

Exhibit No.: _____
Issue(s): Rate Case Expense/
Sewer Commodity Charge
Over-Charge Refund/
Refunds of Late Fees
and Reconnection Fees/
Customer Deposit Refunds/
Recommendation
Witness/Type of Exhibit: Roth/Rebuttal
Sponsoring Party: Public Counsel
Case No.: SR-2013-0016

REBUTTAL TESTIMONY

OF

KERI ROTH

Submitted on Behalf of the Office of the Public Counsel

EMERALD POINTE UTILITY COMPANY

CASE NO. SR-2013-0016

April 11, 2013

1 **TABLE OF CONTENTS**

2 **KERI ROTH**

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4 **CASE NO. SR-2013-0016**

5 I. INTRODUCTION..... 2

6 II. PURPOSE OF TESTIMONY.....3

7 III. RATE CASE EXPENSE..... 3

8 IV. SEWER COMMODITY CHARGE OVER-CHARGE REFUNDS.....4

9 V. REFUNDS OF LATE FEES AND RECONNECTION FEES.....11

10 VI. CUSTOMER DEPOSIT REFUNDS.....13

11 VII. RECOMMENDATION.....15

1
2
3
4
5
6
7
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**REBUTTAL TESTIMONY
OF
KERI ROTH**

**EMERALD POINTE UTILITY COMPANY
CASE NO. SR-2013-0016**

9 **I. INTRODUCTION**

10 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

11 A. Keri Roth, PO Box 2230, Jefferson City, Missouri 65102-2230.

12
13 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

14 A. I am employed by the Missouri Office of the Public Counsel (OPC or Public Counsel) as
15 a Public Utility Accountant I.

16
17 Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES AT THE OPC?

18 A. My duties include performing audits and examinations of the books and records of
19 public utilities operating within the state of Missouri under the supervision of the Chief
20 Public Utility Accountant, Mr. Ted Robertson.

21
22 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER
23 QUALIFICATIONS

1 A. I graduated in May 2011, from Lincoln University, in Jefferson City, Missouri, with a
2 Bachelor of Science Degree in Accounting.

3

4 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THE MISSOURI
5 PUBLIC SERVICE COMMISSION (COMMISSION OR MPSC)?

6 A. Yes. I have filed testimony in Empire District Electric Co. Case No. ER-2012-0345.

7

8 **II. PURPOSE OF TESTIMONY**

9 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

10 A. The purpose of this rebuttal testimony is to respond to the direct testimony of MPSC
11 Staff witness, Ms. Leslie Rose, with regard to rate case expense and Staff witness, Mr.
12 James A. Busch, with regard to customer refunds.

13

14 **III. RATE CASE EXPENSE**

15 Q. WHAT IS THE NORMALIZED AMOUNT OF RATE CASE EXPENSE STAFF IS
16 PROPOSING THAT THE COMPANY RECEIVE?

17 A. The amount of rate case expense Staff is proposing is \$1,135 for each of the water and
18 sewer systems, based on a five-year normalization.

19

1 Q. DOES PUBLIC COUNSEL AGREE WITH STAFF'S PROPOSAL?

2 A. Based upon Public Counsel's review of invoices received by the company, Public Counsel
3 believes Staff's proposal is reasonable.
4

5 **IV. SEWER COMMODITY CHARGE OVER-CHARGE REFUNDS**

6 Q. WHAT IS THE ISSUE?

7 A. In addition to the monthly customer charge, the Company had been charging sewer
8 customers a commodity charge for sewer service, which has not been approved in the
9 Company's tariff. The commodity charge being used was \$3.50 per thousand gallons of
10 water usage after the base amount of 2,000 gallons. It is Public Counsel's understanding
11 that this charge was implemented by the Company on the effective date of the Company's
12 current tariff. The Company's current tariff was approved by the Commission in Case No.
13 SR-2000-595 and became effective on May 10, 2000. However, the tariff states only the
14 following approved charges:

15	Monthly Customer Charge (served by a 5/8" water meter)	\$13.63 per month
16	Monthly Customer Charge (served by a 1" water meter)	\$34.08 per month
17	Monthly Customer Charge (served by a 2" water meter)	\$109.06 per month

18

19 Q. WHAT IS THE AMOUNT OF SEWER COMMODITY CHARGE REFUNDS THAT
20 STAFF HAS CALCULATED TO BE REFUNDED TO CUSTOMERS?

1 A. Staff's workpapers show it has calculated the total refund of sewer commodity charge to be
2 returned to customers at \$257,250.03. This total consists of \$187,683.11 in over-charges
3 of the sewer commodity charge and \$69,566.92 in interest, proposed at 6%, from the over-
4 charges of the sewer commodity charge. Staff limited the amount of refund to over-
5 collections which occurred from April 9, 2007 to March 31, 2012.

6
7 Q. ARE THERE COMMISSION RULES THAT DISCUSS THE OVER-COLLECTION OF
8 UTILITY CHARGES WHICH HAVE NOT BEEN APPROVED BY THE
9 COMMISSION?

10 A. Yes. Missouri Code of State Regulations, Division 240-Public Service Commission,
11 Chapter 13 – Service and Billing Practices for Residential Customers of Electric, Gas and
12 Water Utilities, 4 CSR 240-13.025, Billing Adjustments states:

13 In the event of an overcharge, an adjustment shall be made for the
14 entire period that the overcharge can be shown to have existed not to
15 exceed sixty (60) consecutive monthly billing periods, or twenty (20)
16 consecutive quarterly billing periods, calculated from the date of
17 discovery, inquiry or actual notification of the utility, whichever
18 comes first

19
20 Q. DOES CHAPTER 13 APPLY TO SEWER UTILITIES?

21 A. No.
22

1 Q. SINCE CHAPTER 13 DOES NOT APPLY TO SEWER UTILITIES, HAS STAFF
2 DETERMINED THE LEVEL OF REFUNDS OWED TO CUSTOMERS PRIOR TO
3 APRIL 9, 2007?

4 A. No. Staff witness, Mr. Busch, states in his direct testimony on page 7, lines 2 - 6:

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

12

13 Q. DOES PUBLIC COUNSEL AGREE WITH THE AMOUNT OF THE SEWER
14 COMMODITY CHARGE REFUNDS THAT STAFF HAS CALCULATED? IF NOT,
15 PLEASE EXPLAIN.

16 A. No, Public Counsel does not agree with the amount of sewer commodity charge refunds
17 that Staff has calculated. Chapter 13 does not apply to sewer utilities and the total amount
18 of over-collection is quite significant; therefore, Public Counsel believes that sewer
19 customers should receive refunds for the over-charges dating back to the effective date of
20 the current tariff, May 10, 2000.

21

1 Q. HAS PUBLIC COUNSEL DETERMINED A LEVEL OF REFUNDS FOR THE SEWER
2 COMMODITY OVER-CHARGES THAT SHOULD BE RETURNED TO
3 CUSTOMERS? PLEASE EXPLAIN.

4 A. Yes. Public Counsel supports Staff's recommended level of refunds for the sewer
5 commodity charge over-charges which covers the period April 9, 2007 through March 31,
6 2012; however, in order to ascertain the level of return due for service provided prior to
7 April 9, 2007, Public Counsel also sent a data request, OPC DR 50, to the Company,
8 requesting the Company to determine what the Company believes to be the level of over-
9 collections from the effective date of the current tariff, May 10, 2000 through April 8,
10 2007. Mr. Larry Pittman provided a workpaper using Staff's format, with updated
11 customer numbers, showing over-charges and interest from December 30, 2004 through
12 April 8, 2007. Mr. Pittman stated the Company did not have customer records going any
13 further back. Mr. Pittman's workpaper shows a total refund of \$78,712.53 for the
14 timeframe of December 30, 2004 through April 8, 2007. This total consists of \$61,637.01
15 in over-charging of the sewer commodity charge and \$17,075.52 in interest from the over-
16 charging of the sewer commodity charge.

17
18 Furthermore, Public Counsel developed an analysis comparing sewer revenues booked
19 versus revenues that should have been earned each year based on average customer
20 numbers to determine a reasonable level of refunds that should be refunded to customers

1 for the sewer commodity charge over-charges for the period May 10, 2000 through
2 December 29, 2004. Public Counsel has determined the total refund to be \$167,133.15 for
3 this period. This total consists of \$97,330.22 in over-charging of the sewer commodity
4 charge and \$69,802.94 in interest from the over-charging of the sewer commodity charge.

5
6 After combining Staff, Public Counsel, and Company analyses, Public Counsel believes
7 the total refund owed to customers for the sewer commodity charge over-charges from
8 May 10, 2000 through March 31, 2012 is approximately \$503,095.71. This total consists
9 of \$346,650.34 in over-charging of the sewer commodity charge and \$156,445.38 in
10 interest from the over-charging of the sewer commodity charge.

11
12 Q. IS PUBLIC COUNSEL'S ANALYSIS OF OVER-CHARGES IN THE PERIOD MAY
13 10, 2000 TO DECEMBER 29, 2004 SUBJECT TO CHANGE IF COMPANY IS ABLE
14 TO PROVIDE SUBSTANTIATING RECORDS?

15 A. Yes, Public Counsel's analysis during this timeframe is an estimate based on available
16 information and utilizing simple interest calculations.

17
18 Q. DID PUBLIC COUNSEL'S ANALYSIS UTILIZE COMPOUND INTEREST
19 METHODOLOGIES? PLEASE EXPLAIN.

1 A. No. Public Counsel's calculated portion of the monies that should be refunded is based on
2 simple interest. Public Counsel believes once the over-charges to be refunded are
3 authorized by the Commission, the associated interest should be calculated via compound
4 interest methodology and applied on all balances through the applicable refund period.

5
6 Q. HOW HAS STAFF PROPOSED TO DISTRIBUTE THE SEWER COMMODITY
7 CHARGE REFUNDS TO THE CUSTOMERS?

8 A. Staff witness, Mr. Busch, states in his direct testimony on page 7, lines 10 - 15:

9 Staff recommends that the Company provide bills credits to those
10 remaining customers over the course of 45-months to repay the
11 amounts owed. For those customers due a refund who no longer are
12 customers, Staff recommends that the Company send a check to those
13 customers with outstanding balances. If a customer on the system
14 moves prior to receiving their entire refund, then the Company will
15 send a check to that customer for the remaining balance.

16
17 Q. DOES PUBLIC COUNSEL AGREE WITH STAFF'S PROPOSAL FOR THE
18 DISTRIBUTION OF SEWER COMMODITY CHARGE REFUNDS TO CUSTOMERS?
19 IF NOT, PLEASE EXPLAIN.

20 A. No. Public Counsel does not agree with Staff's proposal for the distribution of sewer
21 commodity charge refunds to customers. For the refunds due for the time period of
22 December 30, 2004 through March 31, 2012, Public Counsel recommends the Company
23 be ordered to provide bills credits to those remaining customers over a 24-month period

1 after the effective date of the Commission's Order in this case. Public Counsel
2 recommends this shorter period because ratepayers are facing a 293.40% rate increase in
3 sewer rates, while being owed a significant amount of money due to Company's improper
4 billing of tariff rates. Public Counsel also recommends that interest on the sewer
5 commodity charge refunds should accrue from the date of inception through the entire
6 applicable payback period. Additionally, Public Counsel recommends that the Company
7 be ordered to provide a check to customers who are no longer customers whom are to
8 receive a refund, no later than 90 days after the effective date of the Commission Order in
9 this case. Also, Public Counsel recommends if a customer leaves the system before they
10 are given their full refund, the Company be ordered to provide a check to the customer no
11 later than 90 days after termination of service.

12
13 Q. IS PUBLIC COUNSEL'S PORTION OF ESTIMATED REFUNDS, CALCULATED
14 FROM MAY 10, 2000 TO DECEMBER 29, 2004 CUSTOMER SPECIFIC?

15 A. No.

16
17 Q. HOW DOES PUBLIC COUNSEL RECOMMEND THIS PORTION OF THE REFUNDS
18 BE DISTRIBUTED BACK TO CUSTOMERS?

19 A. Mr. Pittman stated the Company could not provide customer records prior to December 30,
20 2004; therefore, Public Counsel recommends the portion of estimated refunds calculated

1 from May 10, 2000 through December 29, 2004 be credited to all customers remaining on
2 the sewer system over a 24-month period after the effective date of the Commission's
3 Order in this case.
4

5 **V. REFUNDS OF LATE FEES AND RECONNECTION FEES**

6 Q. WHAT IS THE ISSUE REGARDING LATE FEES?

7 A. It has been determined that the Company had been charging a 10% late fee instead of 2%
8 or \$3, whichever is greater, as approved in the Company's tariff. Staff has determined the
9 over-charged late fees, with interest at a rate of 6%, should be returned to the affected
10 customers who paid these fees.
11

12 Q. WHAT IS THE AMOUNT OF LATE FEE REFUNDS THAT STAFF HAS
13 CALCULATED?

14 A. Staff's workpapers show it has calculated the total refund of late fees owed to customers at
15 \$5,802.85. This total consists of \$4,171.78 in over-charged late fees and \$1,631.08 in
16 interest from the over-charged late fees.
17

18 Q. DOES PUBLIC COUNSEL AGREE WITH THE AMOUNT OF LATE FEE REFUNDS
19 THAT STAFF HAS CALCULATED? IF NOT, PLEASE EXPLAIN.

1 A. Yes, Public Counsel believes Staff's calculation is reasonable given the amount of
2 information that is available from the Company for review.

3
4 Q. WHAT IS THE ISSUE REGARDING RECONNECTION FEES?

5 A. It has been determined that the Company had been charging a \$40 fee for water
6 reconnection rather than \$30 which has been approved in the Company's tariff. Staff has
7 determined the over-charged reconnect fees, with interest at a rate of 6%, should be
8 returned to the affected customers who paid these fees.

9
10 Q. WHAT IS THE AMOUNT OF RECONNECTION FEE REFUNDS THAT STAFF HAS
11 CALCULATED?

12 A. Staff's workpapers show it has calculated the total refund of reconnection fees owed to
13 customers at \$333.65. This total consists of \$280 in over-charged reconnect fees and
14 \$53.65 in interest from the over-charged reconnect fees. The interest has been charged at
15 6%.

16
17 Q. DOES PUBLIC COUNSEL AGREE WITH THE AMOUNT OF RECONNECTION FEE
18 REFUNDS THAT STAFF HAS CALCULATED?

19 A. Yes, Public Counsel believes Staff's calculation is reasonable given the amount of
20 information that is available from the Company for review.

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Q. HOW HAS STAFF PROPOSED TO DISTRIBUTE LATE FEE AND RECONNECTION FEE REFUNDS TO CUSTOMERS?

A. Staff witness, Mr. Busch, states in his direct testimony on page 8, lines 10 - 12:

Staff proposes that the Commission order the Company to provide a check to those customers who were erroneously charged and paid these late fees. This check should be sent within 90 days of the effective date of the order in this proceeding.

Q. DOES PUBLIC COUNSEL AGREE WITH STAFF'S PROPOSAL FOR THE DISTRIBUTION OF LATE FEE AND RECONNECTION FEE REFUNDS TO CUSTOMERS?

A. Yes, Public Counsel believes Staff's proposal is reasonable. However, Public Counsel also recommends that interest on the late fee and reconnection fee refunds should continue to accrue from the date of inception through the entire applicable payback period.

VI. CUSTOMER DEPOSIT REFUNDS

Q. WHAT IS THE ISSUE?

A. Staff witness, Mr. Busch, states in his direct testimony on page 8, lines 15 - 20:

During the course of its investigation, Staff determined that the Company has been violating its Commission approved tariff in two manners. First, the Company has been requiring all water customers to make a deposit of \$30 upon requesting service. Second, instead of refunding the deposits, with interest, as in accordance with the

1 Company's tariff after successful completion of given criteria, the
2 Company was holding the deposits until the customer left the system.
3

4 Q. WHAT IS THE AMOUNT OF CUSTOMER DEPOSIT REFUNDS THAT STAFF HAS
5 CALCULATED TO BE RETURNED TO CUSTOMERS?

6 A. Staff's workpapers show it has calculated the total refund of customer deposits owed to
7 customers at \$29,398.00. This total consists of \$11,730.00 in customer deposits to be
8 returned and \$17,668.00 in interest from the customer deposits. The interest has been
9 charged at 6% as stated in the Company's tariff.
10

11 Q. DOES PUBLIC COUNSEL AGREE WITH THE AMOUNT OF CUSTOMER DEPOSIT
12 REFUNDS THAT STAFF HAS CALCULATED?

13 A. Yes, Public Counsel believes Staff's calculation is reasonable given the amount of
14 information that is available from the Company for review.
15

16 Q. HOW HAS STAFF PROPOSED TO DISTRIBUTE THE CUSTOMER DEPOSIT
17 REFUNDS?

18 A. Staff witness, Mr. Busch, states in his direct testimony on page 9, lines 8 - 10:

19 Staff recommends that the Company send a check to all affected
20 customers within 90 days of the effective date of the order approving
21 this recommendation.
22

1 Q. DOES PUBLIC COUNSEL AGREE WITH STAFF'S PROPOSAL FOR THE
2 DISTRIBUTION OF CUSTOMER DEPOSIT REFUNDS?

3 A. Yes, Public Counsel believes Staff's proposal is reasonable. However, Public Counsel
4 also recommends that interest on the customer deposit refunds should continue to accrue
5 from the date of inception through the entire applicable payback period.

6
7 **VII. RECOMMENDATION**

8 Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION REGARDING THE SEWER
9 COMMODITY CHARGE OVER-CHARGES?

10 A. Public Counsel recommends that the Commission order the Company to refund over-
11 charges, with interest, collected during the period May 10, 2000 through March 31, 2012
12 totaling \$432,594.38. Public Counsel also recommends that the payback period for the
13 refunds due for the December 30, 2004 through March 31, 2012 timeframe be over 24-
14 months, instead of the 45-month period Staff has recommended. Public Counsel also
15 recommends that the interest accrue on the refunds from the date of inception throughout
16 the applicable payback period. Additionally, Public Counsel recommends that the
17 Company be ordered to provide a check to customers who are no longer customers whom
18 are to receive a refund, no later than 90 days after the effective date of the Commission
19 Order in this case. Also, Public Counsel recommends if a customer leaves the system
20 before they are given their full refund, the Company be ordered to provide a check to the

1 customer no later than 90 days after termination of service. Since Public Counsel's
2 estimated portion of refunds calculated from May 10, 2000 through December 29, 2004 is
3 not customer specific, due to the lack of customer records, Public Counsel recommends
4 this portion of the refunds be credited to all customers remaining on the sewer system over
5 a 24-month period after the effective date of the Commission's Order in this case.
6

7 Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION REGARDING THE LATE
8 FEE AND RECONNECTION FEE REFUNDS?

9 A. Public Counsel supports Staff's recommendation. Staff witness, Mr. Busch, states in his
10 direct testimony on page 8, lines 9 – 12, Staff's recommendation:

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

17 Public Counsel also recommends that interest continue to accrue on the refunds from the
18 date of inception throughout the applicable payback period.
19

20 Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION REGARDING CUSTOMER
21 DEPOSIT REFUNDS?

22 A. Public Counsel supports Staff's recommendation. Staff witness, Mr. Busch, states in his
23 direct testimony on page 10, lines 7 – 10, Staff's recommendation:

1 Staff recommends that the Commission order the Company to refund
2 all unlawfully collected customer deposits to all affected customers.
3 Staff recommends that a check in the amount of the appropriate
4 refund be sent to each affected customer within 90 days of the
5 effective date of the order in the proceeding.

6 Public Counsel also recommends that interest continue to accrue on the
7 refunds from the date of inception throughout the applicable payback period.

8
9 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

10 A. Yes, it does.