

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

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| In the Matter of a Small Utility |) | |
| Rate Case Procedure for Rogue |) | <u>File No. SR-2013-0435</u> |
| Creek Utilities, Inc. |) | <u>File No. WR-2013-0436</u> |

**MISSOURI DEPARTMENT OF NATURAL RESOURCES'
APPLICATION TO INTERVENE**

COMES NOW Missouri Department of Natural Resources (“MDNR”) and, pursuant to Commission Rule 4 CSR 240-2.075, respectfully requests that the Commission issue its order granting MDNR’s Application to Intervene. For its Application, MDNR states as follows:

1. On March 27, 2013, Rogue Creek Utilities, Inc. (“Rogue Creek”), through its court-appointed receiver, filed a request to increase rates for its water and sewer services. On that date, Rogue Creek also filed tariff revisions with an effective date of April 26, 2013.

2. On April 2, 2013, the Office of Public Counsel (“OPC”) filed an objection to the requested interim relief. Rogue Creek responded to OPC’s objection on April 9, 2013, and Staff of the Public Service Commission (“Staff”) filed a Recommendation for Emergency Rate Relief on April 15, 2013. The Commission has not issued an order regarding intervention.

3. MDNR is a state agency charged by § 640.010 RSMo with administering and executing the policies of environmental programs and commissions assigned to MDNR, including the Missouri Clean Water Law,

§ 644.006 *et seq.* RSMo, and the Missouri Safe Drinking Water Law, § 640.100 *et seq.* RSMo.

4. A sanitary sewage overflow from Rogue Creek's facilities occurred on or before March 14, 2013, and Public Service Commission personnel reported the overflow to MDNR on March 15, 2013. The overflow discharged into a nearby recreational lake, thereby threatening the health or welfare of persons served by Rogue Creek and others engaged in fishing or other recreational activities.

5. Rogue Creek was unable to timely abate the ongoing sewage overflow. MDNR, therefore, issued a declaration of emergency on March 29, 2013, and immediately hired a contractor to fix the overflow. MDNR's contractor completed repairs during the week of April 1, 2013.

6. On April 17, 2013, MDNR issued a Notice of Violation to Rogue Creek, documenting numerous violations of the Missouri Safe Drinking Water Law since October 2011, including failure to install treatment equipment, failure to conduct inspections and water samples, and exceeding maximum contaminant levels in drinking water.

7. On April 17, 2013, MDNR requested that the Missouri Attorney General's Office take appropriate legal action to address any violations of the Missouri Clean Water Law and Safe Drinking Water Law by Rogue Creek,

including intervention in this case and recovery of MDNR's costs in responding to the emergency sewage overflow event.

8. MDNR has an interest different than that of the general public, and its intervention will serve a public interest in that it seeks to protect public health and the environment. MDNR's review and participation will relate to its duty to enforce the Missouri Clean Water Law and Safe Drinking Water Law. In addition to ensuring that past violations are properly addressed, MDNR also has an interest in Rogue Creek attaining and maintaining compliance in the future.

9. MDNR is uncertain at this time of the position it will take regarding the permanent relief sought by Rogue Creek in this case. However, based on the filings in this case by Rogue Creek and Staff, it appears that emergency/interim relief is necessary for Rogue Creek to comply with the Missouri Clean Water Law, the Missouri Safe Drinking Water Law, and the Public Service Commission Law.

10. Staff, OPC, MDNR, and the Missouri Attorney General's Office have held discussions in the past regarding the problems faced by certain PSC-regulated wastewater and drinking water companies, which sometimes encounter difficulty obtaining financing, especially short-term financing, needed to implement measures to attain compliance with the Missouri Clean Water Law, Safe Drinking Water Law, and MDNR's implementing regulations.

11. Although such discussions have not yet produced a definite path forward in the context of cases like this, one option may involve establishing an escrow account to be used to pay for infrastructure and other costs necessary to attain compliance with relevant environmental requirements, on a case-by-case or pilot project basis.

12. Regardless of the precise mechanism utilized to fund compliance, MDNR believes that compliance with applicable environmental requirements is a necessary component of a regulated company's obligation to provide "safe and adequate" service under § 393.130.1 RSMo.

13. Communications, correspondence, orders, and decision in this matter should be addressed to:

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WHEREFORE, the Missouri Department of Natural Resources respectfully requests that it be allowed to intervene in the above-styled matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 19th day of April, 2013.

/s/ Jeremy Knee
Jeremy Knee
Assistant Attorney General