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	)	**File No. SR-2013-0321**
Rate Increase	)	

REPORT AND ORDER

Issue Date: April 2, 2014

Effective Date: May 2, 2014

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In the Matter of the Application of Lincoln County Sewer & Water, LLC for Approval of a Rate Increase	)))	**File No. SR-2013-0321**

Appearances

Dean L. Cooper and James D. Burlison *for* Lincoln County Sewer & Water, LLC.

Christina L. Baker *for* the Office of the Public Counsel.

Kevin A. Thompson and Amy E. Moore *for* the Staff of the Missouri Public Service Commission.

JUDGE**:** Kennard Jones, Senior Regulatory Law Judge

REPORT AND ORDER

Background:

Although formally beginning on December 4, 2012, with Lincoln County Sewer and Water, LLC (LCSW) filing this rate increase request, this matter actually began on February 10, 2011, with the Staff of the Commission filing a complaint[1] against Dennis Kallash, Toni Kallash, Bennington Inc. and Bennington Water, Inc. In that case, Staff complained that respondents were providing sewer and water service to the public without a Certificate of Convenience and Necessity.

Toward resolution of the complaint case, LCSW was formed on May 9, 2011, by James Burlison.[2] On July 19, 2011, LCSW filed applications with the Commission for certificates to provide water and sewer service in the Bennington and Rockport subdivisions

[1] File No. WC-2011-0253 and SC-2011-0254.

[2] See *Articles of Organization* and *Certificate of Organization* of Lincoln County Sewer and Water, LLC; Secretary of State's website. James Burlison is an attorney who has entered his appearance in this matter on behalf of Lincoln County Sewer and Water.

of Lincoln County, and to assume the assets of Bennington Inc. and Bennington Water, Inc.[3] The certificate cases were resolved through a Stipulation and Agreement.[4] At the time, the company provided water service at a flat rate because there were no meters installed. In anticipation of meters being installed over time, the parties agreed to the following metered and unmetered rates:

Bennington Water:	unmetered flat rate:	$26.72/month
	metered customer charge:	$15.10/month
	metered commodity charge:	$3.45/1000 gallons
Bennington Sewer:	flat rate	$39.39/month
Rockport Water:	unmetered flat rate:	$39.80/month
	metered customer charge:	$13.91/month
	metered commodity charge:	$5.57/1000 gallons
Rockport Sewer:	flat rate	$34.07/month

The Commission issued an order approving the agreement on June 27, 2012,[5] and approved the tariff sheets reflecting the above rates on July 16, 2012.[6]

The Rate Increase Request

With its certificates in place and metered and unmetered rates approved by the Commission, LCSW filed a request to increase its rates. In addition to increases in maintenance and operation, the company pointed out that the rate increase request was primarily driven by the installations of new, automated meters and the associated costs.

[3] File Nos. WA-2012-0018 and SA-2012-0019.
[4] File No. WA-2012-0018, EFIS Item No. 39.
[5] File No. WA-2012-0018, *Order Approving Unanimous Stipulation and Agreement, Approving Transfer of Assets and Granting Certificates of Convenience and Necessity;* EFIS Item No. 42.
[6] File No. WA-2012-0018, *Order Approving Tariff Filings in Compliance with Commission Order;* EFIS Item No. 49.

Upon request of the Office of the Public Counsel, the Commission held a local public hearing on August 20, 2013. Eight people testified. Customers expressed concerns regarding: the necessity of automated meters given the number of customers served; problems with being on fixed incomes and having to pay more for water; and, the company's inability to show costs that justify higher rates.[7] In addition to the issues surrounding the installation of automated meters, the parties disagreed on a number of issues. Those issues are discussed separately, below.

The Commission held an evidentiary hearing on November 5, 2013. The parties filed post hearing briefs and the Commission makes the following finding and conclusions.

Conclusions of Law – Jurisdiction

1. LCSW is a public utility as defined in Section 386.020(43), RSMo. It is also a sewer corporation as defined in Section 386.020(49). RSMo and a water corporation as defined in Section 386.020(59), RSMo. As such, LCSW is subject to the Commission's jurisdiction under Chapters 386 and 393, RSMo.

2. Under Section 393.140(11), RSMo, the Commission has the authority to regulate the rates LCSW may charge its customers for sewer and water service.

Conclusions of Law – Determination of Just and Reasonable Rates

1. In determining the rates LCSW may charge its customers, the Commission is required to determine that the rates are just and reasonable.[8] Lincoln County has the burden of showing its proposed rates are just and reasonable.[9]

[7] Local Public Hearing transcript, EFIS Item No. 18.
[8] Section 393.150.2, RSMo.
[9] Section 393.150.2, RSMo.

2. In determining whether the proposed rates are just and reasonable, the Commission must balance the interests of the investor and the consumer.[10] In further defining its vision of just and reasonable rates, the United States Supreme Court has held that:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[11]

Later, the Court states that:

> '[R]egulation does not insure that the business shall produce net revenues.' But, such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[12]

3. In undertaking the balance required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for particular circumstances.[13]

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[10] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944).
[11] *Bluefield Water Wokrs $ Improvement Co. v. Public Service Commission of the State of West Virginia,* 262 U.S. 679, 690 (1923).
[12] *Federal Power Commission v. Hope Natural Gas Co.,* 320, U.S. 591, 603 (1944).
[13] *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

4. Finally, quoting the United States Supreme Court in *Hope,* the Missouri Court of Appeals stated that:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.'…. Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[14]

RATE CASE ISSUES

What is the appropriate amount, if any, to include in rates for the purchase, installation, and operation and maintenance of the company's automated meters?

Whether the cost of the automated meter reading system (AMR) should be passed on through rates is the primary issue in this rate case. Staff and the company agree that the cost of the meters should be included in rates. OPC posits that the purchase of automated meters is not warranted given the small number of customers the company serves.

Findings of Fact

1. LCSW provides water and sewer services to 122 customers in Lincoln County, Missouri.[15]

2. LCSW, the Staff of the Commission and the Office of the Public Counsel entered into an agreement setting the company's current rates.[16]

[14] *State ex rel. Associated Natural Gas Co. V. Pub. Serv. Comm'n,* 706 S.W. 2d 870, 8673 (Mo. App. E.D. 1985).
[15] Transcript; page 102, lines 3-5.
[16] File No. WA-2012-0018, EFIS item no. 39.

3. The agreement required LCSW to install a minimum of 6 water meters per year in the Rockport subdivision and 5 meters per year in the Bennington subdivision.[17]

4. At the time of entering into the agreement that disposed of the certificate case, Mr. Kallash made Staff aware that it was his intention to install all of the meters at one time.[18]

5. Standard meters were not expressly contemplated in the context of the agreement.[19]

6. Mr. Kallash believed that he would only be allowed to recover $1.50 in rates for meter reading of each house per month.[20]

7. Mr. Kallash obtained a bid of $2.75 per meter read per month.[21]

8. Mr. Kallash believed that he would have lost money while recovering $1.50/home/month for meter reading.[22]

9. Through discussions during the certificate case, concerns were brought up about customer water usage; e.g. outside water connections being left on.[23]

10. Mr. Kallash has observed excessive water usage, with water running down the street and has found it necessary to shut off hydrants.[24]

11. With customers presumably over-using and wasting water, Mr. Kallash installed all of the meters at once in order to be able to determine what the usage was, prior to being regulated, in order to avoid wasting water.[25]

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[17] File No. WA-2012-0018, Unanimous Stipulation and Agreement (EFIS item no. 39), paragraph 16.
[18] Transcript; page 90, line 13 to page 91, line 14.
[19] Transcript; page 92, lines 14-22.
[20] Transcript; page 95, lines 16-18.
[21] Transcript; page 77, lines 3-17; Transcript; pages 123, and 128-129.
[22] Transcript; page 95, lines 19-24.
[23] Transcript; page 93, line 7 to page 95, line 9.
[24] Transcript; page 93, lines 5-13.
[25] Transcript; page 93, lines 5-23.

12. Mr. Kallash secured a loan from the bank to install all of the meters at once.[26]

13. Both the company and Staff agreed that installation of all of the meters was a good idea.[27]

14. The cost of manual read meters, including installation, is $35,800.[28]

15. The cost of the automated meters is $32,867.[29]

16. The cost of installation for the automated meters is $32,698.[30]

17. The cost of the meter-reading device is $9,438 and the training regarding the use of the device is $1,500.[31]

18. A benefit of the automated meters is the capability to record water usage on a daily or hourly basis and can be helpful for Staff when investigating complaints.[32]

19. Another benefit of the automated meters is that they allow the operator to retrieve information on usage and leaks over periods of time spanning from one to several days to a whole billing period.[33]

20. The metered water rate approved by the Commission in the certificate cases was based on estimated amounts for standards meters, installations, and expenses related to hiring a meter reader.[34]

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[26] Transcript; page 95, lines 11-16.
[27] Transcript; page 93, line 7 to page 95, line 9.
[28] Addo Surrebuttal (OPC 3), page 3, line 16.
[29] Johansen Direct (LCSW 1), page 4, line 5.
[30] Johansen Direct (LCSW 1), page 4, line 6;
[31] Johansen Direct (LCSW 1), page 6, lines 2-3.
[32] Transcript; page 128, line 12 to page 129, line 24.
[33] Transcript; pages 123, and 128-129.
[34] Addo Rebuttal (OPC 2) page 12, lines 15-18.

21. The total amount for AMR costs that Staff has included in its revised accounting schedules for the AMR system is $46,141 for Bennington and $25,515 for Rockport.[35]

22. There are several regulated water companies in Missouri using meters read by radio signal.[36] Specifically, Lake Region has 646 customers with 95% radio-read meters. Liberty-Algonquin, Noel, KMB has 2,112 customers with remote, touch and radio-read meters but plans to upgrade to all radio-read. Ozark Shores has 1,856 customers with 95% radio-read meters. Raytown has 6,508 customers with both manual and radio-read meters. Roy-L Utilities, serving 62 customers, uses manually-read meters and has purchased, but not installed, radio-read meters. Finally, Missouri-American, serving 450,000 customers uses touch and radio-read meters. Missouri-American has, like Roy-L, purchased radio-read meters but has yet to install them.

Conclusions of Law

1. The Conclusions of Law set out above are controlling for this discussion.

2. The Commission must insure just and reasonable rates. To determine whether the rates were just and reasonable, we must consider whether the order could reasonably be expected to maintain financial integrity, attract necessary capital, fairly compensate investors for the risk they assume, and protect relevant public interest.[37]

Discussion

A central question in resolving this issue is whether Lincoln County acted reasonably in purchasing radio read meters. The Office of the Public Counsel rests its opposition to

[35] Addo Surrebuttal, (OPC 3) page 3, lines 1-5.
[36] Late-Filed Commission Exhibit No. 1.
[37] *State ex re. Union Electric Co. v. Public Service Comm*. 765 SW2d 618, 625 (Mo. App. E. D. 1988).

the purchase of the meters on the fact that the company serves only 122 customers and that no other company in Missouri, this size, has invested in automated meters, which cost about twice as much as manually-read meters. Public Counsel goes on to state that those few customers should not have to bear the cost of such an extravagant purchase.

However, reasonableness transcends the number of customers served. At the time of purchase, the company was under the impression that the Commission would allow recovery of only $1.50 per meter, per month, for the cost of meter reading. The only bid the company obtained was for $2.75 per meter, per month. The company reasoned that if it was necessary for someone to manually read the meters each month, it would take a loss of $1.25 per meter, per month.

Additionally, water consumption/waste was an issue about which the company and the Staff of the Commission discussed. The company had concerns about customers wasting water by leaving outside hoses running so long that water ran down the street. Automated meters will allow the company to monitor usage much closer than will standard meters and will therefore afford the company an opportunity to address wasteful consumption.

The Commission cannot ignore that the company secured a bank loan in order to purchase the automated meters. Irreparable economic harm to the company could result if the Commission denies rate recovery of this investment.[38]

It is helpful to compare standard and automated meters through a 10-year payoff analysis: The total cost of automated meters (meters, installation, meter-reading device and training) is about $76,503. This figure divided by 10 years is $7,650.30. This per-year

[38] Transcript; page 177, lines 4-9.

cost can then be divided by the number of customers (122), which equals $62.71. This figure divided by 12 months equals $5.23 per month, per customer for automated meters over a 10-year period.

The cost of standard meters is $35,800. This divided by 10 years is $3,580 per year. This per-year cost can then be divided by the number of customers to equal $29.34; which, divided by 12 is $2.45 per month, per customer. However, if the cost of standard meters, rather than automated meters, is allowed in rates, then the Commission must also allow the cost of meter reading. With the company's bid of $2.75 per meter, per month added to the $2.45 calculated above, the total is $5.20. This is only $0.03 less than the alternative automated meter. If Staff and OPC's figure of $1.50/meter/month is used, the result is $1.28 less than the use of automated meters.

The benefits of automated meters, the financial risk taken by the company and the apparent reasonableness of Mr. Kallash's decision to purchase automated meters in order to avoid a monthly loss on meter reading, outweigh the financial burden on each customer. Also, under the above analysis, had Mr. Kallash purchased standard meters, meter-reading costs would continue beyond 10 years. Thus, in the long run, the company will save on meter reading.

And, finally, although only a few companies in Missouri use automated meters, the technology is beneficial and inevitable. Were the Commission to base its decision on this fact, no small companies would ever advance technologically through the use of automated meter.

The amount to be included in rates, with regard to the automated meters, installation, equipment and training is $76,503.

<u>What is the appropriate amount to include in rates for the company's billing program</u>?

LCSW has purchased a billing program, which complements the automated meters. OPC would have the Commission disallow this cost. LCSW and Staff opine otherwise.

Findings of Fact

23. The company is currently producing bills through its billing program.[39]

24. The billing program has features connected to billing that operate separately from the remote read meters.[40]

25. The billing program that facilitates use of the AMR was not taken into account when the parties agreed on the rates during the certificate case.[41]

26. The billing program is not needed just because the company installed remote-read meters, but is used to create the company's monthly bills, track customer payments, track the status of customer accounts, create late notices, calculate late fees, create disconnect and reconnect orders and create disconnect letters.[42]

27. The billing program is used for customer contact information, account history, water usage history, service location and meter information.[43]

28. The cost of the billing program is $3,745.[44]

29. Inclusion of the billing program will require 12 fewer hours per month for payroll expense of office personnel.[45]

[39] Transcript; page 148, lines 13-18.
[40] Transcript; page 148, lines 19-22.
[41] Transcript; page 150, lines 3-6.
[42] Johansen Direct (LCSW 1), page 7, lines 2-8.
[43] Johansen Direct (LCSW 1), page 7, lines 6-8.
[44] Johansen Direct (LCSW 1), page 7, line 12.
[45] Johansen Direct (LCSW 1), page 7, lines 20-22.

Conclusion of Law

1. The Conclusions of Law set out above are controlling for this discussion.

Discussion

Although the billing program operates separately from the automated meters, the automated meters will be largely ineffective without the billing program. Having decided that the company will be allowed to include the costs of automated in rates, it is reasonable that the cost associated with the billing program also be included.

What is the appropriate beginning balance for the company's rate base?

Although rate base was agreed upon during the certificate cases, the company suggests that there items that should have been included that were not.

Findings of Fact

30. The amount of rate base agreed to in the Stipulation and Agreement from the certificate case is $245,957.[46]

31. The company proposes that all costs were not included – for example: engineering fees, the structures that house the wells and/or storage tanks and the base rock and concrete pads for the water storage tanks.[47]

32. The company argued that the value of the items that should be included range from $75,000 to $100,000.[48]

33. These additional items that the company proposes should now be added to rate base existed at the time the parties entered into the Stipulation and Agreement.[49]

[46] Case No. WA-2012-0018, Unanimous Stipulation and Agreement, paragraph 8, EFIS Item No. 39.
[47] Johansen Direct (LCSW 1), page 14, lines 16-21.
[48] Transcript; page 160, lines 17-23.
[49] Transcript; page 155, line 25 – page 156, line 25.

Conclusion of Law

1. The Conclusions of Law set out above are controlling for this discussion.

Discussion

The company has not shown that the agreed-upon rate base should be changed. The company argues that certain items were not included when the parties agreed to rate base in the certificate case. However, those items existed at the time of the Agreement. For the Commission to now undermine the Agreement without any change in circumstance is unreasonable. Further, the company's position is supported by examples of items and a guess as to the value of those items, with a $25,000 range. The range alone is 10% of the agreed-upon rate base. As a default, the company suggests that the Commission direct the parties to reevaluate rate base. This suggests that there is insufficient evidence to determine rate base. This being so, the company has not carried its burden in this regard.

The rate base, as agreed upon by the parties, shall remain $245,957.

What should the adjustment be to rate base for excess capacity in the company's Rockport facilities?

LCSW has built facilities that are capable of serving more than the number of customers in the subdivision. The question is whether current customers should have to pay for facilities that include capacity that may not be useful to them.

Findings of Fact

34. The Rockport water and sewer facilities were built to serve the overall development, which is not yet fully populated.[50]

[50] Johansen Direct (LSCW 1), page 12, lines 16-17.

35. The Rockport subdivision has 210 lots, with additional undeveloped land within the requested service area.[51]

36. There are 72 homes in the Rockport subdivision.[52]

37. A capacity adjustment reduces, or disallows, part of the capital investment of one or more plant items from the rate calculation, usually because there is substantially more plant capacity and correspondingly more investment than what is reasonably needed to provide service to current ratepayers.[53]

38. Specifically, there are three items in the Rockport development that all parties agree have excess capacity; the water storage tank, the submersible well pump and the sewage treatment facility.[54]

39. Through the Department of Natural Resources (DNR), the company is permitted to serve 210 customers with the water storage tank.[55]

40. The average customer/home uses 180 gallons of water per day.[56]

41. The water storage tank has a capacity of 44,000 gallons and can serve 244 customers per day.[57]

42. Based on current usage, the company's Rockport facility has capacity that exceeds existing customer levels and the levels in the DNR's permit.[58]

43. Based on the DNR permit and the number of customers in the development, the company's adjustment is 65.71% or 72/210.

[51] Merciel Rebuttal (Staff 4), page 5, lines 14-16.
[52] Transcript; page 336, lines 13-14.
[53] Merciel Rebuttal (Staff 4), page 2, lines 20-23.
[54] Merciel Rebuttal (Staff 4), page 5, lines 6-10.
[55] Johansen Direct (LCSW 1), page 13, lines 3-5.
[56] Merciel Rebuttal (Staff 4), page 15, lines 16-18.
[57] Merciel Rebuttal (Staff 4), page 18, lines 22-23.
[58] Transcript; page 336, lines 13-25.

44. Based on a capacity 44,000 gallons, with a current level of 72 customers each using 180 gallons per day, or a total of 12,960 gallons/day, Staff's suggested disallowance is 70% because 29.4% (12,960/44,000) of the capacity is being used.[59]

45. Staff observed the well pump capacity of 420 gallons per minute with a desired maximum run time of 14 hours per day.[60]

46. Under the company's analysis, 72 customers currently use 34.29% of the capacity and the adjustment should be 65.71%.[61]

47. Under Staff's analysis, current customers use 12.24% of the capacity and the disallowance should be 87%.[62]

48. The submersible well pump has a capacity of 352,800 gallons per day.[63]

49. Staff assumed a peak usage of 600 gallons per customer, resulting in a daily usage of 43,200 gallons for the 72 existing customers.[64]

50. Based on a capacity of 352,800 gallons per day and Staff's usage estimate of 43,200, 12.2% of the pump is being used by existing customers.

51. According to DNR standards, a 210-lot subdivision must be served by a sewage treatment plant that is designed handle 78,000 gallons per day.[65]

52. The flow level for the sewage treatment facility at the time of the certificate case was 14,999 gallons per day.[66]

[59] Merciel Rebuttal (Staff 4), page 7, lines 3-7.
[60] Merciel Rebuttal (Staff 4), page 7, line 22-23.
[61] 72/210 (current number of customer/number of customer permitted to be served by DNR).
[62] 43,200 gallons/352,800 gallons (estimated customer usage/actual usage capacity).
[63] Merciel Rebuttal (Staff 4), page 8, lines 1-2.
[64] Merciel Rebuttal (Staff 4), page 8, lines 2-5.
[65] Transcript; page 342, lines 2-4.
[66] Merciel Rebuttal (Staff 4) page 9, lines 8-11.

53. Staff's disallowance is based on the current flow of 14,999 gallons and DNR's permitted capacity of 78,000 gallons per day, resulting in a usage of 19.2% or an 80.8% disallowance.

54. There has been an increase in customers and, in consideration thereof, Staff has applied a 77% disallowance.[67]

55. The company has built excess capacity and has the opportunity to grow into it.[68]

Conclusions of Law

1. The Conclusions of Law set out above are controlling for this discussion.

2. The Commission must insure just and reasonable rates. To determine whether the rates were just and reasonable, we must consider whether the order could reasonably be expected to maintain financial integrity, attract necessary capital, fairly compensate investors for the risk they assume, and protect relevant public interest.[69]

Discussion

As accurately pointed out by Staff,[70] this issue is purely one of balancing the interests of the ratepayer vis-à-vis the company. Under Staff's view, the company will lose that portion of its investment attributed to Staff's disallowance, but a large portion of this loss can be recovered as more lots are sold.

Staff's position is based on the actual capacity of the facilities. The company's position is based on DNR allowing the company, given its facilities, to serve a certain number of customers. No party disagrees with the actual capacities that Staff offers.

[67] Merciel Rebuttal (Staff 4) page 9, lines 2-5.
[68] Transcript; page 350, lines 2-4.
[69] *State ex re. Union Electric Co. v. Public Service Comm*. 765 SW2d 618, 625 (Mo. App. E. D. 1988).
[70] Staff's post-hearing brief, page 20.

Given these capacities, it is clear that DNR's permit is its statement that these facilities will serve 210 customers. This does not forego a conclusion that the facilities can serve more than 210 customers. For instance, given the capacity of the storage tank, 244 customers can be served.

DNR's permit does not speak to maximum capacity but only to the number of customers the company requests to serve and therefore has no bearing on the issue of a capacity adjustment. The actual capacity of the facilities is, however, directly relevant. It is the company that chose the equipment. DNR's requirement is only that the equipment be able to serve the number of customers planned for the subdivision.

The excess capacity shall be calculated consistent with Staff's position.

Should the capacity adjustment to rate base be recorded as plant held for future use?

This question has to do with how to treat the adjustments discussed above. It is purely a question of accounting and what the Commission's rules require. Findings of fact are unnecessary.

Conclusions of Law

1. The Commission's rules[71] require the use of the Uniform System of Accounts.

2. The Uniform System of Accounts exclude from Property Held for Future Use, "materials and supplies, meters held in reserve, or normal spare capacity of plant in service . . ."[72]

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[71] 4 CSR 240-50.030 and 4 CSR 240-61.020.
[72] Ferguson Rebuttal (Staff 3), Schedule LMF-2.

Discussion

This is a question of law. The Commission need not make any findings of fact to resolve this issue. In its brief, the company posits that the Commission need not follow the Uniform System of Accounts.[73] The statute[74] the company references may give the Commission the authority to determine how accounts are kept. However, through its rule, the Commission must require that accounts be kept in a manner that is consistent with the Uniform System of Accounts. Because it is noted in the Uniform System of Accounts that excess capacity not be kept in the account title "Property Held for Future Use", then capacity adjustment for rate base shall not be held in Plant Held for Future Use.

<u>What is the appropriate depreciation rate for the company's submersible pumping equipment account on the Bennington system?</u>

This issue has to do with the difference between Staff and OPC's methodology. OPC would depreciate items individually. Staff includes similar items in an account, then depreciates the account.

Findings of Fact

56. The plant account 325.1 for LCSW includes the pumping equipment at both Bennington and Rockport and is comprised of the piping through to the distribution system, valves, flow measurement, pressure transmission or pressure transmitter and associated electrical systems.[75]

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[73] *See* Lincoln County Sewer & Water, LLC's Brief, page 37.
[74] Section 393.140(8) RSMo.
[75] Transcript; page 228, lines 3-13

57. Staff does not look at individual pieces within an account. Rather, Staff looks at the dollars of the account.[76]

58. The depreciation expense is intended to reflect the average annual consumption of all the dollars in the account.[77]

59. Because there is a lack of sufficient recorded data to support a depreciation study, Staff has depreciation rate schedules that are recommended for water and sewer companies by the Uniform System of Accounts.[78]

60. Within the pumping equipment account is a pump for the Bennington system.[79]

61. The Bennington pump has exceeded the life span of the account.[80]

62. The current rate of depreciation on this account is 10%.[81]

63. To account for the Bennington pump, Staff is recommending a decrease to a 6.6% depreciation rate for the pumping equipment account for Lincoln County Water.[82]

Conclusion of Law

1. The Conclusions of Law set out above are controlling for this discussion.

Discussion

Both the company and Staff agree on this issue. Public Counsel's position hinges on the legal argument that it is the company's burden to show that depreciation should be included in rates. Public Counsel is correct that in the absence of any evidence, the company does not prevail on the issue because it has the burden of proof.

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[76] Transcript; page 229, lines 7-9.
[78] Transcript; page 235.
[78] Transcript; page 230, line 25 – page 231, line 3; Rice Surrebuttal (Staff 9), pages 3-4.
[79] Transcript; page 228, lines 19-22.
[80] Transcript; page 232, lines 4-21.
[81] Rice Surrebuttal (Staff 9), lines 4-5.
[82] Transcript; page 231, lines 22-24.

The standard of proof in Commission cases is a preponderance of the evidence. The Commission considers all evidence presented by the parties.

The Commission has before it evidence concerning depreciation. This evidence was presented by the Staff of the Commission. Under Public Counsel's reasoning, the Commission must ignore this evidence because it is the company, not Staff, who has the burden of proof. The party bearing the burden of proof risks losing if the necessary evidence is not offered. Staff's evidence, however, is before the Commission and will be considered.

Staff asserts that the submersible pump is in an account with other items that serve a similar purpose. The whole account is then depreciated. Because the submersible pump is fully depreciated, the account has been depreciated too quickly. Staff has therefore adjusted the depreciation rate from 10% to 6.6%. The question before the Commission is what the appropriate depreciation rate should be. 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. Staff's suggested depreciation rate of 6.6% is reasonable in that it is consistent with the current method of depreciating accounts containing similar assets rather than depreciating individual assets.

The appropriate depreciation rate for the company's submersible pumping equipment account on the Bennington system is 6.6%

Should the Commission order adjustments to the accumulated depreciation for the Bennington submersible pump account?

Staff and OPC's approaches to this question are different. OPC's answer reflects its position that the submersible pump should be depreciated as a single item. Staff discusses how the pump was damaged and that the cost of removal was not accounted for. To adopt OPC's position would be inconsistent with discussion about depreciation.

Findings of Fact

64. The book entries for the replacement of a submersible pump in January of 2010 resulting from a lightning strike failed to account for cost of removal.[83]

65. The total labor and materials cost of the replacement was recorded as the new, additional plant in service.[84]

66. An adjustment is necessary to correct the books going forward.[85]

67. Staff's recommended adjustment is $1000 as cost of removal.[86]

68. OPC's adjustment is based on its understanding that items should be depreciated individually, not by account with related items having different lives.[87]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

Consistent with Staff's treatment of depreciation with small sewer and water companies, an adjustment which accounts for the cost of removal is appropriate. OPC's suggested adjustment is inconsistent with how items are depreciated with small companies.

[83] Rice Surrebuttal, (Staff 9), page 10, lines 6-7.
[84] Rice Surrebuttal (Staff 9), page 10, lines 7-8
[85] Rice Surrebuttal (Staff 9), page 10, lines 9-10.
[86] Rice Surrebuttal (Staff 9), page 10, line 10-11.
[87] Addo Rebuttal (OPC 2), page 41, line 16 to page 42, line 6.

What is the appropriate amount of rate case expense to include in the company's rates?

Although this issue is broadly framed, it has only to do with whether to include the attorney's fees of James Burlison, a second attorney whose participation OPC opines as unnecessary.

Findings of Fact

69. Dean Cooper entered his appearance in this case on July 9, 2013.[88]

70. Invoices made available to Public Counsel as of September 25, 2013, show a rate case expense of $6,116.[89]

71. As of October 24, 2013 Staff has received invoices of $11,751 for rate case expense.[90]

72. James Burlison entered his appearance in this case on November 4, 2013.[91]

73. The hearing date for the evidentiary hearing in this case was on November 5, 2013.

74. There will be additional cost associated with the evidentiary hearing and the post hearing process.[92]

Discussion

The issue in this case has to do with the inclusion of costs specific to a second attorney (James Burlison) participating during the evidentiary hearing. Public Counsel posits that this attorney's participation was unnecessary and that rate payers should not have to bear the burden of associated costs.

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[88] Docket, EFIS Item No. 10.
[89] Addo Rebuttal (OPC 2), page 32, lines 4-6.
[90] Hanneken Surrebuttal (Staff 2) page 12, line 22 to page 13, line 2.
[91] Docket, EFIS Item No. 45.
[92] Hanneken Surrebuttal (Staff 2) page 13, line 5-8

Public Counsel points out that Mr. Burlison questioned only one witness during the hearing and that this was an effort to justify his appearance. Although Staff has concerns about the company's use of two attorneys, Staff agrees that the company should be able to recover its costs.

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.

What is the appropriate amount of costs related to the company's certificate case to include in the company's rate case?

Findings of Fact

75. Company witness Johansen is not an accountant.[93]

76. Public Counsels' witness, Addo and Staff's witness Hanneken are both accountants.

Conclusion of Law

1. The Conclusions of Law set out above are controlling for this discussion.

Discussion

The company's witness, Johansen, argues that costs incurred during the certificate cases should be included in rate case expense. In support of his position he states that

[93] Transcript; page 189, lines 3-5.

these costs should be included as “Intangible Plant” and held in account 302 of the Uniform System of Accounts, which states:

> This account shall include amounts paid to the federal government, to a state or to a political subdivision thereof inconsideration for franchises, consent, or certificates . . . together with necessary and reasonable expenses incident to procuring such . . . certificates of permission and approval . . .”

Both Hanneken and Addo disagree with Johansen. They are both accountants. Johansen is not an accountant. An interpretation of the USOA by two accountants outweighs such by a non-accountant.

The company shall not include in rates the costs associated with the certificate cases.

<u>What is the appropriate amount of expense to include in rates for the company’s office space, including rent and utilities</u>?

Findings of Fact

77. The company pays $950/month for office space.[94]

78. The company also pays additional expenses including; homeowners’ association fees, water charges, electricity, mowing around the office and maintenance on the building including heating and cooling repairs.[95]

79. It is not normal for a utility with 120 customers to pay what the additional expenses would cost; $1,400/ month.[96]

80. The company has requested to recover rent and utilities through rates, not the other, abnormal expenses.[97]

[94] Transcript; page 199, lines 3-6.
[95] Transcript; page 199, lines 7-14.
[96] Transcript; page 199, line 23 – page 200, line 2.
[97] Transcript; page 201, lines 12-18.

81. The owner of the building is an affiliate of, or an organization that is controlled by, Mr. Kallash.[98]

82. Mr. Kallash leases the office space, but the transaction was not made at arms-length.[99]

83. Mr. Kallash owns Fitch & Associates.[100]

84. Fitch & Associates has paid the taxes on the office space property.[101]

85. Staff based is recommended rental expense of $600/month on available office space in the Troy, Missouri area.[102]

86. For utilities, Staff added $900 for a total of $8,100 annually.[103]

87. Public Counsel's estimate of rent, of $7,018, is also based on average rent in Troy, Missouri.[104]

88. In its assessment, Public Counsel makes a disallowance for some of the office space because it is not being used.[105]

89. The area reflected in OPC's disallowance of $1,140 is 121.83 square feet.[106]

90. 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.[107]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

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[98] Transcript; page 299, line 19 – page 300, line 10; pages 314 - 325.
[99] Transcript; page 306 – page 310.
[100] Transcript, page 322, lines 1-2.
[101] Commission Exhibit 2.
[102] Boateng Surrebuttal (Staff 7), page 5, lines 4-9.
[103] Addo Surrebuttal (Staff 7), page 5, lines 5-6.
[104] Addo Rebuttal (OPC 2) page 5, lines 2-3; Boeteng Surrebuttal (Staff 7), page 5, line 11.
[105] Addo Rebuttal (OPC 2), page 8, line 13 - page 9, line 4.
[106] Addo Rebuttal (OPC 2), page 8, lines 10-12.
[107] Addo Rebuttal (OPC 2), page 8, lines 14-21.

Discussion

The company's real estate transaction, with regard to renting its office space, calls into the question the reasonableness of the rent it pays. The transaction and the responsibility over the maintenance indicate that Mr. Kallash controls the property. Both Staff and OPC have based their evaluations on what the market reflects. Because it has determined that some of the space is not being used, OPC, however, has disallowed a portion of its estimate.

Although the Commission does not find any malfeasance on the part of Mr. Kallash, he does have some control over the amount of rent he pays. In light of information from Staff and OPC regarding the rental market, it would be unreasonable for the LCSW's customer to pay for what is comparatively inflated rent.

Through its investigation, OPC found that there is a 10ft x 12ft area of the building that is not being used and therefore opines that costs associated with this space should be excluded from rates. Upon inquiry the company informs OPC finds that the space is intended for filing cabinets and storage of plat and utility maps for its certificated territory.

The area that OPC is concerned about is 121.83 square feet or 10ft x 12ft. Although OPC's suggestion is scientifically sound, it would be unreasonable from a practical standpoint for the company to have found a space that is 10ft x 12ft smaller. With regard to the company's actual rent, LCSW's lease was not entered into at arm's length and Staff and OPC's recommendation are only $58 apart if OPC disallowance is included. That both Staff and OPC arrived at similar results regarding rental cost in that area further support the veracity of their respective conclusions. However, given OPC's impractical disallowance of a portion of the office space, Staff's recommended allowance of $8,100 annually is reasonable.

Is it appropriate to include income tax expense in the company's cost of service?

Findings of Fact

91. The company does not pay income tax. The profit/loss is recorded on the owner's personal tax.[108]

92. The company does not incur tax liability.[109]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

Because tax expense is reflected in the owner's personal income tax, it is unreasonable to include income tax expense in the company's cost of service.

What is the appropriate level of salary to include in rates for Dennis Kallash?

Findings of Fact

93. For 16 years Mr. Kallash has performed functions such as responding to service-related customer calls, performing the required water sampling, performing inspections of new customer connections, monitoring the operation of the sewer and water systems, reading the water meters, ordering field supplies and installing water meters. He is also the company contact person for dealing with the Commission and the Department of Natural Resources.[110]

[108] Transcript, page 266, line 23 – page 267, line 6.
[109] Transcript, page 266, line 23 – page 267, line 6.
[110] Johansen Direct (LCSW 1), page 10, line 20 to page 21, line 4.

94. Based on a review of available regional wage information from 2012 for experienced "general and operations managers" and the CPI-W data for June 2013, Mr. Kallash should be paid at an hourly rate of $39.65.[111]

95. Mr. Kallash spends 11.5 hours/week performing services with the sewer and water company.[112]

96. The Staff of the Commission is unable to determine the number of hours Mr. Kallash spends time working with the sewer and water company.[113]

97. There are no paid employees working with the company.[114]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

The Staff of the Commission was unable to determine the number of hours Mr. Kallash works. Although the company proposes a monthly average of 87 hours, evidence submitted by the company shows that in October of 2012, Mr. Kallash worked 3 hours on the 10th, 2 hours on the 14th and 6.5 hours on the 15th. This is 11.5 hours in a week's time. This weekly average amounts to 598 hours per year.

With regard to his rate of pay, both Staff and OPC's suggested salaries are based on the salary used to determine rates during the certificate case. There is, however, no basis for the rate set at that time. The rate suggested by the company is based on the CPI-W data for June 2013 and available wage data information from 2012 for "general and operations managers", which is reasonably descriptive of the work performed by

[111] Johansen Direct (LCSW 1), page 11, lines 9-11.
[112] Kallash Surrebuttal (LCSW 4), Schedule DK-4S.
[113] Transcript; pages 275-293.
[114] Ferguson Rebuttal (Staff 3), page 18, lines 5-6.

Mr. Kallash. The company suggests an hourly wage of $39.65. The company further suggests that this amount be increased to $42.68 to include a payroll tax, as if Mr. Kallash was paid as an employee. The Commission has determined that there are no paid employees working for the company and that inclusion of a payroll tax in salaries unreasonable.

The evidence supports an hourly wage of $39.65 for Mr. Kallash at 598 hours per year; or, $23,710.70 annually.

<u>What is the appropriate level of salary to include in rates for Toni Kallash?</u>

Findings of Fact

98. Ms. Kallash performs functions such as producing customer bills, picking up and depositing customer payments, answering customer calls, monitoring the company's answering machine, meeting with new applicants, general bookkeeping, purchasing office supplies and dealing with title companies on property transfers.[115]

99. For October of 2012, Ms. Kallash booked 31.66 hours.[116]

100. For November of 2012, Ms. Kallash booked 17 hours.[117]

101. For December of 2012, when the company filed for a rate increase, Ms. Kallash booked 83.25 hours[118]

102. For January of 2013, Ms. Kallash booked 80 hours.[119]

103. For February of 2013, Ms. Kallash booked 81 hours.[120]

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[115] Johansen Direct (LCSW 1), page 9, lines 11-15.
[116] Addo Rebuttal (OPC 2), page 23, lines 12-13.
[117] Addo Rebuttal (OPC 2), page 23, line 13.
[118] Addo Rebuttal (OPC 2), page 23, lines 14-15.
[119] Addo Rebuttal (OPC 2), page 23, lines 16-17.
[120] Addo Rebuttal (OPC 2), page 23, line 18.

104. For March of 2013, with 3-7 hours booked almost daily at the bank, Ms. Kallash booked 101 hours.[121]

105. Based on a review of available regional wage information from 2012 and the CPI-W data for June 2013, for the services performed by Ms. Kallash, an hourly rate of $15.34 is appropriate.[122]

106. Inclusion of the billing program will require 12 fewer hours per month for payroll expense of office personnel.[123]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

As with Mr. Kallash, the company offers support for its suggested hourly wage of $15.34 for Ms. Kallash. This wage, at the company's proposed 87 hours per month, results in an annual salary expense of $16,015. Staff proposes an annual salary of $10,562 for Ms. Kallash and bases this amount on the number of hours it believes Ms. Kallash works at an average hourly rate of $13.37 as supported by MERIC (Missouri Economic Research & Information Center). OPC suggests an annual salary of $6,592, based on the salary included in rates during the certificate case, with an increase factored in due to an increase in customers.

Although their resulting rates vary, both Staff and the company base their suggested hourly wages on MERIC. Staff uses the hours for October 2012 through March 2013 to arrive an annual compensation for Ms. Kallash. For the months of October 2012 through

[121] Addo Rebuttal (OPC 2), page 24, lines 1-3.
[122] Johansen Direct (LCSW 1), page 10, lines 4-7.
[123] Johansen Direct (LCSW 1), page 7, lines 20-22.

March of 2013, Ms. Kallash worked an average 65.65 hours/month. As pointed out by OPC, the hours dramatically increase in December of 2012, when the company filed this rate increase request. And, in March of 2013, unusually long hours were booked as time spent at the bank. Nevertheless, these are the hours Staff averaged to arrive at its suggested annual salary.

The company proposes an annual salary based on 87 monthly hours. This amount is greater than any monthly amount noted in the months between October 2012 and February 2013. March is booked with 101 hours. The Company's proposed hours are greater than the number of hours supported by the record. On the other hand, Staff has averaged hours from October of 2012 to March 2013. The numbers from December through March are inexplicably much higher than those from October and November. Further, even between October and November the hours decrease from 31 to 17.

The Commission is satisfied that the company has carried its burden with regard to an hourly rate of $15.34 for Ms. Kallash. With regard to the number of monthly hours Ms. Kallash works, Staff presents the only reasonable suggestion by averaging the hours that are in evidence. However, as pointed out by OPC, the month of March includes an inordinate number of hours spent at the bank. It is therefore reasonable to exclude the month of March from the sample of hours that are in evidence. This results in a monthly average of 58.58 hours. At $15.34 per hour, Ms. Kallash's annual salary shall be $10.783.77.00.

What is the appropriate amount of expense to include in rates for vehicle mileage?

Findings of Fact

107. For a total of 892.8 miles, Ms. Kallash makes 144 annual trips, at 6.2 miles per trip, from the company's office to the bank.[124]

108. The federal reimbursement rate for business mileage is $.565/mile.[125]

109. Mr. Kallash makes an average of 14 monthly master meter reading trips with four miscellaneous trips to serve both the Bennington and Rockport systems.[126]

110. Mr. Kallash travels 4552.21 annual miles.[127]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion

Discussion

Given the federal reimbursement rate for mileage and the number of miles traveled annually by Mr. and Ms. Kallash, the amounts to be included in rates for mileage are: $2,572 for Mr. Kallash and $504 for Ms. Kallash.

What is the appropriate amount of expense to include in rates for water testing?

111. The Department of Natural Resources annual fee for each system is $200.[128]

112. An additional amount of $360/year is appropriate as a management fee.[129]

Conclusion of Law

The Conclusions of Law set out above are controlling or this discussion.

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[124] Johansen Direct (LCSW 1), page 16, line 12 to page 17, line 5.
[125] http://www.irs.gov/uac/Newsroom/2013-Standard-Mileage-Rates-Up-1-Cent-per-Mile-for-Business,-Medical-and-Moving
[126] Johansen Direct (LCSW 1), page 16, line 12 to page 17, line 5.
[127] Johansen Direct (LCSW 1), page 16, line 12 – page 17, line 5.

Discussion

Given the cost of $200 per system for the DNR annual fee and an additional amount of $360/year as a management fee, the appropriate amount of expense to include in rates for water testing is $760/year.

What is the appropriate amount of expense to include in rates for sludge hauling?

113. The Company pays $.14/gallon for sludge hauling.[130]

114. A three-year average for sludge hauling is $2,958.[131]

115. The company has not received any DNR violations.[132]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

Staff's position is based on a three-year average for sludge hauling; which is reflective of the company's expenses. The company seeks to include in this cost, expenses associated with additional maintenance suggested by ESA, Inc.[133] During its 16 years in operation, the company has not been cited for any violations from the Department of Natural Resources. In light of this, the necessity for additional maintenance is not supported.

Based on the company's historical costs, an appropriate amount of expense to include in rates for sludge hauling is $2,958.

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[128] Ferguson Rebuttal (Staff 3), page 23, lines 1-5.
[129] Johansen Direct (LCSW 1), page 17, lines 17-18.
[130] Ferguson Rebuttal (Staff 3), page 20, lines 15-16.
[131] Ferguson Rebuttal (Staff 3), pages 20-21; Hanneken Surrebuttal, pages 18-19.
[132] Transcript; page 177, lines 13-15.
[133] *See* Schedule DWJ-2S, Johansen Surrebuttal (LCSW 2).

<u>What is the appropriate amount of expense to include in rates for office supplies and postage in regard to the mailing for the Consumer Confidence Report?</u>

116. This expense has to do with a required DNR consumer confidence report.[134]

117. The report must be made available to customers annually.[135]

118. LCSW, being a small company, is not required to mail the report to customers but must only make it available to customers.[136]

119. If the company chooses to mail the report to customers, the report can be mailed with a monthly billing statement.[137]

120. The cost of additional paper and ink to produce the Consumer Confidence Report is $192.[138]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

Staff asserts that the report can be mailed with a monthly billing statement, with no additional postage required. This is reasonable. The company will, however, incur additional cost of printing at $192/year. It is just and reasonable to include this expense in rates.

[134] Transcript, page 21, lines 3-7.
[135] Ferguson Rebuttal (Staff 3), page 27, lines 11-12.
[136] Transcript, page 21, lines 13-17.
[137] Ferguson Rebuttal (Staff 3), page 27-28.
[138] Ferguson Rebuttal (Staff 3), page 28, lines 6-7.

<u>What is the appropriate amount of revenue to include in rates for late fees?</u>

121. Staff's results for annualized late fees are: $252 each for Bennington water and sewer, and $816 each for Rockport water and sewer.[139]

122. Rates in Missouri are based on a historical test year.[140]

123. The matching principle requires that all expenses and revenues of the same time period be weighed in order to determine rates.[141]

124. The company has not provided updated numbers necessitating any changes in late fees while adhering to the matching principle.[142]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

Staff's position is based on historical costs. The company asserts that a change in the number of customers should be considered in determining late fees. Because all revenues and expenses must be considered during the same time period, thus the purpose of a test year, Staff's position is just and reasonable. The appropriate amount of late fees to be considered in rates are as Staff suggests: $252 each for Bennington water and sewer, and $816 each for Rockport water and sewer.

<u>What is the appropriate amount of expense to include in rates for telephone and internet usage?</u>

125. The actual cost of telephone and internet usage is $128.65/month.[143]

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[139] Ferguson Rebuttal (Staff 3), page 25, lines 21-23.
[140] Transcript, page 214, lines 13-15.
[141] Transcript, page 217, line 3 to page 218, line 3.
[142] Transcript, page 216, lines 5-12.
[143] Johansen Surrebuttal (LCSW 2), Schedule DWJ-5S.

126. The company's telephone and internet provider is CenturyLink.[144]

127. The company's actual, annual cost for telephone and internet usage is $1,543.80.

128. The landline package from CenturyLink is the basic and least expensive package.[145]

129. Staff has annualized $899 for telephone and internet usage.[146]

Conclusion of Law

The Conclusions of Law set out above are controlling for this discussion.

Discussion

The company seeks to have its actual costs included in rates. Staff's position, which OPC supports, is based on Staff inquiring into what it believes the telephone/internet plan should be. Staff's contention is that telephone and internet service should be less than what the company is spending. The evidence shows that the company acted reasonably when choosing telephone and internet service. It is an expense that is being incurred and will be included in rates at annual amount of $1,543.80.

THE COMMISSION ORDERS THAT:

1. The company shall file tariffs consistent with this Report and Order.

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[144] Transcript, page 220, lines 16-17.
[145] Transcript, page 221, lines 23-24.
[146] Addo Rebuttal (OPC 2), page 37; Ferguson Rebuttal (Staff3), pages 23-24.

2. This Report and Order shall become effective on May 2, 2014.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney, and Hall, CC., concur, and certify compliance with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri, on this 2nd day of April, 2014.