

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23<sup>rd</sup> day of July, 2014.

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

**File No. SR-2013-0321**

**ORDER REGARDING MOTION  
TO ESTABLISH RATE CASE EXPENSE**

Issue Date: July 23, 2014

Effective Date: August 2, 2014

The Commission is allowing Lincoln County Sewer and Water, LLC (LCSW) to recover as rate case expense all attorney and consulting fees and limited miscellaneous expenses, with a 3-year amortization.

**Background**

On April 2, 2014, the Commission issued a Report and Order resolving issues presented by the parties with regard to LCSW's request for a rate increase. One such issue was whether the attorney fees of James Burlison should be included in rate case expense. Because the company retained the services of Brydon Swearngen & England as their attorneys, the Office of the Public Counsel argued that Mr. Burlison's participation was unnecessary. Consequently, Public Counsel sought to exclude his expenses from rate case expense.

Nevertheless, the Commission viewed Mr. Burlison's participation as reasonable and found that his expenses should be included in rates. The Report and Order was effective

on May 2, 2014. On May 8, the company filed a motion to establish rate case expense. Those expenses are: (1) the attorney fees of Brydon, Swearingen & England; (2) the attorney fees of McIlroy and Millan (James Burlison); (3) the consulting fees of Dale W. Johansen d/b/a Johansen Consulting Services; and, (4) the expenses incurred by the company. The Commission held a hearing on June 13. Post-hearing briefs were filed on June 30.

Primarily, at issue are: the expenses claimed to have been incurred by the company, the time period over which all expenses should be recovered through rates, and the method of recovery – amortization or normalization.

### **The Amount of Rate Case Expense**

#### Summary of the Parties' Positions

For rate case expense totaling \$66,510, the company requests \$31,210 in attorney fees, \$10,106 for consulting fees, and \$25,194 for time and expenses incurred by the company owners, Dennis Kallash and Toni Kallash. The company also requests that the expenses be amortized over three years with a tracker.

Staff agrees that the attorney and professional fees should be included in rates. Staff argues that all of the expenses of Dennis Kallash should be disallowed because they are unverifiable. Those of Toni Kallash, to the extent that they are verifiable, should be limited to \$4,700. Staff would also limit certain other expenses for copying, ink cartridges, mileage and labor for copying. Under Staff's analysis, the total rate case expense is \$47,115 and should be amortized over 5 years with a tracker.

Public Counsel argues that some professional fees are outside of an agreed-upon time frame to be considered for rate case expense. Additionally, Public Counsel would

deny the company's request for expenses for copying, ink cartridges and labor for copying. Finally, Public Counsel would limit those expense for mileage, hotel and meal cost. Under Public Counsel's analysis, total rate case expense is \$39,662.16 and should be normalized over 3 years.

## **Findings**

### Professional Fees

The parties generally agree that attorney and consultant fees should be included in rate case expense. However, Public Counsel posits that the attorney and consultant fees should be limited to an already agreed-upon time frame ending on November 26, 2013; the date post-hearing briefs were filed.<sup>1</sup> The Report and Order was issued on April 2, 2014, with an effective date of May 2. Both the company and Public Counsel each filed an Application for Rehearing on May 1.

In an effort to recover rates case expense, the company filed its motion on May 8, with the parties filing alternate pleadings on May 13, 16 and 21, and June 5. This docket has gone well beyond the November date, culminating on June 13 with a hearing related solely to rate case expense and post-hearing briefs being filed on June 30, 2014. The company has raised this issue separate from the rate case hearing, thereby extending the typical rate case timeline and placing it in a unique posture before the Commission. However, given the history of this case, the Commission finds that it is reasonable to allow fees incurred after November 26, 2013

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<sup>1</sup> Public Counsel post-hearing brief, page 4.

### Expenses for Company Time

The Commission is sensitive to the amount of time Dennis and Toni Kallash have spent preparing for this rate case, responding to requests from other parties, reviewing documents and attending hearings. Nevertheless, the Kallashes have been awarded a salary for the time they spend operating the sewer and water company; which will necessarily include regulatory activities. Even outside of the rate case, the company will be required to file annual reports, to respond to any complaints and generally take action to comply with statutes and rules of this Commission. The time spent complying with these requirements will be compensated at the hourly rates awarded in the Report and Order; \$39.65 to Mr. Kallash and \$15.34 to Ms. Kallash. It is the company's burden to show that the time dedicated by the company to rate case activities is recoverable through rate case expense. The company has not met this burden.

Staff and Public Counsel argue that the Commission should disallow recovery of the company's time spent on the case because of poor record-keeping. Whether the company's records are adequate is immaterial in light of the Commission's larger concern. A small number of ratepayers will be subject to significant yet reasonable costs with regard to automated meters, which was the central issue in the Report and Order. The Commission must balance the interest of a small number of ratepayers with the company's request for expenses to be included in rates paid by those ratepayers.

With the approved cost of automated meters that the customers will have to bear, it would be unjust to require them to shoulder the additional expense of compensation to the owners for their time spent during this rate case because they are compensated through

the salary granted to the owners and the owners can control the issues raised in a rate case proceeding as well as the filing of a rate case.

#### Labor at Fitch & Associates

The company requests \$340 for work performed by “Patty”, an employee of Fitch & Associates (an affiliate of Dennis Kallash).<sup>2</sup> The company arrived at this amount by valuing her hours worked at \$20/hour.<sup>3</sup> Public Counsel would disallow this expense as being undocumented. The company has presented evidence of this expense<sup>4</sup> and Staff asserts that the expense should be allowed but at the same rate allowed by the Commission for work performed by Toni Kallash; \$15.34. This results in \$260.78, or \$261. The Commission finds that Staff’s approach is reasonable and will allow that \$261 be included in rate case expense.

#### Copying

The company seeks \$47.66 for ink cartridges purchased at Wal-Mart and has included a receipt for such.<sup>5</sup> Public Counsel would exclude this expense. Staff does not object to this amount being included in rate expense. It is reasonable that the company would be required to purchase ink cartridges during a rate case because of the amount of copying the company has had to do to participate in this rate case. Both testimony and the receipt is evidence that \$47.66 was spent on ink cartridges, not \$327.79 as Mr. Kallash testified.<sup>6</sup> The Commission finds it reasonable to include \$47.66 in rate case expense.

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<sup>2</sup> LCSW Exhibit 4, page 1; Transcript, page 476, lines 2-4.

<sup>3</sup> LCSW Exhibit 4, page 1.

<sup>4</sup> LCSW Exhibit 4, page 1; Transcript, page 452, lines 12-25.

<sup>5</sup> LCSW Exhibit 4, last page.

<sup>6</sup> Transcript, page 444, lines 8-9. Wal-Mart web search, item no. PG-210XL.

### Hotels and Meals

The company seeks \$467 for hotel charges and meal costs.<sup>7</sup> Although Staff does not object, Public Counsel points out that the hotel cost includes an overnight stay for Jim Burlison, the company's attorney, and Dennis Kallash.<sup>8</sup> Mr. Burlison submitted an invoice to the company.<sup>9</sup> As pointed out by Public Counsel, there is no obligation that the company bears the cost of Mr. Burlison's stay. The Commission finds that it is unreasonable to include Mr. Burlison's portion of hotel cost. However, Mr. Kallash incurred a cost of \$119.31. The Commission will include the cost of Mr. Kallash's stay in rate case expense as it is reasonable.

The company submitted evidence showing meal costs reflected on a credit card statement in the amounts of \$162.35 on November 4, 2013, and \$26 and \$40 on November 5;<sup>10</sup> all in Jefferson City. As pointed out by Public Counsel, Mr. Kallash was the only company personnel required to attend the hearing, which was held on November 5, 2013. Public Counsel reasons that there must be some meal cost incurred by Mr. Kallash and that the federal CONUS rates for Jefferson City should be applied, which would allow \$8.00 per breakfast, \$12.00 for lunch and \$26.00 for dinner. This amounts to \$46.00. The Commission finds Public Counsel's reliance, in this case, on federal CONUS rates to account for Mr. Kallash's meals is reasonable.

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<sup>7</sup> LCSW Exhibit 4, page 1.

<sup>8</sup> LCSW Exhibit 4, DoubleTree Hotel receipts.

<sup>9</sup> LCSW Exhibit 2.

<sup>10</sup> LCSW Exhibit 4, Cabela's Club Visa account statements.

## Mileage

As pointed out by Public Counsel, the company provided only a list of activities, then a total amount for mileage.<sup>11</sup> There are no dates for each activity or cost per activity. Further, some of the activities are unreasonable; e.g., measuring the office building, work at the office on weekends, and attending the local public hearing in Troy, Missouri where the company is located. It is reasonable, however, to include the cost of mileage of the company's trip to Jefferson City. Public Counsel suggests that the Internal Revenue Service rate of \$0.56 be used. The Commission finds that including a mileage cost of \$110.85 is reasonable.

## **Conclusions**

Charges for rates must be just and reasonable and the burden of proving such is with the company.<sup>12</sup> While balancing the varied interests of the parties in the rate-making process, the Commission has broad discretion.<sup>13</sup> In balancing the interest of the ratepayer and the company, the Commission concludes that it is just and reasonable for rates to reflect the expenses found above.

With regard to the time frame of recovery, the Commission's conclusion must be just and reasonable. The company proposes 3 years. Staff and Public Counsel propose 5 years. Because the Commission will limit expenses as found above, it is just and reasonable that the time frame should be the shorter of those proposed to bring recovery of those costs closer to the time at which they were incurred. Finally, to ensure that the exact amount of rate case expense is recovered, without regard to when the company may file

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<sup>11</sup> LCSW Exhibit 4.

<sup>12</sup> Section 393.150, RSMo.

<sup>13</sup> *State ex rel. Union Elec. Co. v Pub Serv. Comm'n of State of Mo.*, 765 S.W.2d 618,622 (Mo. App. W.D. 1988).

another rate case request, the Commission will order that the expenses be amortized with a tracker.

**Decision**

The above discussion results in the following:

\$27,990.00 from Brydon, Swearngen & England P.C<sup>14</sup>

\$3,220.00 from McIlroy & Millan<sup>15</sup>

\$10,106.00 from Johansen Consulting, LLC<sup>16</sup>

\$261.00 labor for an employee at Fitch & Associates

\$34.02 photocopies

\$47.66 ink cartridges from Wal-mart

\$119.31 Hotel costs

\$46.00 meal cost

\$110.85 mileage

**\$41,934.84 TOTAL**

The above expenses will be amortized over three years with a tracker.

**THE COMMISSION ORDERS THAT:**

1. Lincoln County Sewer and Water, LLC, shall include in rates expenses consistent with this order.

2. The parties shall file tariff sheets consistent with this order and the Report and Order issued on April 2, 2014.

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<sup>14</sup> LCSW Exhibit 1.

<sup>15</sup> LCSW Exhibit 2.

<sup>16</sup> LCSW Exhibit 3.



3. This order shall become effective on August 2, 2014.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
and Hall, CC., concur.  
Rupp, C., dissents.

Jones, Senior Regulatory Law Judge