

Exhibit No.:
Issues: Customer Refunds
Witness: James A. Busch
Sponsoring Party: MO PSC Staff
Type of Exhibit: Direct Testimony
Case No.: SR-2013-0016
Date Testimony Prepared: March 28, 2013

MISSOURI PUBLIC SERVICE COMMISSION
REGULATORY REVIEW DIVISION
TARIFF, SAFETY, ECONOMIC & ENGINEERING ANALYSIS

DIRECT TESTIMONY

OF

JAMES A. BUSCH

EMERALD POINTE UTILITY COMPANY

CASE NO. SR-2013-0016

Jefferson City, Missouri
March 2013

Staff Exhibit No. 2
Date 5-9-13 Reporter SB
File No. SR-2013-0016

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TABLE OF CONTENTS

DIRECT TESTIMONY

OF

JAMES A. BUSCH

EMERALD POINTE UTILITY COMPANY

CASE NO. SR-2013-0016

I. Executive Summary 2

II. Background..... 2

III. Refunds of Previously Collected Sewer Commodity Charges 4

IV. Refunds of Previously Collected Late Fees and Reconnection Fees..... 7

V. Refunds of Customer Deposits..... 8

VI. Recommendation..... 9

1 A. Yes. The cases in which I have filed testimony before the Commission are
2 listed on Schedule 1 attached to this testimony.

3 Q. What is the purpose of your direct testimony?

4 A. The purpose of my direct testimony is to present Staff's position on the known
5 issues between Emerald Pointe Utility Company (Emerald Pointe or Company) and Staff in
6 Case No. SR-2013-0016. Specifically, I will be addressing the issue of customer refunds
7 owed by Emerald Pointe to its customers.

8 **I. EXECUTIVE SUMMARY**

9 Q. Please summarize your direct testimony.

10 A. Prior to the Company's rate request filing, Staff was informed by the Company
11 that the Company was collecting a sewer commodity charge in violation of its Commission
12 approved tariff. During the course of Staff's audit and investigation during the rate request,
13 Staff also discovered that the Company was charging the wrong amounts for late fees and
14 reconnection fees. Furthermore, the Company was collecting customer deposits from all
15 customers in violation of its tariff and not properly refunding deposits when required by its
16 tariff. Staff has calculated appropriate amounts of these various violations, which the
17 Company should refund to its customers as described in greater detail in my testimony. All
18 refunds owed to customers include a reasonable amount of interest.

19 **II. BACKGROUND**

20 Q. Please briefly explain the case with File No. SR-2013-0016.

21 A. Emerald Pointe sent a letter to the Commission requesting an increase in its
22 total annual sewer service operating revenues and its annual water service operating revenues
23 on July 16, 2012. Upon receipt of this letter and under the Small Utility Rate Case Procedure
24 (4 CSR 240-3.050), Staff proceeded to do a complete audit and investigation of the

1 Company's books, records, and operations. After months of investigation and settlement
2 discussions, Staff and the Company executed a Company/Staff Partial Agreement Regarding
3 Disposition of Small Sewer Company Revenue Increase Request (Partial Sewer Agreement)
4 and a Company/Staff Partial Agreement Regarding Disposition of Small Water Company
5 Revenue Increase Request (Partial Water Agreement), on March 14, 2013. Since the Partial
6 Sewer and Water Agreements did not resolve all of the issues in this case, a request for
7 hearing was filed concurrently with the Partial Agreements. Public Counsel did not agree
8 with the Partial Agreements and filed The Office of the Public Counsel's Objection and
9 Evidentiary Hearing Request and Request for Local Public Hearing (Objection) on March 18,
10 2013. After discussions among Staff, the Company and Public Counsel, the parties filed a
11 Joint Proposed Procedural Schedule on March 22, 2013. Within the Partial Sewer Agreement
12 and the Partial Water Agreement, various issues were left unresolved between Staff and the
13 Company. Those issues are:

- 14 a. Refunding of previously collected sewer commodity charges;
- 15 b. Refunding of previously collected late fees and reconnection fees;
- 16 c. Refunding of customer deposits;
- 17 d. City of Hollister sewer treatment expense;
- 18 e. Rate case expense; and
- 19 f. Rate Design.

20 Q. Who else from Staff will be filing Direct Testimony?

21 A. In addition to my testimony, Staff expert Lisa Hanneken will be filing
22 testimony regarding an update to Staff's accounting schedules for the City of Hollister sewer
23 treatment expense. Staff expert Leslie Rose will be filing testimony regarding an update for

1 rate case expense and depreciation expense. Staff expert Arthur Rice will file testimony
2 explaining a change in depreciation rates. Staff expert James Russo will be filing testimony
3 regarding Rate Design. Besides Ms. Hanneken and Mr. Russo, other Staff experts assisted in
4 Staff's audit and investigation, include Zephania Marevangepo, David Spratt, and Deborah
5 Bernsen.

6 Q. What issues did Public Counsel raise in its Objection?

7 A. In Public Counsel's Objection filed on March 18, Public Counsel stated that
8 besides the issues outlined in the Partial Agreements, it also had concerns with the appropriate
9 total plant calculation including plant reserve adjustments and contribution in aid of
10 construction (CIAC) determinations, appropriate capital structure and return on equity,
11 appropriate amount of refund of sewer commodity charge, late fees, and reconnection fees,
12 and appropriate refund procedure for sewer commodity charge, late fees, reconnection fees
13 and customer deposits.

14 Q. Will Staff address Public Counsel's concerns in its direct filing?

15 A. No. Public Counsel has not yet fully explained its concerns, so Staff is not in a
16 position to address them at this time. Staff fully supports its accounting schedules as filed in
17 the Partial Sewer Agreement and Partial Water Agreement. If Public Counsel introduces
18 specific concerns with certain aspects of Staff's case, Staff will address those with the
19 appropriate expert at the proper time, either in pre-filed testimony or during the hearing.

20 **III. REFUNDS OF PREVIOUSLY COLLECTED SEWER COMMODITY**
21 **CHARGES**

22 Q. Please explain the issue of previously collected sewer commodity charges.

23 A. Shortly prior to the Company filing its rate request letter, Staff became aware
24 of the fact that the Company had been charging its sewer customers a commodity charge for

1 sewer service in addition to a monthly customer charge. Since the Company was planning on
2 filing a rate request, Staff asked the Company to cease the charging of the commodity charge
3 and notified the Company that Staff would investigate this situation within the context of the
4 Company's soon to be filed rate request.

5 Q. How did Staff become aware of the Company's behavior?

6 A. Staff became aware of the Company's behavior during normal discussions held
7 with the Company discussing the soon to be filed rate request. During one of those
8 discussions, the Company, through its attorney, notified Staff of a potential overcharge. Staff
9 reviewed information provided and notified the Company that it was over-charging its
10 customers and must stop charging a sewer commodity rate.

11 Q. Why did Staff ask the Company to cease collecting a sewer commodity
12 charge?

13 A. Emerald Pointe's currently effective tariff (attached as Schedule 2 is P.S.C.
14 MO. No. 1, 1st Revised, Sheet No. 4), approved by the Commission in Case No. SR-2000-595
15 and effective on May 10, 2000, allows the Company to charge a Monthly Customer Charge to
16 each of its customers, but does not allow the Company to charge a commodity rate. The
17 Monthly Customer Charge is based on the size of water meter that serves the customer. There
18 are three different size meters with a charge specific to each size. The approved charges are
19 as follows:

20 Monthly Customer Charge (served by a 5/8" water meter) \$13.63 per month;

21 Monthly Customer Charge (served by a 1" water meter) \$34.08 per month;

22 Monthly Customer Charge (served by a 2" water meter) \$109.06 per month.

23 Q. What additional rate was the Company charging its customers?

1 A. In addition to the approved Monthly Customer Charge, the Company was also
2 charging its customers \$3.50 per thousand gallons of water usage above a base amount of
3 2,000 gallons. This amount was not approved by the Commission and is not a lawful tariffed
4 rate.

5 Q. Is the collection of an untariffed rate allowed?

6 A. No. Missouri State Statute, 393.130. 1. states that “[e]very unjust or
7 unreasonable charge made or demanded for gas, electricity, water, sewer or any such service,
8 or in connection therewith, or in excess of that allowed by law or by order or decision of the
9 commission is prohibited.”

10 Q. What is Staff’s recommendation?

11 A. Staff recommends that the Company refund all overcharges, with interest,
12 collected during the past five (5) years. The amount calculated by Staff is \$187,683 of
13 commodity-based fees and \$69,567 of associated interest. Thus, the grand total to be
14 refunded for this matter is \$257,250.

15 Q. Are there Commission rules that discuss the unauthorized over-collection of
16 utility charges?

17 A. Yes. Chapter 13 of the Missouri Code of State Regulations, Division 240,
18 contains the rules regarding over-collection of bills. Specifically, 4 CSR 240-13.025, Billing
19 Adjustments states that for an overcharge, an adjustment shall be made for the entire period
20 that the overcharge can be shown to exist not to exceed sixty (60) consecutive monthly billing
21 periods.

22 Q. Does Chapter 13 apply to sewer utilities?

23 A. No.

1 Q. Why is Staff relying on Chapter 13 if it does not apply to sewer utilities?

2 A. Staff is relying on Chapter 13 because it is an appropriate guide to determine
3 the level of refund to give to the customers. In many instances, when disputes arise between
4 sewer utilities and their customers, Staff uses the guidelines in Chapter 13 as a reasonable
5 guide to solve the dispute. Chapter 13's common sense approach to the water, gas, and
6 electric industries is appropriate to use in solving similar situations in the sewer industry.

7 Q. Please explain Staff's method for returning the over-collections of sewer
8 commodity charges.

9 A. Staff has reviewed the accounts of all of Emerald Pointe's customers and has
10 determined the level of refund for each customer. Staff recommends that the Company
11 provide bill credits to those remaining customers over the course of 45-months to repay the
12 amounts owed. For those customers due a refund who no longer are customers, Staff
13 recommends that the Company send a check to those customers with outstanding balances. If
14 a customer on the system moves prior to receiving their entire refund, then the Company will
15 send a check to that customer for any remaining balance.

16 **IV. REFUNDS OF PREVIOUSLY COLLECTED LATE FEES AND**
17 **RECONNECTION FEES**

18 Q. Please explain the late fees and reconnection fees issue.

19 A. During the course of its investigation, Staff determined that the Company was
20 collecting late fees of 10% instead of the Commission approved 2% or \$3, whichever was
21 greater. This approval was given by the Commission at the same time as the approval for
22 Emerald Pointe's rate schedules. Please see Schedule 2 for the appropriate language, which
23 includes the appropriate tariff sheet for sewer and water service, respectively.

24 Q. What is the amount of refund that Staff calculates?

1 A. Staff has determined that the total amount of refund for this matter is \$5,803,
2 which includes \$4,172 in wrongfully collected later fees and \$1,631 in interest. Staff has
3 calculated that there are \$280 of overcharged reconnection fees and \$53.65 in associated
4 interest for a grand total of \$333.65 in reconnection fees.

5 Q. How do the rules apply to the unlawfully collected late and reconnection fees?

6 A. The same rules and regulations apply to the late and reconnection fees as apply
7 to the commodity charge, as described above.

8 Q. Please explain Staff's refund proposal.

9 A. Staff has determined which customers paid the wrong late fees and
10 reconnection fees. Staff proposes that the Commission order the Company to provide a check
11 to those customers who were erroneously charged and paid these late fees. This check should
12 be sent within 90 days of the effective date of the order in this proceeding.

13 **V. REFUNDS OF CUSTOMER DEPOSITS**

14 Q. Please explain the issue of customer deposits.

15 A. During the course of its investigation, Staff determined that the Company has
16 been violating its Commission approved tariff in two manners. First, the Company has been
17 requiring all water customers to make a deposit of \$30 upon requesting service. Second,
18 instead of refunding the deposits, with interest, as in accordance with the Company's tariff
19 after successful completion of given criteria, the Company was holding the deposits until the
20 customer left the system. According to its tariff, P.S.C. MO No 1, Original Sheets 20 and 21,
21 Rule 10. Bills For Service, paragraphs (i), (j), (k), (l), (m), and (n), neither scenario is allowed.
22 The appropriate tariff sheets are attached to this testimony as Schedule 3.

23 Q. What is Staff's recommendation regarding customer deposits?

1 A. Unfortunately, the Company's records of customer deposits is lacking. Even
2 so, Staff has estimated that the Company needs to refund \$11,370 in deposits with an
3 additional \$17,668 in interest for a grand total of refund to customers of \$29,038. Staff
4 recommends that all customers who have existing records held by the Company receive
5 refunds of their deposits, with interest. Staff also recommends that all other customers be
6 refunded their original deposit of \$30, plus interest from the time they were added to the
7 system. For any customer connected to the system in the past year and properly charged a
8 deposit, then the Company does not need to refund any amount to that customer. Staff
9 recommends that the Company send a check to all affected customers within 90 days of the
10 effective date of the order approving this recommendation.

11 **VI. RECOMMENDATION**

12 Q. What is Staff's recommendation to the Commission regarding the over-
13 collection of sewer commodity charges?

14 A. Staff recommends that the Commission order the Company to refund over-
15 charges, with interest, collected during the five-year period immediately preceding the date
16 when the Company ceased collecting the unapproved commodity rate. Staff recommends that
17 the Company provide bill credits to existing customers who are due refunds over a 45-month
18 period. For any customer who has left the system, Staff recommends that the Company send
19 those former customers a check for the amount of refund owed. For any customer who leaves
20 the system prior to being refunded all amounts owed, the Company will send that customer a
21 check for any remaining un-refunded balance.

22 Q. What is Staff's recommendation to the Commission regarding late fees and
23 reconnection fees?

1 A. Staff recommends that the Commission order the Company to refund all
2 erroneously collected late fees and reconnection fees to the appropriate customers within 90
3 days of the effective date of the order in this proceeding. Staff recommends that the Company
4 send a check to each of those customers due a refund.

5 Q. What is Staff's recommendation to the Commission regarding customer
6 deposits?

7 A. Staff recommends that the Commission order the Company to refund all
8 unlawfully collected customer deposits to all affected customers. Staff recommends that a
9 check in the amount of the appropriate refund be sent to each affected customer within 90
10 days of the effective date of the order in the proceeding.

11 Q. Does this conclude your direct testimony?

12 A. Yes.

**Cases of Filed Testimony
James A. Busch**

| <u>Company</u> | <u>Case No.</u> |
|--|-------------------------|
| Union Electric Company | GR-97-393 |
| Missouri Gas Energy | GR-98-140 |
| Laclede Gas Company | GO-98-484 |
| Laclede Gas Company | GR-98-374 |
| St. Joseph Light & Power | GR-99-246 |
| Laclede Gas Company | GT-99-303 |
| Laclede Gas Company | GR-99-315 |
| Fiber Four Corporation | TA-2000-23; et al. |
| Missouri-American Water Company | WR-2000-281/SR-2000-282 |
| Union Electric Company d/b/a AmerenUE | GR-2000-512 |
| St. Louis County Water | WR-2000-844 |
| Empire District Electric Company | ER-2001-299 |
| Missouri Gas Energy | GR-2001-292 |
| Laclede Gas Company | GT-2001-329 |
| Laclede Gas Company | GO-2000-394 |
| Laclede Gas Company | GR-2001-629 |
| UtiliCorp United, Inc. | ER-2001-672 |
| Union Electric Company d/b/a AmerenUE | EC-2001-1 |
| Laclede Gas Company | GR-2002-356 |
| Empire District Electric Company | ER-2002-424 |
| Southern Union Company | GM-2003-0238 |
| Aquila, Inc. | EF-2003-0465 |
| Missouri-American Water Company | WR-2003-0500 |
| Union Electric Company d/b/a AmerenUE | GR-2003-0517 |
| Aquila, Inc. | ER-2004-0034 |
| Aquila, Inc. | GR-2004-0072 |
| Missouri Gas Energy | GR-2004-0209 |
| Empire District Electric Company | ER-2004-0570 |
| Aquila, Inc. | EO-2002-0384 |
| Aquila, Inc. | ER-2005-0436 |
| Empire District Electric Company (CC) | ER-2006-0315 |
| Kansas City Power & Light (CC) | ER-2006-0314 |
| Union Electric Company d/b/a AmerenUE | ER-2007-0002 |
| Aquila, Inc. | EO-2007-0395 |
| Missouri-American Water Company (Live) | WC-2009-0277 |
| Missouri-American Water Company | WR-2010-0131 |
| Review of Economic, Legal and Policy Considerations Of District Specific Pricing and Single Tariff Pricing (Live) | SW-2011-0103 |
| Timber Creek Sewer Company | SR-2011-0320 |
| Missouri-American Water Company | WR-2011-0337 |

CC – Case Coordinator

P. S. C. MO. No. 1

1" Revised

Sheet No. 4

Cancelling P. S. C. MO. No. 1

Original

Sheet No. 4

Emerald Point Utility Company For **Missouri Service Area**

Name of Issuing Company

Community, Town or City

RECEIVED

RULES GOVERNING

RENDERING OF SEWER SERVICE

+ MAR 23 2000

SCHEDULE OF SEWER RATES

**MISSOURI
Public Service Commission**

Availability: *

Available to any customer located in the Company's certificated service territory.

Sewer Service Rates:

| | | | |
|--|----------|-----------|---|
| Monthly Customer Charge (served by a 5/8" water meter) | \$13.63 | per Month | + |
| Monthly Customer Charge (served by a 1" water meter) | \$34.08 | per Month | + |
| Monthly Customer Charge (served by a 2" water meter) | \$109.06 | per Month | + |

Monthly Minimum Bill: * Equals the applicable Monthly Customer Charge
The minimum monthly billing shall be billed customers based on this Charge.

Taxes: *

Any applicable Federal, State or local taxes computed on a billing basis shall be added as separate items in rendering each bill.

Late Payment Charge: *

Billings will be made and distributed at monthly intervals. Bills will be rendered net, bearing the last date on which payment will then be considered delinquent. The period after which the payment is considered delinquent is 21 days after rendition of the bill. A charge of \$3.00 or two percent (2%) per month times the unpaid balance, whichever is greater, will be added to delinquent amounts.

Bad Check Charge: *

A bad check charge of \$15 per check will be paid on all checks returned from the bank for insufficient funds.

FILED

00-595
MAY 10 2000

* Indicates new rate or text
+ Indicates change

**MISSOURI
Public Service Commission**

Date of Issue *3/23/00*

Date Effective *5/10/00*

Issued By: **Gary W. Snadon, President**

111 East Main, Branson, MO 65616

Name of Officer

Title

Address

Emerald Point Utility Company For **Missouri Service Area**
Name of Issuing Company Community, Town or City

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| | | |
|--|---------------------------|---|
| RULES GOVERNING | | |
| RENDERING OF WATER SERVICE | | + MAR 23 2000 |
| SCHEDULE OF WATER RATES | | MISSOURI Public Service Commission |
| Availability: * Available to any metered customer located in the Company's certificated service territory. | | |
| Water Service Rates: | | |
| Monthly Customer Charge (5/8" meter) | \$ 6.52 per Month | + |
| Monthly Customer Charge (1" meter) | \$10.62 per Month | + |
| Monthly Customer Charge (2" meter) | \$25.52 per Month | + |
| <hr/> | | |
| Usage Charge (for all usage > 2,000 gal/month) | \$ 3.50 per 1,000 gallons | + |
| <hr/> | | |
| Monthly Minimum Bill: * Equals the applicable Monthly Customer Charge The minimum monthly billing shall be billed customers based on this Charge. | | |
| Taxes: * Any applicable Federal, State or local taxes computed on a billing basis shall be added as separate items in rendering each bill. | | |
| Late Payment Charge: * Billings will be made and distributed at monthly intervals. Bills will be rendered net, bearing the last date on which payment will then be considered delinquent. The period after which the payment is considered delinquent is 21 days after rendition of the bill. A charge of \$3.00 or two percent (2%) per month times the unpaid balance, whichever is more, will be added to delinquent amounts. | | |
| Bad Check Charge: * A bad check charge of \$15 per check will be paid on all checks returned from the bank for insufficient funds. | | |
| | | FILED |
| | | MAY 10 2000 |
| | | MISSOURI Public Service Commission |
| * Indicates new rate or text + Indicates change | | |

Date of Issue 3/23/00 Date Effective 5/10/00
 Issued By: Gary W. Snadon, President 111 East Main, Branson, MO 65616
 Name of Officer Title Address

Schedule E - 5

Name of Utility: Emerald Pointe Utility Company

Service Area: Missouri Service Area

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| | | |
|---|--|---|
| Rules Governing Rendering of Water Service | | MAY 10 1996 |
| | | MISSOURI Public Service Commission |
| <p>such due date falls on a Sunday, a legal holiday, or other day when the office is closed, in which case the due date shall be extended to the next business day. Bills unpaid after the stated due date will be delinquent and the company shall have the right to discontinue service in accordance with Rule 7. The company shall not be required to restore or connect any new service for such delinquent customers until the unpaid account due the company under these Rules and Regulations has been paid in full or arrangements satisfactory to the company have been made to pay said account.</p> | | |
| (h) | When bills are rendered for a period of less than a complete billing period due to the connection or termination of service, the billing shall be the monthly minimum plus an amount based on the water used at the commodity (water usage) rate or one-half (1/2) of the flat rate if applicable. | |
| (i) | The company may require a security deposit or other guarantee as a condition of new service if the customer: still has an unpaid account with a utility providing the same type of service accrued within the last five years; or has diverted or interfered with the same type of service in an unauthorized manner within the last five (5) years; or is unable to establish a credit rating with the company. Adequate credit rating for a residential customer shall be established if the customer: owns or is purchasing a home; or is and has been regularly employed full time for at least one year; or has an adequate and regular source of income; or can provide credit references from a commercial credit source. | |
| (j) | The company may require a security deposit or other guarantee of payment as a condition of continued service if: the water service of the customer has been discontinued for non-payment of a delinquent account not in dispute; or the utility service to the unit has been diverted or interfered with in an unauthorized manner; or the customer has failed to pay undisputed bills before the delinquency date for five (5) billing periods out of twelve (12) consecutive monthly billing periods, or two (2) out of four (4) consecutive quarterly billing periods. | |
| (k) | The amount of a security deposit shall not exceed utility charges applicable to one (1) billing period plus thirty (30) days, computed on estimated or actual annual usage. | |
| * | Indicates new rate or text | |
| + | Indicates change | |
| | | FILED |
| | | MAY 31 1996 96 - 96 |

MO. PUBLIC SERVICE COMM

DATE OF ISSUE MAY 10 1996
Month Day Year

DATE EFFECTIVE MAY 31 1996
Month Day Year

ISSUED BY Gary W. Snadon President Branson, MO
name of officer title address

Name of Utility: Emerald Pointe Utility Company

Service Area: Missouri Service Area

RECEIVED

| | |
|--|-------------|
| Rules Governing Rendering of Water Service | MAY 10 1996 |
| MISSOURI Public Service Commission | |
| <p>(l) Interest at the rate of 6% per annum compounded annually shall be payable on all deposits, but shall not accrue after the utility has made reasonable effort to return the deposit. Interest may be credited to the customer's account.</p> <p>(m) After a customer has paid proper and undisputed utility bills by the due dates, for a period not to exceed one year, credit shall be established or re-established, and the deposit and any interest due shall be refunded. The utility may withhold full refund of the deposit pending resolution of a disputed matter.</p> <p>(n) The utility shall give a receipt for deposits received, but shall also keep accurate records of deposits, including customer name, service address, amounts, interest, attempts to refund and dates of every activity regarding the deposit.</p> <p>(o) All billing matters shall be handled in accordance with the Public Service Commission's Utility Billing Practices, 4 CSR 240-13.</p> | |
| FILED | |
| MAY 31 1996 96 - 96 | |
| MO. PUBLIC SERVICE COMM | |
| * Indicates new rate or text | |
| + Indicates change | |

DATE OF ISSUE MAY 10 1996 DATE EFFECTIVE MAY 31 1996
Month Day Year Month Day Year

ISSUED BY Gary W. Snadon President Branson, MO
name of officer title address