

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Requested Rate Increase for)
Annual Sewer Operating Revenues by Hickory) File No. SR-2014-0166
Hills Water & Sewer.)

In the Matter of a Requested Rate Increase for)
Annual Water Operating Revenues by Hickory) File No. WR-2014-0167
Hills Water & Sewer.)

**THE OFFICE OF THE PUBLIC COUNSEL’S RESPONSE TO STAFF’S
RECOMMENDATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff’s Recommendation states as follows:

1. On December 2, 2013, Hickory Hills Water & Sewer Company (Hickory Hills) filed with the Missouri Public Service Commission (Commission) a request for approval of an increase in its annual sewer and water system operating revenues.
2. On March 17, 2014, Hickory Hills filed a request for an emergency rate increase which stated the emergency rate increase was necessary “to address the specific need to pump and haul contaminated wastewater from the lagoon to a permitted facility capable of accepting and treating the contaminated wastewater.”
3. On April 7, 2014, the Staff of the Missouri Public Service Commission filed its Recommendation regarding Hickory Hills’ request. In its Recommendation, Staff stated that it recommends that no emergency rates be approved by the Commission at this time because the costs of a solution to the problem posed by Hickory Hills are not yet known.

4. Public Counsel notes that Hickory Hills' request was merely for an emergency interim rate increase without stating specifically what the emergency rate increase was proposed to be or what costs were proposed to be recovered through an emergency rate increase. In a rate case, the utility holds the burden of proof that the rates it is seeking to impose are just and reasonable. At this time, Hickory Hills has still provided no documentation as to what costs have been incurred and no documentation has been provided as to what the costs will be. As a result, the Commission has nothing before it on which it can set just and reasonable emergency rates at this time. Therefore, Public Counsel supports Staff's recommendation that no emergency rates be approved by the Commission at this time.

5. In its Recommendation Staff also states:

8. Staff recommends that all of the actual costs associated with Alternative 3, or whichever alternative is ultimately chosen, be included in permanent rates that will be approved by the Commission at the conclusion of this rate case. Staff will finalize the costs and work with the Hickory Hills' receiver, Frontier, and the other interested parties to get all the necessary regulatory approvals, all final costs, and will include this information in Staff's cost of service. It is anticipated that Staff and Hickory Hills will have a rate case agreement signed and submitted on May 1, 2014. [Emphasis added]

6. Staff's recommendation that all of the actual costs of whichever alternative is ultimately chosen by Hickory Hills to address the issue of the contaminated wastewater from the lagoon be included in permanent rates in this case is premature and unreasonable.

7. As presented, Staff makes no statement that these costs will just be considered, but goes directly to a recommendation that the actual costs be approved for automatic inclusion in rates. As Staff states, no decision has been made at this time as to exactly how the contaminated wastewater issue will be addressed so no documentation can be provided as to what the actual costs will be. As a result, Staff's recommendation unreasonably asks the Commission to pre-approve unknown costs to be automatically included in customer rates.

8. Additionally, Staff's recommendation that "all" costs be included indicates that Staff is recommending that even unreasonable costs be included in customer rates. This is unjust and unreasonable.

9. Therefore, Public Counsel opposes Staff's recommendation that all of the actual costs of whichever alternative is ultimately chosen by Hickory Hills to address the issue of the contaminated wastewater from the lagoon be included in permanent rates that will be approved by the Commission at the conclusion of this rate case.

10. While Public Counsel opposes this recommendation by Staff as presented, Public Counsel would agree that it is just and reasonable to consider the actual costs incurred by Hickory Hills to address the issue of the contaminated wastewater from the lagoon for inclusion in permanent rates at the conclusion of this rate case. However, any Order by the Commission regarding Hickory Hills' request for an emergency interim rate increase cannot predetermine ratemaking treatment of the costs associated with addressing the issue of the contaminated wastewater from the lagoon.

11. Public Counsel also wishes to state its concern with Staff's planned involvement (and apparently the receiver's expected lack of involvement) with this utility.

12. Staff's Recommendation and attached *Memorandum* include statements such as that quoted above indicating that "Staff will finalize the costs" to address the issue of the contaminated wastewater from the lagoon; and "If the new permanent rates seem unlikely due to a disagreement among the parties after the May 1 filing, **Staff will likely request emergency rates** at that time to cover the costs of the solution, assuming the new facility is in-service"¹; as well as "If an agreement among the parties cannot be reached in the permanent rate case and the

¹ Staff's Attached *Memorandum*, pg. 1, emphasis added.

temporary facility is in-service, **Staff will likely request emergency rates** to allow for the collection of the costs of the facility and installation as quickly as practical.”²

13. Public Counsel is concerned that the situation at Hickory Hills may be requiring Staff to overstep its boundaries as the neutral party in this rate case and insert itself into the business decisions of the utility. In this rate case, Hickory Hills has the burden of proof – not Staff. Staff may certainly assist the utility and its receiver to help ensure that proper steps are being taken to protect both the utility and the customers. However, it would be improper for Staff to appear as the neutral party, while also attempting to act in place of the utility.

14. The fact that Staff finds itself compelled to act for the utility is the greatest concern of all. Hickory Hills has a court-appointed receiver whose quite significant receiver fees have been included in the current rates that customers pay. It is the charge of the receiver to take reasonable action on behalf of the utility and to make reasonable business decisions to protect the welfare of the utility and its customers. If other parties are compelled to step in and do the work that the receiver is supposed to do and make business decisions the receiver is supposed to make, then the Commission should question whether the full costs of the receiver are just and reasonable to include in customer rates.

WHEREFORE, Public Counsel respectfully submits its response.

² Staff’s Attached *Memorandum*, pg. 9, emphasis added.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 11th day of April 2014:

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