

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

In the Matter of the Small Company Rate)	
Increase Request of Hickory Hills Water &)	<u>Case No. WR-2006-0250</u>
Sewer Company, Inc.)	

BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

I. Introduction

Although this case began as a small company rate increase request pursuant to the Commission's Small Company Rate Case Rules¹, it has moved beyond that process. Because it is now a contested rate increase case, the Commission must make its decision on whether to allow any increase based upon an examination of all relevant factors and a consideration of the record evidence. Luckily, the issues are few and straightforward, and all have to do with the appropriate compensation for the owner/operator, Randy Clifford. There are no issues about rate base, rate of return, or most of the expense issues that are usually present in rate cases. The only four issues are:

- (a) What hourly wage for Randy Clifford should be allowed in rates?
- (b) What number of hours worked by Randy Clifford should be allowed in rates?
- (c) How many compensated miles traveled should be allowed in rates?
- (d) Should payments to a retirement account or accounts be allowed in rates?

This is not to minimize the importance of these issues. Indeed, they have relevance far beyond this particular case. There are many small water and sewer companies in Missouri, and as infrastructure ages and environmental regulations increase, they will become harder and harder to operate at a profit. But the Commission should not confuse compensation

with profit as Mr. Clifford has. The Commission should not, as Mr. Clifford urges, force ratepayers to pay an inflated salary rate or compensate him for hours not actually worked in order to afford him a return on his investment – an investment not matched by rate base. The Commission’s determinations in this case on appropriate time-recording and whether padding is allowed, what constitutes appropriate compensation for someone spending a few minutes a day to run a simple system, whether ratepayers should cover mileage that the operator would have driven anyway, and whether ratepayers should pay for retirement benefits for a part-time operator will influence how rates are set in the future for many of the small water and sewer systems in the state.

II. Issues

A. What hourly wage for Randy Clifford should be allowed in rates?

The only competent evidence on this issue supports Public Counsel’s proposed wage rate of \$13/hour. In this section of the brief, Public Counsel will first discuss the evidence that supports its proposed wage rate, and then discuss the fatal flaws in Staff’s evidence.

Public Counsel relied on two lines of analysis to support its proposed wage rate. First, it examined what employers in the area pay water and sewer system operators. This line of analysis looked at four separate advertisements for operators and two data points from the U.S. Department of Labor’s Bureau of Labor Statistics. (Exhibit 9, Rebuttal Testimony of Ted Robertson, pp. 18-25; Transcript, pp. 143-149, 182-191). The four advertised positions, some of which were for experienced operators (Transcript, p. 144), covered a wage range of \$10.00 to \$16.05 per hour. Public Counsel witness Robertson

¹ 4 CSR 240-3.

recommended that Mr. Clifford's compensation be set at \$13/hour: the midpoint of that range. The two data points from the U.S. Department of labor show that the average wage for an operator is \$15.65 in Springfield, Missouri and \$16.44 nationwide. All four of the advertised positions sought employees with a higher level of Department of Natural Resources (DNR) certificate than the certificate Mr. Clifford possesses.

The second line of analysis used by Public Counsel to determine the appropriate wage rate for Mr. Clifford involved an examination of the tasks that Mr. Clifford actually performs as the owner/operator of the system. With very few exceptions, these tasks fall into one of two categories: menial labor like cutting grass or clearing brush; or simple, rote tasks like chlorine testing or mixing household bleach with water in a trash can. An examination of Mr. Clifford's logbook (Exhibit 9, Robertson Rebuttal, Schedule TJR-2) shows that almost all of the time spent during the 2004 test year was on these activities; very little was spent on repair work. There are only a few notations of actual repair work during the entire year, totaling only a dozen or two hours – an immaterial amount in light of the hundreds of hours spent doing menial or unskilled tasks. There were no hours recorded as being spent on "management" (which makes sense because there is only one employee to manage: Mr. Clifford's wife who only worked 40 hours in the test year). It would be unreasonable to set a wage rate that requires captive ratepayer to compensate Mr. Clifford at \$19/hour for cutting grass and doing chlorine tests.

Most of the notations in the log during the test year are for chlorine testing and checking the system. This is a very simple routine that can be done in only fifteen minutes (Transcript. PP. 155-156, 167). The photos attached to the *ex parte* notice filed in this case

on May 9, 2006 show that this routine is so simple that Mrs. Clifford was able to perform it on at least three days in April of this year.²

The Staff of the Commission, as well as Hickory Hills, allude to the fact that Mr. Clifford is “on call” 24 hours a day. But there is no evidence in the record that there is any actual burden associated with this theoretical obligation, and there is nothing noted in Mr. Clifford’s log to show that he was called out on any emergencies during the test year (Transcript, pp. 216-217). Staff and Hickory Hills also allude to the fact the Mr. Clifford has some skill with computer-assisted drafting (CAD) software and has done some mapping of the Hickory Hills system. But on two recent occasions, DNR has found Mr. Clifford’s mapping to be insufficient (Transcript, pp. 75-76). It would be unreasonable to set an operator’s salary based on a skill set the only demonstrated use of which is to create a deficiency that has twice been pointed out by DNR.

The evidence that Staff produced to support its proposed wage rate of \$19/hour is so full of holes that the Commission should not rely on it at all. Staff looked at two sources to arrive at the \$19/hour figure. First, it looked at a Commission case from 1993 (SC-93-276) that may have set a wage rate of \$15/hour for Bill Gold, the operator. The most remarkable aspect of Staff’s reliance on this case is how little the Staff witness actually knows about it. Staff witness Clark initially testified that the Commission set that wage rate (Exhibit 3, Clark Direct, p. 7), but later corrected his testimony to say that the “Greene County Circuit Court Judge” set that wage rate. However, he did not review any

² It is not clear whether allowing a person who does not possess the requisite certification to perform these tests complies with DNR regulations, but that question is not addressed herein. What is made clear by these photos, and it reinforces Public Counsel’s position, is that these tasks are simple and do not require any special skill set.

documents from the Greene County Circuit Court, preferring to rely on “discussions with the water and sewer department and what they recall...” (Transcript, pp. 113-114). Mr. Clark testified that he did review “some” documents from the Commission case, but was unable to find **any** reference to a \$15 wage rate in the material he reviewed (Transcript, p. 114). Mr. Clark testified that he did not know what DNR certificate that operator in SC-93-276 held. Mr. Clark testified that he did not know whether Bill Gold still operates the system. Mr. Clark testified that he did not know what kind of testing was done on the system in SC-93-276. Mr. Clark testified that he did not know whether the operator performed any testing himself. (Transcript, pp. 117-118). The Staff was able to testify to how the system in SC-93-276 is **unlike** the Hickory Hills system: the Bill Gold system served 110 customers, more than double the size of Hickory Hills (Transcript, p. 115) and the Bill Gold system was a mechanical system, more complicated than the simple lagoon system at Hickory Hills (Transcript, p. 116).

Staff took that \$15/hour – a shaky base on which to begin – and performed an utterly ridiculous inflation adjustment. Staff factored up the \$15/hour by the “CPI for Urban Wage Earners in the Midwest Region for Size Class D, which applies to areas with population less than 50,000.” (Exhibit 3, Clark Direct, p. 7). Staff witness Clark was wholly unable to explain why he adjusted Bill Gold’s supposed wage rate with an inflation factor derived from urban clerical workers (Transcript, p. 112). In short, Staff relied a number that may have appeared in a case thirteen years ago – although the witness testified that he was unable to find that number – without any evidence that the system in that case was like the Hickory Hills system (and indeed, much evidence that it was not), or that the operator in

that case performed tasks similar to those performed by Mr. Clifford. Staff then took that number and increased it by an inflation factor that clearly is not appropriate.

Staff's second source of support for its \$19/hour figure is no more reliable. Staff relied on hearsay information from the City of Tipton that the city's water and sewer and street department manager receives a wage of \$18.65. Once again, Staff was not able to testify that the Tipton system is anything like the Hickory Hills system or that the Tipton manager's duties are anything like Mr. Clifford's. In fact, Staff presented quite a bit of evidence that the systems are not alike. Staff witness Clark testified that the Tipton manager supervises three or four employees and two inmates (Transcript, p. 118); Mr. Clifford supervises none. Staff witness Clark testified that the Tipton manager holds a higher level DNR certificate than Mr. Clifford (Transcript, p. 118). Mr. Clark testified that both the water system and the sewer system at Tipton are more complicated than those at Hickory Hills. Mr. Clark testified that the city of Tipton has about 2000 residents³, at least **40 times larger** than the Hickory Hills system.

B. What number of hours worked by Randy Clifford should be allowed in rates?

The primary source of evidence in this case on the number of hours that Mr. Clifford worked during the test year is Mr. Clifford's time log (Exhibit 9, Robertson Rebuttal,

³ This mistake is typical of the analysis Staff performed in this case. Rather than checking the Census Bureau website (http://factfinder.census.gov/servlet/SAFFPopulation?_event=ChangeGeoContext&geo_id=16000US2973420&geoContext=&street=&county=tipton%2C+mo&cityTown=tipton%2C+mo&state=&zip=&lang=en&sse=on&ActiveGeoDiv=&useEV=&pctxt=fph&pgsl=010&submenuId=population_0&ds_name=null&ci_nbr=null&qtr_name=null®=null%3Anull&keyword=&industry=) to determine that Tipton actually has over 3000 residents, Mr. Clark preferred to rely on his impression of the size while driving through Tipton and on "discussions with the water and sewer department." (Transcript, pp 129-130).

Schedule TJR-2 ⁴). Mr. Clifford has frankly admitted that he does not record his actual hours worked, but pads his time log by recording an hour even if he has only worked 15 minutes (Exhibit 9, Robertson Rebuttal, p. 11). Since the log itself is unquestionably inaccurate, the Commission has two choices: allow the hours reflected in the log knowing that they are not accurate, or adjust the hours. Public Counsel submits that the first is not a real choice. Staff witness Clark half-heartedly asserted for the first time at the hearing that there may be some other hours not recorded that make up for the padding, but he did not make any attempt to quantify those hours. (Transcript, pp 126). Mr. Clifford himself never testified that there are any unrecorded hours. Without some evidence that quantifies these unrecorded hours, there is no way to even make a plausible guess that they may offset the padding. Thus the Commission would have to condone the padding of the time log to accept the first choice. If the Commission chooses to adjust the recorded hours, Public Counsel witness Robertson's adjustments are fair and well-supported by the record evidence. Mr. Robertson examined the time log day by day for the entire test year, and adjusted all the days in which it appeared Mr. Clifford did nothing more (or little more) than chlorine testing and a system check. Mr. Clifford admitted that he can perform these tasks in fifteen minutes (Exhibit 9, Robertson Rebuttal, p. 14); Mr. Robertson very generously allowed thirty minutes. By doubling the amount of time that Mr. Clifford needs to perform the basic daily routine, Public Counsel built in time to allow other routine tasks like mixing chlorine. Mixing chlorine on the Hickory Hills system is a simple matter of adding household bleach and water to a trash can – easily accomplished in about fifteen minutes

⁴ Schedule TJR-2 is a reproduction of the actual log with Public Counsel's adjustments and notations reflected on it.

on average (Transcript, p. 88). Because it is based on judgment, there may be some minor inaccuracies in Public Counsel's adjustments. For example, Public Counsel allowed only thirty minutes on days on which bacteria testing was done. If bacteria testing takes significantly longer than fifteen minutes, it could not be accomplished along with the chlorine tests and system check in thirty minutes. However, by allowing thirty minutes minimum for every day in the test year, Public Counsel effectively built in a "cushion" because Mr Clifford's duties on many days in the test year days only took fifteen minutes. The bottom line is that the log Mr. Clifford kept is admittedly false, and Public Counsel's is the only evidence in the case that approaches an accurate rendition of the actual hours Mr. Clifford worked.

C. How many compensated miles traveled should be allowed in rates?

This appears to be a question of first impression before the Commission. It is entirely a policy question; there is no real dispute over the underlying facts. Mr. Clifford has a full-time, well-paying job in Jefferson City. As a result, he drives right past the Hickory Hills system twice a day on days he works his full-time job. Hickory Hills and Staff propose that ratepayers should compensate Mr. Clifford for those miles that Mr. Clifford would be driving anyway. Public Counsel proposes that ratepayers should only compensate for mileage on days when Mr. Clifford would **not** be passing the system anyway. Public Counsel's adjustment would allow mileage from Mr. Clifford's home to the plant on weekends and holidays, and would allow mileage claimed for other company business. It simply eliminates mileage on normal workdays when Mr. Clifford goes right by the plant twice. Exhibit 9, Robertson Rebuttal, pp. 26-30; Transcript, pp. 191-198).

D. Should payments to a retirement account or accounts be allowed in rates?

Mr. Clifford works 539 or 675 hours per year for Hickory Hills, depending on whether the Commission accepts Staff's or Public Counsel's calculation of hours. Mrs. Clifford works 40 hours per year. This is about a dozen hours a week, making it less than a half-time job. Staff has proposed that the salary of Mr. Clifford be supplemented by a "retirement benefit" of 9%, or \$1,155 per year. The only support for this retirement benefit is Staff witness Clark's assertion that "most companies provide benefits which include some form of retirement benefit to its employees." (Exhibit 3, Clark Direct, pp. 7-8). But upon cross-examination, Mr. Clark admitted that he did not have direct knowledge of **any** companies that provide retirement benefits for part-time employees. He simply had heard "in discussions with the other members of Staff, that on occasion that there has been members from the Public Service Commission on part-time that received partial benefits." He didn't know if that was a normal practice, and was unable to name any other company that provides retirement benefits to part-time employees. In contrast, Public Counsel witness Robertson, an auditor with vastly more experience than Mr. Clark, testified that it is not a normal for a regulated company – particularly one as small as Hickory Hills – to provide retirement benefits to part-time employees (Exhibit 9, Robertson Rebuttal, p. 26; Transcript, pp. 199-200).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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