

**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 REPLY TO PUBLIC COUNSEL’S OBJECTION  
AND STAFF’S RESPONSE CONCERNING RATE CASE EXPENSE**

COMES NOW Lincoln County Sewer & Water, LLC (LCSW or Company), and, in response to The Office of the Public Counsel’s Objection to Motion to Establish Rate Case Expense (Public Counsel Objection) and Staff’s Response in Opposition to the Company’s Motion to Establish Rate Case Expense and For Expedited Treatment (Staff Response), states as follows to the Missouri Public Service Commission (Commission):

**PUBLIC COUNSEL OBJECTION**

1. On May 13, 2014, the Public Counsel Objection was filed in response to LCSW’s Motion to Establish Rate Case Expense. The result of the Public Counsel Objection is that it appears the status quo will continue for some time. That is, LCSW made a significant investment in plant that was installed by August 2012. Coming on twenty-one (21) months later, that plant is still not recognized in rates and LCSW is still THIS DAY incurring rate case expenses in an attempt to get to the end of the Commission’s “small company” rate case process.

2. Public Counsel’s Objection does nothing to help move this matter forward. While it states that “some rate case expenses may be reasonable for this case,” it then goes on to object to ALL rate case expenses. Public Counsel does not identify even one dollar that it believes to be reasonable.

3. Perhaps the most shocking statement is that the “rate case expense claimed by LCSW is at best merely a listing of unverifiable dates, generic activities and unverifiable amounts.” (Public Counsel Objection, para. 4) This counsel remembers being in the same room with Ms. Baker many times during the course of this case, corresponding with Ms. Baker, exchanging pleadings with Ms. Baker, and appearing at both the local public hearing and the evidentiary hearing with Ms. Baker. Amazingly, the Commission’s own certified transcript places Ms. Baker, Mr. Kallash, and I in the same room for both the local public hearing and the evidentiary hearing. Between the Commission’s certified transcript and the time sheets of Public Counsel and Staff, it should not be difficult to establish a person’s presence at meetings, calls, prehearings, local hearings, and evidentiary hearings.

4. Public Counsel attempts to put this rate case expense issue “in perspective” by comparing the rate case expense to what it believes to be the revenue requirement associated with the automated meter reading (AMR) system. Public Counsel suggests that that revenue requirement is \$7,650.30 (the total cost divided by ten year, the assumed life span). However, this is not the complete issue. What Public Counsel describes is merely the *return of* the investment (depreciation). Public Counsel does not address the *return on* the investment. Of course, Public Counsel also does not attempt to quantify the damage to the utility if this investment is deemed to not be prudent and the Company is required to immediately write-off the entire investment. The potential cost of the Staff and Public Counsel attack on LCSW’s investment was much riskier for both LCSW and its customers, than Public Counsel represents.

5. In terms of “perspective,” the Commission needs to be mindful of where this case was when LCSW decided to hire a consultant and a lawyer to assist it. LCSW filed its rate case requests on December 4, 2012. 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.<sup>1</sup> *It should have surprised no one* that in the face of this Staff position, LCSW engaged counsel and a consultant familiar with Commission rate cases. However, Public Counsel reaches a different conclusion describing the Company’s response as being due to “LCSW’s self-serving desire to have an evidentiary hearing.” (Public Counsel Obj., para. 8) LCSW did not desire an evidentiary hearing. LCSW desired just and reasonable rates that reflected the amount of time its members must spend on the systems and recognition of their investment. The only option available to pursue that goal was to borrow and expend what were significant funds and to spend a considerable amount of additional personal time and energy on the process. This does not fit into the category of something the Company wanted to do, but rather something circumstances forced it to do.

6. The lesson Public Counsel seems to take from this is that small water and sewer companies should not be allowed to recover rate case expense so that they learn their place in the world and do not ask questions. The lesson *THAT SHOULD BE LEARNED FROM THIS SITUATION* is that when a small water and sewer company has the financial means and technical wherewithal to operate systems that are in

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<sup>1</sup> 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.

compliance with environmental regulations and to invest in improvements to those systems, *Staff and the Public Counsel* should approach the disposition stage of small company rate cases in a way that makes settlement likely, rather than engaging in a game of *GOTCHA*'. A Staff auditor suggested early in this matter that Staff could make the rate case process so cost prohibitive for LCSW, that it would be forced to agree to whatever Staff (and, ultimately, Public Counsel) demanded. That is already a real result in some small company cases. Public Counsel's approach to rate case expense seeks to make it the rule.

7. The Public Counsel also attacks the rate case expenses by stating that "[i]t is not just and reasonable for LCSW to try to produce evidence long after the hearing when there is no opportunity for the parties to audit, verify or even question that evidence." (Public Counsel Obj., para 3) This statement shows a misunderstanding of how the work progresses in a case. As of the hearing, LCSW had provided the invoices associated with its attorney and consultant work that had been received. In fact, Staff built these invoices into its EMS run that was filed at the evidentiary hearing.

8. However, whether it is a LCSW, Missouri-American, Ameren Missouri, or some other public utility's rate case, much of the attorney and consultant time spent on a rate case will take place preparing for hearing, appearing at the hearing and writing the brief in the aftermath of the hearing. The Commission itself has recognized this situation. (*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.”).

9. 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) As predicted by Staff, additional legal and consulting fees were incurred after the filing of surrebuttal testimony and these fees should be included in rates.

10. Public Counsel further erroneously states that “much of the information provided by LCSW in its May 8<sup>th</sup> filing is being provided to the Commission and the parties for the first time even though the dates for claimed activities were long before the evidentiary hearing and in some cases long before the rate case was even filed.” (Public Counsel Obj., para. 3) Public Counsel should check its facts before making such an allegation. In fact, “much of the information provided by LCSW in its May 8<sup>th</sup> filing” was provided to Staff’s Water and Sewer Department long ago – as much as five months before the May 8 filing. The last time counsel checked, Staff is deemed to be a party to this case. Having said this, LCSW is not sure that all of Staff was aware that it had some of this information. In April of this year, LCSW’s consultant, Dale Johansen, collected information from the Staff Water and Sewer Department so that he could then

provide it to the Staff audit department. LCSW does not believe that it should be blamed for a departmental disconnect within the Staff.

11. Public Counsel's blanket objection does nothing to further this matter or to work toward the provision of safe and adequate service at just and reasonable rates.

### **STAFF RESPONSE**

12. On May 16, 2014, the Staff Response was filed. Staff suggests that the Commission should: (1) either disallow the Company time and expenses related to the rate case or, alternatively, permit Staff to audit those claimed costs; and, (2) include the costs of the Company's attorneys and consultant in revenue requirement and normalize those costs to rates over five years.

13. As a part of its justification, Staff makes the statement that "all of the labor costs were either incurred prior to the filing of the rate case or during the audit." (Staff Resp., para 4.C.) Given that the Staff's audit seems to continue throughout the case, this statement may have some grain of truth. However, it is also true that the time identified extends from the preparation of the case through the evidentiary hearing. A standard period of time when work on the rate case would be expected.

14. Staff also states that "[t]here was no indication from Lincoln County, as of the time of the hearing, that the Company would be seeking recovery of additional rate case expenses incurred prior to the hearing." (Staff Resp., para 4.C.) Staff should read the Company's testimony. LCSW's Direct Testimony, filed on September 4, 2013, stated, in part, as follows under the title "RATE CASE EXPENSE (LEGAL FEES, CONSULTING FEES, OFFICE PERSONNEL)":

The Company's prudently incurred legal fees and consulting fees related to the resolution of its operating revenue increase requests, the cost of

time spent directly on rate case activities by office personnel other than Ms. Kallash, and the cost of time spent directly on rate case activities by Mr. Kallash and Ms. Kallash should be included in determining the Company's cost of service.

(Exh. LCSW-1, p. 15 (emphasis added)). The fact that more than legal fees and consulting fees was involved in this issue was picked up by Public Counsel witness Addo, as he also described the issue as “RATE CASE EXPENSE (LEGAL FEES, CONSULTING FEES, OFFICE PERSONNEL).” (Exh. OPC-2, Addo Reb., p. 32) LCSW provided notice of the existence of this issue.

15. Beyond the testimony, there were other reasons that at least some members of Staff would have been aware of this issue. Mr. Kallash believed his time and expenses to be compensable as a result of conversations with Staff members and their representations that such time was compensable. These matters were discussed with certain Staff members before and during the course of the evidentiary hearing in November 2013, and Mr. Kallash’s statement of these dates and times was provided to Staff members in November of 2013. Having had this statement for five months, it is unclear why the Staff now needs additional time to audit.

16. As stated above, some level of Company time should be easy to establish based on the Staff’s own time sheets, as a great amount of the Company’s time was spent in meetings with Staff members, calls with Staff members, preparation of data in response to Staff requests, and appearance at hearings. Company time will also be reflected in the invoices of LCSW’s counsel and consultant. Whether or not Staff agrees with the totality of the time identified by the Company, it should be absolutely clear that there is significant and substantial time that Mr. Kallash and his wife have

spent on this case. *Zero* is certainly the wrong number and does not come close to representing the time spent.

17. Lastly, the Staff has taken the position that whatever rate case expense is authorized by the Commission, it should be *normalized over five years*. LCSW took the position in testimony and its brief that an allowance for rate case expense should be included in the rate to be set in this proceeding utilizing no more than a *three year amortization*. (Exh. LCSW-1, p. 15-16) (emphasis added). Staff took the position in testimony that rate case expense should be normalized over a three year period. (Exh. Staff-3, p. 12; Exh. Staff-8, p. 13)

18. There are two sub-issues included in this most recent Staff recommendation – (1) should the rate case expenses be accounted for as an amortization<sup>2</sup> or a normalization; as well as, (2) what length of time should be used.

19. 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.

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<sup>2</sup> 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.”).



20. There are no carrying costs associated with rate case expense. Thus, 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 proposal to normalize over five years will practically guarantee non-recovery of valid expenses.

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

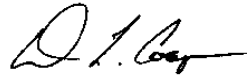
Rate case expense is typically normalized over an interval of time which is determined to be representative of the length of time likely to pass until the utility will have a need to file an application for a rate increase. In this case, Staff has normalized rate case expense over a three-year period 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)

22. Similar to the filing made by the Public Counsel, Staff’s position does nothing to move this matter along or to reach a conclusion in this rate case. This Commission should direct its Staff to take a position on the time identified by LCSW, make a finding in regard to what period of time to recover rate case expense, decide whether such expense should be amortized or normalized, and direct Staff to make EMS runs based on this decision so that customer rates may be determined.

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

Respectfully submitted,



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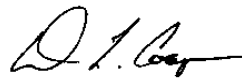
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**Certificate of Service**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 21<sup>st</sup> day of May, 2014, to:

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