

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

In the Matter of a Review)	
Of the Commission's Rules)	Case No. WW-2017-0283
Regarding Small Water and Sewer Companies)	

OFFICE OF PUBLIC COUNSEL'S COMMENTS

ON COMMISSION RULES REGARDING RATE CASES FOR SMALL UTILITIES

COMES NOW the Missouri Office of Public Counsel ("OPC"), by and through undersigned counsel, and files these comments on Commission rules regarding rate cases for small utilities. In support thereof, OPC states as follows:

1. On April 27, 2017, the Public Service Commission ("Commission") filed a notice opening file WW-2017-0283 in the matter of a review of the Commission's Rules Regarding Small Water and Sewer Companies.
2. On May 3, 2017, the Commission filed an Order directing interested stakeholders to submit comments by June 1, 2017 about revisions to 4 CSR 240-3.050, the small utility rate case procedure rule.
3. OPC offers three exhibits for this Commission's consideration.
4. Exhibit one consists of a grid that compares the current rule with the proposed rule, and exhibit one is offered to help navigate the parties' considerations of similarities and of differences between the existing rule and the proposed rule. Exhibit one also provides comments and suggestions to provide a foundation for additional discussion.
5. Exhibit two is a proposed alternative rule for the consideration of the Commission and for the consideration of other interested stakeholders. Exhibit two is a red-line version of the proposed rule, and exhibit two highlights some of OPC's suggestions in Exhibit one.

6. Exhibit three is an informative document that provides statistics about the frequency of extensions and about the length of extensions in other small utility rate cases.

WHEREFORE, OPC submits these comments as the foundation for additional discussions, opinions and conclusions to be further discussed in the workshop on June 27, 2017.

Respectfully submitted,

OFFICE OF PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

On this 1st day of June, 2017, I hereby certify that a true and correct copy of the foregoing motion was submitted to all relevant parties by depositing this motion into the Commission's Electronic Filing Information System ("EFIS").

/s/ Hampton Williams

OPC comments on proposed small rate case revisions. OPC has included notes on the proposed rules and their impact on the existing rule. OPC has also prepared a draft version of the rule incorporating OPC's suggestions.

Matrix for Discussion

Draft Rule	Existing Rule
(1)(A)	(1)
(1)(B)	(10)
(2)(A)	(4)
(3)(A)	(2)
(3)(A)2	(3)
(4)	
(5)	(5)
(5)(A)	(12)
(6)	
(7)	(7)
(8)	(6)
(9)	
(10)	(3), edited
(11)(A)	(11)
(11)(B)	(13)
(11)(C)	(14)
(11)(D)	(15)
(12)	(21)
(12)(C)/(D)	(20)
(13)	(24)
(14)	(25)
(15)	

NOTES

- (2)(A)4 - Draft removes dismissal for failure to comply or produce documents to Staff and OPC. **OPC suggests inclusion of the existing requirement providing dismissal for failure to comply with Staff or OPC investigations.**
- (3)(A)2 - Removes RLJ arbitration language from the pre-settlement process. In Draft Subsection (10), RLJ mediation is identified during disposition agreement, is that intended to apply to the entire rule or just the disposition agreement period? If not, would 4 CSR 240-2.125(2) authorize an RLJ to be involved during pre-settlement? The difference would be under the existing rule, mediation can occur at the *request* of the parties; under 2.125(2) it would have to be ordered. **OPC inquires as to the purpose of this proposed edit.**

- (3)(A)3 - Why should the company not be permitted to withdraw its case after Day 150?
- If this section is approved, would it conflict with 4 CSR 240-2.116?
 - Existing Section (23) provides that the utility and staff can agree to withdraw a cases at any time. Consider including that language again.
- (5)(A) - Cuts extension period from 60 days to 30 days; I am aware that these extensions are employed with some frequency to accommodate a utility and DNR. What would happen to cases that would be unable to get extensions were they not available? Would they be dismissed? As stated in Exhibit 3, OPC observes the frequent use of the full 60 days extension period. OPC is concerned that a reduction of this period may result in dismissals or withdrawals where the company is unable to comply with Staff and OPC inquiries. **OPC proposes providing for 60-days to allow parties flexibility in review of small water utility cases.**
- (6) - Local public hearing may not be particularly helpful at 60 days in the case; because it would most likely be based on the company's request, which may not be an accurate figure. Also, at 60 days, it is possible that neither OPC nor Staff will be in a position to provide substantive responses to the public, which may reflect poorly on both offices. **OPC suggests providing any party to request a local public hearing within the first 130 days, providing an opportunity for the Staff and OPC to investigate the company's request and possibly inform the public as to each offices' analysis of the proposal.**
- (7)(A) - The customer notice requirement within 30 days of filing the case has been removed. This proposal only requires public notice *in the event* that there would be a local public hearing. Current rule provides for two notices; one at the initiation of the case wherein people are informed they may participate, and another at the point where prospective tariffs are being filed at the end of the case. An optional notice may be issued should an LPH be determined necessary.
- OPC suggests including the notice to customers at the initiation of a case. Additionally, any notice provision should list the case number to allow citizens to review the documents themselves. Finally, OPC would like to discuss whether § 393.150 requires notice with respect to a rate increase.**
- (8) - What is the intended effect of the edit; to restate the authority removed from the existing rules Section 6? **OPC inquires as to the purpose of this proposed edit.**
- (8)(C) - This rule is explicitly allowing for costs to be recovered for which there is inadequate evidence – OPC is concerned as to whether this is lawful. Will companies be held liable via penalty for not maintaining records? In my experience, the smaller operators have difficulty maintaining the existing records standards, what appetite does the Commission have for issuing penalties to small system operators who fail to maintain

records? Whose responsibility will it be to determine estimates? If a company fails to have a record, is Staff obligated to produce estimated costs to set rates? **OPC suggests edits to the subsection to ensure costs to be recovered from ratepayers has an evidentiary basis.**

(8)(D) - Right now, OPC and the utility would respond to Staff's 90 Day investigation within 10 days under Chapter 2. Would the proposed second sentence limit OPC's ability to comment on Staff's investigation? In practice, OPC responds to Staff's investigation. If OPC's participation in the case *requires* an independent investigation, we will need to employ additional FTEs to deal with the workload. **OPC suggests striking the second sentence.**

(9)(B) - This contracts the time period for which negotiations take place and discourages cooperation. Currently, Staff's settlement proposals are due at Day 120, settlement conference held at Day 130, and parties notify Staff of agreement/disagreement by Day 135. **OPC suggests providing ten business days for public counsel and the utility to respond to Staff's settlement proposal.**

(11)(A)3(B)/(D) (B) identifies "business" days, (D) identified "working" days. Seek uniformity in terminology. **OPC suggests edits to create uniform business day designation.**

(11)(C) - Draft removes notice requirement once tariffs are filed. Should the public be entitled to notice of rate increases? **OPC suggests inclusion of public notice of new tariff rates, as the current rules provide.**

(11)(D) - Removes OPC's authority to request a Local Public Hearing. **OPC suggests edits to Section 6 that would allow parties to request a local public hearing anytime before Day 130 that addresses this concern.**

(11)(E)- Staff cannot carry the burden of proof, § 393.150.2 requires the company to do so. In cases where OPC asserts an objection or requests a hearing, Staff may be discouraged from entering into a full resolution with the company because doing so would mean they would be forced to carry a burden that is not theirs to bear. **OPC suggests edits that conforms with Section 393.150.2.**

Also the standard is regarding the proposed rate increases must be just and reasonable; shifting the review to the document effectuating the rate increase cannot change the standard for adoption of the rate. **OPC suggests adding the terminology "just and reasonable" to the section.**

(13) - Cuts the presentation to the commission by 1 month, from 9 months to 8 months, and the cuts the final decision from the Commission by 2 months, from 11 months to 9 months. OPC believes that §§ 386.490 and 386.500, RSMo., require a review of the proposed draft and may compel a longer period for an order to become effective

beyond the timeframe contemplated by the draft rule. **OPC suggests providing an additional month to give the Commission an opportunity to review the case before voting.**

OTHER ISSUES

Draft removes the Commission's authority to alter disposition agreements under existing rule (25). **OPC inquires as to the purpose of this proposed edit.**

STAFF ASSISTED RATE CASE

(1) Definitions. As used in this rule, the following terms mean:

(A) A small utility means a gas utility serving ten thousand (10,000) or fewer customers or a water or sewer utility serving eight thousand (8,000) or fewer customers, or a steam utility serving one hundred (100) or fewer customers..

(B) A disposition agreement is a document that sets forth the signatories' proposed resolution of some or all of the issues pertaining to a small utility rate case.

(2) Notwithstanding the provisions of any other commission rule to the contrary, unless the commission orders otherwise, any rate case involving a small utility shall proceed under this rule.

(A) In addition to the commission's provisions regarding dismissal of a case in 4 CSR 240-2.116, the commission may dismiss a small utility rate case at any time if:

1. The utility is not current on the payment of all of its commission assessments;
2. The utility fails to submit its annual report or annual statement of operating revenue; or
3. The utility is not in good standing with the Missouri Secretary of State, if applicable.
4. The utility fails to timely provide the staff or the public counsel with the information needed to investigate the utility's request.

(3) Commencement. A small utility rate proceeding may be commenced by:

(A) A letter received by the secretary of the commission from a small utility requesting an increase in its overall annual operating revenues;

1. Any such letter shall state the amount of the revenue increase requested but need not be accompanied by any proposed tariff revisions.

2. Upon receipt of the letter, the secretary of the commission shall cause a rate case to be opened and file a copy of the letter in that case.

3. At any time before day 150 of the timeline described in subsection (4) of this rule, the utility may submit to the secretary of the commission a letter withdrawing its previous request for a rate increase. Upon receipt of such a letter, the secretary of the commission shall close the rate case.

(B) A complaint filed by the commission staff or by any eligible entity or entities pursuant to section 386.390.1, RSMo., or section 393.260.1, RSMo.

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(C) A proposed tariff stating a new rate or charge filed by a small utility pursuant to section 393.150.1, RSMo.

(4) No later than thirty (30) days after a case is opened, the utility shall mail written notice of the request to each of its customers. The notice, which must be approved by the staff and the public counsel prior to being mailed, shall invite the customers to submit comments about the utility's rates and quality of service within thirty (30) days after the date shown on the notice, and shall include instructions as to how comments can be submitted electronically, by telephone or in writing. When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file. For small steam heating utility requests, the notice shall also be sent to each gas service and each electric service provider in the area affected by the request.

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(4) Pursuant to § 393.150.2, RSMo., a small utility shall bear the burden of proof in proceedings. Staff shall assist a small utility in processing a small utility rate case to every extent possible consistent with Staff's duties to the Commission.

(5) Timeline. Within one (1) week after a small utility rate case is opened, the staff shall file a timeline under which the case will proceed, specifying due dates for the activities required by this rule.

(A) The staff and the utility may agree in writing that the deadlines set out in this timeline be extended for up to ~~thirtysixty-(6030)~~ days. If an extension is agreed upon, the staff shall file the agreement and an updated timeline reflecting the extension in the case file.

(6) Local public hearing. The regulatory law judge assigned to the small utility rate case shall schedule a local public hearing, to occur no later than ~~sixty-one hundred and thirty (60)130~~ days after the opening of the case, unless all parties have agreed a local public hearing is not necessary.

(7) Notice of local public hearing. At least ten (10) days prior to the local public hearing, the utility shall mail a written notice to its customers. The notice must be approved by the staff and the public counsel prior to being mailed.

(A) The notice shall include:

1. The time, date, and location of the local public hearing, consistent with the order setting the hearing;

2. A summary of the proposed rates and charges, the effect of the rates on an average residential customer's bill, and any other company requests that will affect customers, if known;

3. An invitation to submit comments about the utility's rates and quality of service within thirty (30) days after the date shown on the notice and instructions as to how comments can be submitted electronically, by telephone, and in writing;

4. Instructions for viewing the publicly available copies of all filings subsequently made in the case via the commission's electronic filing system.

(B) The Staff shall file a copy of the notice in the case file.

(8) Investigation and audit. After a small utility rate case is opened, the staff shall, and the public counsel may, conduct an investigation of the utility's request.

(A) This investigation may include a review of any and all information and materials related to the utility's cost of providing service and its operating revenues, the design of the utility's rates, the utility's service charges or fees, all provisions of the utility's tariffs, and any operational or customer service issues that are discovered during the investigation.

(B) The investigation may include the records generated since the previous rate case, the case in which the utility was granted its Certificate of Convenience and Necessity, or the utility's transfer of assets case, whichever is most recent. The investigation shall include an update of the utility's rate base.

(C) In determining the utility's cost of service, the value of normal expense items and plant-in-service and other rate base items ~~for which adequate documentary support is not available,~~ may be based upon such evidence ~~as is available or may be estimated in order to include reasonable levels of those costs.~~ Unusual expense or rate base items or expense or rate base items for which the utility claims unusual levels of cost may require additional support by the utility. Nothing in this section diminishes the utility's obligation to adhere to the Commission's rules regarding appropriate record-keeping.

(D) Not later than ninety (90) days after a small utility rate case is opened, the staff shall provide a report of its preliminary investigation, audit or analysis to all parties. The public counsel, if conducting its own investigation, shall do the same. This report shall include:

1. An evaluation of the utility's record-keeping practices.

2. An itemized list of unusual cost of service items for which additional support was required.

(9) Settlement proposals.

(A) Staff's confidential settlement proposal. Not later than one hundred twenty (120) days after a small utility rate case is opened, the staff shall provide a confidential settlement proposal to the utility, the public counsel, and any other parties to the case.

1. Staff's settlement proposal shall include:

- A. The utility's annual operating revenues;
- B. The utility's customer rates;
- C. The utility's service charges and fees;
- D. The utility's plant depreciation rates;
- E. The utility's tariff provisions;
- F. The operation of the utility's systems; and
- G. The management of the utility's operations.

2. The staff shall also provide the following with its settlement proposal:

- A. Draft revised tariff sheets reflecting the staff's settlement proposal;
- B. A draft disposition agreement reflecting the staff's settlement proposal;
- C. Staff's audit workpapers;
- D. Staff's rate design workpapers; and
- E. Any other documents supporting the staff's settlement proposal.

3. Any settlement proposal, including any draft disposition agreement, and all supporting documents attached thereto are strictly intended for settlement negotiations only. If the staff and the utility are unable to reach a full or partial settlement via disposition agreement, staff is not bound to any position stated or implied by the settlement proposal, draft disposition agreement, or supporting documents provided.

(B) Not later than ten (10) business days after the staff provides its settlement proposal, public counsel, the utility, and any other parties to the case shall notify staff whether they agree with the proposal or, if not, provide any suggested changes and the reasoning for those changes. Public counsel shall provide to staff, the utility, and all other parties to the case any audit workpapers, rate design workpapers, or other documents in its possession that support its recommendations.

(10) At any time prior to the filing of the disposition agreement, any party may request the assigned regulatory law judge meet with the participants and mediate discussions to assist them in reaching at least a partial agreement.

(11) Disposition agreement.

(A) Not later than one hundred fifty (150) days after a small utility rate case is opened, the staff shall file one of the following:

1. A disposition agreement between at least the staff and the utility providing for a full resolution of the small utility rate case;

2. A disposition agreement between at least the staff and the utility providing for a partial resolution of the small utility rate case and a motion asking that the case proceed to an evidentiary hearing; or

3. A motion stating that agreements cannot be reached on any of the issues related to the small utility rate case and asking that the case proceed to an evidentiary hearing.

(B) If the disposition agreement filed by the staff provides for a full resolution of the small utility rate case and is executed by all parties, the utility shall submit to the commission, within five (5) business days of the staff's filing, new and/or revised tariff sheets bearing an effective date of not fewer than thirty (30) days later, to implement the agreement.

(C) If the disposition agreement filed by the staff provides for a full resolution of the small utility rate case but is not executed by all parties, the utility shall submit to the commission concurrent with the staff's filing new and/or revised tariff sheets, bearing an effective date that is not fewer than forty-five (45) days after they are filed, to implement the agreement.

(D) No later than five (5) ~~working-business~~ days after the filing of a full or partial disposition agreement that is not executed by all parties, each non-signatory party shall file a pleading stating its position regarding the disposition agreement and the related tariff revisions and providing the reasons for its position. If the non-signatory party intends to ask that the case be resolved by evidentiary hearing, it must do so in this pleading.

(E) If any party requests an evidentiary hearing where the disposition agreement filed by the staff provides for a full resolution of the small utility rate case and is executed by at least the utility and the staff, ~~either the utility or staff~~ shall bear the burden of proving the disposition agreement is just and reasonable.

1. If the utility elects to not participate as a party in an evidentiary hearing, representatives of the utility may still be called as witnesses by other parties.

(12) Evidentiary hearing procedures.

(A) Any party may file a request for an evidentiary hearing.

(B) Once such a request is filed, the regulatory law judge shall issue a procedural schedule designed to resolve the case in the time remaining in the small utility rate case process, consistent with the requirements of due process and fairness to the parties and the utility's customers.

(C) A request for an evidentiary hearing shall include a specified list of issues that the requesting party believes should be the subject of the hearing.

(D) The utility's pending tariff revisions, if any, shall be suspended pending completion of the hearing.

(13) Submission to the commission. The small utility rate case must be submitted to the commission for decision not later than eight (8) months after the small utility rate case is opened, and the commission's report and order regarding the case shall be issued and effective not later than ~~nine-ten~~ (910) months after the small utility rate case is opened.

(14) The commission shall set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease.

(15) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown.

*Rate Cases filed that were consolidated into one docket. Note: arguably duplicative.
 Also note: Rate cases were omitted if they were dismissed without reaching a disposition.

Case Number	Utility Name	Cumulative Length of Extensions, if any	Request a continuance?
WR-2017-0139	Stockton Hills	20	1
WR-2017-0131*	Gladlo*	0	0
SR-2017-0130	Gladlo	0	0
WR-2017-0110*	Terre Du Lac*	60	1
SR-2017-0109	Terre Du Lac	60	1
WR-2017-0042	Ridge Creek	60	1
SR-2016-0202	Raccoon Creek	60	1
SR-2016-0112	Cannon Home Association	0	0
WR-2016-0267	Rex Deffenderfer	30	1
WR-2016-0109*	Roy-L*	30	1
SR-2016-0110	Roy-L	30	1
WR-2016-0064*	Hillcrest*	38	1
SR-2016-0065	Hillcrest	38	1
SR-2015-0106	Seges Partners Mobile	4	1
WR-2015-0246	Raytown Water Co	0	0
WR-2015-0192*	Bilyeu Ridge Water Co*	60	1
WR-2015-0197	Valley Woods Utility	60	1
WR-2015-0196	Taney County Water, LLC	60	1
WR-2015-0195	Riverfork Water	60	1
WR-2015-0194	Moore Bend Water	60	1
WR-2015-0193	Midland Water Co	60	1
WR-2015-0138	Village Greens Water Co	60	1
WR-2015-0104	Spokane Highlands Water	0	0

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WR-2017-0139	Stockton Hills	20	1
WR-2017-0131*	Gladlo*	0	0
WR-2017-0110*	Terre Du Lac*	60	1
SR-2017-0109	Terre Du Lac	60	1
WR-2017-0042	Ridge Creek	60	1
SR-2016-0202	Raccoon Creek	60	1
SR-2016-0112	Cannon Home Association	0	0
WR-2016-0267	Rex Deffenderfer	30	1
WR-2016-0109*	Roy-L*	30	1
WR-2016-0064*	Hillcrest*	38	1
SR-2015-0106	Seges Partners Mobile	4	1
WR-2015-0246	Raytown Water Co	0	0
WR-2015-0192*	Bilyeu Ridge Water Co*	60	1
WR-2015-0138	Village Greens Water Co	60	1
WR-2015-0104	Spokane Highlands Water	0	0