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*Witness:* *James A. Busch*  
*Sponsoring Party:* *MO PSC Staff*  
*Type of Exhibit:* *Rebuttal Testimony*  
*Case Nos.:* *SR-2014-0166 and*  
*WR-2014-0167*  
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**MISSOURI PUBLIC SERVICE COMMISSION**

**REGULATORY REVIEW DIVISION**

**REBUTTAL TESTIMONY**

**OF**

**JAMES A. BUSCH**

**HICKORY HILLS WATER AND SEWER COMPANY, INC**

**CASE NOS. SR-2014-0166 and WR-2014-0167**

*Jefferson City, Missouri*  
*September 2014*

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**JAMES A. BUSCH**  
**HICKORY HILLS WATER & SEWER COMPANY**  
**CASE NOS. SR-2014-0166 and WR-2014-0167**

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1           A.     Yes. The cases in which I have filed testimony before the Commission are  
2 listed on Schedule JAB-1 attached to this testimony.

3           Q.     What is the purpose of your Rebuttal Testimony?

4           A.     The purpose of my Rebuttal Testimony is to provide the Commission with  
5 Staff's general policy considerations regarding the Disposition Agreement that Staff and  
6 the Receiver of Hickory Hills Water and Sewer Company, Inc. (Hickory Hills or  
7 Company) have entered into as a result of the Company's rate request. This testimony  
8 will give a brief history and an update of the current situation impacting the Company  
9 and the customers. Also, I support Staff's rate design recommendation.

10          Q.     Are there any other Staff members filing testimony regarding the  
11 Disposition Agreement?

12          A.     Yes. Staff has various experts responding to the direct testimony of Office  
13 of the Public Counsel (Public Counsel) witness Keri Roth. Staff expert Paul Harrison  
14 will be filing testimony regarding the various accounting issues mentioned by Ms. Roth.  
15 Staff expert Shana Atkinson will be filing testimony regarding Return on Equity. Staff  
16 expert Derick Miles will be filing testimony regarding depreciation issues. Staff expert  
17 Aaron Archer will be filing testimony addressing Staff's recommended wastewater  
18 treatment facility solution.

19       **I.     EXECUTIVE SUMMARY**

20          Q.     Please summarize your Rebuttal Testimony.

21          A.     Hickory Hills is a small utility that provides both water and sewer service.  
22 The Company was placed into Court appointed receivership in 2007. Mr. Gary Cover is  
23 the Court appointed receiver. The biggest issue that is impacting Hickory Hills is its

1 wastewater treatment facility, which is no longer in compliance with Department of  
2 Natural Resource (DNR) regulations and in fact, has been operating without a discharge  
3 permit since March 2009. Currently, the Company's wastewater treatment facility is a  
4 single-cell lagoon (for a further description of the Company's facility, please see the  
5 testimony of Staff expert Archer). From discussions with DNR and a review of various  
6 engineering reports, a new type of wastewater treatment facility needs to be installed.  
7 Unfortunately, the receiver is not in position to raise the capital required to make that  
8 level of investment. The Company is in enforcement action by the Missouri Attorney  
9 General's Office (AG) on behalf of DNR. It was due to this enforcement action that  
10 Hickory Hills initiated this rate request. It is also due to this enforcement action that  
11 Staff has made the decisions it has made in this case regarding the wastewater treatment  
12 facility. A new treatment facility is needed as soon as possible. Staff has thus researched  
13 and found a temporary type facility that can be leased and will allow the system to be in  
14 compliance with State and Federal environmental regulations yet not require a substantial  
15 amount of capital outlay by the receiver. Please refer to the testimony of Staff witness  
16 Archer for treatment facility alternatives and information.

17 **II. BRIEF HISTORY**

18 Q. Please provide a brief history of Hickory Hills.

19 A. Hickory Hills is a small water and wastewater utility that provides water  
20 and wastewater service to approximately 45 customers in a subdivision just outside of  
21 California, MO. In 2006, Mr. Randy Clifford, owner of Hickory Hills, indicated that he,  
22 as owner of the Company, was no longer willing and able to continue to provide  
23 service to the customers of Hickory Hills. In Case No. WO-2007-0036, a unanimous

1 stipulation and agreement between Mr. Clifford, Staff and Public Counsel was filed to  
2 appoint Mr. Gary Cover as receiver of the Company and to ask the Commission  
3 permission for Staff to petition the circuit court for court approval. The Commission  
4 approved this agreement by Order on August 13, 2006. Staff subsequently petitioned the  
5 Cole County Circuit Court and that Court approved Mr. Cover as receiver on January 2,  
6 2007 in Case No. 06AC-CC00885.

7           On March 19, 2004, DNR issued an operating permit to Hickory Hills.  
8 The permit expired on March 1, 2009. Because of non-compliance with prescribed  
9 permit conditions, the permit was not re-issued by DNR and the treatment facility has  
10 been operated by Hickory Hills without a permit since that time, in violation of Missouri  
11 law. Due to this and other factors, the AG's Office filed a Petition and Application for  
12 Preliminary Injunction, Permanent Injunction, and Civil Penalties against Hickory Hills  
13 on December 2, 2012 in the Circuit Court of Moniteau County, Case No. AP 12MT-  
14 CC00027. The Petition is attached to this testimony as Schedule JAB-2. Besides the  
15 various counts for violation of Missouri law within the petition, the AG in paragraph 42,  
16 asks for a Preliminary Injunction to have Hickory Hills enjoined from causing or  
17 permitting the discharge of contaminants from the wastewater treatment facility into  
18 waters of the State in order to prevent further violations of the Missouri Clean Water  
19 Law. Since the lagoon is no longer capable of meeting treatment and discharge  
20 requirements, it either needs substantial rehabilitation and upgrades or a new facility must  
21 be installed in order for customers to receive safe and adequate wastewater service.  
22 Other less than desirable options that DNR could impose on the Company to undertake  
23 include pumping and hauling raw sewage from the lagoon on a daily basis for disposal

1 elsewhere, which would be extremely expensive, or the customers must cease using the  
2 system, meaning their homes would be uninhabitable and valueless.

3           On August 8, 2013, an Agreed Order of Preliminary Injunction was filed  
4 among DNR, the AG, and Hickory Hills and approved by the Court that required Hickory  
5 Hills to mow grass on the constructed lagoon berms, repair or erect a fence around the  
6 lagoon, post warning signs, and file a rate request with the PSC to request an emergency  
7 rate increase that would address the pumping and hauling costs regarding the lagoon.  
8 This rate request is the result of that Agreed Order.

9           Within this case, Hickory Hills eventually requested emergency rates to  
10 comply with the Agreed Order. Staff did an analysis of this request and determined that  
11 the cost of pumping and hauling to meet these requirements was cost prohibitive. Staff  
12 filed Staff's Recommendation Regarding Hickory Hills Request for Emergency Rate  
13 Increase in this proceeding on April 7, 2014. In that recommendation, Staff provided  
14 detailed analysis as to why pumping and hauling was not cost effective and  
15 recommended that the Company utilize a temporary facility to address DNR concerns. In  
16 reality, a treatment facility may or may not be a temporary set-up depending upon the  
17 product selected to be used. One option studied by Staff involves a facility that is  
18 intended to be used on a temporary basis and is available for lease, rather than purchase  
19 requiring a large capital investment. Refer to Staff's April 7, 2014 memorandum and  
20 Staff witness Archer's Rebuttal testimony for further information on treatment facility  
21 alternatives and options. The cost of a replacement facility was included in the Staff and  
22 Company Disposition Agreement filed on July 7, 2014 and is further discussed in the  
23 Rebuttal testimony of Staff expert Archer.

**III. TEMPORARY WASTEWATER FACILITY**

Q. What is Public Counsel's position regarding the temporary wastewater facility recommended by Staff?

A. According to Ms. Roth's testimony, Public Counsel opposes Staff's recommendation.

Q. Why does Public Counsel oppose Staff's recommendation?

A. From Ms. Roth's direct testimony, page 5 lines 14 – 16, she states that a permanent solution should be determined before customers are asked to pay such a high cost in their rates.

Q. What is the expected wastewater rate for Hickory Hills' customers if Staff's total recommendation is approved by the Commission?

A. Staff's recommended wastewater rate is \$116.33 per month. This includes not only the temporary wastewater facility, but includes all of Staff's recommendations.

Q. Does Staff agree with Public Counsel that this is a high rate?

A. Yes.

Q. Does Staff agree with Public Counsel that a permanent solution should be found?

A. Yes.

Q. Is there a permanent solution available at this time?

A. No. Staff has explored many permanent solutions to help solve this problem impacting the customers. Staff has worked diligently with DNR and the AG's office. Staff has attended meetings and has had discussions with the City of California to



1 solve this problem. Staff has contacted potential entities who might purchase the system.

2 At this time, no permanent solution has been found.

3 Q. Please briefly describe the discussions with the City of California.

4 A. Staff has participated in discussions over the past few years with various  
5 council members and officials of the City of California (City). The Hickory Hills system  
6 is just outside of the municipal limits of the City. The reason that Staff has met with  
7 City officials is that one potential permanent solution is to have the City either take over  
8 the water and wastewater systems or at least allow for the connection of the water and  
9 wastewater systems to the City's system. However, after participating in these  
10 discussions, there are various obstacles mentioned by the City that need to be addressed  
11 before the City would be willing to allow the Hickory Hills' systems to be connected to  
12 the City's systems. Without a viable option to overcome those obstacles there have not  
13 been any further discussions to address how those obstacles can be overcome.

14 Q. Can you briefly describe Staff's efforts to reach out to potential buyers of  
15 the water and wastewater system?

16 A. Yes. Staff has had discussions with various entities that may be able to  
17 purchase the systems. However, as has been noted, there are very few customers and any  
18 permanent solution to the problems facing the system that a potential buyer would face  
19 would be cost prohibitive as well. Potential buyers are rightfully shy of tackling this  
20 problem considering the outstanding DNR violations, how quickly those violations would  
21 need to be remedied, and the overall cost to the customers via potential rates.

22 Staff continues to have discussions with any interested party to find not  
23 only a permanent solution, but a permanent solution that is more cost effective.

1           Q.     What is Public Counsel's recommendation to get the wastewater system  
2 into compliance with State law?

3           A.     After reading the testimony of Ms. Roth, it does not appear that Public  
4 Counsel has a plan that would move the system into compliance.

5           Q.     If Staff agrees that its recommendation is costly and that a permanent  
6 solution is the best solution, why is Staff recommending a solution that could be  
7 considered to be temporary?

8           A.     Staff is concerned about what will happen if the status quo continues. As  
9 noted earlier, the AG has filed for an injunction that would force the Company to cease  
10 polluting the waters of the state of Missouri. Absent a new facility or pumping and  
11 hauling (which is an even more expensive option, if it would even be practical), the only  
12 other way to prevent pollution is to force the customers to quit using the facilities. In  
13 other words, the customers would essentially be forced from their homes if the Circuit  
14 Court case would continue, absent some other resolution that would cause the polluting to  
15 stop. It is better to recommend a temporary solution with a relatively high cost rather  
16 than hope that the Court case does not force customers out of their homes.

17 **IV.   OTHER CONCERNS REGARDING PUBLIC COUNSEL TESTIMONY**

18           Q.     On page 5, lines 16 – 18 of her direct testimony, Ms. Roth states that it  
19 does not appear that other similarly effective, less-expensive options have been explored.  
20 Has Staff explored other similarly effective and less-expensive options?

21           A.     Staff is unaware of other similarly effective, less-expensive options. Staff  
22 has spent considerable time exploring a great number of treatment facility products,  
23 researching and estimating capital costs to install a replacement treatment facility, and

1 estimating with as much detail as possible the costs to operate a replacement treatment  
2 facility. Public Counsel does not provide any alternatives. If Public Counsel is aware of  
3 such options, Staff would be very interested in reviewing Public Counsel's  
4 recommendations and is eager to analyze the feasibility of those options.

5 Q. What entity does Public Counsel propose pay for the permanent solution  
6 that it states should be determined?

7 A. Ms. Roth does not indicate who will pay for a permanent solution.

8 Q. If the intent of Public Counsel's recommendation is to have the receiver  
9 raise the capital required for a permanent solution, is this a realistic solution?

10 A. No.

11 Q. Please explain.

12 A. Under the terms of the order by the Cole County Circuit Court that  
13 appointed Mr. Cover as receiver, the receiver is directed to transfer the utility by sale or  
14 liquidate the assets of the utility. The receiver does not have the authority to make a  
15 substantial investment in the Company. In fact, there is nothing that requires any receiver  
16 to expend its own money to finance any improvements of a utility. Another option is to  
17 raise capital is through borrowing. However, due to the size of the Company, lack of  
18 revenues due to the small number of customers, and the cost of improvements, any ability  
19 the receiver would have to secure loans to fully address a permanent solution are non-  
20 existent. Staff is aware of many small water and sewer utilities that cannot secure  
21 financing for much needed repairs and upgrades. Thus, expecting the receiver of a small  
22 water and sewer utility to fund a project of the magnitude required for Hickory Hills is  
23 not feasible.

1 Q. How is Staff's recommendation financially possible?

2 A. Staff's recommendation relies upon a leasing of the majority of the costs  
3 of the temporary facility. Further, if the Commission approves Staff's plan, monies can  
4 start to be collected now that would allow the Company to have a down-payment for any  
5 costs that would need to be expended to prepare the site for the temporary facility.

6 Q. On page 6, lines 2 – 4, Ms. Roth states there is no accounting mechanism  
7 established in the utility and Staff's agreement to ensure customers are made whole.  
8 Does Staff have an opinion on this comment?

9 A. Yes. Staff is open to the idea of creating a special accounting mechanism  
10 to ensure that all monies collected in relation to the proposed treatment facility will be  
11 utilized to meet the exact costs of the proposed treatment facility.

12 Q. Do you have any more comments on Ms. Roth's direct testimony?

13 A. Yes. Although addressed by Staff experts Shana Atkinson and Paul  
14 Harrison in greater detail, I would like to address Public Counsel's recommendation of a  
15 zero Return on Equity (ROE) in this proceeding.

16 Q. Ms. Roth, on page 15, lines 3 – 8, states that since the Company is in  
17 receivership, it is not just and reasonable for customers to be required to pay a profit  
18 through rates to an owner the court has found necessary to replace with a receiver. Please  
19 comment.

20 A. As noted above, a receiver does not have the ability to provide substantial  
21 capital required for major system repairs and/or upgrades or for emergencies. The  
22 manner in which rates are built for a small water/sewer system does not allow for extra  
23 funds to be built in to address these situations. Generally, systems are put into

1 receivership when they have major environmental issues and/or poor overall  
2 management. This means that money needs to be expended on the system when there is  
3 no money available. From a practical perspective an ROE granted on rate base, is one  
4 small way that extra money could become available to the receiver to address these  
5 unaccounted for emergencies. Further, it is my experience as manager of the Water and  
6 Sewer Unit for the past six and a half years that most companies in receivership are  
7 barely bringing in sufficient cash flow to meet basic operating requirements. If ROE is  
8 reduced to zero, this means that there will be even less cash flow to meet basic operating  
9 requirements.

10 Q. Can you please explain how an ROE of zero creates less cash flow to meet  
11 basic operating requirements?

12 A. Yes. Many smaller, privately owned, wastewater systems, Hickory Hills  
13 in particular, are older systems. They date back 30 or 40 years, if not longer. Thus, even  
14 the best estimate of cost of service is highly likely to be insufficient to include all  
15 potential repairs, maintenance, and emergency repairs needed on an aging system. As the  
16 system keeps failing, it needs more and more cash to stay financially solvent. Since rates  
17 are set primarily looking in the past, future expenses are not included, nor are potential  
18 future repairs. ROE for these systems, like Hickory Hills, is just a little bit of cash flow  
19 that is available to meet those expenses and emergencies. As noted in Staff expert  
20 Harrison's testimony, Hickory Hills is cash poor, has been cash poor, and if Public  
21 Counsel's position on ROE is accepted, will be even more cash poor in the future.

22 **IV. CONCLUSION**

23 Q. Please summarize your testimony.

1           A.     Staff recognizes that its proposed rate for sewer service is high and will be  
2     very difficult for the customers to pay in Hickory Hills. Staff has worked very hard over  
3     the past few years to find a solution and has not stopped working on a better solution.  
4     Without a connection with the City of California or the sale to a larger entity, there are  
5     only two options. Option one is to continue to do nothing and hope that the  
6     environmental regulators and Circuit Court continue to allow the pollution of the waters  
7     of the state as opposed to forcing the residents to vacate their homes. Option two is to  
8     find a solution, temporary or otherwise, that will cause the pollution to cease and allow  
9     the homes to remain habitable, while at the same time recognizing it will be difficult for  
10    the customers of Hickory Hills to support a rather steep price associated with that  
11    solution. In Staff's opinion, option two is the only viable option at this time.

12           Q.     What is Staff's recommendation regarding rate design?

13           A.     Staff recommends maintaining Hickory Hill's current rate structure for  
14    both its water and wastewater tariffs.

15           Q.     Does this conclude your Rebuttal Testimony?

16           A.     Yes.


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

In the Matter of a Requested Rate Increase for )	Case No. WR-2014-0167
Annual Water Operating Revenues by Hickory )	
Hills Water & Sewer )	and
In the Matter of a Requested Rate Increase for )	Case No. SR-2014-0166
Annual Sewer Operating Revenues by Hickory )	
Hills Water & Sewer )	

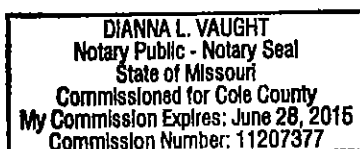
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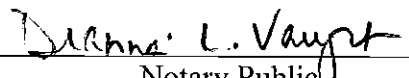
STATE OF MISSOURI	)	
	)	ss.
COUNTY OF COLE	)	

James A. Busch, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 12 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
James A. Busch

Subscribed and sworn to before me this 12th day of September, 2014.



  
\_\_\_\_\_  
Notary Public