

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

In the Matter of the Request for an)
Increase in Sewer Operating Revenues of) **File No. SR-2013-0016**
Emerald Pointe Utility Company)

In the Matter of the Request for an)
Increase in Water Operating Revenues of) **File No. WR-2013-0017**
Emerald Pointe Utility Company)

EMERALD POINTE’S STATEMENT OF POSITION

COMES NOW Emerald Pointe Utility Company (Emerald Pointe or Company), and for its Statement of Position, states the following to the Missouri Public Service Commission (Commission) concerning the issues contained in the Joint List of Issues, Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements filed on May 3, 2013:

INTRODUCTION

This case was initiated as a small company rate case in accordance with Commission Rule 4 CSR 240-3.050. The main driver for the Company’s request was the recent completion of a new pipeline through which sewage is transported to the City of Hollister for treatment and the corresponding elimination of the Company’s sewage treatment plant. Prior to construction, the pipeline project was the subject of Commission review in File No. SA-2012-0362.

The cost of the sewer pipeline project was over \$1 million. It has resulted in a significant increase in the Company’s sewer system rate base and a significant new expense for the treatment of the sewage through a wholesale contract with Hollister. It was a necessary and desirable improvement as it allowed for the elimination of an older sewer treatment facility that needed to be replaced and expanded and eliminated the flow of treatment plant effluent into Table Rock Lake.

Two general subjects have developed for hearing in this case: 1) what rates are just and reasonable for the Company to charge on a going-forward basis; and, 2) the treatment of a sewer commodity rate that was charged by Emerald Pointe from the conclusion of its last rate case (SR-2000-595) until May of 2012.

1. SEWER COMMODITY CHARGE

- a. Was the Company authorized to collect a sewer commodity charge as a result of Case No. SR-2000-595?**

EMERALD POINTE POSITION: Yes. The tariff prepared by the Commission Staff and served on Emerald Pointe in Case No. SR-2000-595 included a sewer commodity charge in the amount of \$3.50 per 1,000 gallons. Emerald Pointe agreed to that tariff and filed it with the Commission, as required by Section 393.140(11), RSMo, when it followed the instructions of the Commission in its letter of service of March 7, 2000. A sewer tariff sheet without a sewer commodity charge was later found to exist. The Commission failed to serve the tariff sheet without the commodity charge on Emerald Pointe as required by Section 386.490, RSMo. The imposition of a refund based upon a tariff sheet that was never served on the Company, and that was contrary to the only tariff sheet served on the Company on March 7, 2000, impermissibly violates the Company's procedural and substantive due process rights as contained in Section 1 of the 14th Amendment of the U.S. Constitution and Section 10 of Article I of the Missouri Constitution.

Emerald Pointe had a commodity charge prior to Case No. SR-2000-595, in the amount of \$5.83 per 1,000 gallons, and proposed to increase that charge when it initiated the 2000 rate case. At the conclusion of Case No. SR-2000-595, Emerald Pointe adjusted its sewer commodity charge to the \$3.50 to which it agreed. That \$3.50 commodity charge was utilized by Emerald Point until May of 2012, and was expressly identified on each monthly customer

bill.

Also of significance is the fact that the sewer rate, including the \$3.50 sewer commodity charge, did not recover the revenue requirement identified by the Staff EMS run in Case No. SR-2000-595. A review of the Company's revenues over the period the sewer commodity charge was utilized shows that there was no overearning, the owners took no dividends or salaries and, in fact, the owners were required to infuse cash in order to continue to provide safe and adequate service. But for the sewer commodity rate, expenses would have far exceeded revenues and Emerald Pointe would have been required to file for a rate increase many years ago.

Moreover, during the period the commodity charge was utilized, Staff was ordered to review Emerald Pointe's rates and worked with the Company to address revenues and expenses for purposes of the Company's annual reports. The Commission should be estopped, by its words and conduct in 2000 and thereafter, from seeking a refund.

The revenues associated with the rates proposed in this case would not be sufficient to support the Company's expenses and still make the proposed refunds. Accordingly, if ordered to make the proposed refunds, a bankruptcy would be likely.

Snadon Reb., All.
Pittman Reb., All
Johansen Reb., pp. 4-10.

b. If not, what action should the Commission take?

EMERALD POINTE POSITION: If the Commission decides that a refund is warranted and should be pursued, it may only authorize its General Counsel to pursue such an action in circuit court as the Commission "cannot order any monetary or pecuniary award, refund or reparation."

LaHoma Paige v. Kansas City Power & Light Company, Case No. EC-84-274, 27 Mo.P.S.C.

(N.S.) 363 (1985), citing *B.G. DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674 (Mo.App. 1978).

c. If the Company is required to return to customers amounts collected through a sewer commodity charge:

i. What is the appropriate time period over which the amounts due to customers should be calculated?

EMERALD POINTE POSITION: The Commission should use Commission Rule 4 CSR 24-13.025 as a guide in determining what period of time should be used for calculation of potential refunds. Commission Rule 4 CSR 24-13.025 provides that billing adjustments for overcharges may not exceed five years. While this rule does not expressly apply to sewer utilities, it does apply to water utilities (which Emerald Pointe is) and mimics the five (5) year statute of limitations that would be applied in a civil action for the refund of such amounts.

ii. What, if any, interest should be applied to the amounts to be returned?

EMERALD POINTE POSITION: No interest should be applied to any sewer commodity charge amounts to be refunded as there is no authority for the addition of such interest in the tariffs or statute. Moreover, the amounts collected by Emerald Pointe were used for necessary and required expenses used to operate the sewer system. Emerald Pointe did not benefit from the use of the money, other than it was able to continue to operate the sewer system, something that was of equal advantage to the customers.

Menke Reb., pp. 4.

iii. If an over collection occurred, over what period of time should those amounts be redistributed to customers?

EMERALD POINTE POSITION: If amounts are ultimately to be returned to customers, they should be returned over the period of time proposed by the Staff.

2. LATE FEE/RECONNECT FEE OVERCHARGES

- a. Should interest be applied to the refund of late fee/reconnect fee overcharges? i. If so, at what rate?**

EMERALD POINTE POSITION: No interest should be applied to any amounts to be refunded as there is no authority for the addition of such interest in the tariffs or statute. Moreover, the amounts collected by Emerald Pointe were used for necessary and required expenses used to operate its water and sewer systems. Emerald Pointe did not benefit from the use of the money, other than it was able to continue to operate its water and sewer systems, something that was of equal advantage to the customers.

Menke Reb., pp. 4.

- b. Over what period of time should those amounts be returned to customers?**

EMERALD POINTE POSITION: Emerald Pointe will voluntarily return the late fee/reconnection fee overcharges. Emerald Pointe is willing to return the reconnection fee amounts in a single payment/credit. Emerald Pointe suggests that it should return the late fees through a customer credit over no more than a twenty-four (24) month period, for those customers still on the Emerald Pointe system, and through a one-time payment to those customers that have previously left the system.

Menke Reb., pp. 3-4.

3. CUSTOMER DEPOSITS

- a. Over what period of time should deposits be returned to customers?**

EMERALD POINTE POSITION: Emerald Pointe will voluntarily return the customer deposits and associated interest through a customer credit over no more than a twenty-four (24) month period, for those customers still on the Emerald Pointe system, and through a one-time payment to those customers that have previously left the system.

Menke Reb., pp. 2-3.

4. HOLLISTER SEWAGE TREATMENT EXPENSE

- a. What amount of expense related to the sewage treatment performed by the City of Hollister should be recovered in rates?**

EMERALD POINTE POSITION: The Company is proposing an increase in this expense based upon a 20% increase in the volumes being used to calculate it. This results in a total treatment expense of \$91,127, or a \$15,188 increase from the April 1, 2013 Staff amount.

Johansen Dir., pp. 5-6.
Johansen Reb., pp. 3-4; Reb. Schd. DWJ-1 and DWJ-2.

5. LEGAL FEES

- a. What amount of the Company's legal fees should be recovered in rates?**

EMERALD POINTE POSITION: It is the Company understanding that Staff intends to include legal fees associated with the Company's most recent certificate case (File No. SA-2012-0362) and financing case (File No. WF-2013-0346) in the cost of service. Emerald Pointe agrees with this approach.

Johansen Dir., p. 5.

6. RATE CASE EXPENSE

- a. What are the appropriate expenses to be included as rate expense in this case?**

EMERALD POINTE POSITION: It is the Company's position that these expenses should be updated as contemporaneous as possible to the conclusion of this case. As of the filing of surrebuttal testimony, the Company had incurred the following additional expenses that it believes should also be included as rate case expense in the cost-of-service calculations: (1) legal fees of \$4,128; and (2) consulting fees of \$5,160. These expenses do not include the additional

expenses incurred in preparing for and participating in a hearing as well as the submission of post hearing briefs.

Johansen Dir., p. 5.

Johansen Reb., pp. 2-3.

Johansen Sur., pp. 2-3.

7. CAPITAL STRUCTURE

- a. Should the capital structure of the Company for ratemaking purposes be: 1) a structure that treats the Company as one entity or 2) a structure that considers the water and sewer operations of the Company separately?**

EMERALD POINTE POSITION: Emerald Pointe supports the position of the Staff.

8. RATE OF RETURN/RETURN ON EQUITY

- a. What is the appropriate cost of equity for the Company?**

EMERALD POINTE POSITION: Emerald Pointe supports the 13.26% cost of equity proposed by the Staff.

Menke, Sur., pp. 1-6.

- b. What is the appropriate methodology for estimating small water and sewer companies' rates of return?**

EMERALD POINTE POSITION: Emerald Pointe supports the methodology used by the Staff.

9. CIAC RESERVE – CUSTOMER FEES

- a. What is the appropriate amount of CIAC Reserve to book for customer fees?**

EMERALD POINTE POSITION: Emerald Pointe supports the position of the Staff.

10. PLANT-RELATED BALANCE UPDATE PERIOD

- a. Through what period should the plant-related balance be updated?**

EMERALD POINTE POSITION: Emerald Pointe supports the position of the Staff.

WHEREFORE, Emerald Pointe respectfully requests that the Commission consider this Statement of Position.

Respectfully submitted,



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**ATTORNEYS FOR EMERALD POINTE
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent by electronic mail this 7th day of May, 2013, to:

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