

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

In the Matter of the Request for an Increase in)
Annual Water System Operating Revenues for) **File No. WR-2017-0343**
Gascony Water Company, Inc.)

STAFF’S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Reply Brief*, states as follows:

INTRODUCTION

This *Reply Brief* will respond to certain arguments made by Gascony Water Company, Inc. (“Gascony” or “Company”). Rather than replying to every argument other parties’ make in their initial briefs, having presented and argued its positions in its *Initial Brief*, Staff limits its replies to where it views further explanation will most aid the Commission in its deliberations.

ARGUMENT

a. Revenue Requirement / Expenses – Salary

Despite having twenty (20) pages of Staff testimony on salary expense¹ and an opportunity to question Staff’s witness regarding salary expense,² Gascony nevertheless focuses in its brief on one Schedule contained in Staff’s pre-filed testimony.³ This Schedule sets out a comparison of salaries based on Commission

¹ Ex. 102, Taylor Rebuttal, 4-24. These twenty (20) pages do not include schedules associated with salary expense.

² Hrg. Tr. Vol. 2, 143:8-145:12; 156-13-158:21.

³ The Schedule discussed is contained within Ex. 102, Taylor Rebuttal, Schedule MJT-r7.

Order or settlement for other water or sewer utilities.⁴ Gascony claims “the list provided by Staff does not contain sufficient information to allow for a fair comparison.”⁵ While Gascony picked one case on the list which went to hearing to support its position that Mr. Hoesch’s salary should be allowed based on Gascony’s proposal, that case actually supports Staff’s position. This is so because the expense allowed in that litigated case demonstrates the Commission’s reliance on detailed timesheets and comparable market wages.⁶ Moreover, because Mr. Hosech did not provide evidence fully substantiating his hours, this chart is, in a sense, a common-sense check of

⁴ See Ex. 102, Taylor Rebuttal, Schedule MJT-r7; see also Note 7, *infra*.

⁵ *Gascony’s Initial Post-Hearing Brief*, “Discussion of Contested Issues”, “Revenue Requirement / Expenses” at 3-4.

⁶ See File No. SR-2013-0321, *Report and Order* (April 2, 2014) at pages 28-29:

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 ... The evidence supports an hourly wage of \$39.65 for Mr. Kallash at 598 hours per year; or, \$23,710.10 annually.

See also File No. SR-2013-0321, *Report and Order* (April 2, 2014) at pages 30-31:

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)...

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 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...

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.

reasonableness—the consideration of such a notion by Chairman Hall was apparent when he asked at hearing if such a comparison existed.⁷

Additionally, Gascony claims its recommendation of salary expense to be included in Gascony's cost of service is "based on ample evidence".⁸ However, Gascony did not describe any of this evidence, except to direct the reader to the summary of Mr. Hoesch's managerial hours at Schedule 2 of Mr. Russo's Direct Testimony.⁹

b. Rate Base – Lot 27 and the Shed Property

Gascony argues that even though it is now apparent to all that Gasc-Osage did not actually own Lot 27 at the time of the CCN case, that Mr. Hoesch testified that he *will* own the land and that he "is trying to make that happen today."¹⁰ Nothing to Staff's

⁷ Hrg. Tr. Vol. 2, 153:11-154:12:

Q How does that compare to the salary for -- the salary and rates for other small water utilities -- water and sewer utilities? Do you know?

A Actually, yes. I have -- let me look at my schedules that I had created. On my Schedule MJT R-7, I took ten of some of the recent water and sewer cases.

Q Is this attached to your rebuttal?

A Yes.

Q This one. Okay.

A And we took -- looking at the total compensation plus travel and then comparing the number of customers. We showed that Staff's position was pretty much in line with the other ten with an average of approximately \$119 for the cost [] per customer. And we came up with 113.26.

Q How were these ten water and sewer companies collected for this chart?

A We tried to -- we tried to go with just the most recent that we could find.

Q So these are the ten most recent where there -- where there was a -- either an order [or] a settlement agreement that's specifically set forth?

A Correct. That -- that stated out the total compensation plus travel.

⁸ *Gascony's Initial Post-Hearing Brief*, "Discussion of Contested Issues", "Revenue Requirement / Expenses" at 4.

⁹ *Gascony's Initial Post-Hearing Brief*, "Discussion of Contested Issues", "Revenue Requirement / Expenses" at 3-4. Gascony also cited to pre-filed testimony. *Id.* at 4.

¹⁰ *Gascony's Initial Post-Hearing Brief*, "Discussion of Contested Issues", "Rate Base" at 7 (emphasis original).

knowledge has prevented Mr. Hoesch in the last twenty years from already consummating the transfers he swore to the Commission that he would make in the CCN case. Past performance is usually a fair indicator of future behavior, and in the instant matter, the Commission has twenty years of Mr. Hoesch's inaction to consider.¹¹ The message being sent here should be interpreted as one similar to that of Popeye's J. Wellington Wimpy, who would "gladly pay you Tuesday for a hamburger today."¹²

As to the Shed Property, Gascony argues that this property "had nothing to do with the original development."¹³ However, this statement completely misses the fact that the deed itself shows a transfer of the property from Gasc-Osage, which is Mr. Hoesch's company that developed Gascony Village,¹⁴ to Gascony.¹⁵ Thus, this real property has everything to do with the original development.¹⁶ Gascony also describes property improvements made to the Shed Property in terms of the erection of a structure.¹⁷ Staff included the cost of the structure in rate base, recognizing that there were supportable costs associated with the construction of the shed itself.¹⁸

c. "Policy Considerations"

Gascony utilized one of the first sections of its brief to level some unsupported and inaccurate accusations against Staff. More specifically, Gascony laments that

¹¹ Ex. 100, Young Rebuttal, 10:4-11:27.

¹² See <http://popeye.com/timeline/>.

¹³ *Gascony's Initial Post-Hearing Brief*, "Discussion of Contested Issues", "Rate Base" at 7.

¹⁴ Ex. 3, Hoesch Direct, 1:17-19.

¹⁵ Ex. 113.

¹⁶ See *Staff's Initial Brief* at 17-21.

¹⁷ *Gascony's Initial Post-Hearing Brief*, "Discussion of Contested Issues", "Rate Base" at 8.

¹⁸ Ex. 100, Young Rebuttal, 20:11-13.

“Gascony has not been assisted by Staff in this rate case process.”¹⁹ Such a statement completely overlooks Staff’s involvement at each stage of this case’s process and is a mischaracterization of what actually occurred in this case.²⁰ In fact, it is of note that not included in Gascony’s brief is any recitation of the procedural history of this case;²¹ to recite the history of the case would be to acknowledge Staff’s constant involvement and consistent participation in the case. Undeterred, and to support its claim, Gascony cites to: (1) a “rulemaking [] pending to rescind the rule which contains the current small utility rate case procedure, 4 CSR 240-3.050, and replace it with 4 CSR 240-10.075, the ‘Staff Assisted Rate Case Procedure Rule’” (“The Pending Rule”) and to (2) “another proposed rule – one to provide incentives for larger companies to step in and acquire nonviable small water and sewer utilities” (“The Proposed Acquisition Rule”).²² Thus, Gascony relies on two pending or proposed rules to support its arguments that Staff did not assist in this case and that Gascony is apparently teetering on the edge of viability.

¹⁹ *Gascony’s Initial Post-Hearing Brief*, “Policy Considerations”, at 2.

²⁰ Staff understands and appreciates that a small utility rate case proceeds on a more informal basis, especially as compared to a larger utility rate case. In a larger, more formal utility rate case, the utility must file direct testimony supporting the tariff that memorializes the rate request Cost of Service completed when the application for a rate increase is filed. Commission Regulation 4 CSR 240-2.065(1) (“Any public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.”) Such testimony must necessarily include either the results of, or a Cost of Service study itself (or similar analysis), to support the request. In this small utility case, Staff developed all of the Cost of Service components. Staff provided its results to all parties for review of Staff’s analysis of Gascony’s rate structure. To that end, Staff provided Gascony with assistance necessary to allow Gascony’s complete review and assessment of the total revenue requirement as contemplated under the small rate case process. See Ex. 3, Hoesch Direct, 4:16-21 (“The Staff of the Commission (‘Staff’) conducted an audit and investigation of the Company. The results of the audit and investigation were provided to the Company and the Office of the Public Counsel (‘OPC’). The Company, Staff, and OPC discussed resolution of this case and Staff and the Company entered into a *Partial Disposition Agreement and Request for Evidentiary Hearing* which was filed by Staff on November 17, 2017.”).

²¹ *Gascony’s Initial Post-Hearing Brief*, 1-10.

²² *Gascony’s Initial Post-Hearing Brief*, “Policy Considerations”, at 2.

First, it should be clear that the rules cited by Gascony are *pending* or *proposed* and as such, the Commission owes these rules no deference nor can it legally apply them to this case.²³ Even if these pending or proposed rules could be properly applied to Gascony in this case, the pending or proposed rules would not produce a different result. In examining the current rule regarding Small Utility Rate Case Procedure and the “Staff Assisted Rate Case Procedure Rule”, there is indeed a section in The Pending Rule which refers to Staff assistance in a small utility case.²⁴ However, that section clearly states that Staff’s role is not to represent the Company, nor is it Staff’s role to meet the Company’s burden of proof to show the Company’s proposed rates are just and reasonable:

(4) Staff will assist a small utility in processing a small utility rate case insofar as the assistance is consistent with the staff’s function and responsibilities to the commission. Staff may not represent the small utility and may not assume the small utility’s statutory burden of proof to show that any increased rate is just and reasonable.²⁵

Thus, Staff does not act like a rubber stamp to “approve” all of the Company’s requests. Furthermore, the timing aspects and the responsibilities associated with those timing aspects of The Pending Rule are in line with the existing and applicable rule. For example, 90 days after a case is opened, Staff provides to all parties its preliminary

²³ *Gascony’s Initial Post-Hearing Brief*, “Policy Considerations”, at 2 (emphasis added); **St. Louis Christian Home v. Missouri Comm’n on Human Rights**, 634 S.W.2d 508, 513–14 (Mo. App. W.D. 1982) (“We do determine that the Commission regulation was not duly before the circuit court and so was owed neither notice nor deference.”).

²⁴ See Case No. AX-2018-0050, *Memorandum* re: Authorization to File Final Order of Rulemaking with the Office of Secretary of State (Feb. 7, 2018) [hereinafter “*Memo*”]. Page 9 of this *Memo* contains The Pending Rule language.

²⁵ *Memo* at 9. Staff understands part of the purpose of this rulemaking is to more formally recognize that small water companies are not experts in regulation and that small water companies have limited resources from which to develop a comprehensive cost of service calculation.

audit;²⁶ a settlement proposal is provided at day 120;²⁷ and a disposition agreement is filed around day 150.²⁸ Based on the foregoing, Gascony cannot argue with sincerity that Staff did not assist with the process and that the result would be any different if The Pending Rule were somehow applicable in this situation.

Likewise, Gascony cannot argue with sincerity that The Proposed Acquisition Rule, which Gascony says is “to provide incentives for larger companies to step in and acquire nonviable small water and sewer utilities”, has any sort of impact in this case. First and importantly, the viability of Gascony’s system has not been put at issue throughout this matter,²⁹ except in Gascony’s Initial Brief. Gascony utilizes its “Policy Consideration” portion of its brief to make assertions such as “perhaps some of the small utilities would be able to remain viable, if their rates were truly just and reasonable – instead of primarily being the result of one-sided negotiations between an unsophisticated utility owner and the Commission’s Staff”,³⁰ and “Staff’s adversarial stance is illustrated by Staff’s position and evidence on the issue of salary expense”,³¹ before asking the question of “[h]ow can a small utility remain viable when Staff and

²⁶ 4 CSR 240-3.050(9); *Memo* at 11 (citing subsection (F) of The Pending Rule, “Not later than ninety (90) days after a small utility rate case is opened, the staff shall, provide to all parties, a report of its preliminary investigation, audit, analysis and work papers...”).

²⁷ 4 CSR 240-3.050(10); *Memo* at 11 (citing subsection (9)(A) of The Pending Rule, “Not later than one hundred twenty (120) days after a small utility rate case is opened, staff shall, and the public counsel if proposing its own settlement, may provide to all parties to the case, a confidential settlement proposal.”).

²⁸ 4 CSR 240-3.050(11); *Memo* at 12 (citing subsection (11)(A) of The Pending Rule, “Not later than one hundred fifty (150) days after a small utility rate case is opened, staff shall file one of the following: 1. [disposition agreement for full resolution]; 2. [partial resolution and motion for evidentiary hearing]; or 3. [no agreement and motion for evidentiary hearing]”).

²⁹ See Note 33, *infra*.

³⁰ *Gascony’s Initial Post-Hearing Brief* at 2.

³¹ *Gascony’s Initial Post-Hearing Brief* at 2.

OPC fight to keep a revenue requirement increase at approximately \$1,000 over a 20-year period?”³²

There have been no facts shown that the Gascony system is not viable or is hanging on to some metaphorical cliff of viability.³³ If the system was truly unviable, then it is likely that there would be Department of Natural Resources (DNR) violations; however, counsel for Gascony asked Staff witnesses at hearing if they were aware of any such violations, to which the answer was resoundingly “no”.³⁴ Gascony may perceive Staff as being adversarial on the issue of salary expense, and such a perception would be unfortunate, as it is likely more of a misunderstanding of Staff’s role. As previously stated, Staff is not a rubber stamp for the Company’s requests. Moreover, there are no facts to suggest the Company’s lack of record-keeping, especially as to salary expense, is the fault of Staff or even that Staff would have been better-positioned to prevent this lack of record-keeping.

There can be no doubt that as to this small utility rate case, Staff absolutely assisted Gascony.³⁵ Furthermore, any now-raised argument of viability, however

³² *Gascony’s Initial Post-Hearing Brief* at 3. Gascony asks such a question without presenting the fact that it filed and withdrew a rate case in 2014. Furthermore, Staff’s position on the “increase at approximately \$1,000” is well supported in *Staff’s Initial Brief*.

³³ The term “viable” or “viability” was not used at hearing. See Hrg. Tr. Vol. 2, 12:1-217:18. Mr. Russo’s direct and surrebuttal testimony does not use the term “viable” or “viability”, see Ex. 1, Russo Direct, 1:1-18:21 and Ex. 2, Russo Surrebuttal. Mr. Hoesch’s direct and surrebuttal testimony does not use the term “viable” or “viability”, see Ex. 3, Hoesch Direct 1:1-8:19 and Ex. 4, Hoesch Surrebuttal, 1:1-11:16.

³⁴ Hrg. Tr. Vol. 2, 124:24-125:1 (“Q Gascony Water Company doesn’t have any DNR violations or notices; is that correct? A None that I’m aware of.”); Hrg. Tr. Vol. 2, 145:9-10 (Q There are no DNR violations, correct? A Not that I know of.”); Hrg. Tr. Vol. 2, 168:1-3 (Q There are no DNR violations, is that correct, for this company? A Correct.”).

³⁵ To be abundantly clear on this point, Gascony itself recognizes instances in which Staff must have assisted the Company. See *Gascony’s Initial Post-Hearing Brief*, “Discussion of Contested Issues”, “Revenue Requirement / Expenses” at 6 (“Also, the Company agreed with Staff on its recommendations for capital structure, ROE, and many operating conditions, limiting the issues to be tried.”). Thus, by

attenuated, cannot be seriously considered, as it was not raised at any earlier time during this case and the rule seemingly relied on by Gascony is only a proposed rule.³⁶

d. Remaining Issues: Rent Expense, Mileage Expense, Rate Case Expense, Depreciation Expense, Total Revenue Requirement, Trencher and UTV, Customer Equivalency Factors, New Customer Application

To the extent that Gascony's brief on these issues is supported primarily only by citations to Gascony's pre-filed testimony, which said citations are substantially similar to those previously provided in position statements, and to the extent Gascony makes no legal argument in terms of utilizing case law or citations to statutes or rules, Staff has nothing to which to respond and rests on its *Initial Brief*.

CONCLUSION

WHEREFORE, on account of the foregoing, Staff prays that the Commission will issue its findings of fact and conclusions of law, determining just and reasonable rates and charges for Gascony as recommended by Staff; and granting such other and further relief as is just in the circumstances.

Gascony's own admission, Staff must have prepared a proposal, containing at a minimum, provisions for capital structure, ROE, and operating conditions.

³⁶ Furthermore, if Gascony is now claiming it is truly a distressed utility, there are other mechanisms by which Gascony could seek relief. See MO. REV. STAT. § 393.146, providing for acquisition of a small water utility by a capable public utility; see also MO. REV. STAT. § 393.900, providing for nonprofit water companies.

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 parties and/or counsel of record on this 13th day of April, 2018.

/s/ Alexandra L. Klaus