

# STEWART & KEEVIL, L.L.C.

ORIGINAL

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November 12, 2003

FILED<sup>4</sup>

NOV 12 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 of *Response To Orders Directing Filings* 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 (w/o attachment)  
Andy Dalton (w/o attachment)

FILED<sup>4</sup>  
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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. )

**RESPONSE TO ORDERS DIRECTING FILINGS**

COMES NOW the City of Springfield, Missouri, through the Board of Public Utilities ("Respondent"), by and through counsel, and pursuant to the Commission's *Order Directing Filing*, issued on November 4, 2003, and *Fourth Order Directing Filing*, issued on November 7, 2003, respectfully states as follows:

1. The Commission's November 4, 2003 *Order Directing Filing*, directed Respondent to file a certified copy of portions of the City's Charter no later than 9:00 a.m. on November 6, 2003. Respondent's counsel has been and continues to be in the process of moving his office, and due to unexpected construction delays beyond counsel's control, counsel for several weeks has been unable to conduct normal business through fax, computer, email, copier and even telephone. Counsel's office telephone and fax service were first fully up and running only on Tuesday afternoon, November 11, 2003, and the occupancy permit for counsel's new office was first issued the afternoon of Monday, November 10, 2003.

2. Upon first becoming aware of the Commission's November 4, 2003 *Order*, Respondent's counsel contacted the Administrative Law Judge via counsel's home email to indicate that Respondent would be unable to comply with the Commission's *Order* within the short two days allotted, not only due to counsel's own office situation but also due to the need to obtain a *certified* copy of the City Charter from the appropriate City officials. Counsel

further indicated that under the circumstances he was unable even to prepare and file a request for extension of time by November 6, 2003 but that in any event counsel would attempt to comply with the Commission's *Order* as soon as practicable. Counsel has now obtained a copy of the City of Springfield's City Charter, certified by the City Clerk, and files same herewith.

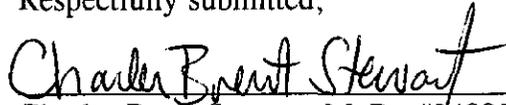
3. The Commission's Fourth Order Directing Filing, issued on November 7, 2003, directed Respondent to file a responsive pleading by 9:00 a.m. on November 12, 2003. Due to November 11, 2003 being a holiday, this in effect provided Respondent only one business day within which to make the filing requested by the Commission. Respondent respectfully submits that this extremely short time frame is inadequate and unreasonable on its face under any circumstances, is contrary to the Commission's usual practice in cases involving for-profit investor-owned utilities, and is especially inappropriate under the peculiar circumstances of this case. First, Respondent is unaware of any legitimate reason, such as a statutory operation of law date or other "emergency", which would justify allowing Respondent only one business day to prepare and file its response on this, or any other issue, arising out of this case. Petitioners certainly can suffer no irreparable harm if the Commission accords Respondent a reasonable and adequate time to file its response. Second, the Commission should recognize that, like the Commission itself, Respondent as the third largest municipality in the state has certain internal procedures and processes it must follow with regard to litigation and that these procedures and processes necessarily take some time. Third, in addition to the aforementioned office situation of Respondent's undersigned counsel, City Utilities' General Counsel, who necessarily will have to review any response Respondent might make, is out of the country

until next week and is otherwise unavailable. Fourth, the Commission's *Order*, among other things, directs Respondent to conduct a search of a multitude of City's past and current ordinances and also to "analyze Section 250.190, RSMo 2000, and address whether it otherwise applies to Respondent". Even under the best of circumstances, the Commission should not reasonably expect such a search and an analysis to be conducted, and a responsive pleading filed, in one business day.

4. While Respondent frankly fails to see how as a matter of law Chapter 250 affects the fundamental question of the Commission's regulatory jurisdiction over Respondent, Respondent nevertheless intends to conduct the analysis requested by the Commission and then file its response if given an adequate and reasonable time within which to do so. Given the circumstances heretofore stated, Respondent expects to be able to file its response within two weeks, and therefore hereby requests that the Commission grant Respondent an extension of time to November 26, 2003 to make said filing.

WHEREFORE, Respondent once again renews its Motion To Dismiss and otherwise requests that the Commission grant Respondent a two week extension of time to November 26, 2003 to file its response to the Commission's November 7, 2003 *Fourth Order Directing Filing*.

Respectfully submitted,



Charles Brent Stewart, MoBar#34885

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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 12<sup>th</sup> day of November, 2003.

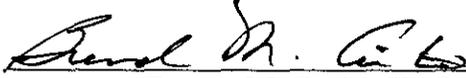


STATE OF MISSOURI    )  
                                  ) SS  
COUNTY OF GREENE    )  
                                  )  
CITY OF SPRINGFIELD    )

I, Brenda M. Cirtin, duly qualified and acting City Clerk, in the City of Springfield, Missouri do hereby certify that the foregoing constitutes a true and correct copy of the City Charter of the City of Springfield, as the same was recommended by City Council, and approved by the voters, City of Springfield, Missouri.

IN TESTIMONY WHEREOF, I hereto set my hand and official seal in the City of Springfield, Missouri this 5th day of November, 2003.



  
\_\_\_\_\_  
Brenda M. Cirtin, CMC  
City Clerk