

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

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

**OFFICE OF THE PUBLIC COUNSEL’S
POST HEARING REPLY BRIEF**

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and in compliance with the Missouri Public Service Commission’s (“Commission”) February 16, 2018 *Order Granting Motion to Continue Hearing and Amending Procedural Schedule* and submits its Post Hearing Reply Brief in this case.

INTRODUCTION

It is curious why Gascony filed a rate case now when there is an almost incomplete absence of competent and substantial evidence to support its case. No matter the size or nature of a rate case, the Company bears the statutory burden of proof to demonstrate the changes it proposes are just and reasonable.¹ Neither Staff, Public Counsel, nor the Commission can ignore or overlook this statutory obligation. The lack of either competent or substantial evidence to support an increase means the Company has failed to meet its burden of proof on almost every issue.² No amount of Company mewling about Staff or Public Counsel changes that fact.

¹ Section 393.150.2 RSMo (2016). At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the ... water corporation. . .

² *Id.*

All of the expenses originally included in rates were necessarily estimates because no records existed.³ In its 1997 CCN case, the Company proposed rates of \$75,675, including \$20,750 annually for startup costs. The parties settled on \$33,817,⁴ which included \$4,000 for startup costs to be collected over 5 years. As explained in OPC's Initial Brief, Gascony continued to collect this 5-year amortization in rates until it filed this rate case.

The Company's attacks on Staff and Public Counsel are unfounded.

Gascony complains that "Gascony has not been assisted by Staff in this rate case process." It does so in reference to 4 CSR 240-10.075, a yet to be promulgated Commission rule. That rule, which is submitted to the Secretary of State but has not been formally promulgated, states:

(4) Staff will assist a small utility in processing a small utility rate case insofar as the assistance is consistent with 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.

Notice the language "insofar as the assistance is consistent with staff's function and responsibilities to the commission," and "Staff may not represent the small utility and may not assume the small utility's statutory burden of proof." Given how much Staff actually did assist Company in preparing this small water case, Company can only be requesting that Staff either

³ Case No. WA-97-510, *In the Matter of the Application of George Hoesch for a Certificate of Convenience and Necessity Authorizing Him to Own, Operate, and Maintain a Water System for the Public, Located in an Unincorporated Area of the County of Gasconade, Missouri*.

⁴ Case No. WA 97-510, Merciel Testimony in Support of Stipulation and Agreement. (Jan. 5, 1999)

change its position to what Company wishes it to be⁵ or to actually represent the Company,⁶ neither of which is allowed, even under the new rule.

In fact, Staff recommended a \$15,000 salary for Mr. Hoesch, despite his providing wholly inadequate timesheet records.⁷ Staff has gone above and beyond in its efforts to be fair to this Company in this regard. Staff evaluated Mr. Hoesch's managerial responsibilities, administrative responsibilities, reviewed historic payroll costs, evaluated state wage information,⁸ included an additional amount for management duties, the lack of evidence, and reviewed salaries for other utility companies.⁹ Staff did all this as the basis for its recommendation of \$15,000 for salaries for Mr. Hoesch and his part-time employee. If this is not assistance, it would be hard to imagine what would qualify for assisting the company.

Staff also recommended mileage reimbursement, despite the Company's failing to maintain travel logs for mileage. To be fair, no one is questioning that Mr. Hoesch travels from his home in St. Louis to Gascony Village regularly and conducts Company business there. The remaining issue is how Mr. Hoesch should be reimbursed.

⁵ The Company complains that "perhaps some of the small utilities would be able to remain viable, if their rates were truly just and reasonable." Gascony Brief, p. 2.

⁶ Gascony complains that "Mr. Hoesch did not want to have an evidentiary hearing in this matter ... (or) ... hire a lawyer and an expert witness." Gascony Initial Br. p. 2. OPC's recollection is that Mr. Hoesch had counsel from the very beginning, which calls these claims into question.

⁷ Exh 21, Taylor Rebuttal, p. 6:15-22 (The total hours reported by Mr. Hoesch for the most recent year is 493 hours. . . [H]e identified only three work activities. Each time sheet [recorded read the master meter], checked the property and reviewed mail.

⁸ Exh 21, Taylor Rebuttal, p. 8:12-18.

⁹ *Id.*

Most importantly, to support inclusion of some amount of rate base for Gascony, in a disturbing approach, Staff actually failed to use the Commission-approved depreciation rates for the trencher and the UTV/Gator to establish rate base for this equipment in order to help the Company.¹⁰

Even more far-fetched, Company complains that “if Staff is not opposing the Company on an issue, then the Office of Public Counsel...is fighting the Company on the issue.”¹¹ Public Counsel’s purpose is to “protect the interests of the public,” not the Company’s. Section 386.710.1(2), RSMo. If Public Counsel determines that a Company intends to charge the public more for utilities than they should, it is OPC’s statutory obligation to oppose it. Each of the issues in dispute are examples of expenses that are not proven to be just and reasonable.

Staff cannot assist a Company that has failed to keep any competent or substantial records, displaying a total disdain for the commitments it made to the Commission in the CCN case.¹² The history of the trencher is a case in point. In explaining why Gascony failed to transfer the trencher to the water company, Mr. Russo explained that the trencher “went into the water plant [rate base] at zero. Mr. Hoesch said, the heck with that. I’ll just keep it in my realty business. So he used it from then until, again, about that 2015 time frame.”¹³

¹⁰ Exh. 22, Young Rebuttal, page 31:3-11. Q. What would the June 30, 2017 rate base value of the trencher and the UTV if the [commission] approved depreciation rates were applied? A. [T]he rate base value of both pieces of equipment would be \$0, assuming they were retired when fully depreciate[ed]. (sic) or would have be[en](sic) a reduction to rate base assuming they were not retired when fully recovered. . . .

¹¹ Gascony Initial Br., pg. 2.

¹² Case No. WO-97-510, *Stipulation and Agreement*.

¹³ Tr. Vol. 2 p. 74:5-12.

Another point involves the land. Mr. Hoesch warranted the Company would own the land where the well plant is situated.¹⁴ The Company still does not formally own the land.¹⁵ Staff cannot put \$10,000 in rate base, as Gascony requests, Gascony claims “ample” evidence.¹⁶ But Gascony’s time sheets have no detailed description of the actual work activity¹⁷ and are woefully inadequate. Consequently the claim Mr. Hoesch has had to “fight for every dollar,”¹⁸ as Gascony states, rests solely with Mr. Hoesch and his complete lack of any competent recordkeeping, after-the-fact manufactured recordkeeping, and his failure to perform under the CCN Stipulation.¹⁹

Importantly, Mr. Hoesch knew exactly what was required for him to prove his case. It is set out in the Stipulation and Agreement in Case No. WA-97-510.²⁰ “The Company agrees to maintain employee time sheets, telephone usage logs, vehicle logs, equipment use logs, work orders, continuing property records, and customer complaint records, examples of which are attached as Schedules 5, 6, 7, 8, 9, 10 and 11.”²¹ The Agreement required Gascony to “maintain employee timesheets.”²² Mr. Hoesch did not keep timesheets at all until 2015, and never

¹⁴ Case No. WO-97-510, Hoesch Direct, p. 3:49-59 (*see* Exh. 100, Young Rebuttal, Sch. MRY-R3.

¹⁵ *See* Staff Exhs. 108-112.

¹⁶ Gascony Initial Br., p. 4. Support for management activities consists of estimates resulting from well-after-the-fact discussions between Mr. Hoesch and Mr. Russo.

At hearing Mr. Russo, to his credit, admitted the records were “still lacking.” Tr. Vol. 2, 149:12-24. In fact, what the records are lacking is credibility.

¹⁷ Exh. 102, Taylor Rebuttal, MJT-r-4.

¹⁸ Gascony Initial Br. p. 2. (emphasis added).

¹⁹ *See* Exh. 200, Robinett Rebuttal, Sch. Jar-R-2, p. 4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at p.10-11.

maintained contemporaneous timesheets for “management duties.”²³ There are no vehicle usage records, work orders, continuing property records, or customer complaint records.

Staff and OPC’s Recommendations for Salaries are Just and Reasonable

Public Counsel is in agreement with Staff on this issue. OPC’s comments, therefore, are only directed to Company’s brief. Company’s brief is woefully inadequate with regard to support for its position. First, with regard to management duties, Company’s statement that “Mr. Hoesch’s managerial hours are *summarized* in Schedule 2...”²⁴ is very telling. That is all Mr. Hoesch could provide: a summary.²⁵ This is because Mr. Hoesch did not keep management records.²⁶ It’s also telling that “when Staff first met with Mr. Hoesch, he did not consider his managerial tasks.”²⁷ It’s almost as if Mr. Hoesch did not have management tasks to log, and only brought them up once he realized that his salary expectations were not supported by the hours he originally reported.

Given the lack of records kept, which Hoesch himself admitted were inadequate,²⁸ Company is hard pressed to support the claim that it provided “ample evidence...regarding Mr. Hoesch’s operational and managerial duties.”²⁹ Rather, it was the lack of evidence due to

²³ Mr. James Russo, relied upon after-the-fact discussions with Mr. Hoesch to calculate management hours Mr. Hoesch claimed to have worked. Tr. Vol. 2, p 55, lines 10-11.

²⁴ Gascony Initial Br., pg. 3.

²⁵ Tr. Vol. 2, pg. 46, lines 12-20.

²⁶ Tr. Vol. 2, pg. 90, lines 17-23.

²⁷ Gascony Brief, pg. 3.

²⁸ Vol. 2, p. 90-91.

²⁹ Gascony Brief, pg. 4.

inadequate record keeping that made Company rely upon unreliable summaries to justify its excessive salary demands.

Gascony complains Staff's salary recommendation is unfair based on the rate authorized in the CCN case. In Case No. WA-97-510 Mr. Merciel describes the salary for management, operations and clerical as "strictly a negotiated *estimated* amount," explaining that the Staff needs reasonable documentation of such things as ...employee time..."³⁰

Due to the lack of reasonable documentation and because Staff witness Michael Jason Taylor's recommendation, which was based upon an assumption of a 12 hour per week work load,³¹ to which Hoesch himself twice testified³² is likely how much Mr. Hoesch worked, Mr. Taylor's recommendation is the best calculation with regard to salary. This Commission should adopt Staff's recommendation.

The Company's Request for Rent Expense for two offices is Unreasonable and Unsupported.

OPC supports Staff's calculation for rent for the Gasconade County office. And, OPC supports Staff's position with regard to the not approving any customer charge for rent for the St. Louis office. On the part of the Company, there is no justification why customers should pay for a St. Louis office in Mr. Hoesch's home. The Company states that, "It would not be practical, from an economic or logistical standpoint, for the Company to maintain only one office location."³³ But why? It has been for practical for over 20 years. The only reasons offered are

³⁰ Case No. WA 97-510, Merciel Testimony in Support of Stipulation and Agreement. (Jan. 5, 1999)(emphasis added).

³¹ Taylor Rebuttal, page 14.

³² Tr. Vol. 2, pp. 89, 96.

³³ Gascony Initial Br. pg. 5.

that Hoesch takes weekend visits to Gascony and that the Company's business records are stored in St. Louis. But, the records described were all in Gasconade County office,³⁴ not the St. Louis Office. Early on, no one was aware Mr. Hoesch was attempting to claim a second office space in his St. Louis residence.³⁵ The Company has offered no reason or support for why records would have to be stored in St. Louis. The only specific reference to records is to bills and tax documents,³⁶ but neither of those duties are so urgent that they can't be handled during the weekly trips to Gasconade County.³⁷

Only Public Counsel Uses Commission-Authorized Depreciation Rates.

Staff's recommendation has a significant flaw. In its Brief, Staff noted that OPC did not object to the Partial Disposition and Agreement ("Agreement").³⁸ This is not entirely correct. Public Counsel did object to Staff's exclusion of the mileage issue from the list of contested issues.³⁹ Public Counsel did not waive argument on any contested issue by not objecting, and all contested issues went to hearing.⁴⁰ In other words, it is meaningless that Public Counsel did not object to the Agreement.

³⁴ Tr. Vol. 2, pg. 20, line 13.

³⁵ Tr. Vol. 2, pp. 154-55.

³⁶ Tr. Vol 2, pp. 156-57, 205.

³⁷ Tr. Vol. 2, pg. 95, line 22.

³⁸ Staff Initial Br. fn. 24.

³⁹ EFIS Item 11. Motion for Leave to Accept Late-Filed Response to Partial Disposition Agreement and Request for Evidentiary Hearing

⁴⁰ EFIS Item 8, *Partial Disposition Agreement and Request for Evidentiary Hearing*, unnumbered p. 2, para. 3. The remaining [contested] issues of rate base, rate design, customer applications, land ownership, depreciation rates, rent, salaries, and rate case expense will be further defined and filed separately in EFIS.

This does not mean Public Counsel is not disturbed by Staff's failure to use Commission-approved depreciation rates to develop rate base.⁴¹ Staff admits it did not use the current Commission ordered depreciation rates.⁴² This is an unwarranted and critical departure from Commission practice.

Since Gascony adopted Staff's unauthorized depreciation rates, Public Counsel is the only party to apply Commission-ordered, and found them to be reasonable going forward.⁴³ The original Commission-ordered depreciation rates are based on the NARUC USoA Class "C" depreciation rates for water utilities.⁴⁴ The choice of which Class to use is up to the company. Further, the current ordered depreciation rates, are consistent with many of the other small-water depreciation rates currently ordered for other regulated small water systems in the state.⁴⁵

Staff's testimony has led to some confusion about what it is recommending. When asked if he had reviewed the Company's workpaper, Staff witness Moilanen, answered: "Briefly. Yes. Are you talking about Mr. Russo's work paper?"⁴⁶ When asked what USoA Class the Company had used, Mr. Moilanen replied: "Looking at this it is not clear. For the general plant, it uses two accounts that are 370 accounts which would be Class D. And then the remaining five accounts are

⁴¹ EFIS No. 36, OPC Statement of Position

⁴² Exh 100, Young Rebuttal, p. 31 (If [Commission] approved depreciation rates were applied . . . the rate base of both pieces of equipment would be \$)) .

⁴³ Exh. 200, Robinette Rebuttal, Sch. JAR-R-2 *Order Approving Stipulation and Agreement*.

⁴⁴ Exh 200, Robinett Surrebuttal, p. 3: 19-20.

⁴⁵ Exh. 200, Robinette, Rebuttal, p. 3:18-20.

⁴⁶ Mr. Moilanen recognized that Exh. 200, Robinette, Rebuttal, Sch. JAR-R-3 was Mr. Russo's workpaper.

390 accounts, which would be something other than Class D.” Mr. Moilanen agreed it was reasonable to assume Class C for those accounts.⁴⁷

Gascony bears the burden of proof that its proposed rates are just and reasonable;⁴⁸ and it has failed to meet that burden. Mr. Russo adopted Staff’s recommendation and admitted some confusion.⁴⁹ Public Counsel discussed the confusion in Staff’s testimony in its Initial Brief.⁵⁰ Accordingly, the Commission should adopt Public Counsel’s expert’s recommendation as the only one to comply with Commission-authorized rates and to be supported by competent and substantial evidence.

Public Counsel’s Travel Expense/Mileage Compensation Recommendation is Just and Reasonable.

OPC is the only party thus far to provide any justification for its position on what mileage rate to use. Company’s position is that the IRS rate should be used because that’s how it has always been done.⁵¹ First, the Company put forth no evidence to establish that using the IRS rate is common practice. The only thing on the record to that effect is Company’s counsel repeatedly asking Keri Roth whether she was aware of other cases in which the Missouri rate was used.⁵² Roth testified that she did not have knowledge to OPC’s practices in all other cases, but she did

⁴⁷ Tr. Vol. 2, 184: 4-23.

⁴⁸ Section 393.150.2.

⁴⁹ Tr. Vol. 2, 64:1-18.

⁵⁰ OPC Initial Br. p. 9.

⁵¹ Gascony Brief, p. 5, “The commission should continue the practice of allowing the company to recover...”

⁵² Tr. Vol. 2, pp. 197-99.

identify at least one other instance in which the Missouri rate was recommended.⁵³ But, Roth was not asked whether she was aware of other cases using the IRS rate.⁵⁴ Company did not provide references to other cases that shows a pattern of the IRS rate being used. The record is inadequate to say that the IRS rate is what is always used. Company pushes that sentiment, but does not meet any burden of production to that effect.

Company makes the claim that OPC was “unable to provide any justification for OPC’s position in this case that a mileage rate published by the state of Missouri should be used instead of the mileage reimbursement rate.”⁵⁵ Company’s counsel must not have reviewed the record, because OPC offered two compelling and un rebutted reasons to use the Missouri rate:

- 1) The IRS rate represents a deduction, not a reimbursement.⁵⁶ Because Company seeks a reimbursement, a reimbursement rate should be used. No other *reimbursement* rate has been offered by any party.
- 2) The IRS rate represents a nationwide estimate of travel costs.⁵⁷ Missouri’s fuel prices are lower than other parts of the country.⁵⁸ The Missouri rate is a better representation of what Hoesch’s travel costs are.

⁵³ Tr. Vol. 2, pp. 197-99.

⁵⁴ See generally Tr. Vol. 2, pp. 197-99.+

⁵⁵ Gascony Brief, pg. 6.

⁵⁶ Ex. 203 & 204; Tr. Vol. 2, pp. 59, 147, 207.

⁵⁷ Tr. Vol. 2, pp. 56, 146.

⁵⁸ Tr. Vol. 2, pp. 56, 147.

These two justifications are much more compelling than, to paraphrase, “this is how we’ve always done it,” which is also unsupported by the record. On top of that, there are also reasons why Hoesch may not even be entitled to the Missouri amount. Hoesch’s trips to Gasconade County have non-business purposes, including personal/leisure time in his second residence⁵⁹ and that he may spend at least a little time on his real estate business.⁶⁰

Staff’s only stated reason to use the IRS rate is “because Gascony is not a state agency.”⁶¹ But, how does that fact matter? Missouri’s rates are still the only reimbursement rate offered and the only rate that considers Missouri costs, not nationwide costs. Because neither Staff nor Company have even attempted to address those realities, OPC’s mileage reimbursement recommendation should be adopted.

Staff and OPC Recommend a Just and Reasonable Rate Design.

Company’s Brief, with regard to part time residents, literally states “the customer equivalent factor (for comparing part-time and full-time customers) should be increased from .35 to .5.” There is nothing further. There is no explanation as to why, at all.

OPC agrees with Staff except for one small point.⁶² OPC flatly opposes an increase to the dump station, whether the part-time customer’s share is increased or not. Just as there is insufficient information to establish an increase in consumption for part-time residents, there was

⁵⁹ Tr. Vol. 2, pp. 105-06, Hoesch Surrebuttal, p. 10, line 7.

⁶⁰ Tr. Vol. 2, pg. 92.

⁶¹ Staff Brief, pg. 12.

⁶² OPC mistakenly made the claim in its opening brief that the only dispute was with part-time customers. Upon review, OPC notes that Company sought an increase from 1.65 to 2.5, whereas Staff only made that recommendation on the condition that part-time resident shares would increase from .35 to .5.

also insufficient data to establish that the dump station increased in consumption.⁶³ Neither share should be increased.

WHEREFORE, Public Counsel recommends the Commission issue its orders in this case to set just and reasonable rates as recommended by the Office of the Public Counsel in its testimony and as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 13th day of April 2018, 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/Lera L. Shemwell

⁶³ Tr. Vol. 2, pp. 164-65.