

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

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

STAFF’S POST-HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Post-hearing Brief*, states:

Introduction

The unusual circumstances of this hearing are regrettable because the additional proceedings on the issue of rate case expense will necessarily result in yet more rate case expense. Making this case particularly difficult is the fact that these expenses, plus the other revenue requirement increases granted by the Commission, must be paid for by only 122 customers.

This case was initiated as a small company rate increase request, pursuant to Commission Rule 4 CSR 240-3.050. Lincoln County Sewer & Water, LLC (“Lincoln County” or “Company”) is a small water and sewer company serving 122 customers in two subdivisions, Rockport and Bennington.¹ After a hearing and initial briefs, the parties were unable to resolve the amount of rate case expense to include in rates. A second hearing on June 13, 2014, focused solely on rate case expense.

Lincoln County seeks \$66,510 as an addition to revenue requirement for rate case expense, to be amortized over three years.² The total amount incurred litigating

¹ Tr. 3:102.

² Tr. 4:547.

this rate case includes the expense for two attorneys, a consultant, and time spent by office personnel and Mr. and Ms. Kallash. Staff recommends that \$47,115 be recovered in rates, including the costs of the Company's attorneys, consultant, and the verifiable portions of Ms. Kallash's time, and that this amount be amortized over five years in order to balance the needs and concerns of the Company with the customers' very real interest in affordable rates.³

Argument

Issue 1: What is the appropriate amount of rate case expense to include in the Company's rates?

Facts:

1. The Company has asked for \$66,510, to be amortized over three years.⁴
2. Staff believes that \$47,115, amortized over five years with a tracker, is appropriate to include in rates.⁵
3. OPC recommends an amount of \$39,662.16, to be normalized over 5 years.⁶
4. Brydon, Swearngen & England tendered bills totaling \$27,990 to Lincoln County for the professional services of attorney Dean Cooper.⁷
5. The Company filed the affidavit and bills from attorney Dean Cooper which include detailed dates, time, and descriptions of work done.⁸

³ "Ratemaking is a balancing process. Although there are general guidelines and restrictions placed upon a regulatory body's discretion concerning rates, that discretion is very broad within those perimeters." *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of State of Mo.*, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988).

⁴ Tr. 4:547.

⁵ Tr. 4:551, line 19. The purpose of the tracker is to ensure that all of the rate case expense is recovered and that there is no over-recovery.

⁶ Tr. 4:526; OPC Exhibit 2.

⁷ Lincoln County Exhibit No. 1 - Affidavit of Dean Cooper.

6. McIlroy & Millan tendered bills totaling \$3,220 to Lincoln County for the professional services of attorney Jim Burlison.⁹
7. The Company filed the affidavit and bills from attorney Jim Burlison which include detailed dates, time, and descriptions of work done.¹⁰
8. Dale Johansen tendered bills totaling \$10,106 to Lincoln County for his professional services as an expert consultant.¹¹
9. The Company filed the affidavit and bills from consultant Dale Johansen which include detailed dates, time, and descriptions of work done.¹²
10. Lincoln County seeks \$25,194 for the Company's time and expenses in addition to the professional services of Cooper, Burlison and Johansen.¹³
11. Mr. Kallash was provided a template to use for keeping time by Staff in the CCN case, but chose not to use it.¹⁴
12. Lincoln County provided handwritten notes by Dennis Kallash, some indicating dates and some not, some indicating time spent and some not, and some with a summary description of the work done and some without any indication other than a Commission Staff member's name.¹⁵

⁸ Lincoln County Exhibit 1.

⁹ Lincoln County Exhibit No. 2 - Affidavit of Jim Burlison.

¹⁰ Lincoln County Exhibit 2.

¹¹ Lincoln County Exhibit No. 3 - Affidavit of Dale Johansen.

¹² Lincoln County Exhibit 3.

¹³ Tr. 4:547.

¹⁴ Tr. 4:439-440.

¹⁵ Lincoln County Exhibit 5.

13. Lincoln County provided a spreadsheet compiled by its consultant that lists dates and hours worked by Mr. and Mrs. Kallash, but it lacks any detailed descriptions of the work done.¹⁶
14. Some of the time sheets kept for Mr. Kallash did not have dates, did not have hours, and did not have times.¹⁷
15. Inconsistencies on the Kallash's time sheets include one day where the listed time was recorded entirely as time spent preparing the rate case and another version of the same day where that same time period includes utility operations activities in addition to rate case preparation.¹⁸
16. The Commission stated in its *Report and Order*, "[t]he Staff of the Commission is unable to determine the number of hours Mr. Kallash spends time working with the sewer and water company."¹⁹
17. The Commission determined that "Mr. Kallash spends 11.5 hours/week performing services with the sewer and water company."²⁰
18. The figure of 11.5 hours/week cites to Kallash Surrebutal (LCSW 4), Schedule DK-4S.²¹
19. Kallash Surrebutal (LCSW 4), Schedule DK-4S is a handwritten note listing time and descriptions totaling 11.5 hours; 9 of those hours were spent on rate-case-related matters.²²

¹⁶ Lincoln County Exhibit 4.

¹⁷ Tr. 4:464

¹⁸ Tr. 4:469

¹⁹ *Report and Order*, iss'd April 2, 2014, p. 28, par. 96.

²⁰ *Report and Order*, iss'd April 2, 2014, p. 28, par. 95.

²¹ *Id.*

20. The Commission concluded in its *Report and Order*, “with regard to the number of monthly hours Ms. Kallash works, Staff presents the only reasonable suggestion by averaging the hours that are in evidence.”²³
21. Staff averaged the hours for October 2012 through March 2013 to arrive an annual compensation for Ms. Kallash.²⁴
22. Ms. Kallash’s hours for December “dramatically increased in December of 2012, when the company filed ... [its] rate increase request.”²⁵
23. Lincoln County told Staff that several items were not available for Staff’s review for this current case, including bank statements.²⁶
24. Public Counsel expert William Addo calculated the toner plus per copy charge billed by Fitch & Associates for rate case expense results in a cost of approximately one dollar and twenty cents per copy.²⁷

Analysis:

The Commission must consider all expenses incurred by Lincoln County in providing utility service and must determine whether it should set rates that will recover them.²⁸ The Company has incurred rate case expenses litigating this case and Staff agrees those are recoverable in rates as a cost of doing business to the extent that they are reasonable, necessary and prudent. At present, Staff recommends that \$47,115 be

²² Kallash Surrebuttal (LCSW 4), Schedule DK-4S.

²³ *Report and Order*, iss'd April 2, 2014, p. 31.

²⁴ *Id.* at 30.

²⁵ *Id.* at 31.

²⁶ Tr. 4:491

²⁷ Tr. 4:513

²⁸ Sections 393.150 and 393.230, RSMo.; ***State ex rel. Union Electric Co. v. Public Service Commission***, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988).

amortized over five years with a tracker.²⁹ This position is a compromise, a departure from Staff's preferred method of normalizing rate case expenses, but one that strikes a balance between the interests of Lincoln County and the interests of its customers.

The overall amount of rate case expense for the Commission's consideration can be broken down into separate sub-issues of (A) professional fees, (B) compensation for Dennis Kallash, (C) compensation for Toni Kallash, (D) compensation for Fitch & Associates employee "Patty", and (E) miscellaneous items.

(A) Professional Fees:

On this issue, the parties are in agreement as to the inclusion of the attorney and consultant fees.³⁰ The two attorneys and the consultant have each submitted itemized invoices with proper detail as to what was done for each of the minutes claimed and the charged rates. The attorney fees for Brydon, Swearingen & England (Dean Cooper) total \$27,990; the attorney fees for McIlroy & Millan (Jim Burlison) total \$3,220; and the consulting fees for Dale Johansen total \$10,106. Staff agrees these amounts are recoverable in rates as a reasonable and necessary cost of doing business.

(B) Compensation for Dennis Kallash:

The parties disagree on the calculation of rate case compensation for Dennis Kallash. Lincoln County has asked for \$13,300 in rate case expense for Mr. Kallash. This figure is calculated by multiplying a \$25 hourly rate by the number of hours Mr. Kallash asserts that he worked on the rate case.³¹

²⁹ Tr. p. 551, line 19.

³⁰ Tr. 4:403.

³¹ Tr. 4:455.

Public Counsel argues that the only appropriate time period for rate case expense runs from the filing of the case, which is December 4, 2012, through November 26, 2013.³² OPC further argues the rate case expenses incurred within that time period by Lincoln County should have been provided and audited at the time of the initial hearing when rate case expense was resolved³³ and are now untimely.³⁴ Lastly, OPC argues the total rate case is so extraordinary that it is not just and reasonable to include the amount in rates.³⁵ As a result, OPC asks the Commission to disallow the entire amount of rate case compensation sought by Lincoln County for the services of Dennis Kallash.

Staff also believes that Mr. Kallash's additional rate case time should be disallowed, but for different reasons than OPC. The first reason is that discrepancies in Mr. Kallash's timesheets raise issues as to the true number of hours worked. An instructive comparison is found between Lincoln County's own exhibits 2, 3, and 4, the itemized statements submitted by the Company's retained professionals, and the timesheets submitted by the Company for Mr. Kallash. The latter are so deficient in essential details of date, time and task description that it is simply not possible to determine the total number of hours that Mr. Kallash devoted to the rate case.

Staff witness Lisa Hanneken testified that the notes and spreadsheet Lincoln County provided contained conflicting information.³⁶ One such inconsistency includes one day where the listed time was recorded entirely as time spent preparing

³² Tr. 4:396, 400.

³³ Tr. 4:408.

³⁴ Tr. 4:405-407.

³⁵ *Id.*

³⁶ Tr. 4:469

the rate case, and another version of the same day where that same time period includes utility operations activities, not just rate case preparation.³⁷ Another deficiency in the time sheets is illustrated by the April 4th entry in Lincoln County Exhibit 5,³⁸ which on the left side says “1/2” and for the description says “Jim Bush.” Any time entry for April 4th is totally absent from the second set of notes provided to Staff and entered in evidence as Late-Filed Commission Exhibit 6. The entry for April 5th on Lincoln County Exhibit 5 on the left side says “[symbol] T 2 ½” and the description is “Jim Burlison.” This date, too, is absent from the second set of notes provided to Staff.³⁹ These are just two examples of the many inconsistencies in the “timesheets” maintained by Dennis Kallash.⁴⁰ Lincoln County has provided a spreadsheet compiled by its consultant on pages 3 – 6 of Lincoln County Exhibit 4. While more aesthetically pleasing than the handwritten notes it is based upon, it does little to resolve the data deficiencies. Lincoln County Exhibit 4, page 3, has an entry that reflects .5 hours for Dennis on April 4th; none of the handwritten notes show that time as attributable to Mr. Kallash.⁴¹ That the data in Lincoln County’s Exhibit 4 is, at least in part, based on assumptions calls into question the veracity of the spreadsheet.

Any suggestion by Lincoln County that the lack of proper documentation is somehow Staff’s fault is wholly inappropriate. Mr. Kallash was provided a template to use for keeping time by Staff in the CCN case that allows for reasonably detailed

³⁷ Tr. 4:469

³⁸ At p.2.

³⁹ Late-Filed Commission Ex. 6, p. 9.

⁴⁰ Staff also identified inconsistencies for 10/15/2012, 1/20/2013, 2/19/13, and 3/26/13.

⁴¹ Lincoln County Ex. 5; Late-Filed Commission Ex. 5; and Late-Filed Commission Ex. 6.

timekeeping, but *chose not to use* the template.⁴² From Mr. Kallash's testimony on page 439:

**15 Q. Okay. And in the course of that certificate
16 case, isn't it true that Staff advised you to keep
17 detailed time sheets?**

18 A. They told me -- can -- for 16 years when we
19 ran this company, there was no time sheets ever kept.
20 They told me after we had got through the process that
21 there was going to be some things we had to do. And
22 that's when I met with Lisa Kremer and stuff like that
23 and talked about that. That is correct.

**24 Q. Okay. So you agree they told you to keep
25 detailed time sheets?**

Mr. Kallash's testimony continued on page 440:

1 A. They told me I was going to have to keep
2 track of my time. And I talked to -- and I talked to
3 Steve Latham,⁴³ who approved my notes. I talked to Lisa
4 Kremer, who approved my notes.

**5 Q. Mr. Kallash, isn't it true they even gave you
6 a form as a template to use?**

7 A. They gave me a form. That's correct.

8 Q. Thank you.

⁴² Tr. 4:439-440.

⁴³ A reference to former PSC employee Steve Loethen.

9 A. But said I did not have to use it.

10 Q. **And in fact, you did not use it; did you?**

11 A. I did not use it.

To the extent that the Company seeks recovery of time spent on rate case activities by Mr. Kallash, it is only reasonable that reliable evidence of that time be produced. Although Mr. Kallash was given a template time sheet by Staff in a prior case, he chose not to use it. Now, he seeks several thousands of dollars based on incomplete and inconsistent notes, some portion of which was evidently reconstructed after the fact. Employee timesheets are a basic business record and Mr. Kallash, as an experienced businessman, is undoubtedly familiar with them. Nonetheless, he chose not to keep acceptable timesheets and must live with the consequences of his decision.

The second reason Staff opposes the inclusion of any additional rate case expense for Mr. Kallash is because Staff believes the Commission has already factored in the time spent on rate case activities by Mr. Kallash in its *Report and Order*. Unable to determine the actual hours Mr. Kallash worked, again as a result of poor record keeping, the Commission relied on an estimate.

The Commission concluded, “with regard to the number of monthly hours Ms. Kallash works, Staff presents the only reasonable suggestion by averaging the hours that are in evidence.”⁴⁴ Ultimately, the Commission determined “Mr. Kallash spends 11.5 hours/week performing services with the sewer and water company.”⁴⁵ This number was an estimation, in part because “[t]he Staff of the Commission is unable to determine the number of hours Mr. Kallash spends time working with the sewer and

⁴⁴ *Report and Order*, iss'd April 2, 2014, p. 31.

⁴⁵ *Id.*, p. 28, par. 95.

water company.”⁴⁶ As here, during the initial part of this case, lack of coherent information and incomplete records caused issues.

The figure of 11.5 hours/week determined by the Commission cites to Kallash Surrebuttal (LCSW 4), Schedule DK-4S.⁴⁷ That evidence, Schedule DK-4S, is a handwritten note listing time and description totaling 11.5 hours; 9 of those hours were spent on rate-case-related matters.⁴⁸ It is a fact that the week relied on by the Commission to extrapolate monthly hours worked included a large number of hours spent on the rate case. Logically, because the calculation of Mr. Kallash’s regular salary included time spent on rate-case-related work, his regular salary would have been intended to compensate him for that time spent on rate-case-related work. Because Mr. Kallash has already been compensated for his rate-case time, and because Lincoln County did not present verifiable time information, the Commission should disallow the entire amount requested by Lincoln County for Mr. Kallash’s compensation. There is simply not enough information with which to evaluate if the expense was reasonable, necessary or prudent.

(C) Compensation for Toni Kallash:

The calculation for rate case compensation for Toni Kallash is similarly contentious. Lincoln County has asked for \$10,030 for her rate-case-related services. That number is a calculation of the hours purportedly spent on the rate case times a \$20 per hour rate.⁴⁹

⁴⁶ *Id.*, p. 28, par. 96.

⁴⁷ *Id.*

⁴⁸ Kallash Surrebuttal (LCSW 4), Schedule DK-4S.

⁴⁹ Tr. 4:454.

Public Counsel again argues the rate case expense is unaudited,⁵⁰ untimely,⁵¹ and so extraordinary that it is not just and reasonable to include the amount in rates.⁵² As a result, OPC asks the Commission to disallow the entire amount of rate case compensation sought for Ms. Kallash.

The most reasonable solution for this sub-issue is to reduce the amount that can be recovered for Ms. Kallash, but not to disallow the entire amount. The “timesheets” detailing Ms. Kallash’s time sent to Staff during the rate case audit consist of calendars with hours worked written on each day, and sometimes a brief description of the work done.⁵³ Ms. Kallash also apparently had time recorded on the other handwritten notes, indicated by a “T” next to an entry.⁵⁴ This latter method of timekeeping is deficient in many of the same respects as already described with reference to Mr. Kallash.

Additionally, as with Mr. Kallash, Staff believes the Commission took into account the time Ms. Kallash spent on rate-case activities when it determined the level of her salary to include in rates in the initial *Report and Order*. As previously mentioned, the Commission concluded that Staff presented the only reasonable suggestion by averaging the hours for the Kallashes.⁵⁵ In that calculation, Staff averaged the hours for October 2012 through March 2013 to arrive an annual compensation for Ms. Kallash.⁵⁶ Importantly, Ms. Kallash’s hours “dramatically increased in December of 2012, when the

⁵⁰ Tr. 4:408.

⁵¹ Tr. 4:405-407.

⁵² *Id.*

⁵³ Late-Filed Commission Exhibits 3 – 4.

⁵⁴ Late-Filed Commission Exhibits 7 – 8.

⁵⁵ *Report and Order*, iss’d April 2, 2014, p. 31.

⁵⁶ *Id.* at 30.

company filed ... [its] rate increase request.”⁵⁷ Because the lack of proper documentation required the Commission to estimate hours worked, calculation of Ms. Kallash’s regular salary included time spent on rate-case-related work. Thus, her regular salary would have been intended to compensate her for some of the time spent on rate-case-related work. The regular salary calculation was based on the handwritten notes on calendars.⁵⁸ Staff compared the handwritten notes that Lincoln County offered to support her time spent on the rate case⁵⁹ to the calendar notes and determined to allow 60-percent of the pre-hearing hours Lincoln County suggests for Ms. Kallash. In addition, Staff expert Lisa Hanneken testified that she is confident the hours for Ms. Kallash on the hearing and post-hearing notations are accurate.⁶⁰ Thus for the hearing and post-hearing hours claimed for Ms. Kallash, Staff suggests allowing 100-percent. However, rather than apply the \$20 per hour rate that Lincoln County requests, Staff applied the Commission-ordered rate of \$15.34 cents per hour. Based on the estimated and known hours worked on the rate case multiplied by the Commission ordered rate, \$4,700 should be included in rates for Toni Kallash’s time.

(D) Compensation for Fitch & Associates’ Employee “Patty”:

Lincoln County seeks \$340 for work performed by “Patty,” an employee of Fitch & Associates. This amount was derived by multiplying her hours worked by a rate of \$20 per hour.

⁵⁷ *Id.* at 31.

⁵⁸ Late-Filed Commission Exhibits 3 – 4.

⁵⁹ Lincoln County Exhibit 5.

⁶⁰ Tr. 4:473.

Again, Public Counsel argues the rate case expense is unaudited,⁶¹ untimely,⁶² and so extraordinary that it is not just and reasonable to include the amount in rates.⁶³ As a result, OPC asks the Commission to disallow the entire amount of rate case compensation for “Patty.”

Staff does not dispute the hours “Patty” worked; however, Lincoln County used an hourly rate higher than the Commission approved in its *Report and Order*. Based on the hourly rate approved by the Commission, Staff proposes that an amount of \$261 should be included in rates for “Patty’s” time.

(E) Miscellaneous Items:

Several miscellaneous items were incurred by Lincoln County in preparation of the rate case, including: (i) Fitch & Associates copying and ink; (ii) Wal-Mart ink; (iii) hotels and meals; and (iv) mileage. For each of these costs, Public Counsel objects to any level of inclusion because they are unaudited,⁶⁴ untimely,⁶⁵ and so extraordinary that it is not just and reasonable to include the amount in rates.⁶⁶

(i) Fitch & Associates Copying and Ink:

Lincoln County seeks \$570.79 for the cost of copies and ink cartridges obtained from Fitch & Associates, a company owned by Mr. Kallash.⁶⁷ To support this amount, the Company provided an invoice from the affiliated company for \$327.79 in ink

⁶¹ Tr. 4:408.

⁶² Tr. 4:405-407.

⁶³ *Id.*

⁶⁴ Tr. 4:408.

⁶⁵ Tr. 4:405-407.

⁶⁶ *Id.*

⁶⁷ Tr. 4:414.

cartridges and 486 copies at 50 cents per copy.⁶⁸ Staff's expert testified that the office supply store that Lincoln County has used previously charges 7 cents per copy.⁶⁹ Lincoln County never provided any clarification about the use of the ink cartridges.⁷⁰ If the ink cartridges were used in making those copies, according to Public Counsel expert William Addo's calculation of the toner plus per copy charge, Lincoln County paid an affiliated company - owned by Dennis Kallash - approximately *one dollar and twenty cents per copy*.⁷¹

In these circumstances, without further clarification about the ink cartridges, it is unreasonable to require captive ratepayers to subsidize the affiliated business of Mr. Kallash. Staff believes that \$34.02, the amount of copies multiplied by 7 cents, should be included in rates for copies.

(ii) Wal-Mart Ink:

Lincoln County seeks \$47.66 for ink cartridges purchased from Wal-Mart. Staff does not object to including this amount in rates.

(iii) Hotels and Meals:

The Company seeks \$467 for hotel charges and meal costs incurred during the hearing. While Staff has concerns about the lack of detailed documentation for these charges, it does not object to including this amount in rates.⁷²

⁶⁸ Tr. 4:444.

⁶⁹ Tr. 4:476.

⁷⁰ Tr. 4:476 – 477.

⁷¹ Tr. 4:513

⁷² Tr. 4:480-484.

(iv) Mileage:

Lincoln County seeks \$437.88 in mileage reimbursement for rate-case-related travel. Staff calculated the mileage for trips to Jefferson City for meetings and the hearing, attendance at the local public hearing, and various other items to be 512 miles.⁷³ Staff subtracted mileage for commuting to the office.⁷⁴ Based on the allowable miles multiplied by the federal rate of 56 cents per mile, \$287 should be included in rates.⁷⁵

Issue 2: Exactly how should the rate case expense be recouped?

Analysis:

Staff recommends that \$47,115 be allowed in rates, amortized over five years with a tracker.⁷⁶ This treatment will ensure that all of the allowed rate case expense is recovered and will also prevent any over-recovery.

In most rate proceedings, Staff recommends that rate case expenses be normalized over a period from two to three years, periods that reflect the expected interval between rate cases. Normalization treatment of rate case expenses is preferable because it will best set rates to include a reasonable level going-forward of the expenses the company may incur during a normal rate case. However, where the amount of those expenses is so great as to expose the ratepayers to rate shock, as in these special circumstances, Staff will recommend alternative treatment over a longer period in order to reduce the annual impact and mitigate any rate shock. By amortizing

⁷³ Tr. 4:485.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Tr. p. 551 line 19.

this amount with a tracker, the Company is protected because all of the allowable rate case expense amount will be recovered, no matter when the Company comes in for its next rate case. Likewise, the tracker will protect the ratepayers by ensuring that there is no over-recovery. Thus, the use of amortization treatment in this case, coupled with the tracker mechanism proposed by Staff, is vital to ensuring that Lincoln County recovers the appropriate amount determined by the Commission, not more, not less. If use of a tracker is ordered, the disposition of any over-recovered amount of rate case expense experienced by Lincoln County will be addressed by the parties in the company's next sewer and water rate proceedings.

The five-year time period for amortization is important because it allows the cost to be distributed over a longer time period, thereby helping to mitigate the rate-shock inherent in a larger rate increase. The rate case expense incurred in this case is so large compared to Lincoln County's number of customers that Staff's proposed steps to mitigate rate-shock are necessarily reasonable.

Conclusion

In summary, in order to strike a reasonable balance between Lincoln County and its customers, Staff recommends that \$47,115 in rate case expense should be included in rates, amortized over five years with a tracker. In this way, the Company is assured of recovery of all verifiable rate case expense, while the ratepayers are protected from any over-recovery.

WHEREFORE, Staff submits its *Post-hearing Brief* for the Commission's consideration and requests the Commission resolve each issue in this case as recommended by Staff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this **30th day of June, 2014.**

/s/ Tim Opitz