



No objections were made at the point of offering Mr. Meyer's testimony.<sup>3</sup> Furthermore, the Commission clearly considered the Company's Exhibit 15, stating "[e]ven if the Commission gave full weight to Indian Hills' evidence on this point, the Commission would remain unconvinced."<sup>4</sup> Finally, the allegation that the 6.75% interest rate was based "in large part" on Schedule GRJM-SUR2 ignores the Commission's findings of fact wherein the Commission discussed comparable market rates, as well as comparable bond markets; all of which arrive at a similar figure.<sup>5</sup>

4. The allegation generally is that the Commission lacks the authority to weigh evidence, either in the face of contradictory evidence proffered by opposing parties,<sup>6</sup> or in the absence of evidence to the contrary.<sup>7</sup> The Missouri Supreme Court disagrees, stating that where the Commission:

"...is required under the statute to make a report in writing which shall state its conclusions and its decision or order. Thus it must find and determine the facts. And in doing so the commission determines the weight of evidence presented to it. It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it. The rule is established in this State that the triers of fact under their duty to weigh the evidence may disbelieve evidence although it is uncontradicted and unimpeached."

State ex rel. Rice v. Public Service Com., 359 Mo. 109, 116-117, 220 S.W.2d 61, 65 (Mo. 1949)

(internal citations omitted).

5. While OPC did present contradictory evidence in this proceeding to the Company's position, even if it had not, the Commission still maintains the authority to scrutinize the veracity of the evidence put before it.

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<sup>3</sup> *Id.* at pg. 488.

<sup>4</sup> Order, pg. 58.

<sup>5</sup> Order, pg. 55.

<sup>6</sup> Application, pg. 2 ¶ 3.

<sup>7</sup> Application, pg. 5 ¶ 10.

6. Clearly the Commission has the authority to consider the evidence presented to it, and in this case, determined Exhibit 15 unpersuasive. It is neither an arbitrary nor capacious for the Commission to lawfully exercise its duty to weigh evidence. The Application should be denied on this point.

### **Commission's Cost of Debt Determination Is Not Confiscatory**

7. The Company argues a new position in its Application that the Commission's order of an imputed rate of interest of 6.75% on its cost of debt, stating that such an order is unreasonable and results in a confiscatory taking in violation of the due process protections under the United States and Missouri Constitutions. In considering whether a Commission's order is unreasonable, "questions of reasonableness turn on whether there is competent and substantial evidence upon the whole record to support the Order." State ex rel. Marco Sales v. Public Service Commission, 685 S.W.2d 216, 218 (Mo. App. 1984). The Company fails to argue that the Commission's finding of the 6.75% interest rate is not based on the weight of the record evidence. In fact, some of the assertions raised in the Company, such as the table on page two of its Application, are not based on record evidence. While the Company argues that the "tabulation and calculations follow the format..." of an admitted exhibit, the figures asserted are not a part of record evidence and other parties have not had an opportunity to test the veracity of the calculations presented or an opportunity to offer rebuttal testimony.

8. In *State ex rel. U.S. Water/Lexington v. Missouri Public Service Commission*, the court supported a Commission's order that imputed a rate of interest on a loan that was an outlier to similarly situated small utilities and where concerns were raised that the terms entered into were not a product of an arms-length negotiation. 795 S.W.2d 593, 596 (Mo. App. 1990). Like *Water/Lexington*, the record in this case determined that a survey of similarly situated small water

companies had an average interest rate of 5.16%, and that lower rates are available through independent lenders in an arm's length dealing.<sup>8</sup> Courts have recognized the Commission's authority to make a similar determination on the same issue.

9. Further, the Commission has denied applications for rehearing alleging similar circumstances in the past. *Order Denying Applications for Rehearing*, WR-88-255, 1989 Mo. PSC Lexis 3 (March 28, 1989).

10. Finally, this argument in untimely raised after the close of the hearing and the briefs; past Commissions have found such arguments waived and ineligible for consideration on rehearing. *Order Regarding Public Counsel's Motion for Reconsideration*, GR-2004-0209, 2004 Mo. PSC Lexis 1290, 9 (August 12, 2004).

**The Commission Did Not Approve a Cost of Debt Rate in WO-2016-0045**

11. The Company claims that the Commission's order in this proceeding regarding financing terms conflicts with its order approving an acquisition in WO-2016-0045. This accusation is false, in that the Commission's order in WO-2016-0045 makes no such determination as to any specific financing term. *Order Approving Transfer of Assets and Issuance of Certificate of Convenience and Necessity*, EFIS 14, Page 8 (February 3, 2016). \*\*

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12. Notably absent from the Company's recollection of the Commission's WO-2016-0045 order are the actual terms requiring the company to file all documentation pursuant to the terms of the financing agreement with the Commission and notify the Commission in the event the Company is in violation of said terms. \*\*

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<sup>8</sup> Order, pgs. 53 and 55.

\*\* The Company failed to provide any such notice to the Commission, and in failing to do so violated the Commission's order.

13. Should the Commission find any need for additional consideration of its order regarding financing terms in WO-2016-0045, it would be in exercise of its authority under § 386.570, RSMo., for failure to comply with a Commission order and for the determination of an appropriate penalty.

**WHEREFORE** the Order is lawful and reasonable, the Office of the Public Counsel respectfully requests the denial of the Company's Application for all the reasons identified above.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2<sup>nd</sup> day of March, 2018.

/s/ Hampton Williams