

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

In the Matter of the Application of Lincoln)
County Sewer & Water, LLC for Approval of) **File No. SR-2013-0321**
a Rate Increase)

LCSW'S RATE CASE EXPENSE BRIEF

COMES NOW Lincoln County Sewer & Water, LLC (LCSW or Company), and, in response to Missouri Public Service Commission's (Commission) Order Directing Filing of Posthearing Briefs, states as follows to the Missouri Public Service Commission (Commission):

QUESTIONS

LCSW asks that the Commission take up and provide a ruling as to the annual amount of rate case expense to utilize in Lincoln County's revenue requirement. LCSW believes this will require the Commission to address three questions:

- I. What is the total amount of rate case expense to be recovered in rates;
- II. Over what time period will that amount of expense be recovered;
- III. Will the recovery of the rate case expenses be accounted for as an amortization or as a normalization?

I. RATE CASE EXPENSE

LCSW presented evidence that it has rate case expense from four sources –

- 1) Brydon, Swearingen & England P.C. - \$27,990 (Exhibit LCSW-1);
- 2) McIlroy and Millan - \$3220 (Exhibit LCSW-2);
- 3) Johansen Consulting, LLC - \$10,106 (Exhibit LCSW-3); and,

- 4) Mr. and Ms. Kallash's time associated with these cases - \$25,194 (Exhibits LCSW-4 and LCSW-5).

There appeared to be no disagreement among the parties as to the reasonableness of the first three expense sources. The disagreement as to the reasonableness of rate case expense relates only to the time and expenses related to the members (owners) of LCSW and the time period for which LCSW's rate case expense should be allowed.

SHOULD OTHERWISE REASONABLE RATE CASE EXPENSE BE DENIED RECOVERY BASED UPON WHEN IT WAS INCURRED?

Without regard to the reasonableness of the rate case expense, the Public Counsel argues for a time limitation based on when the services were performed. That is, Public Counsel would only allow recovery of that rate case expense related to activities that took place between December 4, 2012 (the date of the letter initiating the small company rate case), and November 26, 2013 (a week beyond the filing of the first set of briefs).

Public Counsel proposes to essentially start with the filing of the case. This is in spite of the fact that it is common in every rate case for there to be time spent prior to the filing that is treated as rate case expense and in spite of the fact that Mr. Kallash spent time in preparation for the initial filing in this case. (Tr. 456-457)

Public Counsel's position is based on a waiver argument related to the sixty (60) day notice contained in Commission's ex parte rules (Rule 4 CSR 240-4.020(2)). Public Counsel stated as follows in closing:

The company had the ability to file a sixty-day waiver notice -- or sixty-day notice ahead. They waived that. They decided to just file the single letter

and waive the ability to work on the case for 60 days. That was their choice.

(Tr. 553-554)

It is completely unclear what Public Counsel is referring to. First, that sixty day notice requirement does not apply to a small company case, as such cases are not contested at the time of filing. Further, there is certainly no “waiver” of rate case expense concept found in Rule 4 CSR 240-4.020(2). Lastly, the “letter” referenced by Public Counsel is the process outlined by the Commission’s rules for the filing of a small company rate case. There is no option other than the “single letter” and no basis for the Public Counsel’s waiver argument.

The proposed time limit is also unwieldy as the calculation of rate case expenses *must necessarily take place after the conclusion of the evidentiary hearing*. Staff’s surrebuttal testimony acknowledged as much stating that “[i]t is expected that this case will go to hearing and, therefore, additional legal and consulting fees, as well as possible other costs may be incurred by LCSW. Should Staff be presented with additional documentation, Staff will consider such future expenditures for inclusion in its rate recommendation.” (Exh. Staff-8, Hannekan Sur., p. 13)

For this reason, it is normal and necessary to address invoices received after the evidentiary hearing. (See *In the Matter of the Request for an Increase in Sewer Operating Revenues of Emerald Pointe Utility Company*, File No. SR-2013-0016 et. al, Revised Report and Order (September 24, 2013) (“Many of the company’s rate case expenses were not incurred until the hearing and will continue to accumulate even after the Commission issues its report and order. It is appropriate to update rate case expenses through a date closer to when new rates will go into effect.”)).

In support of its position that only rate case expense incurred prior to November 26, 2013, should be recovered, Public Counsel stated that “in any normal case, that’s when everything would be given to the Commission.” (Tr. 400) The problem with this reasoning is that this is far from a “normal” case and the circumstances call for a different approach.

In a normal case, most of the costs incurred after briefing would be related to review of the Commission’s order and the filing of tariffs. This case not only includes those elements, it also includes motions trying to determine the revenue requirement, preparation for a hearing, and now additional briefing associated with that hearing. These are significant costs not normally present in a Commission rate case. A timing limitation in regard to otherwise reasonable rate case expenses is not appropriate.

MEMBER/OWNER TIME AND EXPENSE

The evidence indicates that LCSW’s members/owners, Dennis Kallash and Toni Kallash, participated in this case in a substantial way. In fact, for the first five months after this case was filed, all interaction between LCSW and the Staff and the Public Counsel involved Mr. and Mrs. Kallash, as the Company did not have a lawyer or consultant at that time. (Tr. 332)

Public Counsel witness Addo testified that he had meetings with Mr. Kallash relating to the rate case at the offices in Troy and telephone conferences related to data requests. (Tr. 531-532) Mr. Addo remembered Mr. Kallash being present at the first hearing. (Tr. 532)

Staff witness Hanneken testified that she had contact during this rate case with Dennis Kallash and Toni Kallash, both in person and by telephone. (Tr. 493, 494) She

also participated in a meeting with the Kallashes, when they traveled to Jefferson City. (*Id.*) She remembered Mr. Kallash was present for the hearing in this case (*Id.*) (as is recorded in the transcript), as well as Mrs. Kallash being present. (Tr. 494) There was no doubt in Ms. Hanneken's mind that Mr. Kallash was involved in this rate case from its beginning through the most recent hearing. (Tr. 493)

The Brydon, Swearingen & England P.C.; McIlroy and Millan; and Johansen Consulting invoices, to which no one objects, corroborate the Kallash's participation in this case. They also corroborate the meal and hotel expenses reflected in the Company's rate case expense request. (See Tr. 533-536)

LCSW maintained separate records for rate case time and time spent on the normal operation of the company. The rate case time represented by Exh. LCSW-5 is separate and apart from the time spent on those operation activities. (Tr. 432) The listing of time in LCSW- 4 was compiled using the notes found in LCSW-5. (Tr. 433)

Public Counsel seeks to throw out the entire list by suggesting that the listing provided by the Company is not auditable because it is just times and dates. (Tr. 396-397) However, that is not the case. LCSW's listing of the rate case time spent by its members/owners is found in LCSW-5. This document was provided to Staff prior to the evidentiary hearing in this matter. (Tr. 432, 443) Staff witness Hanneken admitted she had had it for some time. (Tr. 488-489)

A review of LCSW-5 reveals there is a listing of the person involved (D – Dennis, T- Toni), time, date, and a description. Most of those descriptions do a sufficient job of indicating the task accomplished. The following are a few examples:

4-9 – "Fax from Lisa H"

7-29 -- "Lisa Kremer called back"

8-19 – "Measured Sunswept for OPC"

8-20 – "Public Hearing"

9-5 – "Met Steve L[oethen] PSC went over 100 pages of meter reports" "Called Jim Busch"

9-9 – "Contact Bob Hettick Schulte for AMR Info Rate Case"

10-8 – "Data Request 1-30" "Deed Book & Pages"

10-15 – "Review our DR to OPC & Staff"

10-18 – "Revise DR to serve OPC"

This begs the question how much detail a small company owner/operator is required to provide. While entries could always be neater and more detailed, shouldn't these entries be sufficient to indicate time and substance? Where the Staff and Public are having personal interaction with the persons involved, the standard should be much lower than that applied to attorney invoices.

Staff and Public Counsel further argued about the \$.50 per copy figure utilized by Fitch & Associates for copies made for LCSW related to the rate case. The time associated with the Fitch secretary and the use of the machine cost more than \$.50 per copy. (Tr. 445) This is not surprising. For comparison purposes, the State of Missouri sets the per page charge for medical record copies at \$.53 per page (Section 191.227, RSMo ("Search and retrieval, in an amount not more than twenty-two dollars and eighty-two cents plus copying in the amount of fifty-three cents per page for the cost of supplies and labor plus")). The Missouri General Assembly recognizes that there

are labor and other costs associated with copying that should be included in the charges.

Further, there seems to be an assumption that the cartridges billed by Fitch & Associates was for the same 486 copies listed on the invoice, as opposed to the additional thousands of pages requested by the Staff. While Mr. Kallash was asked about this invoice while he was on the witness stand, he was never asked what the cartridges were for. (Tr. 444-445)

A rate case is extremely time consuming for a small company and its owners. There is no one else to respond to Staff and Public Counsel requests or to pull together necessary information or to provide explanations. This is further exasperated by the fact, as stated by Lisa Hanneken, that the Staff auditors can, and do, drill deeper in a small company case than they would if they were auditing Ameren, for example. (See Tr. 489-490)

The time spent on this case and the additional expense was largely caused by Staff's hard-line negotiating approach. LCSW filed its rate case requests on December 4, 2012, based on its substantial investment in meters for the subdivision. LCSW tried to process the case without hiring a lawyer. (Tr. 332) However, the Staff's initial position, before the Public Counsel had even expressed its view of things, suggested that LCSW's rates should be *decreased* by \$7,543, on an annual basis, and its investment in meters was essentially alleged to not be prudent.¹ The only option available to the company at that time to pursue the Company's goal of obtaining just and reasonable rates that reflected its investment in its systems was to borrow and

¹ In fact, Staff's proposed DECREASE grew to \$8,598 by its filing of Direct Testimony. The Staff did not change its position on LCSW's meter installation until rebuttal testimony was filed in this case. The Public Counsel never changed its position on the meter installation.

expend what were significant funds on attorneys and a consultant and to spend a considerable amount of their own personal time and energy on the process -- which they did.

This situation, to some extent, repeated itself in regard to rate case expense. When Mr. Johansen filed his direct testimony, he raised the issue of company time and expense as a part of rate case expense. (Exh. LCSW-1, p. 15) However, when the conversations turned to rate case expense after the issuance of the Commission's Report and Order, the only position taken by the Staff was that there should be *zero* dollars for the Company time and expense included as rate case expense. (Tr. 488) No matter what one thinks of the records, it's clear that both the Public Counsel and Staff had plenty of interaction with the Kallashes and familiarity with time they have spent on this case. In spite of that, Staff took the position that zero dollars was the correct amount for time and expense. Given that option, the Company, unsurprisingly, has asked the Commission for a ruling.

In determining what amount of rate case expense is just and reasonable, the Commission must remember the circumstances and positions with which the Company was presented – initial proposed disallowance of its investment in meters, ridiculously low proposals for the time spent to operate and maintain the systems, and then zero for the Company's time spent in the rate case. A small company like LCSW cannot survive and provide service under the conditions initially proposed. On the other hand, when it pursues the process provided by the Commission and does not give into the initial Staff and/or OPC positions, the end result is cost to the Company that will either raise the rates of the Company or provide an additional impediment to the survivability of the

Company and its ability to provide a necessary service for its customers if recovery of that cost is not permitted.

What is just and reasonable in this case is that the Commission grant LCSW recovery of the expenses that were necessary to participate in what has been a nineteen-month process. Doing so will enable this small water and sewer company to survive and provide necessary services. What would be just and reasonable in a more global sense is for the Commission to communicate to its Staff (and to the extent it can, to the Public Counsel) that more lenient and reasonable starting points and positions in the future is likely to yield benefits both for the financial stability of small companies and in terms of rates to be paid by the customers.

II. TIME PERIOD FOR RECOVERY

This is an important question. Because there are no carrying costs associated with rate case expense, the further one extends the recovery period, the more expense is borne by the Company. Further, with a “normalized” expense, the longer the recovery period is extended, the more likely that a Company will need to come in for another rate case before the end of that period and the company will NEVER have an opportunity to recover some portion of the rate case expense.

Staff’s Rebuttal Testimony in this case described this conundrum -

Rate case expense is typically normalized over an interval of time which is determined to be representative of the length of time likely to pass until the utility will have a need to file an application for a rate increase. In this case, Staff has normalized rate case expense over a three-year period as suggested by Mr. Johansen. However, it is important to note that no one can predict what factors may cause a utility to apply sooner for a rate increase, or in contrast, what factors may allow them to go longer without a rate increase. Therefore, depending on the timing of the utility's next rate case, the amount recovered in rates may be more than or less than what was actually incurred for rate case expense by the utility.

(Exh. Staff-3, Ferguson Reb., p. 12)

Accordingly, as indicated in Staff's testimony, the period ideally should be an "interval of time which is determined to be representative of the length of time likely to pass until the utility will have a need to file an application for a rate increase." (*Id.*)

LCSW has taken the position that the appropriate time period for recovery is three (3) years. Mr. Kallash identified in testimony four items that are likely to drive him back in for a future rate case – 1) increases that have been experienced in regard to the licensed operator; 2) costs associated with sludge hauling; 3) timing of the need for an additional well at Rockport (an over \$300,000 expenditure); and, 4) installation of a disinfectant process at Bennington (Tr. 434-436).

No other party has provided testimony as to the length of time likely to pass before LCSW will file its next rate increase. In fact, the Public Counsel witness specifically acknowledged that his recommendation of a five year recovery period had nothing to do with a review of LCSW's circumstances or when he thought LCSW would be in for its next rate case. (Tr. 539)

The evidence available to the Commission is that LCSW will likely need to return for its next rate case within three years. The Commission should use that three year period to establish the annual amount of rate case expense to be recovered in rates.

III. NORMALIZE OR AMORTIZE

The difference between an amortization and a normalization was described in the *Unanimous Statement of Clarification*, filed in this case on March 14, 2014:

Normalization is the calculation of a reasonable level of expense which is then allowed to be recovered annually by the company. Once set, normalization proceeds without regard to the original cost such that in

future rate cases what was recovered (or not recovered) in the past is irrelevant.

Amortization is the gradual payoff of an expense item over a specific number of years. Thus, unrecovered amounts are addressed in future rate cases.

The Commission has used both approaches in the past² and, in many cases, because of the way cases are settled, it is not necessary to obtain a meeting of the minds as to this issue.

From the Company's perspective, the importance of the time period is elevated by use of a normalization and minimized by the use of an amortization. With a normalization, if the period chosen is inappropriately long, there is a danger that the Company will never have an opportunity to recovery its rate case expense. If the period is inappropriately short, the customers may reimburse the Company for more than its incurred rate case expense.

Given the potential consequences for both the utility and the customers in guessing either long or short on the time period, LCSW has suggested that an amortization (with a tracker) much better balances the interests of the utility and customer and should be ordered by this Commission.

Staff has similarly recommended an amortization, with a tracker. While LCSW believes that the five year period for recovery identified by the Staff is too long, it does believe that a amortization/tracker approach will appropriately address the risks for both the Company and its customers.

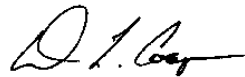
² An example of where amortization has been used by this Commission in the treatment of rate case expenses is referenced in *In the Matter of Missouri Gas Energy's Tariffs Increasing Rates*, Case No. GR-2006-0422, 2007 Mo. PSC LEXIS 408, 32-33; 256 P.U.R.4th 250 (2007) ("The Commission resolved this issue in MGE's last rate case to allow the company to recover, what was determined to be prudent costs, through amortization over three years. The Commission will not vacate its order in that regard. Staff and MGE propose to amortize the remaining rate case expense with that incurred in this case. The Commission will grant that request and allow MGE to amortize the combined amounts over a three-year period.").

IV. CONCLUSION

The Company's proposal in this case is to include in rate case expense the \$10,106 reflected by Mr. Johansen's invoices; the \$27,990 reflected in the Brydon, Swearingen & England invoices; the \$3220 reflected in the McIlroy & Millan (Mr. Burlison's) invoices; and, the \$25,194 reflected in the Company's time and expense calculation. That is a total of \$66,510. LCSW would then propose that a three-year amortization (with tracker) be used to derive the annual amount of rate case expense to recover in rates (\$22,170 on an annual basis).

WHEREFORE, for the foregoing reasons, LCSW respectfully requests the Commission establish rate case expense, as stated herein, for the purpose of setting rates in this matter.

Respectfully submitted,



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Certificate of Service

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 30th day of June, 2014, to:

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