

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

In the Matter of the Application of Lincoln)
County Sewer & Water, LLC for Approval)
of a Rate Increase.)

File No. SR-2013-0321

**THE OFFICE OF THE PUBLIC COUNSEL'S APPLICATION
FOR REHEARING**

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states that rehearing is warranted and the Report and Order should be reheard because the decision is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion, all as more specifically and particularly described in this motion and as follows:

Application for Rehearing

A. **Introduction**

The Office of the Public Counsel (Public Counsel), pursuant to Section 386.500¹ and 4 CSR 240-2.160, specifically sets forth the reasons warranting a rehearing and moves the Missouri Public Service Commission (Commission) for rehearing of its Report and Order of April 2, 2014, effective May 2, 2014.

¹ All statutory citations are to the Revised Statutes of Missouri 2000, unless otherwise noted.

B. Depreciation for Over-Depreciated Plant Account is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission's decision allowing depreciation expense for the over-accrued Bennington plant account is unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

The Report and Order states: "OPC posits that the depreciation rate for the submersible pump should be set at zero. This ignores the fact that the pump is depreciated along with other items in an account."² The Report and Order also states: "OPC's adjustment is based on its understanding that items should be depreciated individually, not by account with related items having different lives."³ None of these statements accurately reflect Public Counsel's position in this case.

After reading through the Report and Order it seems there has been a misunderstanding about Public Counsel's position on the over-depreciated pumping account for the Bennington system. The Commission (and possibly Staff and the Company) seems to be unaware that what Public Counsel essentially proposed was to set up one depreciation sheet for the Bennington water system showing a 0% depreciation rate for its pumping account and a separate depreciation sheet for the Rockport water system showing a depreciation rate of 10% for its pumping account. It was never Public Counsel's position that items should be depreciated individually and not by account.

The Bennington water system and the Rockport water system have separate customers, separate water sources, separate equipment and therefore, separate rates. As Mr. Rice admits,

² Report & Order, pg. 20.

³ Report & Order, pg. 21.

the pumping account for the Bennington water system pumping equipment is over-accrued in that it has accrued more than it should at this point in its life.⁴ As a result, the evidence shows that as of May 30, 2010, LCSW has fully recovered the costs of the Bennington water system's pumping equipment as reflected in the Bennington water system's pumping account.⁵

While the evidence shows that the pumping account for the Bennington water system is fully depreciated, the evidence also shows that the pumping account for the Rockport water system pumping equipment is not.⁶ As it is not over-accrued, Public Counsel would agree that it is just and reasonable that the Rockport water system pumping account continue accruing a 10% depreciation rate for its pumping equipment. It is believed that Staff and the Company would also agree. So, the gist of the question before the Commission was what is just and reasonable for the Commission to do about the over-accrued pumping account for the Bennington water system.

Public Counsel argued that the depreciation rate for the pumping account containing the pumping equipment at the Bennington water system be set to 0%. In essence, what Public Counsel proposed was to set up a depreciation sheet for the Bennington water system showing a 0% depreciation rate for its pumping account and a separate depreciation sheet for the Rockport water system showing a depreciation rate of 10% for its pumping account. Since the Bennington water system and the Rockport water system have separate rate structures this proposal is both feasible and just and reasonable.

Public Counsel's proposal would allow full depreciation of 10% on the not-fully depreciated Rockport water system pumping account while not allowing ongoing depreciation of the fully depreciated Bennington water system pumping account. As compared to Public

⁴ Tr. Pg. 233.

⁵ OPC Ex. 2.

⁶ Tr. Pg. 233

Counsel's proposal, Staff's proposal for a single depreciation sheet with a 6.6% pumping account depreciation rate applicable to all the pumping equipment owned by LCSW is detrimental to both LCSW and the customers. Under Public Counsel's proposal, the company would get the benefit of a full 10% depreciation rate for the not-fully depreciated Rockport water system plant account, which is a great benefit over Staff's proposal of 6.6%. And the customers would get the benefit of not paying for an over-depreciated plant account at the Bennington water system, as they would be required to do under Staff's proposal.

As it is today, the Commission's determination that the appropriate depreciation rate for the company's submersible pumping equipment account on the Bennington system is 6.6% is detrimental to the LCSW and the customers and therefore, is unlawful, unjust and unreasonable.

Public Counsel requests that the Commission investigate whether there actually was a misunderstanding of Public Counsel's position on this issue and allow Staff and the Company to state their positions on Public Counsel's actual proposal to set up a depreciation sheet for the Bennington water system showing a 0% depreciation rate for its pumping account and a separate depreciation sheet for the Rockport water system showing a depreciation rate of 10% for its pumping account.

C. Automated Meter Reading System Expense is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission's decision regarding the inclusion of costs for the Automated Meter Reading System (AMR) is unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

In the Report and Order, the Commission determined that \$76,503 for the automated meters, installation, equipment and training should be included in rates.⁷ In the Report and Order, the Commission attempts to balance the costs of the AMR system with the costs of standard meters. To do this the Commission compares the cost of the AMR system with installing standard meters for every customer all at once. However, the Commission fails to note that the evidence showed that the Stipulation and Agreement from the certificate case contemplated the addition of meters over time not all at once.⁸ The effect on customers due to cost of the addition of meters over time as contemplated by the Stipulation and Agreement as compared to the costs of the addition of the AMR system in one swoop has not been determined by the Commission. In terms of rate shock alone, it is quite clear that the addition of meters over time as agreed to by the Company in the Stipulation and Agreement would have been much more beneficial to the customers. Therefore, the true effect on customers has not been considered.

Additionally, the Commission seems to rely heavily on the benefits of provided by an AMR system to justify its decision that the inclusion of such a large amount of money in rates for such a few number of customers is just and reasonable.⁹ However, potential benefits are not the same as actual benefits. The evidence showed that the only documentation the Company could provide of an actual benefit of the AMR system was in response to the Missouri Public Service Commission Staff (Staff) Data Request No. 5 which gave an example of a customer who had an average \$60 bill and then suddenly the next month it went up to around \$500 indicating a leakage on his side of the meter.¹⁰ But, this is not evidence of the benefit of an \$80,000 AMR system because even if a manual read meter was in place, the customer would certainly know

⁷ Report & Order, pg. 10.

⁸ Tr. Pg. 90.

⁹ Report & Order, pg. 7.

¹⁰ Tr. Pg. 103-104.

there was an issue when their bill turned out to be \$500 one month.¹¹ No other documentation of benefit was provided by the Company and this disparity between the large cost and the complete lack of evidence of actual benefit at the evidentiary hearing shows quite clearly that the benefits of the AMR do not outweigh the costs.¹² Without proof of actual benefits of the AMR system, the costs are not just and reasonable.

The evidence shows that the Company failed to meet its burden that the costs of the AMR system are just and reasonable to be put in rates. As compared to non-automated meter costs, the excessive costs associated with the AMR system are unnecessary for the provision of safe and adequate water service, and an extravagant investment that customers of such a small utility system should not be asked to bear in rates. Therefore, the inclusion of \$76,503 for the AMR in the Report and Order is unlawful, unjust and unreasonable.

D. Rate Case Expense is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission's decision regarding rate case expense is unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

In this issue, the Commission was asked to determine the appropriate amount of rate case expense to include in the Company's rates. It is the Company's burden to prove that any expenses it requests to be reflected in rates are just and reasonable. It is obvious the Company did not meet this burden.

In the Report and Order, the Commission stated:

¹¹ Tr. Pg. 104.

¹² Tr. Pg. 103.

Because the costs are unknown, there is no evidence before the Commission that would allow the Commission to specifically resolve the issue of “the appropriate amount of rate case expense to include in rates”. However, the underlying question is whether the costs associated with the participation of Mr. Burlison should be included in rate case expense. Because we view Mr. Burlison’s participation in this case as reasonable, it is reasonable that his costs shall be included in rates.¹³

In essence the Commission is stating that despite the fact that there is no evidence to show what the costs are, Mr. Burlison’s costs should be automatically included in rates. The Commission unreasonably makes no statement that only just and reasonable costs should be included in rates, or that the unknown costs should be audited, or even reviewed by the parties first. There isn’t even a requirement that the costs be detailed so that it can be determined what the costs were for. Without such provisions, the Company seemingly would be allowed to write down any number it wished and that amount would be automatically included in rates. This is not just and reasonable.

It is not just and reasonable to expect customers to pay rate case expense when there was no evidence before the Commission that would allow the Commission to specifically resolve the issue of the appropriate amount of rate case expense to include in rates. Therefore, mere blanket determination in the Report and Order that Mr. Burlison’s costs shall be included in rates as a resolution to this issue is unlawful, unjust and unreasonable.

E. Building Rent is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission’s decision that Staff’s recommended allowance of \$8,100 annually is reasonable is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

¹³ Report & Order, pg. 23.

In the Report and Order, the Commission stated: “However, given OPC’s impractical disallowance of a portion of the office space, Staff’s recommended allowance of \$8,100 annually is reasonable. But, the Commission had no evidence before it that disallowing a portion of the office space was impractical. Mr. Addo provided an analysis of the market for rental rates per square foot for similar office rental properties as that utilized by LCSW in centrally located Troy, Missouri.¹⁴ Therefore, the square footage costs of the unused area can easily be determined. Also, the elimination of the costs related to the additional space would in no way prevent LCSW from renting similar but right-sized office space or even keeping the office space it has. Elimination of the costs is in no way impractical.

The Commission also had no evidence before it that disallowing a portion of the office space was unreasonable. It is quite common for the Commission to disallow costs for expenses which provide no benefit to the customer. In the Report and Order, the Commission notes: “The office space that OPC disallowed will be used for filing cabinets and storage of plat and utility maps with the utility’s certificated territory.¹⁵ So, even the Commission admits that a portion of the office space is not currently being used by the utility. It makes no difference what the utility might plan to do in the future, the evidence shows it is not being used today so no benefit is being provided to the customers. As such the costs are not just and reasonable to be included in rates.

It is not just and reasonable for the customers to bear rental costs for space that is not used by the utility and therefore provides no benefit to the customers. Therefore the Report and Order is unlawful, unjust and unreasonable.

¹⁴ OPC Ex. 2; Tr. Pg. 246-248.

¹⁵ Report & Order, pg. 25.

F. Conclusion

Public Counsel's Application for Rehearing should be granted due to the fact that the Report and Order is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its April 2, 2014, Report and Order.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 1st day of May 2014:

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