

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

In the Matter of the Rate Increase for Oakbrier Water Co., Inc.))	<u>Case No. WR-2012-0267</u>
In the Matter of the Rate Increase for Lakeland Heights Water Co., Inc.))	<u>Case No. WR-2012-0266</u>
In the Matter of Request for Increase in Annual Sewer System Operating Revenues by R.D. Sewer Company, LLC.)))	<u>Case No. SR-2012-0263</u>

**STAFF'S RESPONSE TO OCTOBER 15TH ORDER DIRECTING FILING,
REQUEST TO DENY THE OFFICE OF THE PUBLIC COUNSEL'S
REQUEST FOR RECONSIDERATION AND
REQUEST FOR WAIVER OF COMMISSION RULE 4 CSR 240.3.050 (19)**

COME NOW the Staff (Staff) of the Missouri Public Service Commission (Commission), by and through counsel, and hereby states:

1. On January 31, 2012¹, the Commission received a Rate Increase Request Letter from Oakbrier Water Co., Inc. (Oakbrier or Company), requesting Commission approval of an increase of \$2,160.00 in its annual water service operating revenue, Lakeland Heights Water Company (Lakeland or Company) sought an increase of \$3,960.00 in its annual water service operating revenue, and R.D. Sewer Company, LLC (RD Sewer or Company) sought an increase of \$10,380 in its annual sewer service operating revenue, pursuant to Commission Rule 4 CSR 240-3.050 (Small Utility Rate Case Procedure).

2. On April 10 Staff filed a *Motion to Extend Filing of Disposition Agreement*, pursuant to Commission Rule 4 CSR 240-3.050 (12), seeking a two month extension from June 29 to August 29.

¹ Unless otherwise indicated, all dates are for the year 2012.

3. On April 11, the Commission entered an *Order Extending Timeline* granting Staff's request.

4. On August 28, Staff filed a *Notice of Company/Staff Agreement Regarding Disposition of Small Company Rate Increase Request (Company Staff Agreement)*. On September 5, 2012, an Amended Company Staff Agreement was filed in RD Sewer to correct a mistake in the original August 28 filing.

5. On October 4, the Office of the Public Counsel (Public Counsel) filed a request for local public hearing.

6. On October 10, the Commission issued an *Order Granting Request for a Local Public Hearing and Suspending Tariff*, suspending the tariffs until December 31, 2012, or until otherwise ordered by the Commission.

7. Also on October 10, the Commission established that local public hearings would be held on October 29 and October 30, in Poplar Bluff and Dexter, Missouri, respectively.

8. On October 11, Staff filed a *Motion to Request for Waiver and Request for Hearing Date*.

9. On October 11, the Commission filed an *Order Setting Evidentiary Hearings* setting the following dates:

List of Issues and Order of Witnesses	November 8
Live Evidentiary Hearing	November 15-16
Transcripts Filed	November 17
Proposed Reports and Orders	December 6

10. On October 12, the Public Counsel filed a *Request for Reconsideration* citing Commission Rule 4 CSR 240.3.050 (19) as allowing Public Counsel ten (10) working days after a local public hearing to determine its position on the Company/Staff Disposition and related tariff revisions, and to determine what issues are unresolved such that an evidentiary hearing would be necessary.

11. Staff acknowledges that part of the difficulty in this case is that the Company and Staff were provided an additional sixty (60) days to file its agreement, which is specifically allowed by Commission Rule 240 CSR 3.050 (12). In order to ensure the receipt of all pertinent information regarding the Company's activities, an extension was necessary and appropriate in this matter.

12. Staff notes that it did not specify a date for the evidentiary hearing and acknowledges that one may not be needed. Staff only requested that an evidentiary hearing be scheduled so that all parties and the Commission will be able to meet the 11-month timeline of December 31, 2012.

13. Commission Rule 240 CSR 3.050 (19) states "**No later than** ten (10) working days after the local public hearing, the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, or requesting that the commission hold an evidentiary hearing, and providing the reasons for its position or request." (Emphasis added.) In its *Request for Reconsideration*, Public Counsel disputes the hearing schedule the Commission ordered because it would require Public Counsel to file a List of Issues and Order of Witnesses by November 8 and, as argued by Public Counsel, it is entitled to ten (10) full working days after the last local public hearing, until November 14, due to a state holiday on

November 12. The Commission's ordered hearing schedule allows Public Counsel six (6) full working days after the last local public hearing to determine its position, as opposed to ten (10) full working days. This schedule is permissible under Commission Rule 240 CSR 3.050 (10) because while Public Counsel may take up to ten (10) working days, by rule that is the maximum amount of time Public Counsel can take to make its determination. Public Counsel may, by rule, take less time to make that determination and therefore no due process violation occurs if the hearing schedule remains as ordered on October 11.

14. Public Counsel cites its ability to wait ten (10) working days after a local public hearing to make a determination on its position or if any issues are ripe for hearing. However, in its request for a local public hearing, Public Counsel identified an overstated revenue requirement and an unreasonable return of equity as concerns related to the Company Staff Agreement, so it is possible for Public Counsel to anticipate and prepare for those issues that may be ripe for a hearing at this time, before any local public hearing is held; Public Counsel does not require an additional ten (10) working days after October 30 to make that determination. The Company Staff Agreements for all three cases were initially filed on August 28, and an Amended Company Staff Agreement was filed on September 5 for RD Sewer. As a result, Public Counsel has had almost two (2) full months to consider the Company Staff Agreements and accompanying tariffs. Additionally, a combined seven (7) public comments were recorded for the three companies. Of those seven (7) comments, only two (2) were submitted after the submission of the Company Staff Agreements. Thus, the potential of any new material information being revealed at the local public hearings

that would change the basic agreement is minimal. Such minimal risk further justifies an expedited process in this case.

If the current hearing schedule remains as it was ordered by the Commission, as mentioned above, Public Counsel will have six (6) working days (with one weekend) to come up with a list of issues and list of witnesses after the local public hearings; and in that time, Public Counsel should know which of its witnesses will best address any lingering issues, even if it is not the full ten (10) working days provided by Commission Rule 4 CSR 240.3.050 (19). Additionally, Commission Rule 4 CSR 240.3.050 (19) could be waived for good cause attributable to the Commission's full calendar and Staff hereby makes a request for such a waiver.

15. Staff reminds the Commission that the matter was supposed to be finally presented to the commission no later than nine (9) months, October 31, and given that the last local public hearing is scheduled for October 30, Staff sought a waiver of Commission Rule 240-3.050 (24) in its last pleading.

16. In looking at the Commission's calendar for November, Staff assumes the Commission picked November 15-16 because those dates work best for the Commission, as their calendar is busy for the remainder of 2012.

17. Staff hereby proposes that the Commission deny Public Counsel's request for reconsideration and keep the hearing schedule ordered on October 11 because it is workable given the unique circumstance the parties are in to meet the 11-month timeline; and the Commission's calendar is open for two consecutive days, November 15-16, which is ample time for this hearing to occur. As stated above, Commission Rule 4 CSR 240.3.050 (19) provides a maximum of ten (10) working days,

and the current hearing schedule allows six (6) working days for Public Counsel to consider any issue raised at the local public hearings and to determine if it wishes to pursue the issues already raised which are inflated revenue requirement and return on equity, both currently in the Company Staff Agreement.

18. Alternatively, if the Commission grants the *Request for Reconsideration*, Staff proposes the following two alternative hearing schedules:

Alternative One:

The first alternative is to amend the Evidentiary Hearing Schedule as follows in bold type:

Public Counsel Files its Issues and Order of Witnesses	November 14
Joint List of Issues and Order of Witnesses	November 15
Live Evidentiary Hearing	November 21
Transcripts Filed	November 28
Proposed Reports and Orders	December 6

As referenced in Staff's *Request for Hearing Date*, Staff deems it possible for a hearing in this case to only take one day, particularly if the issues relate to an alleged overstated revenue requirement and unreasonable return on equity. This alternative pushes the transcript due date back by one day and maintains the Proposed Reports and Orders as originally ordered by the Commission.

Alternative Two:

The second alternative is to amend the Evidentiary Hearing Schedule as follows in bold type:

List of Issues and Order of Witnesses	November 15
Live Evidentiary Hearing	November 26-27
Transcripts Filed	December 3
Proposed Reports and Orders	December 10

This alternative pushes everything back, but allows Public Counsel the maximum ten (10) working days, along with two weekends and a state holiday, after the last local public hearing to determine whether there are issues ripe for evidentiary hearing. It also places a heavier burden on the amount of time the Commission may have to make a determination based on the evidence.

19. While it is possible under Section 393.150 RSMo for the Commission to extend the time of suspension for the tariffs for no longer than 120 days and for a further period not to exceed six months if a hearing cannot be concluded within the period of suspension, Staff does not advocate that this matter be delayed for any period close to six months and maintains it should be resolved by December 31, 2012. Any suspension beyond December 31 will result in these three small companies waiting more than eleven (11) months for their potential rate increase, and such a result is not fair and equitable to the Company.

WHEREFORE, Staff respectfully submits this *Staff's Response to October 15th Order Directing Filing, Request to Deny the Office of the Public Counsel's Request for Reconsideration and Request for Waiver of Commission Rule 4 CSR 240.3.050 (19)* for the Commission's information and consideration, and respectfully requests the Commission deny the Office of the Public Counsel's *Request for Reconsideration* and retain the hearing schedule ordered on October 11, and respectfully requests a waiver

of Commission Rule 4 CSR 240.3.020 (19) to allow for a shorter time period and easier assurance to meet the 11-month timeline of December 31. Alternatively, Staff requests the Commission issue an order establishing an alternative hearing schedule as described above.

Respectfully Submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

/s/ Rachel M. Lewis

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 18th day of October, 2012.

/s/ Rachel M. Lewis