

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

In the Matter of a Small Utility Rate Case)
Procedure for Rogue Creek Utilities, Inc.) **File No. SR-2013-0435**

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STAFF’S RECOMMENDATION FOR EMERGENCY RATE RELIEF

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), and by and through the Staff Counsel’s Office, and for Staff’s recommendation for emergency rate relief states as follows:

Background

1. On March 27, 2013, Rogue Creek Utilities, Inc. (“Rogue Creek”) filed a request to increase rates for its water and sewer services. On that date, the company also filed tariff revisions with an effective date of April 26, 2013.
2. Rogue Creek was abandoned by its owner around March of 2007.
3. On November 9, 2007, the Circuit Court of Cole County ordered Rogue Creek into receivership, pursuant to 393.145 RSMo.
4. On June 11, 2012, Johansen Consulting Services was appointed receiver of Rogue Creek by the Circuit Court of Cole County and is currently the receiver of Rogue Creek.
5. Rogue Creek’s current sewer rates are \$15.46 per month and became effective on November 11, 2002. Rogue Creek’s current water rates also went into effect on November 11, 2002, and consist of a \$11.51 per month customer charge

(includes the first 1,000 gallons) plus a commodity rate of \$1.189 per 1,000 gallons of usage.

6. The Company provides service to approximately 100 customers.

7. Since the 2002 rates became effective, the operational costs have increased dramatically and many repairs that have been required due to the age of the infrastructure, both substantially increasing the cost of service.

8. Staff has determined that Rogue Creek is at serious risk both operationally and financially of failing to provide safe and adequate service. Please see attached *Water and Sewer Unit Recommendation* (Appendix 1), and *Auditing Unit Recommendation* (Appendix 2), for discussion of the operational and financial concerns, respectively.

9. In those Recommendations, Staff concludes that a potential operational emergency exists where, absent proper immediate repairs and the ongoing ability to make future repairs, there is risk of contamination of both ground water and drinking water. Staff concludes the potential danger to the continued provision of safe and adequate service, in consideration of Rogue Creek's on-going receivership status, constitutes a financial emergency.

10. Staff has determined that emergency rate relief is necessary in the form of interim rates, to take effect May 1. These rates will be collected subject to refund pending completion of the permanent rate case.

11. The interim rates are an increase of \$10.33 / month for water service, and \$8.52 / month for sewer service.

12. To the extent these interim rates exceed the permanent rates, the difference in rates multiplied by the months collected multiplied by the applicable customers shall be refunded as a credit to customers' bills.

13. Staff has determined that emergency rate relief is necessary in the form of a surcharge, to begin collection May 1. The surcharge will be tracked, and any excess in collection under the surcharge will be refunded through a mechanism in the company's next general rate cases.

14. The amount of the surcharge is \$13.67 / month for water service, and \$13.84 / month for sewer service.

15. This surcharge would be in place for the months of May, 2013, through April, 2014, unless the amounts of \$15,035, water, and \$14,310, sewer, are collected first. If those amounts are collected prior to collection of the April, 2014 billings, then that charge shall not be applied to the bills of that service. Any amount collected in excess of \$15,035, water, and \$14,310, sewer, shall be refunded through a mechanism in the company's next general rate cases.

16. Staff recommends that Commission order the company to immediately file tariff sheets in conformance with the sample tariff sheets attached as Appendix 3, with an effective date of May 1, 2013.

Legal Standard for Commission Authorization of Interim Rate Tariffs

17. Given the potential for impairment of the provision of safe and adequate service, Rogue Creek is facing a financial emergency such as would justify immediate rate relief under the Commission's authority to grant interim rate relief.

18. The Commission recently articulated the source and bounds of its authority to grant interim rate relief, in its October 31, 2012, *Report and Order Regarding Interim Rates*, in Case No. ER-2012-0345, concerning a request for interim rate relief by The Empire District Electric Company, Inc. In that order, the Commission stated as follows:

The Commission has the authority to grant interim rate relief, which is implied from the “file and suspend” statutes, Sections 393.140 and 393.150, RSMo.¹ While the statutes do not provide any specific legal standard regarding exercise of the Commission’s implied authority², it is clear that “[a]n interim rate increase may be requested where an emergency need exists”.³ This implied authority to grant interim rate increases is necessary to enable the Commission to “deal with a company in which immediate rate relief is required to maintain the economic life of the company so that it might continue to serve the public”.⁴ Previous Commissions have granted interim rate increases in emergency or near emergency situations or where the utility’s financial integrity or ability to provide safe and adequate service was threatened.⁵ In the most recent Commission rate case where a utility requested an interim rate increase, the Commission declined to grant interim relief “unless the utility is facing extraordinary circumstances and there is a compelling reason to implement an interim rate increase”.⁶

19. Regrettably, the potential inability of Rogue Creek to provide safe and adequate service under its current rate schedules does present extraordinary circumstances and a compelling reason to implement emergency rate relief on an interim, subject to refund, basis.

¹ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n*, 535 S.W.2d 561, 566 (Mo. Ct. App. 1976).

² *Id.*

³ *State ex rel. Util. Consumers’ Council of Missouri, Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d at 48.

⁴ *State ex rel. Fischer v. Pub. Serv. Comm’n of Missouri*, 670 S.W.2d 24, 26 (Mo. Ct. App. 1984).

⁵ *In re Missouri Public Service Co.*, Case No. ER-79-59, 28 P.U.R.4th 109, 22 Mo.P.S.C. (N.S.) 427 (Dec. 1, 1978); *Raytown Water Company*, Case No. WR-94-300, 1994 WL 321226; *In the Matter of Sho-Me Power Corporation of Marshfield, Missouri, for Authority to File Emergency Interim Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case No. ER-83-20, 1982 WL 190892; *In the Matter of Timber Creek Sewer Company, Inc.’s Tariff Designed to Increase Rates for Sewer Service*, File No. SR-2008-0080, 2007 WL 3243348; *In the Matter of the Application of Citizens Electric Corporation for Approval of Interim Rates, Subject to Refund, and for a Permanent Rate Increase*, Case No. ER-2002-217, 2001 WL 1840788.

⁶ *In the Matter of Union Electric Company d/b/a AmerenUE’s Tariffs to Increase its Annual Revenues for Electric Service*, File No. ER-2010-0036, Report and Order Regarding Interim Rates, p. 12.

WHEREFORE, the Staff respectfully recommends the Commission order the immediate filing of tariffs in conformance with the sample tariff sheets attached as Appendix 3, to take effect May 1 upon less than 30 days' filing, and implementation of both the interim rates and surcharge described here-in, and any other relief the Commission deems appropriate and reasonable.

Respectfully submitted,

/s/ Sarah Kliethermes

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 15th day of April, 2013.

/s/ Sarah Kliethermes