

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

In the Matter of Central Rivers Wastewater)
Utility, Inc.'s Small Company Rate Increase)
Request.) **Case No. SR-2014-0247**

**STAFF'S RESPONSE TO COMPANY'S
MOTION TO SUSPEND AND ENFORCE**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Response to the Company's Motion to Suspend the Procedural Schedule and Enforce the Partial Disposition Agreement*, states as follows:

Introduction

1. On March 11, 2014, Central Rivers Wastewater Utility, Inc. ("Central Rivers"), filed with the Missouri Public Service Commission ("Commission") a letter requesting Commission approval of an increase of \$91,789.57 in its annual sewer system operating revenues pursuant to Commission Rule 4 CSR 240-3.050, Small Utility Rate Case Procedure, an increase of approximately 100%.

2. On October 7, 2014, after two extensions, the Staff of the Missouri Public Service Commission ("Staff") filed a *Notice of Company/Staff Agreement Regarding Partial Disposition of Small Company Rate Increase Request*. The *Partial Disposition Agreement* between Staff and Central Rivers reflected an agreed-upon annualized operating revenue increase in the amount of \$34,461 (31.9%) and an agreed-upon sewer system net rate base of \$110,300. The *Partial Disposition Agreement* also reflected an agreed-upon capital structure which includes 61.53% equity and a return on that equity of 8.60%.

3. Although Staff and the Company filed a *Partial Disposition Agreement*, as required by Commission Rule 4 CSR 240-3.050, not all issues were resolved. Therefore, the *Partial Disposition Agreement* indicated that the unresolved issues between Staff and Company would be addressed through the contested case process. Public Counsel did not join in the *Partial Disposition Agreement*.

4. On October 10, 2014, the Office of the Public Counsel (“OPC”) filed its *Objection and Evidentiary Hearing Request and Request for Local Public Hearing*. Therein, OPC expressly cited Commission Rule 4 CSR 240-2.115(12), which provides that “[e]ach party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party’s right to a hearing.”

5. In response to OPC’s *Objection*, the Commission convened a prehearing conference on October 22, 2014, and directed the development and filing of a *Proposed Procedural Schedule*. On October 24, 2014, the parties filed their *Joint Motion to Set Test Year and to Establish Procedural Schedule*. The Commission issued its *Order Setting Procedural Schedule* on October 30, 2014. The Commission did not adopt the schedule proposed by the parties and denied the parties’ request to extend the 11-month deadline.¹ The result was the present very compressed schedule. The schedule adopted by the Commission is as follows:

¹ See ¶ 4, *Motion to Suspend the Procedural Schedule and Enforce the Partial Disposition Agreement*.

<u>EVENT</u>	<u>DATE</u>
Direct Testimony	November 14, 2014
Rebuttal Testimony	November 26, 2014
List of Issues/Witness List, Order of Opening, etc.	December 4, 2014
Surrebuttal Testimony	December 8, 2014
Position Statements	December 8, 2014
Reconciliation	December 11, 2014
Evidentiary Hearing	December 15 & 16, 2014, beginning at 9:00 a.m.
Initial Briefs	December 24, 2014
Reply Briefs	December 30, 2014

6. On November 19, 2014, following the filing of direct testimony on November 14, 2014, the Company filed its *Motion to Suspend the Procedural Schedule and Enforce the Partial Disposition Agreement*, wherein the Company states that a new procedural schedule – “appropriate for the current circumstances” -- is necessary because the Staff has unexpectedly changed its position and has “completely abandoned the *Partial Disposition Agreement*.”²

7. Also on November 19, 2014, the Commission directed Staff to respond to the Company’s motion by November 21, 2014.

Is a Modified Procedural Schedule Necessary?

8. No, Staff asserts that a new or modified procedural schedule is not necessary in this case. Staff actually has made only one change to its direct testimony,

² ¶¶ 8-10, *Motion to Suspend the Procedural Schedule and Enforce the Partial Disposition Agreement*.

originally drafted to support the position taken in the *Partial Disposition Agreement* – that change was to remove the recommendation for a rate increase. Otherwise, the testimony and supporting schedules are unchanged and support the rate increase included in the *Partial Disposition Agreement* if the Commission chooses to grant it.

9. Although the list of issues has not yet been filed in this case,³ the issues for hearing are, for the most part, still the issues contemplated by the parties at the conference on October 28, 2014, described by the Company in its *Motion*.⁴

10. The Company was notified of the issues that Staff believes require disposition through contested case procedures in the *Partial Disposition Agreement* filed on October 7. That *Agreement* stated at ¶ 12:

Staff hereby advises the Commission that certain matters remain for determination after hearing, to-wit: (1) the refunding of previously collected connection fees in excess of the tariffed amount; (2) the amount of the connection fee to be included in the tariff; (3) whether parties other than the Company's affiliated construction company should be allowed to install the STEP and STEG systems; and (4) the contract operations salary amounts allowed in rate case expense.

11. The Company received notice of the issues that OPC believes require disposition through contested case procedures in the *Objection* filed on October 10.⁵ In addition to the issues identified by Staff, OPC identified (1) revenue requirement, plant balances, rate base, contributions-in-aid of construction (CIAC) balances, depreciation/depreciation reserve balances, and capital structure and return on equity (*Objection*, ¶ 11); (2) the timing and interest, if any, on customer refunds of connection

³ It is not due until December 4, 2014.

⁴ ¶ 4, *Motion to Suspend the Procedural Schedule and Enforce the Partial Disposition Agreement*.

⁵ Commission Rule 4 CSR 240-3.050(20) provides in part, "If the public counsel files a request for an evidentiary hearing, the request shall include a specified list of issues that the public counsel believes should be the subject of the hearing."

fees overpayments (*Objection*, ¶ 12); rate case expense (*Objection*, ¶ 13); the non-STEP CIAC calculations (*Objection*, ¶ 14); and the timing of customer deposit refunds (*Objection*, ¶ 15).

12. Staff intends to add only one additional issue in the *List of Issues* due December 4, 2014, to-wit: Should the Company's revenue requirement be increased by \$34,461 (31.9%) as agreed by Staff and the Company in the *Partial Disposition Agreement*. That issue is among those identified by OPC in its *Objection* of October 10, so the Company can hardly claim any surprise.

Is Staff Bound By the Partial Disposition Agreement?

13. The Company's *Motion to Suspend the Procedural Schedule and Enforce the Partial Disposition Agreement* also prays that the Commission will "enforce the *Partial Disposition Agreement* and direct its Staff to file testimony consistent with its terms." But is the *Partial Disposition Agreement* binding on Staff?

14. As noted above at ¶ 4, OPC treated the *Partial Disposition Agreement* as a nonunanimous stipulation and agreement in its *Objection*. OPC did so because Rule 4 CSR 240-3.050(17), which authorizes OPC to request an evidentiary hearing after the filing of a partial disposition agreement, is keyed to a notice and comment process, described in 4 CSR 240-3.050(16), that never occurred in this case.⁶

⁶ Rule 4 CSR 240-3.050(16) provides: "If the disposition agreement filed by the staff provides for only a partial resolution of the utility's request and for the use of an arbitration process to resolve specified issues, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than forty-five (45) days after they are filed, that reflect the terms of the agreement and its position on the issues to be arbitrated. No later than five (5) working days after it makes its tariff filing, the utility shall mail written notice of the proposed tariff revisions, including a summary of the proposed rates and charges and the impact of the rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed, shall invite customers to submit comments on the proposed tariff changes within twenty (20) days after the date of the notice, and shall include comment submission instructions as described in section (7). When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the

15. Commission Rule 4 CSR 240-2.115(2)(D) provides:

A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, **except that no party shall be bound by it.** All issues shall remain for determination after hearing.

16. The Company contends that a partial disposition agreement is not a nonunanimous stipulation and agreement and that Rule 4 CSR 240-2.115 does not apply. Staff takes the opposite view. Additionally, the public interest does not support the Company's position. Staff's duty is to provide the best and most complete information and analysis available to the Commission. Certainly, the Commission is not bound by the *Partial Disposition Agreement* and it follows that the Staff should not be, either. In any case, as additional information is obtained, Staff's position may necessarily, and frequently does, change. The Company's position would preclude the Staff taking positions based upon the most complete and accurate information available and providing that information to the Commission.

Did Staff Change its Position? If so, Why?

17. Central to the Company's *Motion to Suspend and Enforce* is its contention that Staff has changed its position and abandoned the *Partial Disposition Agreement*. However, that contention is simply not true. As already noted above at ¶ 8, the only change Staff made to its testimony was to remove the recommendation that the Commission authorize a larger revenue requirement from the testimony of auditor Matt Young. That testimony and attached schedules and Staff's Accounting Schedules

case file." No such notice is to be found in the file of this case. Likewise, the Company has never filed a tariff to implement the *Partial Disposition Agreement*, despite the directive at Rule 4 CSR 240-3.050(16).

still provide support for an increase of \$34,461 (31.9%) as agreed by Staff and the Company in the *Partial Disposition Agreement*. So why all this commotion?

18. The testimony of Staff witnesses Young and Merciel describe the purposeful obstruction of Staff's audit by the owners of Central Rivers and its affiliate, Construction Services and Management, LLC ("CSM"). Both corporations are owned and controlled, Staff believes, by members of the Geisinger family of Orrick, Missouri.⁷ Central Rivers has no employees. Instead, pursuant to a contract, employees of CSM provide management, clerical and certified operator services to Central Rivers for fees.⁸ Central Rivers has not been able to pay that fee in total and a debt to CSM has therefore been accumulating.⁹ Staff believes that the amount of the fee that Central Rivers has actually been able to pay is reasonable for such services for a company that size and that the amount of the increase in the *Partial Disposition Agreement* is also reasonable.¹⁰ However, Staff does not believe that the steadily accumulating debt owed by Central Rivers to CSM is reasonable.¹¹ Because CSM is a separate legal entity from Central Rivers, Staff has had no access to any of CSM's

⁷ Central Rivers is a Missouri general business corporation, organized on December 15, 1997. Its registered agent is Mark Geisinger of Orrick, Missouri, who has filed testimony in this case on its behalf. Therein, he states that he is Central Rivers' president and a member of its board and that he has been "a part" of it since its creation in 1997. CSM is a Missouri limited liability corporation. Its registered agent is also Mark Geisinger of Orrick, Missouri. It was created on January 18, 2008. Staff believes that Mark Geisinger owns both Central Rivers and CSM (Direct Testimony of Matt Young, p. 9).

⁸ Direct Testimony of Matt Young, Sch. MRY-2.

⁹ *Id.*, Sch. MRY-5.

¹⁰ Staff is thoroughly familiar with the operating and maintenance expenses incurred by small water and sewer companies operating in various locations in Missouri and is able to compare the amounts in question in this case to those of other companies.

¹¹ *Id.*, Sch. MRY-4.

records.¹² Thus, Staff has been unable to audit the actual expenses incurred by CSM in operating Central Rivers, including payroll records of the CSM employees concerned.

19. Staff removed its recommendation for a revenue requirement increase because it believes that this case presents an important question regarding small company rate increase cases. That issue pertains to the Staff audit. Detailed and thorough audits of the sort performed by Staff with respect to the records of large utilities, such as Ameren Missouri, Laclede Gas, and the like, are exceptionally difficult to perform with small companies. Often, records are lacking or inadequate and the company lacks dedicated, professional accounting employees. Staff's persistent efforts to recover or recreate necessary records may be resented and ultimately may be unsuccessful; they also necessarily cause rate case expense that a small pool of ratepayers may well be required to pay.¹³ The question for the Commission is this: What sort of audit is necessary in a small company rate case? If a detailed, thorough, traditional regulatory audit is required, then no rate increase should be granted in this case because Staff was unable to perform such an audit.¹⁴ On the other hand, if a less detailed audit is acceptable, an audit of the sort performed by necessity in this case, an audit focused on *value of service* rather than *cost of service*, then the agreed rate increase should be granted.

WHEREFORE, Staff prays that the Commission will **DENY** Central Rivers Wastewater Utility's *Motion to Suspend the Procedural Schedule and Enforce the*

¹² *E.g., id.*, Sch. MRY-6.

¹³ *Cf. In the Matter of Lincoln County Sewer and Water, LLC*, Case No. SR-2013-0321, *Report and Order*, iss'd May 2, 2014; *Order Regarding Motion to Establish Rate Case Expense*, iss'd July 23, 2014.

¹⁴ Indeed, Staff was obstructed in its attempt to perform the audit.

Partial Disposition Agreement, and grant such other and further relief as the Commission deems just in the circumstances.

/s/ Kevin A. Thompson

Kevin A. Thompson
Chief Staff Counsel
Missouri Bar No. 36288

Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6514 (Voice)
(573) 526-6969(Fax)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

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 **20th day of November, 2014**.

/s/ Kevin A. Thompson