

**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 RESPONSE AND MOTION FOR RECONSIDERATION**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), and by and through the Staff Counsel’s Office, and for its response and motion 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. On April 2, the Office of the Public Counsel (“Public Counsel”) filed an objection to the company’s request for an immediate revision to its tariff. Public Counsel therefore requests that the Commission suspend the revised tariff.

3. On April 2, 2013, the Commission entered its *Order Directing Company to Respond to the Office of the Public Counsel’s Objection* (“Order”).

**Rogue Creek is in a State of Financial Emergency Placing at Risk Its Ability to Provide Safe and Adequate Service**

4. Rogue Creek was abandoned by its owner around March of 2007.

5. On November 9, 2007, the Circuit Court of Cole County ordered Rogue Creek into receivership, pursuant to 393.145 RSMo.

6. 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.

7. 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.

8. The Company provides service to approximately 100 customers.

9. 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.

10. One cost that has increased dramatically that directly affects the Company's ability to provide safe and adequate service is the expense of a contract operator. Those costs are not built into the current rate structure because the initial receiver was also an operator. Since the costs were not built into rates, the Company is unable to pay those fees. The Company has been unable to pay these required fees since January.

11. It is Staff's understanding that the current contract operator is no longer providing service due to lack of payment.

12. In addition to the normal ongoing costs discussed above, a major environmental event has occurred on the sewer system. Around the middle of March, a sewer back-up occurred on the system. Rogue Creek contacted a contractor to

address the problem. The back-up was located, but the contractor would not complete the task without an initial payment from Rogue Creek. Rogue Creek did not have the funds on hand or access to funding to pay the contractor, nor did it have personnel on staff. After a week or two of sewage flowing into a lake in the subdivision, the Missouri Department of Natural Resources (DNR) provided emergency financing to the contractor to fix the back-up. DNR will be billing the Company for said expense.

13. Although Staff has not yet had the opportunity to perform an audit of Rogue Creek in the context of this rate request, based on the information Staff has reviewed at this time, it appears that the financial condition of Rouge Creek is such that there is a danger to its continued provision of safe and adequate service.

14. Staff concludes that this 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 such as would warrant emergency interim rate reliefs, with such rates to be collected subject to refund pending a final audit and implementation of permanent rates in this matter.

15. Staff intends to file a report recommending the level of interim rate relief necessary, and describing appropriate surcharges, if any, on or before April 15, 2013.

### **Legal Standard for Commission Authorization of Interim Rate Tariffs**

16. The Commission's April 2 *Order* directed a response as to any exception under which immediate rate relief may be sought, which is apparently contrary to Commission rule 4 CSR 240-3.050.<sup>1</sup>

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<sup>1</sup> Commission Rule 4 CSR 240-3.050(2) does state, inter alia, that "[a] utility filing such a request shall specify the amount of the revenue increase that it is seeking, but shall not submit any proposed tariff revisions with the request." Staff understands this provision to relate to the regular small utility rate request procedure, and not to a request for emergency relief. Staff reaches this conclusion because necessarily tariff sheets implementing emergency rate relief would take effect while the regular rate procedure is executed, as discussed below. To the

17. Given the potential for impairment of the provision of safe and adequate service, Staff suggests that 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.<sup>2</sup> While the statutes do not provide any specific legal standard regarding exercise of the Commission's implied authority<sup>3</sup>, it is clear that "[a]n interim rate increase may be requested where an emergency need exists".<sup>4</sup> 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".<sup>5</sup> 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.<sup>6</sup> 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".<sup>7</sup>

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extent this provision does apply to an emergency interim rate request, Staff would support *sua sponte* waiver of this provision for good cause. In this instance, good cause is constituted by the same circumstances that constitute the emergency.

<sup>2</sup> *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 535 S.W.2d 561, 566 (Mo. Ct. App. 1976).

<sup>3</sup> *Id.*

<sup>4</sup> *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d at 48.

<sup>5</sup> *State ex rel. Fischer v. Pub. Serv. Comm'n of Missouri*, 670 S.W.2d 24, 26 (Mo. Ct. App. 1984).

<sup>6</sup> *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.

<sup>7</sup> *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.

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.

### **Response to Public Counsel**

20. In its pleading, Public Counsel stated, “[i]n an emergency situation, the Commission would analyze factors including the depth of the emergency, the actions that the utility had taken to minimize it, and the risk of harm. None of those are considerations here.”

21. As presented above, these considerations are present in this circumstance.

22. Public Counsel requests suspension of the interim rate tariff sheets. Staff is endeavoring to complete the level of audit necessary to recommend a level of rates to be implemented on an emergency basis, to be collected interim, subject to refund. As stated above, Staff expects to be able to provide this recommendation very soon; however it is unlikely that Staff’s ultimate recommended emergency interim rates will be for the exact amounts and exact terms contained on Rogue Creek’s filed tariff sheets.

23. Staff does not object to a brief suspension, but wishes to make clear to the Commission and Public Counsel that it does expect to recommend implementation of some level of interim, subject to refund, rate relief for Rogue Creek, at or around the effective date of the subject tariff sheets.

## **Request for Reconsideration**

24. Given the serious threat of impairment of safe and adequate service discussed above, Staff elected to respond to the *Order* and Public Counsel's pleading.

25. Given this Staff response, Staff suggests that there is no need to incur additional rate case expense and delay by requiring a further utility filing.

26. Staff suggests the Commission reconsider the ordered response directed in its *Order*, and not require a separate response to be made by Rogue Creek, unless Rogue Creek elects to make such a filing.

27. Relieving Rogue Creek of the obligation to make a separate filing in this instance where the company is under receivership where such receivership requires legal representation in order to act will minimize ongoing costs to customers.

**WHEREFORE**, the Staff respectfully recommends the Commission reconsider its *Order Directing Company to Respond to the Office of the Public Counsel's Objection*, and not require such filing.

Respectfully submitted,

**/s/ Sarah Kliethermes**

Sarah L. Kliethermes  
Senior Counsel  
Missouri Bar No. 60024

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-6726 (Telephone)  
(573) 751-9285 (Fax)  
sarah.kliethermes@psc.mo.gov

**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 8<sup>th</sup> day of April, 2013.

**/s/ Sarah Kliethermes**

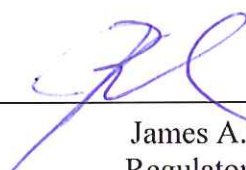
BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

AFFIDAVIT OF JAMES A. BUSCH

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

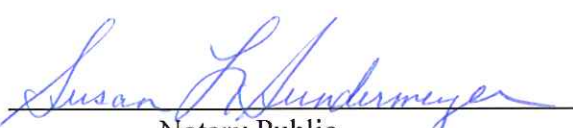
In the Matter of a Small Utility Rate Case )  
Procedure for Rogue Creek Utilities, Inc. ) File No. WR-2013-0436

James A. Busch, of lawful age, on his oath states: (1) that he is a Regulatory Manager of the Water and Sewer Department of the Missouri Public Service Commission; (2) that he participated in the preparation of the for the facts alleged in the attached pleading; (3) that he has knowledge of the matters set forth in the foregoing *Staff Response and Motion for Reconsideration*; and (4) that the matters set forth in the foregoing *Staff Response and Motion for Reconsideration* are true and correct to the best of his knowledge, information and belief.

  
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James A. Busch  
Regulatory Manager  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 8<sup>th</sup> day of April 2013.

SUSAN L. SUNDERMEYER  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Callaway County  
My Commission Expires: October 03, 2014  
Commission Number: 10942086

  
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Notary Public