constitution of the State of Missouri. Respondent further states that the City lawfully provides utility services through its Board of Public Utilities pursuant to the duly adopted City Charter of the City of Springfield, Missouri. Respondent further states that in its Order issued in Case No. 10,614 the Commission specifically rescinded and terminated Springfield Gas and

Electric Company's then-existing certificate of public convenience and necessity and that the Commission at no time, then or since, has transferred or purported to transfer said certificate to the City. *See, Re: City of Springfield*, 27 Mo. P.S.C. 187, 200 (1945); *Associated Electric Cooperative, Inc. et al. v. City of Springfield*, 793 S.W.2d 517, 519 (Mo. App. SD 1990).

Respondent further states that Petitioners throughout their Petition erroneously names "Springfield City Utilities" as a party to this action, and that the Commission continues this error in its *Notice of Complaint*, even though *City Utilities of Springfield, Missouri* has no corporate legal existence under applicable law but exists merely as an operational part of the City of Springfield, Missouri by virtue of Article XVI, Section 16.1 of the City's Charter. Respondent, therefore, generally denies all allegations contained in the Petition to the extent such allegations are directed to and purport to make "Springfield City Utilities" or "City Utilities of Springfield, Missouri" (hereinafter "City Utilities") a lawful and proper party to this proceeding and repeats this denial for the purposes of the balance of the allegations contained in the Petition.

2. Respondent admits the allegation contained in paragraph two (2) of the Petition.

3. Respondent admits that City Utilities is not subsidized by the city's tax payers but denies the balance of the allegations and implications contained in paragraph three (3) of the Petition. Respondent states that City Utilities receives benefits from the City and that the City is supported by taxpayers. Respondent further states that City Utilities operates the City's transit system and has a contract with the Springfield Area Chamber of Commerce, which is mutually beneficial to both parties. Respondent further states that City Utilities makes regular payments to the General Revenue Fund of the City, said payments being in lieu of taxes, which

is fully consistent with the common practice of other municipally-owned utilities throughout the state of Missouri and elsewhere.

4. Respondent denies the allegations and implications contained in paragraph four (4) of the Petition. Respondent states that it was the defendant, not the plaintiff, in the suit brought by Associated Electric Cooperative, Inc. et al. in *Associated Electric Cooperative et al. v. City of Springfield, Missouri* (cited above).

5. Respondent admits that the “Petitioners are all residents of Greene County, Missouri” but denies the balance of the allegations contained in paragraph five (5) of the Petition and here incorporates its answer in paragraph one (1) hereinabove.

6. Respondent admits the allegations contained in paragraph six (6) of the Petition.

7. Respondent denies the allegations contained in paragraph seven (7) of the Petition. Respondent states that in 1960, City Utilities established a new electric rate schedule for residential customers receiving electric service inside the city limits and that said new rate schedule averaged 4.6% less than the general lighting service rate schedule applicable to nonresidents.

8. Respondent admits the allegations contained in paragraph eight (8) of the Petition to the extent that nonresidents are charged approximately 10% on natural gas and water service, and 5% on electric service, more than City residents. Respondent denies the balance of the allegations contained in paragraph eight (8) of the Petition.

9. Respondent admits the allegations contained in paragraph nine (9) of the Petition to the extent that Petitioners, as nonresidents, are charged approximately 10% on natural gas and water service, and 5% on electric service, more than City residents. Respondent denies the

balance of the allegations contained in paragraph nine (9) of the Petition.

10. Respondent admits that, consistent with well-established law applicable to all municipalities, only City residents are allowed to vote for members of the City Council but denies the balance of the allegations contained in paragraph ten (10) of the Petition.

Respondent states that pursuant to the City Charter, the Board of Public Utilities, not the City Council, sets utility rates and that the City Council is limited by the Charter to only approving or denying the rates set by the Board of Public Utilities. Respondent further states that since 1989 by a vote of the people, Section 16.2 of the City Charter requires that two of the eleven members of the Board of Public Utilities be City Utilities' customers residing *outside* the corporate municipal boundaries of the City, and therefore, Respondent specifically denies that nonresidents are denied representation on the Board of Public Utilities.

11. Respondent admits that members of the Board of Public Utilities are appointed by the City Council but denies the balance of the allegations in paragraph eleven (11) of the Petition. Respondent states that pursuant to the City Charter, members of the Board of Public Utilities are appointed to fixed terms, and therefore, do not serve at the discretion of the City Council.

12. Respondent admits that the rate differential between residents and nonresidents generates approximately two million (\$2,000,000) dollars annually for City Utilities' operations but denies the balance of the allegations contained in paragraph twelve (12) of the Petition.

13. Respondent denies the allegations and implications contained in paragraph thirteen (13) of the Petition. Respondent states that, as a matter of well-established law, usage charges

do not constitute "taxes".

14. Respondent admits that City Utilities does not unbundle the electric, natural gas and water rates charged to nonresident customers. Respondent is without knowledge or information sufficient to form a belief as to the truth of what Petitioners were or were not aware of so Respondent therefore denies same. Respondent specifically denies that usage charges constitute a "tax" and further denies the balance of the allegations and implications contained in paragraph fourteen (14) of the Petition.

15. Respondent admits that on or about February 2003 a member of the City Council proposed an increase to the rates charged to nonresidents for electric service but states that said proposal was not adopted. Respondent specifically denies that the rates charged to nonresidents is a tax. Respondent is without knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in paragraph fifteen (15) and so therefore Respondent denies same.

16. Respondent admits that at the request of the City Council, the Board of Public Utilities, by resolution, created a task force to study the rates charged to nonresidents but Respondent states that said resolution subsequently was rescinded by the Board of Public Utilities. Respondent denies the balance of the allegations contained in paragraph sixteen (16) of the Petition.

17. Respondent admits that the Board of Public Utilities has *not* increased the rates charged to nonresidents in 2003 but denies the balance of the allegations contained in paragraph seventeen (17) of the Petition and here incorporates its answer to paragraphs fifteen (15) and sixteen (16) hereinabove.

18. Respondent admits that the Missouri legislature established the Missouri Public Service Commission to regulate the provision of and the rates charged for utility services by jurisdictional, investor-owned public utilities pursuant to the provisions of the Public Service Commission Law but otherwise denies the balance of the allegations and implications contained in paragraph eighteen (18) of the Petition.

19. Respondent admits that Missouri statutes, including those applicable to the Missouri Public Service Commission, state what they state. Respondent otherwise denies the balance of the allegations and implications contained in paragraph nineteen (19) of the Petition.

20. Respondent denies the allegations contained in paragraph twenty (20) of the Petition and denies that the Commission has the jurisdiction and regulatory authority to grant the relief requested by the Petitioners in their Petition. Respondent states that, with regard to water service, City Utilities at no time has been required to possess and does not possess a Commission certificate of public convenience and necessity or Commission-approved tariff, has not in the past filed or been required to file a Commission Annual Report, has never been assessed a Commission assessment fee, and has not otherwise been subject to the Commission's jurisdiction under Chapters 386 and 393 RSMo as a Commission-regulated "public utility" or a "water corporation" as those terms are defined in Section 386.020 RSMo and are applied by the Commission in 4 CSR 240-2.010(18).

21. Respondent admits that Section 386.250.1 RSMo states what it states and that the Commission has jurisdiction and authority over its jurisdictional natural gas and electric utilities as provided by statute and by applicable law but Respondent denies that the Commission has the jurisdiction and supervisory authority to grant the relief requested by the

Petitioners in their Petition. Respondent states that, with respect to natural gas and electric service, City Utilities at no time has been required to possess and does not possess a Commission certificate of public convenience and necessity or Commission-approved tariff, has not in the past filed or been required to file a Commission Annual Report, has never been assessed a Commission assessment fee, and has not otherwise been subject to the Commission's jurisdiction under Chapters 386 and 393 RSMo as a Commission-regulated "public utility", "gas corporation" or "electrical corporation" as those terms are defined in Section 386.020 RSMo. and are applied by the Commission in 4 CSR 240-2.010(18). Respondent denies the balance of the allegations and implications contained in paragraph twenty-one (21) of the Petition.

22. Respondent incorporates its answers to paragraphs twenty (20) and twenty-one (21) for purposes of its answer to the allegations and implications contained in paragraph twenty-two (22) of the Petition.

23. Respondent denies the allegations and implications contained in paragraph twenty-three (23) of the Petition and further incorporates its answer to paragraph twenty-two (22) for purposes of its answer to the allegations and implications contained in paragraph twenty-three (23) of the Petition.

24. Respondent admits that the Petitioners are seeking the relief alleged in the Petition but otherwise denies that the Commission has the jurisdiction and regulatory authority to grant the relief sought in the Petition. Respondent further incorporates its answer to paragraph twenty-three (23) for purposes of its answer to the balance of the allegations and implications contained in paragraph twenty-four (24) of the Petition.

25. Respondent incorporates its answer to paragraph twenty-four (24) for purposes of its answer to paragraph twenty-five (25) of the Petition. Respondent further denies that good cause exists for expedited treatment of the Petition and states that, in any event, Petitioners otherwise have not complied with the provisions of 4 CSR 240-2.080(16) with regard to their request.

26. Respondent admits that Petitioners, acting through their counsel, made contact with the officials and others as alleged in subparagraphs A-G inclusive of paragraph twenty-six (26) of the Petition. Respondent is without knowledge or information sufficient to form a belief as to the truth of the balance of the allegations and implications contained in paragraph twenty-six (26) of the Petition so Respondent therefore denies same.

27. Respondent is without knowledge or information sufficient to form a belief as to the truth of the time of filing of the Petition or as to the truth of what was, or was not apparent to Petitioners, and therefore denies the allegations and implications contained in paragraph twenty-seven (27) of the Petition.

28. Respondent denies the allegations and implications contained in paragraph twenty-eight (28) of the Petition.

29. Respondent denies that the Commission has the lawful jurisdiction and regulatory authority to grant, and that Petitioners are otherwise entitled to, the relief sought in subparagraphs A-C inclusive of paragraph twenty-nine (29) of the Petition. Respondent further denies the remaining factual allegations and implications contained in paragraph twenty-nine (29) of the Petition.

30. Further answering and for its first affirmative defense, Respondent hereby

incorporates all affirmative defenses previously stated hereinabove.

31. Further answering and for its second affirmative defense, Respondent states that because Petitioners have improperly named as the party respondent/defendant "Springfield City Utilities", an entity which has no corporate legal existence separate and apart from the City of Springfield, Missouri, the Petition is procedurally defective on its face and should be dismissed for failure to name and join a necessary party pursuant to Rule 52.04 of the Missouri Court Rules and pursuant to 4 CSR 240-2.070.

32. Further answering and for its third affirmative defense, Respondent states that the Commission has no lawful jurisdiction or regulatory authority over the City of Springfield, City Utilities, or the natural gas, electric and water service provided to residents or to nonresidents; that such services are lawfully being provided by the City as a constitutional charter city consistent with the City's duly adopted City Charter, the Constitution of the State of Missouri, and Chapters 70, 71, and 91 and Section 386.800 RSMo; that at no time since 1945 has the Commission ever purported to exert regulatory jurisdiction over the City or over City Utilities' provision of natural gas, electric and water services, and that to attempt to do so now would violate the Constitution of the State of Missouri, state statutes, and applicable case law; and that for these reasons the Commission is without the authority to grant the relief requested in the Petition, the Petitioners fail to state a claim upon which relief can be granted, and that therefore, the Petition should be dismissed.

33. Further answering and for its fourth affirmative defense, Respondent states that as a matter of law the natural gas, electric and water services provided to Petitioners by the City are a matter of private contract between the City and the Petitioners; that the Commission is

without jurisdiction over such private contracts as a matter of law; that as a matter of law the Commission is without jurisdiction to award damages relating to private contracts; and that, therefore, the Petition should be dismissed.

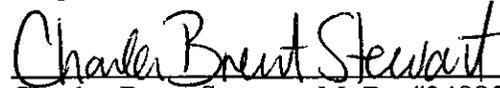
34. Further answering and for its fifth affirmative defense, Respondent states that Petitioners have failed to allege any violation by the City of any statute, tariff, or rule or order of the Commission; that as such Petitioners have failed to state a claim upon which relief can be granted; and that, therefore, the Petition should be dismissed.

35. Further answering and for its sixth affirmative defense, Respondent states that Petitioners do in fact enjoy representation on the Board of Public Utilities, that procedures exist under the Springfield City Code for Petitioners to address their concerns, and that therefore, Petitioners' claims of lack of representation and adequate remedy are without merit and the Petition should be dismissed.

36. Further answering and for its seventh affirmative defense, Respondent states that the rates charged to Petitioners for natural gas, electric, and water service are otherwise and in all respects just and reasonable as a matter of law, and that therefore, the Petition should be dismissed.

WHEREFORE, having fully answered and set forth its affirmative defenses, the City of Springfield, Missouri, through the Board of Public Utilities, prays the Commission issue its order finding that the Commission lacks subject matter jurisdiction over the City, City Utilities' operations, and the subject matter of the Petition itself, and otherwise dismiss the Petition filed by the Petitioners in this cause on or about May 23, 2003 for any and all of the reasons stated hereinabove.

Respectfully submitted,



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ATTORNEY FOR THE CITY OF
SPRINGFIELD, MISSOURI THROUGH
THE BOARD OF PUBLIC UTILITIES

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer in Case No. AC-2003-0526 was served this date on counsel for the Petitioners, the General Counsel's Office and the Office of the Public Counsel by placing same in the United States Mail, first class postage pre-paid, or by hand-delivery, this 17th day of July, 2003.

