

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

In the Matter of Central Rivers Wastewater )  
Utility, Inc.'s Small CompanyRate ) File No. SR-2014-0247  
Increase Request. )

**THE OFFICE OF THE PUBLIC COUNSEL’S POSITION ON THE ISSUES**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Position on the Issues states as follows:

**1. REVENUE REQUIREMENT –**

**(a.) Should Central Rivers be granted an increase in its revenue requirement?**

Yes. Even though Public Counsel shares Staff’s concerns regarding the conduct of Central Rivers, Public Counsel believes substantial and competent evidence exists to support a just and reasonable rate increase of no more than \$35,756.

Public Counsel recognizes that Staff takes the position in testimony that no rate increase is warranted for Central Rivers.<sup>1</sup> Staff posits that Central Rivers has declined to provide certain documentation needed for Staff to perform a complete audit.<sup>2</sup> Public Counsel concurs that Central Rivers’ comportment in this small rate case has made the process more difficult than it should have been on all the parties. However, Public Counsel feels constrained by the law and the record to disagree with Staff’s position. Moreover, to the extent Staff’s position effectively amounts to a request for discovery sanctions against Central Rivers, Public Counsel must disagree that such an outcome is merited in this case.

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<sup>1</sup> Case No. SR-2014-0247, Doc Nos. 39-42, 45.

<sup>2</sup> *Id.*

While Central Rivers failed to provide Staff and Public Counsel valuable information with respect to certain aspects of this case, Central Rivers did provide information in other respects, and the information that was actually provided is sufficient for the parties to discern an appropriate level of increased revenue requirement as to those items. Staff's position in this and other cases appears to be that it must perform a complete audit for the Commission's consideration, the nature and scope of which it determines on a case-by-case basis in its sole discretion. Absent a complete audit, Staff will protest and represent to the Commission that there can be no rate increase (or decrease) at all for the utility without the benefit of its work.<sup>3</sup> Staff appears to take this position even where substantial and competent evidence exists to support some increase (or decrease) of the revenue requirement under an all relevant factors analysis. Public Counsel can find no support for Staff's position. Where, upon examination of all relevant factors, substantial and competent evidence exists that prudentially incurred costs for a regulated utility have risen (or decreased), rates must be reset accordingly, irrespective of whether Staff has provided the Commission with the results of an audit.<sup>4</sup>

Though not offered by Staff in these terms, the effect of Staff's position in this case, if adopted by the Commission, would be the imposition of a discovery sanction against Central Rivers. The sanction would be drastic, in that it would be an order entered against the utility denying the entire amount of its requested revenue increase. While the Commission has the

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<sup>3</sup> Public Counsel knows of no support for the proposition that a staff audit – complete or partial, while perhaps useful, is a legal prerequisite without which an adequate factual record cannot exist to support a Commission order. Further, a conclusion that a Staff audit – the nature and scope of which is determined solely by Staff – is required as a matter of policy should never be the case, because such a conclusion improperly elevates the role of Staff over the role of every other party to the litigation, including the Commission. If such a conclusion were adopted as a matter of law or policy, Staff could then claim that a lack of time, adequate resources or some other reason (legitimate or not), prohibits the completion of a complete audit, and therefore, completely deprive the utility or the customer of their entitlement to a just and reasonable rate and deprive the Commission of the opportunity to consider all relevant factors.

<sup>4</sup> Of course, Public Counsel often disagrees that the evidence supports such costs or that the costs incurred were prudent. Even in this case, as shown herein, Public Counsel recommends certain adjustments to Staff's accounting runs.

authority to enter discovery sanctions, it is rarely exercised, and there is a dearth of legal authority on the matter. In analogous contexts, however, an entry of judgment against an offending party by a court is only in the most egregious and contemptuous of circumstances considered an appropriate sanction, and only after substantial process had been undertaken by the tribunal to afford the offending party the opportunity to avoid the sanction. Here, Public Counsel cannot concur that such a drastic remedy is merited by Central Rivers' conduct. Instead, the appropriate remedy is to disallow those particular costs associated with the information Central Rivers failed to provide. The revenue requirement increase offered by Public Counsel herein does just that.

**(b.) If so, how much?**

Public Counsel believes that the revenue requirement agreed upon by Staff and Central Rivers in the October 7, 2014 Notice of Company/Staff Agreement Regarding Partial Disposition of Small Company Rate Increase Request, as adjusted by Public Counsel's calculations for non-STEP CIAC depreciation offset and rate case expense as presented in Mr. William Addo's testimony is reasonable. Below is a table showing a summary of Public Counsel's revenue requirement recommendation.

MPSC Staff's October 7, 2014 Revenue Requirement		\$34,461
<u>Add:</u> OPC's Recommended Rate Case Expense		\$ 3,279
<u>Less:</u> Non-STEP CIAC Depreciation Offset:		
MPSC Staff's Non-STEP CIAC Dep. Offset Recommendation	\$32,187	\$(1,984)
Minus OPC's Non-STEP CIAC Dep. Offset Recommendation	\$34,171	
OPC's Recommended Revenue Requirement		<b>\$35,756</b>

Public Counsel is reviewing Staff's December 15, 2014 Accounting Schedules and reserves the right to present a more current recommendation at the evidentiary hearing.

## **2. CONNECTION FEE –**

### **(a.)Should the Connection Fees found in Central Rivers’ current tariff be changed?**

It is Public Counsel’s position that the Commission should reject Central Rivers’ request to increase the Connection Fee to a one-time \$6,000 charge for each new connection because Central Rivers has not justified the increase from the current tariff amount it is requesting. The burden of proof lies with Central Rivers to justify any cost it wants to include in its rates and it is Public Counsel’s position that Central Rivers has not met that burden.

### **(b.)If so, what should be the new fee?**

While it is Public Counsel’s position that the Commission should reject Central Rivers’ request to increase the Connection Fee, if the Commission should decide that an increase is warranted, the new Connection Fee should be based on a documented, detailed break-down of the actual costs for a new connection. It is also Public Counsel’s position that any Connection Fee approved by the Commission must include detailed description of what is to be included in the base Connection Fee and also include set pricing with specific detail for any additional charges above and beyond the base Connection Fee.

## **3. STEP AND STEG INSTALLATIONS –**

### **(a.)Should entities other than Central Rivers be allowed to install STEP and STEG systems?**

It is Public Counsel’s position that it is appropriate to allow customers to choose other parties to perform STEP and STEG installations.

**(b.) If so, are changes to Central Rivers' tariff necessary to provide for this?**

It is Public Counsel's position that some additional charges may need to be added to the Company's tariff to accomplish this change to allow customers to choose other parties to perform STEP and STEG installations.

**(c.) If so, what changes should be made?**

It is Public Counsel's position that any changes to Central Rivers' tariff should be based on just and reasonable, required actions to maintain system safety and integrity in a situation where a customer chooses another party to perform STEP and STEG installations. It is also Public Counsel's position that the cost for each required action must be specifically detailed in the tariff approved by the Commission based on documented actual costs by Central Rivers during the test year in this case. It is Public Counsel's position that the additional charges that Central Rivers witness Mr. Mark Geisinger alleges it would cost Central Rivers to "maintain the integrity of the system" are not reasonable because the proposed charges are not based on actual costs.

**4. RATE CASE EXPENSE –**

**(a.) What amounts should be included in rate case expense?**

It is Public Counsel's position that a reasonable amount of rate case expense to include in rates is \$16,393.79 which includes: (a) a reasonable amount of fees incurred for time spent by CSM personnel working on the rate case on behalf of the Company; (b) the fees incurred for legal representation related directly to the rate case as of November 26, 2014; (c) the fees incurred for consulting services related directly to the rate case as of December 4, 2014; and (d) office supplies and postage costs related directly to this case.

**(b.)What is a reasonable time frame for inclusion of rate case expense?**

It is Public Counsel's position that the Company's recommendation to recover rate case expenses through the filing date of reply briefs in this case is reasonable.

**(c.)Should rate case expense be normalized or amortized?**

It is Public Counsel's position that rate case expense should be normalized because normalization is appropriately a ratemaking mechanism of spreading a reasonable allowable cost over a period of time whereas amortization is the repayment of a mortgage, debt, or other obligation over a period of time and therefore not appropriate for rate case expense.

**(d.)Over what period should rate case expense be normalized/amortized?**

It is Public Counsel's position that rate case expense should be normalized over a period of five (5) years.

**5. NON-STEP CIAC DEPRECIATION OFFSET –**

**(a.)Should amounts be updated to reflect the update period in this case?**

It is Public Counsel's position that the non-STEP CIAC depreciation offset should be trued-up through March 31, 2014 as Staff did for Plant-in-Service and CIAC balances. It is Public Counsel's position that this is necessary to fulfill the requirements of the matching principle.

**(b.)Is there an effect on rate base, cost of service and revenue requirement that needs to be accounted for?**

It is Public Counsel's position that the non-STEP CIAC depreciation offset will have an effect on cost of service and revenue requirement that will need to be accounted for.

## **6. PREVIOUS STEP INSTALLATIONS –**

**(a.) Does the Commission have the authority to address in this case and to order a refund of previously received STEP installation fees?**

It is Public Counsel's position that the Commission has the authority to address in this case and to order a refund of previously received STEP installation fees in excess of those listed in a Commission approved tariff.

Public Counsel believes it is just and reasonable for the Commission to address the previous STEP installations issue in this case to avoid additional, unnecessary costs for Central Rivers and its customers. If Central Rivers wishes to take up this issue in a separate complaint case and the Commission agrees, it is Public Counsel's position that any expenses, including time spent by CSM personnel working on the complaint case on behalf of the Company, legal fees and consultant fees, be borne strictly by Central Rivers and not the customers.

**(b.) If so, what amount should be refunded, should this amount include interest, over what time period should the refund be made and if interest should be included, what is a reasonable interest rate?**

It is Public Counsel's position that \$53,444 (\$44,920 over-collected base STEP Connection Charges + \$8,524 interest) plus \$15,338 (\$12,557 additional over-collected STEP Connection Charges + \$2,781 interest) should be refunded to customers who paid these extra charges.

It is Public Counsel's position that the Commission should order Central Rivers to refund all the over-collected Connection Charge amounts within 1-year of the effective date of the Commission's Report and Order in this case.

It is also Public Counsel's position that both customer deposit amounts and the over-collected amounts received from customers represent cost-free funds provided by certain customers for taking sewer service from Central Rivers; therefore, in the absence of any definitive determination on an applicable interest rate to be applied in the event of an overcharging, the Commission-authorized 6% interest rate for customer deposits is an appropriate proxy especially considering that Central Rivers' current cost of debt (the interest rate that Central Rivers pays for borrowing money from its bank) as determined by Staff is 9.75%.

**(c.) Is there an effect on rate base, cost of service and revenue requirement that needs to be accounted for?**

It is Public Counsel's position that the over-collected STEP Connection Charges refund amounts, once authorized by the Commission, must be removed from Plant-in-Service and CIAC.

**7. CUSTOMER DEPOSITS –**

**(a.) Does the Commission have the authority to address in this case and to order a refund of previously received customer deposits?**

It is Public Counsel's position that the Commission has the authority to address in this case and to order a refund of previously received customer deposits.

Public Counsel believes it is just and reasonable for the Commission to address the customer deposit issue in this case to avoid additional, unnecessary costs for Central Rivers and its customers. If Central Rivers wishes to take up this issue in a separate complaint case and the Commission agrees, it is Public Counsel's position that any expenses, including time spent by



CSM personnel working on the complaint case on behalf of the Company, legal fees and consultant fees, be borne strictly by Central Rivers and not the customers.

**(b.)If so, what amount should be refunded, should this amount include interest, and over what time period should the refund be made?**

It is Public Counsel's position that \$23,208 (\$16,022 held customer deposits + \$7,186 interest) should be refunded to customers who paid these deposits.

It is Public Counsel's position that customer deposit refunds should include interest at the Commission-authorized 6% interest rate for customer deposits.

It is also Public Counsel's position that the Commission should order Central Rivers to refund all the customer deposit amounts within 1-year of the effective date of the Commission's Report and Order in this case.

**(c.)Is there an effect on rate base, cost of service and revenue requirement that needs to be accounted for?**

It is Public Counsel's position that if the Commission orders Central Rivers to refund all the customer deposit amounts within 1-year of the effective date of the Commission's Report and Order in this case, an adjustment to rate base will be necessary.

**WHEREFORE**, Public Counsel respectfully submits its position.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By: \_\_\_\_\_

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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 16<sup>th</sup> day of December 2014:

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**/s/ Christina L. Baker**

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