

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

In the Matter of the Application)
Of a Rate Increase)
For Indian Hills Utility Operating)
Company, Inc.)

Case No. WR-2017-0259

**BRIEF OF THE OFFICE
OF THE PUBLIC COUNSEL**

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TABLE OF CONTENTS

1. Introduction 3-9

2. Payroll 9-13

3. Auditing and Tax Preparation 13-16

4. Management Consulting Fee 16-19

5. Bank Fees 19-21

6. Rate Case Expense 21-22

7. Treatment of Leak Repair 22-26

8. Treatment of the extension of an electric service line 26- 27

9. Rate Design 27-29

10. Cost of Capital and Capital Structure 29-39

11. Conclusion 39-40

12. Proposed Findings of Fact (with citations to the record) 40-59

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The Office of the Public Counsel (“Public Counsel” or “OPC”) requests the Public Service Commission (“Commission”) to issue an order finding that a just and reasonable incremental increase in rate revenues to be \$432,110. In so ordering, the Commission should adopt the positions and findings of fact recommended by OPC. The Commission should also reject the Non-Uniform Stipulation and Agreement between the Staff of the Public Service Commission (“Staff”) and the Indian Hills Utility Operating Company, Inc. (“Company”).

INTRODUCTION

The Company is requesting to increase the water rates for approximately 715 customers in the Cuba, Missouri area.¹ The ratepayers consist of seasonal and full-time residents.²

The Company has a complicated ownership structure. The Company has a holding company called the Indian Hills Utility Holding Company, Inc., which is owned by First Round CSWR, LLC (“Parent”).³ The manager of the Parent, according to filings with the Secretary of State of Missouri, is David Glarner.⁴ Other filings with the Secretary of State of Missouri indicate

¹ Exhibit 212, Direct Testimony of Dr. Geoff Marke, Pg. 3, Lines 21-24.

² *Id.*

³ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 115, Line 25; Exhibit 208, Direct Testimony of Greg Meyer, Pg. 2-3; Exhibit 230; Exhibit 231; and Exhibit 232, Exhibit 1, Direct Testimony of Josiah Cox, Pg 3, Lines 9-13

⁴ Exhibit 232, First Round CSWR LLC Statement of Change of Registered Agent

that the Parent is a manager-managed limited liability company.⁵ The Parent is also managed by Central States Water Resources, Inc.⁶ Mr. Josiah Cox owns 13% of the Parent and GWSD LLC has the remaining ownership share in the Parent.⁷

Robert Glarner and David Glarner (the “Glarner”) are on the board of directors of Central States Water Resources, Inc.⁸ David Glarner is the treasurer and Robert Glarner is the Secretary of Central States Water Resources, Inc.⁹ The Glarner both hold membership interests in GWSD, LLC.¹⁰

Within the Indian Hills Utility Holding Company, Inc., the treasurer is David Glarner, the secretary is Robert Glarner, and the Glarner are both on the board of directors.¹¹

The Glarner both own Water Fund LLC, and Glarner are both the ultimate owners of Fresh Start Venture LLC (the “Lender”).¹² As mentioned, the Lender and the Company (or, the borrower) are both owned, in whole or in part by the Glarner. The Lender and the Company have agreed to a 20-year loan at a rate of 14%, which is significantly above market cost of debt for distressed utilities.¹³ They have combined the high-interest rate feature with the prepayment penalty that includes all of the interest that would accrue during the loan period, which makes this loan uncommon even without considering the affiliate relationship between the borrower and the

⁵ Exhibit 231, First Round CSWR, LLC Articles of Organization

⁶ See, e.g., Exhibit 1, Direct Testimony of Josiah Cox, Pg. 3, Lines 7-13 and Evidentiary Hearing Volume 3, 11/27/2017, Pg. 297, Line 19 and Pg. 299, Lines 9-10

⁷ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 419, Lines 16-25

⁸ Exhibit 237, 2017 Annual Registration Report of Central States Water Resources, Inc.

⁹ *Id.*

¹⁰ Exhibit 235, Articles of Organization, GWSD, LLC

¹¹ Exhibit 230, 2017 Annual Registration Form

¹² Exhibit 233, Articles of Organization Water Fund LLC and Evidentiary Hearing Volume 4, 11/28/2017, Pg. 420, Lines 1-10

¹³ See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23

Lender.¹⁴ The total make whole payment for a loan of **

**15

The Glarners are signatories on the bank accounts of the Company “in order to access financial control,” and the Glarners have instructed Mr. Cox with whom to bank, which is American Bank.¹⁶ The Glarners are on the board of directors at American Bank.¹⁷

The Commission has reviewed the aforementioned relationships in past proceedings. Mr. Greg Meyer reviewed the transcript from the Raccoon Creek Utility Operating Company, Inc’s rate increase case, File No. SR-2016-0202. Mr. Meyer cited to the transcript as it relates to the cost of debt, and the transcript states: Commissioner Stoll commented “just again fail to see the incentive because I question the arm’s length lack of- maybe lack of arm’s length relationship out there, but I’ll leave it at that.”¹⁸ Commissioner Hall commented on his reservation to continue to approve a 14 percent cost of debt, and he said there should to be an “interest to find lower cost of debt.”¹⁹ Commissioner Coleman explained that “[the loan agreement] seems like it’s not arms length to me.”²⁰ She was concerned that the company could continuously come back to the Commission asking for the same type of approval, and “we should all be concerned about any— about where we’re going here because it’s -- we’re talking real money that affects real people.”²¹ Commissioner Coleman also advised the company to “dig deeper and find some real significant financing.”²²

¹⁴ See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23

¹⁵ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 4, Lines 8-9

¹⁶ Evidentiary Hearing Volume 4, Pg. 433, 11/30/2017, Lines 17-20

¹⁷ Exhibit 227, American Bank of Missouri 2016-2017 Biennial Registration Report

¹⁸ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 22-25

¹⁹ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 13-20

²⁰ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 27-35 and Pg. 8, Lines 1-2

²¹ *Id.*

²² *Id.*

The Company comes to the Commission with the same financing, with the same prepayment penalty, with the same high interest rate, and with the same affiliate lender.

In OPC's testimony, OPC raises concerns that this Company may have failed to comply with the Commission's order approving the acquisition. OPC cites to order's provisions on financing conditions.²³ The case number is WO-2016-0045, and the referenced paragraphs are Paragraphs 18, 20, 21, and 22, which relate to filing documentation of the financing agreement, modifications to the loan agreement, the use of loan proceeds, and changes in the investment structure of the Parent or of the Company.²⁴ OPC suggests these concerns go to credibility of the Company, in particular about the Company's credibility to the Commission relating to the cost of debt.²⁵

Subsequent to the acquisition case, on April 4, 2017, the Company filed their initial rate request in which it requested an incremental increase of \$750,280 in revenues or a 771% rate increase. Staff filed its preliminary audit with the parties on July 3, 2017.

The preliminary audit of the Staff *substantiates* the direct testimony of OPC because the OPC audit finds that a rate increase of \$432,110 would be appropriate for this Company.²⁶ Compare OPC's audit with Staff's preliminary audit, which finds that an incremental increase in revenues of \$443,925, or a 456.29 percentage increase in rates, would be appropriate for the Company.²⁷

²³ Exhibit 200, Direct Testimony of Keri Roth, Pg. 12-14

²⁴ *Id.*

²⁵ *Id.*

²⁶ Exhibit 244, Staff's Day 90 Preliminary Audit Rate Design Schedule and Exhibit 200, Direct Testimony of Keri Roth, attached audit schedule

²⁷ Exhibit 244, Staff's Day 90 Preliminary Audit Rate Design Schedule

However, on September 1, 2017, Staff entered into a Partial Disposition Agreement with the Company. This Partial Disposition Agreement was far-reaching, and it settled substantial matters such as the cost of debt.

In its pre-filed testimony, Staff justified its first Partial Disposition Agreement by explaining that it is natural for Staff's position to "evolve."²⁸ As between the Staff's preliminary audit and the Company's preliminary request, Staff continued to "evolve" further in the direction of the Company, and in fact, Staff eventually met the Company more than halfway by settling all of the issues for an incremental increase to revenues of \$630,911 or a 648.48% increase.²⁹ OPC argues that Staff's position continued to evolve in a direction that lacked factual support and lacked credibility.

The Company and Staff entered two settlement agreements throughout this proceeding. The first settlement agreement occurred prior to the local public hearing. By the time the Commission held a local public hearing, the Company and Staff already conceded important matters to ratepayers, like the cost of debt. Consumers were too late, and to the extent any customers had concerns about the self-dealing and a high-interest loan, no consideration was given.³⁰ The Commission has an opportunity in this proceeding to weigh the concerns of the public, an opportunity that Staff and the Company foreclosed in its early agreement.

²⁸ Exhibit 100, Staff's Direct Testimony of Natelle Dietrich, Pg. 4, Lines 11-14 and 15-17 ("Staff's preliminary audit and investigation continues to *evolve* from day 90 to day 120 to day 150 as additional data is obtained or as Staff's preliminary recommendations are discussed and refined... so even beyond day 150, up to and including the filing of various rounds of testimony, Staff's position may continue to *evolve* on non-settled issues") (emphasis added).

²⁹ Non-Unanimous Stipulation and Agreement, Item No. 87, WR-2017-0259 (Filed: 11/22/2017).

³⁰ Staff Report on Local Public Hearing, 10/23/2017, EFIS Item No. 45 ("Staff states that it obtained no material information at the local public hearing that would result in any change to the partial disposition agreement or other positions Staff has taken in the matter").

The Company and Staff reached a second settlement agreement on the eve of trial. Of vital importance, OPC argues that both settlement agreements do not have factual support in the record. For example, no witness supported a two-way tracker in their pre-filed testimony, but it was argued at hearing. As another example, Staff witness Ms. Natelle Dietrich indicates that between the preliminary audit and the settlement of the cost of debt issue, “no new documents were reviewed specific to the cost of debt.”³¹ Because of the lack of factual support, Staff witness Mr. David Murray “was not comfortable with being the witness on the 14 percent, so he did not proceed with the case.”³²

Parties to the agreement conceded there were unreasonable terms in the agreement. Staff witness Ms. Dietrich said about both settlement agreements that she “would not say Staff would say [14% is] a reasonable cost of debt... [and] I would not – again not call [the prepayment penalty] reasonable.”³³ Although there is not factual support for the settled positions, Staff’s day 90 preliminary audit contains factual support and is in the record.

At the evidentiary hearing, the Company indicated it would be proceeding with its presentation of evidence, but offered the settlement as package for the Commission’s consideration.³⁴ The Staff similarly argued that the settlement is “presented for your approval today.”³⁵ OPC continues to express concerns that the parties failed to present a factual basis for their settled positions.³⁶ In this situation, the law requires a full contested hearing on the issues and the Commission needs to make findings of fact relating to each issue.³⁷ OPC argues the Company

³¹ Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 167, Lines 8-16.

³² *Id.* at Lines 8-10

³³ Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 181, Lines 1-3 and Pg. 183, Lines 10-11.

³⁴ Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 122, Lines 6-10

³⁵ Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 126, Lines 1-3

³⁶ Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 134, Lines 3-5.

³⁷ *State ex rel Fisher v. Public Service Commission*, 645 S.W.2d 39 (Mo. App. 1982) (citing to due process concerns, the Court indicated the Commission must include findings of facts on the issue and not limit a hearing to “the only issue it would consider was whether or not to approve the stipulation and agreement”).

and Staff have not created a sufficient record upon which the Commission can make its required findings of fact. Naturally, if there is lack of factual support in the record, the Commission would have to deny the Non-Unanimous Stipulation and Agreement.

The settled positions are harmful to the Company's customers because of the tremendous rate hike. The customers served by the Company have expressed their negative opinion of the rate increases, and their comments exceed the number of comments in the last Missouri American Water Company's rate case.³⁸ Many customers attended the local public hearing, and customers expressed facts and opinions that filled over 100 pages of testimony.³⁹

The Commission should give weight to the opinions of these customers who expressed opinions, such as that they would be forced to sell their home or forego medicine under the Company's initial proposal. The Commission should pay careful attention to these customers, and the Commission should order a just and reasonable outcome for these customers. OPC recommends the Commission adopt OPC's findings of fact, deny the settlement agreements, and order a just and reasonable incremental increase in rate revenues to be \$432,110.

ISSUES AND ARGUMENT

I. Payroll

- a. What are the appropriate job titles to be used in Missouri Economic Research and Information Center ("MERIC") to compare and determine labor expense associated with Mr. Josiah Cox and Mr. Todd Thomas?*

³⁸ Compare WR-2017-0259, the Indian Hills Operating Company, Inc. rate case, Public Comments, "Total Public Comment(s): 225;" with WR-2015-0301, the Missouri-American Water Company's rate case, Public Comments, "Total Public Comment(s): 219 and in SR-2015-0302 ("Total Public Comment(s): 10")

³⁹ Local Public Hearing Vol 2, 10/18/2017

The Commission should give similar treatment to small utilities and should craft an order that sets the compensation of Mr. Todd Thomas and Mr. Josiah Cox at a level based on MERIC's construction manager and general operations manager classifications.

The identification of an appropriate job title is important as a marker for the Commission to evaluate the appropriateness of employees' compensation.⁴⁰ While MERIC's job titles may facially differ from the job titles utilized by the Company, the Commission should make its determination on this issue by reviewing the economic realities of the job duties and consider similarly situated utilities. Staff and the Company depart from the practice of classifying the top manager of a small utility as a general manager. Instead, Staff and the Company take an outlier opinion that Mr. Cox should be treated as a "Chief Executive."

As stated by OPC witness Ms. Keri Roth, the "top manager of a small water and sewer company in Missouri is usually classified as a general manager and, with that, comes a different level of compensation" than utilizing a "Chief Executive."⁴¹ The record does not reflect that any party contested this testimony.

Ms. Roth also testified that the combination of this Company and its multiple affiliates would be considered a small utility under the existing rule, 4 CSR 240-3.050.⁴² Whether you calculate the customer count at the Company-level or the Parent-level, the Company and its affiliates qualify as small utilities in Missouri. It is important to have consistency among similar utilities in making such determinations. The Commission should support similar pay and benefits

⁴⁰ Exhibit 200, Direct Testimony of Keri Roth, Pg. 8, Lines 1-7 (the impact of selecting a job title will affect such things as life insurance, short-term disability, long-term disability, accidental death and dismemberment, and 401k benefits).

⁴¹ Exhibit 203, Direct Testimony of Keri Roth, Pg. 6, Lines 7-8

⁴² *Id.* at Page 7, Lines 2-22. (noting that the regulation is silent as to whether a utility would be considered large or medium if it were to have over 8,000 customers)

structures commensurate to prevent unreasonable rates and in order to make fair determinations under the law.⁴³

Fighting over a job title can lead to, as it has done in this case, a level of salary for these employees which is simply unreasonable. A better approach, as discussed above, is to identify the actual tasks that are performed by the employee and assign a reasonable level of compensation.

The evidence supports a job title of “General and Operations Manager” for Mr. Josiah Cox and the evidence supports a job title of “Construction Manager” for Mr. Todd Thomas. These job titles would produce a reasonable level of compensation for these individuals.

b. What are the appropriate MERIC salary wages?

For the reasons explained above and throughout testimony, Mr. Cox should be treated, under MERIC’s classifications, as a “General and Operations Manager” and Mr. Thomas should be treated as a “Construction Manager.” The Commission should only allow just and reasonable amounts in rates. OPC recommends salaries of \$124,049 and \$102,448 respectively for Mr. Cox and Mr. Thomas at a mean experience-level under the appropriate MERIC job title, which is a just and reasonable amount.

c. Should the Employment Cost Index inflation rate be applied in setting such amounts?

The Commission should not order an index inflation rate be applied in setting such amounts because the Commission should order the utilization of 2016 MERIC wage data, which would be less than one year old at the end of the test year in this case and there is no need to add an inflation adjustment.⁴⁴

⁴³ See, e.g., 393.130 and 393.140(5)

⁴⁴ Exhibit 202, Rebuttal Testimony of Keri Roth, Pg. 8, Lines 5-12.

d. What allocation factor (actual or assumed) should be used to determine payroll?

The Commission should order a 16.61% amount to allocate a portion of the salaries of employees from Parent to the Company.

OPC witness, Ms. Keri Roth, and Staff witness, Ms. Ashley Sarver, recommend the Commission order an allocation factor based on an analysis of the time log records.⁴⁵ As explained by Ms. Roth, the “allocation factor is based upon First Round employee hours spent at Indian Hills during the test year period.”⁴⁶

The Company dismisses the evidence-based approach, and Company witness Phil Macias argues in favor of utilizing a methodology that employs a customer count allocation between multiple subsidiaries. The credibility of his claims diminished during cross-examination when he conceded OPC’s and Staff’s methodology is accurate.⁴⁷ Mr. Macias gave a curious justification for utilizing his method, which was that “it’s easy to understand, it’s easy for everyone to understand.”⁴⁸

OPC does not believe that a whole number allocation factor is more difficult for the Commission to understand than an allocation factor with a decimal. Further, even if it was easier to understand, OPC argues utilizing whole numbers rather than numbers with decimals is not a reasonable justification to choose one methodology over another methodology. The purpose of the allocation factor is to apportion the actual costs associated with the provision of utility services. Utilizing the time log records is in fact the preferred method for allocating the amount of time employees worked for the Company versus customer counts which may have little

⁴⁵ Exhibit 104, Direct Testimony of Ashley Sarver, Pg. 5, Lines 9-21 and Exhibit 200, Direct Testimony of Keri Roth, Pg. 5, Lines 2-9.

⁴⁶ *Id.* at Roth Direct, Lines 8-9.

⁴⁷ Evidentiary Hearing Volume 3 11/27/2017, Pg. 196, Lines 5-6.

⁴⁸ *Id.* at Pg. 197, Lines 16-18.

bearing on the actual time spent on managing a small utility system. For that reason, the Commission should order an allocation factor of 16.61%, which is consistent with the approach of OPC and Staff.

e. *What level of experience should be used to set the labor expense associated with each employee?*

The Commission should order payrolls to be set at mean experience-levels rather than entry experience-levels or rather than experienced experience-levels.

OPC and Staff recommend setting payroll at mean experience-levels. Ms. Roth's recommendation relies on her experience with other small utilities, and she based her recommendation on the fact that the Parent's employees have limited experience with working at a regulated utility company. In fact, Ms. Roth's testimony shows that the employees of the Parent only have experience of approximately three and half years or less with regulated water and sewer utilities.⁴⁹ In that respect, OPC's recommendation of mean experience-level is arguably generous.

The Company is not satisfied with the generous approach of Staff and OPC. Mr. Thomas is arguing on behalf of himself with respect to his experience level and compensation level, yet he concedes that he has only "been with CSWR for nearly a full year."⁵⁰ His testimony supports OPC's credible representation that many of the Parent's employees have less than a few years of experience in the regulated water and sewer industry. As such, OPC' and Staff's recommendation on this issue is credible, reasonable, and what the Commission should select.

II. Auditing and Tax Preparation Fees

⁴⁹ Exhibit 202, Rebuttal Testimony of Keri Roth, Pg. 8, Lines 13-15.

⁵⁰ Exhibit 9, Surrebuttal Testimony of Todd Thomas, Pg. 3, Line 12

- a. What is the appropriate amount of Indian Hill's auditing and tax preparation (accounting) costs to include in Indian Hill's cost of service?*

The Commission should disallow \$1,250 as non-recurring retainer for 2015 tax preparation fees for the Parent, and the Commission should allocate a portion of the remainder of the fees to the Company based on a 16.61% allocation factor.

The Commission should disallow \$500 as non-recurring retainer for 2015 preparation of an audited financial statement for the Parent, and the Commission should allocate a portion of the remainder of the fees to the Company based on a 16.61% allocation factor.

OPC agrees with Staff's disallowance of retainer fees. Staff witness Ms. Ashley Sarver testified these costs should be disallowed from recovery, and she reasoned that these retainer fees are non-recurring costs.⁵¹ OPC agrees with her reasoning for disallowing recovery of these non-recurring costs, and the Commission's order should be consistent with this reasoning.

Furthermore, OPC questions the need for the Parent to maintain audited financial statements, which costs the Parent and the Company a substantial amount of money. Mr. Macias testified that it is "true" in responding to the question of whether there is a "large cost associated with an audited financial statement."⁵² The amount is \$10,000 for the Parent, which is the same cost to the Company.⁵³

Unlike publicly traded companies that must prepare an audited financial statement, the Parent has no SEC reporting requirement to prepare its audited financial statement. In addition, the Commission does not currently require audited financials when subsidiary companies file their annual reports. Mr. Macias acknowledged the lack of reporting requirements, and he went

⁵¹ Exhibit 112, Surrebuttal Testimony of Ashley Sarver, Pages 2-4

⁵² Evidentiary Hearing Volume 3, 11/27/2017, Pg. 212, Lines 4-6

⁵³ *Id.* at Pg. 212, Lines 7-13.

further by conceding that he knows of no legal requirement to hire an outside auditor to create an audited financial statement, which is distinct from the legal requirement to prepare and file one's taxes.⁵⁴ OPC's position is that this Company should do everything possible to reduce the ongoing costs of this utility. Incurring costs for audited financial statements, which are not required and are not common amongst other small utility companies, only adds unnecessary costs to customers of the Company who are already being asked to pay very high rates.

b. Should accounting costs paid outside the test year be included in Indian Hill's cost of service?

The Commission should deny 2016 tax preparation fees and audited financial statement fees because these occurred outside the test year.

The Company conceded the fact that tax preparation invoices and audited financial statement invoices were paid outside of the test year.⁵⁵ As explained by Ms. Roth, her position is consistent with the way in which the Commission treated accounting costs in the Hillcrest rate case, WR-2016-0064, from which she quotes that those "costs would occur outside of the test and update periods, which would violate the matching principle."⁵⁶ Ms. Roth also corroborated the fact that many small utilities do not retain outside auditors to produce audited financial statements.⁵⁷

Beyond this convincing and credible testimony, OPC has the same concerns about why the Company needs to spend \$10,000 on audited financial statements as the concerns raises previously. The cost is not justified at the Company-level. Although Mr. Macias claimed that the Company needed an audited financial statement because one of the subsidiaries of the Parent had

⁵⁴ *Id.* at Pg. 212, Lines 14-21.

⁵⁵ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 214, Lines 18-23.

⁵⁶ Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 5, Lines 15-22.

⁵⁷ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 227, Lines 8-11.

been denied an equipment financing loan purportedly because it did not possess audited financial statements, on cross-examination, Mr. Macias could not remember whether or not the subsidiary who was allegedly denied an equipment financing loan was the Company or was another affiliate.⁵⁸ Mr. Macias also did not know if the lack of audited financials was the predominating reason why the unknown entity was denied a loan or if this alleged factor was among a large list of other factors. For example, other factors might include whether the Company was willing to obtain more equity or offer a personal guarantee on the loan, but Mr. Macias could not say for sure.⁵⁹ Mr. Macias also could not say whether or not his justification would apply to this utility in light of the prepayment penalty that prevents the Company from seeking refinancing. Mr. Macias testified that he did not have enough information to answer the question.⁶⁰ This lack of information to support his reasoning should weigh against the credibility of Mr. Macias' testimony and illustrates a lack of substantial evidence to meet the Company's burden of proof.

For these reasons, the Commission should deny recovery of tax preparation and auditing expenses that were paid outside the test year.

III. Management Consulting Fees

a. Should a management consulting fee be included in the cost of service for Indian Hills?

The Commission should order the denial of rate recovery of a management consulting fee for many reasons.

⁵⁸ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 212-213

⁵⁹ Id. at Pg. 213, Lines 9-12

⁶⁰ Id. at Pg. 213, Lines 13-24.

First, the Company failed to produce time logs for this consultant.⁶¹ This is significant that the Company cannot quantify the consultant's hourly commitment. OPC understand that no timelogs will be kept throughout the duration of the contract, and the Company entered an agreement for ten years, with a three year guarantee, at a fixed rate of \$500 per month.⁶² When the consultant owned the system, Staff described the consultant as not having "the ability or desire to invest adequate money or time to keep this water system in good condition."⁶³ Historically, the consultant has failed to invest meaningful time to improve the system, and the Company has failed to track the quantity of hours she currently invests as a consultant. The Company could only explain her work by sharing anecdotes. Mr. Cox heard from an engineer who heard from Ms. Stanley that "she was able to identify a couple locations where valves already existed that we would not have known of."⁶⁴ Mr. Cox also heard from an engineer who heard from Ms. Stanley that she was able to describe the size of the line in an area and was able to identify what side of the road to locate one of the water mains.⁶⁵ Other than these anecdotal, second-hand representations, there is no documentation from which to audit the amount of hours she invests. OPC argues that the Company's several anecdotal examples do not substantiate the prudence of the costs of a long-term fixed-fee contract.

Second, there are serious doubts about the quality of work being performed. The first concern is that the consultant relies on mental records rather than physical records. Mr. Josiah

⁶¹ Id. at Pg. 231-232.

⁶² Id. at Pg. 231, Lines 2-14.

⁶³ Exhibit 200, Direct Testimony of Keri Roth, Pg. 10, Lines 12-18 (citing to WO-2016-0045, Staff Memorandum, Pg. 2)

⁶⁴ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 233, Lines 15-18

⁶⁵ Id. at Pg. 238, Lines 1-15.

Cox testified that he does not believe the consultant “kept any written records” and that it is “exactly correct” that her records are mental records that exist in her head.⁶⁶

The second concern with the quality of her work relates to her memory and the passage of time. OPC has genuine concerns about the value of the consultant’s memory from five to ten years ago and her ability to provide quality assistance to the Company.⁶⁷

OPC’s third concern is the lack of valuable information the consultants can provide to the company and expertise she provides given that the evidence in this case shows that as the prior owner the consultant neglected line repairs. If the consultant did not perform the repairs personally and frequently, then she would have a smaller sampling of information about which to convey to the Company. Mr. Cox substantiates OPC’s concerns on cross-examination when he stated that “[s]he did not perform many repairs or at least she didn’t do any reinvestment that we’re aware of... [and] I’m not – I don’t know who did the repairs.”⁶⁸ Company-witness Mr. Todd Thomas stated, “[this] level of ongoing repair cost is symptomatic of a water system that was poorly constructed and has been neglected for decades.”⁶⁹

Third, this contract is arguably nothing more than an acquisition premium. Although Mr. Cox denied that characterization of the contract, he conceded that the contract was brokered at about the same time that the utility was sold to the Company.⁷⁰ Because the lack of time records, the length of the contract, the history of neglect with the prior owner, there is circumstantial evidence to suggest that the Company’s purchase of the prior utility is tied to this contract. This

⁶⁶ Id. at Pg. 232, Lines 22-25, and Pg. 233, Lines 1-23.

⁶⁷ Id. at Pg. 234, Lines 3-6.

⁶⁸ Id. at Pg. 235, Lines 11-15

⁶⁹ Exhibit 7, Direct Testimony of Todd Thomas, Pg. 7, Lines 5-7.

⁷⁰ Evidentiary Hearing Volume 3, 11/27/2017, Page 237, Lines 1-2

is another reason the Commission should be skeptical of this contract and the contracting parties' motives.

Fourth, OPC believes the Company has not substantiated the value of this contract, and that Staff did not adequately examine the value of the contract. For example, Staff questioned whether "efficiently performed repairs and replacements save ratepayers money," to which Ms. Roth answered yes.⁷¹ However, in this case, no evidence was presented to show that the cost associated with Ms. Stanley's contract outweighed the abstract, anecdotal, second-hand examples of purported efficiencies. To the extent efficiencies were achieved, the Company failed to produce any analysis to quantify the efficiencies which was further compounded by the lack of time records.

Finally, it is unclear why the consultant cannot convey her knowledge of the system to the Company in a period of time that would be less than the contracted time period. No explanation was given other than Mr. Cox's speculation that Ms. Stanley could not "systematically think about something like that."⁷²

For all of these reasons, the Commission should order the denial of the management consultant fees in rates.

IV. Bank Fees

a. What is the appropriate level of bank fees to include in the cost of service for Indian Hills?

The Commission should order the denial of rate recovery of bank fees because of self dealing and the lack of evidence presented by the Company that it sought lower cost options.

⁷¹ Evidentiary Hearing Volume 3, 11/27/2017, Pg., Lines 18-25.

⁷² Evidentiary Hearing Volume 3, 11/27/2017, Pg. 235, Lines 1-4.

Mr. Cox testified that he needs two bank accounts rather than one bank account for every one of his entities because “my current investors have asked us to bank with American Bank in order to access financial control.”⁷³ Furthermore, his current investors have ties to American Bank and Enterprise Bank, where a Glarner works and who brokered an introduction to Robert and David Glarner.⁷⁴ The reason Mr. Cox selected his banking services is not based on costs, and consequently, the Commission should not presume these costs to be prudent.

Additionally, the Company and/or the Parent had not analyzed other banking options when making its decision on where to bank.⁷⁵ Staff believes the Company “needs to look at all their costs,” but not now because the costs have already been incurred.⁷⁶ OPC and Staff share in the concern that the Company may be able to utilize existing personnel to perform the work performed for lockbox services.⁷⁷ Mr. Greg Meyer testified that account analysis fees **

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serious concern OPC has regarding the Non-Unanimous Stipulation and Agreement between

⁷³ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 434, Lines 1-8.

⁷⁴ Id. Pg. 434, Lines 9-16

⁷⁵ Id. at Pg. 249, Lines 2-10.

⁷⁶ Id. at Page 253, Lines 24-25

⁷⁷ Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 6 Lines 5-11 and Exhibit 110, Rebuttal Testimony of Ashley Sarver, Pg. 11, Lines 19-21

⁷⁸ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 6, Lines 10-17 and Pg. 7, Lines 1-2; *also see* Exhibits 227, Biennial Registration Report American Bank of Missouri; Exhibit 230, 2017 Annual Registration Form, Indian Hills Utility Holding Company, Inc. (listing the treasurer as David Glarner and the secretary as Robert Glarner and also listing Robert and David Glarner on the Board of Directors); Exhibit 235, Articles of Organization of GWSD LLC.

⁷⁹ Id.

⁸⁰ Id.

Staff and the Company is that it ignores the potential for self-dealing. Moreover, the Company needs to meet its burden in this case rather than in a future case.

For these reasons, the Commission should deny recovery of bank fees because of the the failure to protect the Company and ratepayers from the potential for increased costs, risk of self-dealing and lack of proof by the Company.

V. Rate Case Expense

a. What is the appropriate rate case expense to include in the cost of service for Indian Hills?

OPC recommends the following adjustments to the Company's rate case expense:

- The Commission should deny recovery of a before and after video.
- The Commission should only allow partial recovery of expert witness fees and spread those costs over a five-year period.
- The Commission should allow for recovery of attorney's fees and the cost of notice to customers and spread those costs over a three - or a five- year period.

As to the before-and-after video, the Company admits that any testimony or discovery related to cost recovery of a before-and-after video "was a mistake. . . [and] should not have been submitted as part of rate case expense."⁸¹ For that reason, this cost should not be recovered as it appears to have been waived by the Company.

OPC recommends that the Commission allow recovery of expert fees consistent with reasonable rates of other expert witnesses in other utility cases, and OPC's recommendation is to allow recovery of no more than \$250 per hour normalized over a five year period.⁸² Ms. Keri Roth testified that the "hourly rate charged [by one of the consultants] is much higher than

⁸¹ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 259, Lines 11-16

⁸² Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 10, Lines 13-22 and Schedule KNR-3

typically seen of hourly rates charged by other consultants in utility rate case proceedings, even with large utility companies.”⁸³

OPC also recommends normalizing the recovery of attorney’s fees and customer notices over three years, but OPC believes Staff’s approach of a five year recovery is also a reasonable option.⁸⁴

The Commission should follow OPC’s recommendation of allowing partial recovery of expert witness fees and spread those costs over a five year period. The costs of the before-and-after video should be denied and finally, the Commission should allow for recovery of attorney’s fees and the cost of notice to customers and spread those costs over a three - or a five- year period.

VI. Treatment of Leak Repair Costs

a. and b. What are the appropriate accounts to book leak repair and what is the appropriate level of leak repair to include in the cost of service?

The Commission should reject a two-way track as no Company witness was able to present any testimony on this proposal and the proposal otherwise lacks an evidentiary foundation. In fact, the two-way tracker was not even part of this case until the eleventh hour Non-Unanimous Stipulation and Agreement. The Commission should order the Company to create a plan to map its leak repairs and replacements, and develop and present a plan for the replacement of mains and service connections to Staff and OPC. Further, the Commission should order the recovery of leak repair to include OPC’s level of expense and to include the capitalization of certain leak repair expense, which should be placed into Account 343 Transmission and Distribution Mains. The Commission should order in favor of OPC because

⁸³ Id. at Pg. 10, Lines 1-4

⁸⁴ Id. at Pg. 10, Lines 13-15

the Company failed to maintain adequate documentation logging repairs and replacements, and OPC's approach is the most conservative approach to avoid ratepayer harm related to myopic planning and management miscues.

The Company engaged in myopic planning because the Company increased the pressure on a water system without accounting for leaks that would result.⁸⁵ There was no plan in place about how leaks could be managed concurrent with changing the system's water pressure.⁸⁶ Given the fact that the Company hired the prior owner as a consultant to help inform them about the condition and location of the infrastructure, OPC questions how the Company could not have known that additional leaks would be probable with an increase in the water pressure. The Company's planning was also myopic because of the priorities and sequencing of the construction projects. The Company prioritized meter replacement, which was not necessary to provide safe and adequate service, and the Company prioritized increasing the pressure on the system over making planned infrastructure repair.⁸⁷ Additionally, the Company's witness did not have adequate knowledge about whether the Company had overbuilt water storage.⁸⁸ Furthermore, the Company failed to engage in any discussion with the Department of Natural Resources about creating a schedule of compliance to help manage costs in the long-term related to the prioritization of projects, like installing meters, increased storage and increased pressure.⁸⁹ Beyond the myopic planning, the Company made missteps with the management of system leaks.

⁸⁵ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 286, Lines 3-25

⁸⁶ Id.

⁸⁷ Id. at Pg. 283, Lines 12-25

⁸⁸ Id. at Pg. 284-286

⁸⁹ Id. at Pg. 287, Lines 13-20

The management of system leaks is also at issue because the Company failed to keep accurate records relating to repairs versus replacements, made high-frequency repairs rather than replacements, and leak repairs should begin to trend downward as water loss numbers improve. The Company seemingly admits to problems with record-keeping, which OPC argues supports OPC's recommendation for capitalization of certain leak repair expenses. Mr. Todd Thomas testified that the Company had "an imperfect system" and "the contractors made mistakes in terms of [certifying] the addresses where the leak occurred."⁹⁰

In addition to mistakes with documenting where leak repairs occurred, Ms. Jennifer Grisham testified as follows:

"[R]eview of the documentation provided to dates regarding repair invoices shows that **not all entries in the expense accounts in the general ledger are truly repair expense.**

On some invoices, line replacement is classified as and charged to expense when it should be recorded as plant in service. Other items included in repair expense invoices are not recoverable through rates, including an instance where the contractor agreed to repair a water leak on the customer owned portion of the lines, but then billed the Company for it. See Confidential Schedule JKG-r1, for examples of booking anomalies in repair invoices."⁹¹ (Emphasis added).

In response to an OPC data request regarding the inconsistencies with repair and replacement information, the Company admits "the repair and replacement data did not come in as consistently or completely as we would have preferred."⁹² Because of the inaccuracies with the record-keeping practice, OPC's recommendation to capitalize certain of these expenses while

⁹⁰ Id. at Pg. 291, Lines 19-22.

⁹¹ Rebuttal Testimony of Jennifer Grisham Pg. 5, Lines 21-24; Pg. 6, Lines 1-3; and Schedule JKKG-r1

⁹² Exhibit 201, OPC Data Request 50

also building in a reasonable level of expense is a reasonable recommendation. Furthermore, Ms. Grisham's testimony to amortize the expenses over a three year period rather than book them as expenses is similar to OPC's recommendation in that the costs should be spread out across a multi-year period rather than booked as an ongoing expense.⁹³

OPC's recommendation is also reasonable because the Company failed to provide clear instruction to contractors about the criteria for when a line should be replaced or repaired.⁹⁴ Although management guidance was vague, the Company predominantly incentivized their contractors to do repairs rather than replacements which unnecessarily caused higher costs for ratepayers when the Company had to re-repair the same line multiple times.⁹⁵ In one instance, a customer had a leak repair for the sixth time because of the high churn of leak repairs rather than replacements.⁹⁶ In another instance, service lines were either replaced several times or the addresses were inaccurately recorded.⁹⁷

The Company is the master of their cost management practices and procedures, and the Company is best postured to control costs or let them run wild. The Commission should deny a two-way tracker, which is not supported by any Company testimony and does not appear until the eleventh hour settlement agreement between the Staff and the Company.

For these reasons, the Commission should deny the two-way tracker, order the Company to create a plan for dealing with leaks, and order the accounting treatment recommended by OPC, who has included leak repair expense in its calculation of operations, labor and expenses at

⁹³ Exhibit 102, Direct Testimony of Jennifer Grisham, Pg. 3, Lines 1-9.

⁹⁴ *Compare* Evidentiary Hearing Volume 3, 11/27/2017, Pg. 292, Lines 18-25 and Pg. 293, Lines 1-15 (describing the default rule as giving contractor full discretion to implement repairs) *with* Evidentiary Hearing Volume 3, 11/27/2017, Pg. 298, Lines 1-10 (describing that contractors received a vague, verbally conveyed policy of replacing service lines rather than repairing service lines in some instances)

⁹⁵ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 301, Lines 19-21

⁹⁶ E.g., Exhibit 105, Direct Testimony of David Spratt, Schedule DAS-d2, Page 4 of 6, Item 167

⁹⁷ E.g., Exhibit 105, Direct Testimony of David Spratt, Schedule DAS-d2, Page 6 of 6, Items 8-12

\$90,426 and total maintenance expense of \$5,198.⁹⁸ Staff has also built in an amount for extraordinary repairs to be amortized over three-years with a return of and on the expense, which is a less-palatable, but a reasonable alternative for the Commission to consider in the alternative to OPC’s capitalization approach.⁹⁹ The Commission questions regarding why Staff selected three years for its amortization raises concerns for OPC.¹⁰⁰ Another reason Staff’s approach is less palatable is that Staff seemed at odds about whether leak repair items should be treated as expense or be able to be recovered over time, amortized or capitalized.¹⁰¹ OPC’s recommendation is the preferable approach as it provides clear treatment of expenses and is supported by the record.

VII. Extension of Electric Service

a. Should the Company be able to capitalize the electric line extension?

The Commission should deny any request to capitalize the electric line extension. Commission Rule 4 CSR 240-50.030(1) adopts and prescribes the National Association of Regulatory Commissioners (“NARUC”) Uniform System of Accounts (“USoA”) for use by all water companies under the jurisdiction of the Commission.¹⁰² Section 393.140(4), RSMo, states that such uniform methodology proscribed by the Commission will “be observed by . . . water corporations. . .”¹⁰³ NARUC USoA does not support plant in service treatment for the extension

⁹⁸ Exhibit 200, Direct Testimony of Keri Roth, Attached Audit Rate Design Schedule- Water

⁹⁹ Exhibit 102, Direct Testimony of Jennifer Grisham, Pg. 2, Lines 1-9 and Evidentiary Hearing Volume 3, 11/27/2017, Pg. 334, Lines 8-15.

¹⁰⁰ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 335, Lines 20-25

¹⁰¹ Compare the testimony of Staff witness Stephen Moilanen Evidentiary Hearing Volume 3, 11/27/2017, Pg. 332, Lines 13-15 (repairs shouldn’t be a part of plant regardless) with the testimony of Staff witness Jennifer Grisham Evidentiary Hearing Volume 3, 11/27/2017, Pg. 334, Lines 20-24 and Pg. 334, Lines 8-15. (recommending a three year amortization with a return on and of expense).

¹⁰² 4 CSR 240-50.030(1)

¹⁰³ Section 393.140(4)

of this electric service line. As Mr. Robinett stated in his testimony, “Utility Plant 101, Utility Plant in Service, clearly defines what costs are allowable:

101. Utility Plant in Service.

A. This account shall include the original cost of utility plant, included in the plant accounts prescribed herein and in similar accounts for other utility departments, owned and used by the utility in its utility operations, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees. Separate subaccounts shall be maintained hereunder for each utility department.”¹⁰⁴

The Company does not own the electric line extension.¹⁰⁵ It is undisputed that the affidavit from the electric company proves that the Company does not own the electric service line extension. The Company has no right to earn a return on the electric plan of another utility, just as it has no right to earn a return on the transformers, substation, and production facility used to produce the electricity.

The Company and Staff deny that this fact has significance; however, the plain language of the USoA supports OPC’s position.

b. If so, what are the appropriate accounts to book the extension of electric line service?

The Commission need not answer this question because the Company does not own the electric line extension and the electric service line extension should not be capitalized.

VIII. Rate Design

¹⁰⁴ Exhibit 206, Rebuttal Testimony of John Robinett, Pg. 2, Lines 16-25

¹⁰⁵ Exhibit 207, Surrebuttal Testimony of John Robinett, Schedule JAR-S-1 Affidavit of Brett Palmer, Manager of Operations with Crawford Electric Cooperative, Inc.; and Exhibit 206, Rebuttal Testimony of John Robinett, Pg 2., Lines 26-30; Pg. 3, Lines 1-16; and Schedule JAR-R-1

a. and b. How should rates be developed based on the cost of service approved in this case? Should a seasonal rate design be adopted in this case, and if so, what should be the structure of the seasonal and non-seasonal rates?

The Commission should order quarterly reporting of usage to help all parties to this case determine whether the billing determinants and assumptions supporting various rate designs are accurate given the fact that there is very little usage data for this system. Additionally, the Commission should deny the various rate designs recommended by the Company and the Staff, and the Commission should adopt OPC's rate design in proportion to the ordered revenues in this case. The Commission should utilize seasonal rates for this system, and the Commission should order the Company to provide notice to customers in advance of the seasonal rate changes.

OPC points to the testimony of Staff witness Mr. Curtis Gateley who acknowledged that his rate design could have been improved by better usage data.¹⁰⁶ Indeed, the Company and OPC presented a rate design with similar problems because all the parties lacked usage data.¹⁰⁷ Therefore, the Commission should order the Company to make quarterly reports of the usage data consistent with the testimony of the parties.¹⁰⁸

The Staff's and the Company's various rate designs impose a high fixed customer charge, which was described as "uncommon" and generally gives customers less control over their bill.¹⁰⁹ Mr. Curtis Gateley also recognized that he has some concerns with shut-offs and reconnects with the rate design proposed by Staff and by the Company.¹¹⁰

¹⁰⁶ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 506, Lines 12-24.

¹⁰⁷ Exhibit 212, Direct Testimony of Dr. Geoff Marke, Pg. 8, Line 8

¹⁰⁸ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 509, Lines 3-7.

¹⁰⁹ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 506, Line 2 and Pg. 514, Lines 1-4.

¹¹⁰ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 507, Lines 1-17.

OPC's rate *reduces* the customer charge to give customers more control over their bill and helps to mitigate the risk to the Company of excessive seasonal shutoffs.¹¹¹ At hearing, Commissioner Stoll also directed the parties to review a customer's rate design, which would have a lower customer charge. OPC supports the general principles behind the customer's rate design of giving customers more control over their bills.¹¹² What the Staff and the Company agreed to would not accomplish those rate design principles.

OPC recommends a rate design for non-seasonal months of October through April and seasonal months of June to September.¹¹³ OPC is recommending a \$13.03 base charge and a \$16.11 usage charge during non-seasonal months, and OPC recommends a \$43.03 base charge and a \$6.06 usage charge during seasonal months.¹¹⁴ If the Commission agrees to use seasonal rates, OPC agrees with Staff that the Commission should order advanced notice prior to each seasonal rate change.¹¹⁵

For these reasons, the Commission should find in favor of OPC's rate design subject to the conditions contained herein.

IX. Rate of Return

a. What capital structure should be used for determining rate of return?

The Commission should order a 50-50 capital structure for the reason stated by Mr. Michael Gorman, which is that the capital structure should reflect what the Company should be working toward, over time, in order to improve its financial standing.¹¹⁶

¹¹¹ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 520, Lines 10-21.

¹¹² Evidentiary Hearing Volume 4, 11/28/2017, Pg. 520, Lines 10-13.

¹¹³ Exhibit 212, Direct Testimony of Dr. Geoff Marke, Schedule GM-2, Pgs. 1-4

¹¹⁴ Exhibit 212, Direct Testimony of Dr. Geoff Marke, Schedule GM-2, Pgs. 1-4

¹¹⁵ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 514, Lines 10-16.

¹¹⁶ Exhibit 213, Direct Testimony of Mr. Michael Gorman, Pg. 3, Lines 3-24

According to Mr. Gorman's review of the audited financial statement of the Company, the Company's existing capital structure consists of **

**¹¹⁷ Even through the rosier-tinted glasses of the Company, the Company's capital structure mix would reflect 77.12% long-term debt and 22.88% common equity.¹¹⁸

The impact on the capital structure with the attendant rate of return is significant. Staff witness Mr. Matthew Barnes did an analysis showing that an average bill, based presumably on Staff's rate design, could be impacted by as much as \$10.78 per month per customer.¹¹⁹ Staff agrees with OPC that an imputed capital structure is appropriate; however, Staff's structure is different with a mix of 35% common equity and 65% long-term debt.¹²⁰ As Mr. Gorman stated, his recommendation would allow the Company to take advantage of a balanced capital structure and rate of return that encourages the Company to retain earnings and pay down borrowing sources, and the combination of those things will create a healthier actual capital structure for the Company.¹²¹ If the loan needs to be modified to apply retained earnings against loan repayments, OPC believes such a modification as well as additional modifications to the loan could mitigate harm to ratepayers.

OPC recommends the Commission order OPC's capital structure. The Commission has previously ordered imputed capital structure to protect ratepayers from imprudent management decisions.¹²² In this case, Mr. Greg Meyer has described the fact that the Company has insisted on a debt heavy capital structure mixture, which has created obstacles to obtaining lower-cost

¹¹⁷ Exhibit 214, Rebuttal Testimony of Mr. Michael Gorman, Pg. 3, Lines 8-11.

¹¹⁸ Exhibit 10, Direct Testimony of Dylan D'Ascendis, Pg. 3, Table 1, Lines 1-2.

¹¹⁹ Exhibit 106, Rebuttal Testimony of Matthew Barnes, Pg. 3, Lines 18-26

¹²⁰ Exhibit 106, Rebuttal Testimony of Matthew Barnes, Pg. 2, Lines

¹²¹ Evidentiary Hearing Volume 6, 11/30/2017, Pg. 554 Lines 1- 25 and Pg. 555, Lines 1-3

¹²² See, e.g., *In the Matter of St. Joseph Light & Power*, 2 Mo. P.S.C. 30 248, 250 (1993).

financing.¹²³ **

** For the reasons herein, the Commission should order OPC's recommended capital structure and allow the Company to gain financial strength by retaining earnings and paying down high-interest loans.

b. What cost of debt should be used for determining rate of return?

The Commission should order a long-term cost of debt of 6.75% because (i) the Company is not doing everything in its power to seek lower cost of debt on the market; (ii) the Company's current debt agreement was not negotiated at arms-length; (iii) the stipulation suggests that even the Company does not believe a 14% cost of debt is reasonable; (iv) OPC's cost of debt is consistent with what a below investment grade cost of debt and is a reasonable proxy of the Company's market cost of debt; (v) the Company has not acted with credibility in response to the Commission's orders and the Commission's directions in past proceedings; (vi) the cost of debt combined with the prepayment penalty compound to create a toxic transaction that is not in the interest of consumers; (vii) the Company's plan to lower the cost of debt is misleading and relies on unknown assumptions relating to a future bond offering; and (viii) the Staff believes the Company's cost of debt is unreasonable and their preliminary audit corroborates a much lower cost of debt.

In determining an appropriate rate of return due to equity owners, the United States Supreme Court states:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to

¹²³ Exhibit 208, Direct Testimony of Greg Meyer

¹²⁴ *Id.*

that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical development, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.¹²⁵

The following issues cumulatively identify that the Company's equity-deficient capital structure coupled with its high interest long-term debt obligation does not assure confidence in the financial soundness of the utility. Any business, regardless of industry, entering into arms-length contracts will experience difficulty attracting capital or investors at a competitive rate. It is the manner in which the Company conducts its business that raises concerns about its ability to meet its obligations, not the marketplace. Therefore, a high rate of return is not necessary; rather reforms in the capital structure of the Company and the terms of debt can be made to help attract investments.

First, the Company is not doing everything in its power to seek lower cost of debt on the market. Mr. Cox's market outreach involved **

¹²⁵ *Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, at 692-93, 43 S. Ct 675, at 679 (1923).

¹²⁶ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 5-24.

¹²⁷ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 5-24.

** For example, Mr. Meyer testified at the evidentiary hearing that he approached a bank located in Rolla, Missouri, and he discussed general terms of loan financing, the regulatory process, and generally the reasonableness of loan terms.¹³¹ Mr. Meyer indicated that the bank thought terms similar to those in this loan were unreasonable and that more favorable terms could be obtained.¹³² At the evidentiary hearing, Mr. Cox conceded that the Company does not offer any personally guarantees.¹³³

During the hearing, Mr. Cox testified that the Company would be “flexible” to rebalancing its capital structure when it talks with lenders, but Mr. Cox stopped short of quantifying the flexibility of the Parent to contribute equity and induce a lower cost loan.¹³⁴ Mr. Greg Meyer reviewed bank records of the Company, and in his review, he found that **

¹²⁸ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 16-18.

¹²⁹ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 18-22.

¹³⁰ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 22-24 and Pg. 12, Lines 1-2.

¹³¹ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 489, Lines 6-19; Pg. 490, Lines 1-3 and 15-25; Pg. 496, Lines 6-13

¹³² Evidentiary Hearing Volume 4, 11/28/2017, Pg. 490, Lines 1-3 and Pg. 496, Lines 6-13

¹³³ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 425, Lines 21-25 and Pg. 426, Lines 1-6.

¹³⁴ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 426, Lines 7-20

** Therefore, there is some concern about how genuine the Company is about being able to re-balance their capital structure mix to induce lower cost financing. If the Company truly has flexibility, the Parent could transfer cash to the Company immediately or at the time the loan was originated and help re-balance the capital structure. The Company could convey and quantify their flexibility in their loan application rather than being cryptic. One reason there is less flexibility and less market outreach is that the Company is not incentivized to obtain a market-based debt rate.

Second, the Company's current debt agreement is the product of self-dealing and the Company does not have an incentive to obtain market cost of debt. The evidence shows that the Glarners serve as manager of the member-managed Parent, serve as secretary and treasurer of the Company's holding entity, and are the owners of the Lender.¹³⁶ The Glarners also are signatories to the Company's bank accounts.¹³⁷

The evidence shows that the Glarners would rather finance this Company's operations with debt rather than equity and prefer to earn 14% on their money. This is especially worrisome when the Company has testified about the Parent's plan to refinance the debt without waiving the prepayment penalty. The Company is preparing to make a **

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¹³⁵ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 7 Lines 8-9; Pg. 8, Lines 9-12 (Table 7); Pg. 9- Lines 1-11; Pg. 10, Lines 1-12; Pg. 14, Lines 17-23; and Pg. 16, Lines 6-8.

¹³⁶ Exhibit 232, First Round CSWR LLC Statement of Change of Registered Agent; See, e.g., Exhibit 1, Direct Testimony of Josiah Cox, Pg. 3, Lines 7-13 and Evidentiary Hearing Volume 3, 11/27/2017, Pg. 297, Line 19 and Pg. 299, Lines 9-10; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 419, Lines 16-25; Exhibit 235, Articles of Organization, GWSD LLC; Exhibit 230, 2017 Annual Registration Form; Exhibit 233, Articles of Organization Water Fund LLC and Evidentiary Hearing Volume 4, 11/28/2017, Pg. 420, Lines 1-10; and See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23.

¹³⁷ Evidentiary Hearing Volume 4, Pg. 433, 11/30/2017, Lines 17-20.

¹³⁸ Exhibit 2, Rebuttal Testimony of Josiah Cox, JC #4 Confidential and JC #5 Confidential

At the evidentiary hearing, Mr. Meyer testified that an aggregate of \$15 million in prepayment profits would go to the Glarners if all of the systems were refinanced based on Mr. Cox's testimony.¹³⁹

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Because of the repeated self-dealing by the Parent, the Commission needs to deny a 14% interest rate and order an arms length cost of debt of 6.75%.

Third, the Non-Unanimous Stipulation and Agreement shows that a 14% cost of debt is unreasonable. Although the plain language of the Non-Unanimous Stipulation and Agreement agrees to a 14% cost of debt, the return on equity is 12% or 200 basis points lower than the cost of debt.¹⁴¹ In the opinion of the Company's expert witness, Mr. D'Ascendis theorizes that "investors require higher returns from common stocks than from investments in bonds, to compensate them for bearing the additional risk ... [such as the priority claim in the event of a liquidation]."¹⁴² About this, Mr. Gorman stated as follows:

"[A]greeing to return on equity at 12 percent in face of a debt cost of 14 percent is clear acknowledgment that the cost of debt is well above market costs. Debt instruments are typically lower risk than equity investments, and based on the company's own evidence, an equity return of 12 percent would imply a market rate for debt of less than 12 percent

¹³⁹ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 491, Lines 11-16.

¹⁴⁰ Exhibit 211, Surrebuttal Testimony of Greg Meyer, Pg. 8, Lines 11-18; Pg. 10, Lines 1-10; and Pg. 11, Lines 1-2.

¹⁴¹ Non-Unanimous Stipulation and Agreement, EFIS Item No. 87, WR-2017-0259, Pg. 5, Paragraph 5

¹⁴² Exhibit 10, Direct Testimony of Dylan D'Ascendis, Pg. 19, Lines 5-20.

because it's a lower risk security or loan. So it does suggest that the company has acknowledged that a 14 percent interest rate is above market."¹⁴³

For this reason, the Commission should select a market cost of debt as supported by Mr. Gorman.

Fourth, OPC's cost of debt is consistent with what a below investment grade cost of debt and is a reasonable proxy of the Company's market cost of debt. Mr. Gorman found that 6.75% cost of debt was a reasonable proxy to estimate distressed cost of debt for this Company.¹⁴⁴ Mr. Gorman reasoned that his rate of return represents a "fair balance between the investors and the customers."¹⁴⁵ Although Mr. Cox criticized the proxy that Mr. Gorman selected, the Company's own witnesses selected similarly situated utilities as Mr. Gorman as the foundation for his rate of return analysis.¹⁴⁶ Consequently, Mr. Cox's criticism has no merit. The Commission should order a 6.75% cost of debt, which is a reasonable market cost of debt for this utility.

Fifth, the Company has not acted with credibility in response to the Commission's orders and the Commission's directions in past proceedings.¹⁴⁷ Therefore, the Commission should scrutinize the veracity of the Company's representations relating to the cost of debt and their characterization that no market opportunities are available.

Sixth, the cost of debt combined with the prepayment penalty compound to create a toxic transaction that raises serious concerns about ratepayer harm and the prudence of the transaction. Mr. Meyer stated about the prepayment penalty that **

¹⁴³ Evidentiary Hearing Volume 6, 11/30/2017, Pg. 563, Lines 15-25 and 564, Lines 1-4

¹⁴⁴ Exhibit 213, Direct Testimony of Michael Gorman, Pg. 4, Lines 13-23 and Pg. 5, Lines 1-8 and Evidentiary Hearing Volume 6, 11/30/2017, Pg. 558, Lines 19-25.

¹⁴⁵ Evidentiary Hearing Volume 6, 11/30/2017, Pg. 558, Line 2-7.

¹⁴⁶ Exhibit 2, Rebuttal Testimony of Josiah Cox, Pg. 17, Lines 1-12 and Exhibit 10, Direct Testimony of Dylan D'Ascendis, Schedule DWD-3, Pg. 1-9 and Schedule DWD-4, Pg. 2 of 12.

¹⁴⁷ Exhibit 200, Direct Testimony of Keri Roth, Pg. 12-14

** ¹⁵¹ It is the

prepayment penalty combined with the high-interest rate that create an “unusual” situation which is further compounded by the risk of self-dealing.¹⁵²

Seventh, the Company’s plan to lower the cost of debt is misleading and relies on unknown assumptions.¹⁵³ As previously stated, Mr. Meyer testified that an aggregate of \$15 million in prepayment profits would go to the Glarners if all of the systems were refinanced based on Mr. Cox’s testimony.¹⁵⁴

Finally, the Staff believes the Company’s cost of debt is unreasonable and their preliminary audit corroborates a much lower cost of debt. Staff witness Ms. Dietrich testified that she “would not say Staff would say [14% cost of debt is] a reasonable cost of debt.”¹⁵⁵ Staff relied on a prior commission decision as the basis of their opinion to accept a 14% cost of debt

¹⁴⁸ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 13, Lines 4-6.

¹⁴⁹ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 14, Lines 1-7.

¹⁵⁰ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 14, Lines 8-12

¹⁵¹ Exhibit 211, Surrebuttal Testimony of Greg Meyer, Pg. 8, Lines 11-18; Pg. 10, Lines 1-10; and Pg. 11, Lines 1-2.

¹⁵² Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-18

¹⁵³ Exhibit 211, Surrebuttal Testimony of Greg Meyer, Pg. 8, Lines 11-18; Pg. 10, Lines 1-10; and Pg. 11, Lines 1-2.

¹⁵⁴ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 491, Lines 11-16.

¹⁵⁵ Evidentiary Hearing Volume 3, Pg. 181, Lines 1-4.

rather than the facts observed by their witness.¹⁵⁶ However, Staff appears to have ignored or was unpersuaded by the Commission when it expressed their concerns with the 14% debt cost during the Raccoon Creek rate case. OPC has previously discussed the Commission's concerns and included direct quotations documenting the Commission's most recent opinion. Ms. Dietrich also testified that she would not "call [the prepayment penalty] reasonable."¹⁵⁷ She said, "[i]f the loan was refinanced prior to the ten years, then the customers could be saddled with the prepayment penalty."¹⁵⁸ The lack of factual support caused Mr. David Murray to become uncomfortable with the Staff position; and because he was uncomfortable with being the witness on the 14 percent, he did not proceed with the case.¹⁵⁹ The Staff's preliminary audit was sponsored by Mr. David Murray, who recommends a 5% cost of debt relying on BBB utility bond yields and Federal Reserve Economic Data.¹⁶⁰ Mr. Murray's recommendation also relies on the rates charged on Terre Du Lac from First State Community Bank.¹⁶¹ This day 90 analysis is Staff's only evidence in the record on the cost of debt, and it is reasonable for the Commission to give weight to his expert analysis. Staff's day 90 imputed cost of debt harmonizes with Mr. Gorman's recommended 6.75% cost of debt to support a lower cost of debt that better matches the market for below investment grade debt.

In addition, if the Commission mandates a 14% interest rate for purposes of this rate case, OPC would request the Commission explicitly deny the prepayment penalty provision in the loan agreement for ratemaking purposes. The prepayment penalty adds more potential costs to

¹⁵⁶ Evidentiary Hearing Volume 3, Pg. 181, Lines 9-10.

¹⁵⁷ Evidentiary Hearing Volume 3, Pg. 183, Lines 7-11.

¹⁵⁸ Evidentiary Hearing Volume 3, Pg. 185, Lines 18-21.

¹⁵⁹ Evidentiary Hearing Volume 3, Pg. 177, Lines 1-10

¹⁶⁰ Exhibit 245, Recommended Rate of Return Workpaper

¹⁶¹ Exhibit 245, Recommended Rate of Return Workpaper

customers, and including a prepayment penalty on top of this excessive debt cost will only create unreasonable returns for the Glarner.

c. What return on common equity should be used for determining rate of return?

The Commission should order an embedded cost of capital of 9.34% resulting in an overall rate of return of 8.045% and pre-tax rate of return of 9.874% (using a composite tax rate of 27.98%) because it will provide a reasonable return on equity for the Company.

In response to questions from the bench, Mr. Michael Gorman testified that he relied on Staff's methodology for his recommendation, and Staff took a risk premium approach that considered the distressed cost of debt for utilities and added a premium to reflect the higher equity costs for utilities to come up with an appropriate equity return which would correlate with distressed utility interest rate, proxy of the market and is substantiated by both Staff and the OPC in their pre-filed testimony.¹⁶² This approach is reasonable, and it is the only approach for which Staff presented evidence. Staff did not have a witness to support the return on equity in the Non-Uniform Stipulation unless one consider Ms. Dietrich's policy testimony to be sufficient. OPC argues Ms. Dietrich did not provide a factual foundation for the settled return on equity.

For all of these reasons, the Commission should order a 50-50 allocation, a 6.75% cost of debt, and an embedded cost of capital of 9.34%.

CONCLUSION

WHEREFORE, for these reasons, OPC requests the Commission to issue an order finding that a just and reasonable incremental increase in rate revenues to be \$432,110. The Commission should reject the Non-Uniform Stipulation and Agreement, and the Commission should adopt OPC's positions and OPC's findings of fact.

¹⁶² Evidentiary Hearing Volume 6, Pg. 558, Lines 22-25 and Pg. 559, Lines 1-8.

Respectfully submitted,

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The Commission finds that Robert Glarner and David Glarner (the “Glarner”) are on the board of directors of Central States Water Resources, Inc.¹⁶⁸

The Commission finds that David Glarner is the treasurer and Robert Glarner is the Secretary of Central States Water Resources, Inc.¹⁶⁹

The Commission finds that the Glarner hold membership interests in GWSD LLC.¹⁷⁰

The Commission finds that, within the Indian Hills Utility Holding Company, Inc., the treasurer is David Glarner, the secretary is Robert Glarner, and the Glarner are on the board of directors.¹⁷¹

The Commission finds that the Glarner also own Water Fund LLC, and Glarner are the ultimate owners of Fresh Start Venture LLC (the “Lender”).¹⁷²

The Commission finds that the Lender and the Company (or, the borrower) are both owned, in whole or in part by the Glarner.¹⁷³

The Commission finds that the Lender and the Company have agreed to a 20-year loan at a rate of 14%.¹⁷⁴

The Commission finds the loan is significantly about the market cost of debt.¹⁷⁵

The Commission finds that the Company and the Lender have combined the high-interest rate feature with the prepayment penalty that includes all if the interest accrued during the loan period, which makes this loan uncommon even without the affiliate relationship.¹⁷⁶

¹⁶⁸ Exhibit 237, 2017 Annual Registration Report of Central States Water Resources, Inc.

¹⁶⁹ *Id.*

¹⁷⁰ Exhibit 235, Articles of Organization, GWSD LLC

¹⁷¹ Exhibit 230, 2017 Annual Registration Form

¹⁷² Exhibit 233, Articles of Organization Water Fund LLC and Evidentiary Hearing Volume 4, 11/28/2017, Pg. 420, Lines 1-10

¹⁷³ *Id.*

¹⁷⁴ See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23

¹⁷⁵ *Id.*

¹⁷⁶ See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23

The Commission finds that the total make whole payment for a loan of **

**¹⁷⁷

The Commission finds that the Glarners are signatories on the bank accounts of the Company “in order to access financial control,” and the Glarners have instructed Mr. Cox with whom to bank, which is American Bank.¹⁷⁸

The Commission finds that the Glarners are on the board of directors at American Bank.¹⁷⁹

The Commission finds that it has reviewed these affiliate structures in past proceedings, and the Commission finds it made the following comments: Commissioner Stoll commented “just again fail to see the incentive because I question the arm’s length lack of- maybe lack of arm’s length relationship out there, but I’ll leave it at that.”¹⁸⁰ Commissioner Hall commented on his reservation of continually approving 14 percent cost of debt and indicated that there needs to be an “interest to find lower cost of debt.”¹⁸¹ Commissioner Coleman indicated that “it seems like it’s not arms length to me.”¹⁸² She also indicated a concern about the company continuously coming back to the Commission asking for the same type of approval, and “we should all be concerned about any—about where we’re going here because it’s -- we’re talking real money that affects real people.”¹⁸³ Commissioner Coleman also advised the company to “dig deeper and find some real significant financing.”¹⁸⁴

¹⁷⁷ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 4, Lines 8-9

¹⁷⁸ Evidentiary Hearing Volume 4, Pg. 433, 11/30/2017, Lines 17-20

¹⁷⁹ Exhibit 227, American Bank of Missouri 2016-2017 Biennial Registration Report

¹⁸⁰ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 22-25

¹⁸¹ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 13-20

¹⁸² Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 27-35 and Pg. 8, Lines 1-2

¹⁸³ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 27-35 and Pg. 8, Lines 1-2

¹⁸⁴ Exhibit 210, Surrebuttal Testimony of Greg Meyer, Pg. 7, Lines 27-35 and Pg. 8, Lines 1-2

The Commission finds that the Company comes to the Commission with the same financing arrangement, with the same prepayment penalty, the same high interest rate, with the same affiliate lender.¹⁸⁵

The Commission finds that the Company's credibility relating to this loan agreement is diminished because the Company did not follow its order in WO-2016-0045.¹⁸⁶

The Commission finds that, on April 4, 2017, the Company filed their initial rate request in which it requested an incremental increase of \$750,280 in revenues or a 771% rate increase.¹⁸⁷

The Commission finds that Staff filed its preliminary audit with the parties on July 3, 2017.¹⁸⁸

The Commission finds that the preliminary audit of the Staff substantiates the direct testimony of OPC because OPC's direct testimony shows a \$432,110 rate increase.¹⁸⁹

The Commission finds that Staff's preliminary audit is comparable because Staff's recommended an incremental increase in revenues of \$443,925, or a 456.29 percentage increase in rates.¹⁹⁰

The Commission finds that the record does not support the settlement agreements including the Non-Unanimous Stipulation and Agreement, which agreed to an incremental increase to revenues of \$630,911 or a 648.48% increase.¹⁹¹

The Commission finds that the settlement agreement lacks factual support in the record, and as an example to illustrate its finding, Staff witness Ms. Natelle Dietrich indicated that between

¹⁸⁵ See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23; Exhibit 243; and Exhibit 241

¹⁸⁶ Exhibit 200, Direct Testimony of Keri Roth, Pg. 12-14

¹⁸⁷ See WR-2017-0259, EFIS docket

¹⁸⁸ *Id.*

¹⁸⁹ Exhibit 244, Staff's Day 90 Preliminary Audit Rate Design Schedule and Exhibit 200, Direct Testimony of Keri Roth, attached audit schedule

¹⁹⁰ Exhibit 244, Staff's Day 90 Preliminary Audit Rate Design Schedule

¹⁹¹ Non-Unanimous Stipulation and Agreement, Item No. 87, WR-2017-0259 (Filed: 11/22/2017).

the preliminary audit and the settlement of the cost of debt, “no new documents were reviewed specific to the cost of debt.”¹⁹²

The Commission also finds that there is a lack of factual support because Staff’s fact witness, Mr. David Murray, “was not comfortable with being the witness on the 14 percent, so he did not proceed with the case.”¹⁹³

The Commission finds that the parties admitted that the settlement agreement contained unreasonable terms.¹⁹⁴

The Commission finds that there is factual support for Staff’s day 90 preliminary audit in the record.¹⁹⁵

The Commission finds that the customers served by the Company have expressed their negative opinion of the rate increases, and their comments exceed the number of comments in the last Missouri American Water Company’s rate case.¹⁹⁶

The Commission finds that the local public hearing was well attended, and customers gave testimony that created a transcript over 100 pages in length.¹⁹⁷

I. Payroll

- a. What are the appropriate job titles to be used in MERIC to compare and determine labor expense associated with Mr. Josiah Cox and Mr. Todd Thomas?*

¹⁹² Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 167, Lines 8-16.

¹⁹³ *Id.* at Lines 8-10

¹⁹⁴ Evidentiary Hearing, Volume 3, 11/27/2017, Pg. 181, Lines 1-3 and Pg. 183, Lines 10-11.

¹⁹⁵ See generally the Exhibits and Transcripts of WR-2017-0259

¹⁹⁶ Compare WR-2017-0259, the Indian Hills Operating Company, Inc. rate case, Public Comments, “Total Public Comment(s): 225;” with WR-2015-0301, the Missouri-American Water Company’s rate case, Public Comments, “Total Public Comment(s): 219 and in SR-2015-0302 (“Total Public Comment(s): 10”)

¹⁹⁷ Local Public Hearing Vol 2, 10/18/2017

The Commission orders compensation of Mr. Todd Thomas and Mr. Josiah Cox at a level based on MERIC's¹⁹⁸ construction manager and general operations manager classifications.

The Commission finds that the top manager of a small water and sewer company in Missouri is usually classified as a general manager and, with that, comes a different level of compensation than utilizing a 'Chief Executive'.¹⁹⁹

The Commission finds that no party credibly rebutted the previously-described practice.

The Commission finds that the Company and/or the Parent meet the definition of being a small utility and that like treatment is appropriate.²⁰⁰

The Commission finds that the evidence supports a job title of "General and Operations Manager" for Mr. Josiah Cox and the evidence supports a job title of "Construction Manager" for Mr. Todd Thomas.²⁰¹

b. What are the appropriate MERIC salary wages?

The Commission finds that the evidence supports a job title of "General and Operations Manager" for Mr. Josiah Cox and the evidence supports a job title of "Construction Manager" for Mr. Todd Thomas.²⁰²

c. Should the Employment Cost Index inflation rate be applied in setting such amounts?

¹⁹⁸ Missouri Economic Research and Information Center

¹⁹⁹ Exhibit 203, Direct Testimony of Keri Roth, Pg. 6, Lines 7-8

²⁰⁰ *Id.* at Page 7, Lines 2-22. (noting that the regulation is silent as to whether a utility would be considered large or medium if it were to have over 8,000 customers)

²⁰¹ Exhibit 200, Direct Testimony of Keri Roth, Pg. 6, Lines 3-4 (Table)

²⁰² Exhibit 200, Direct Testimony of Keri Roth, Pg. 6, Lines 3-4 (Table)

The Commission finds that utilization of 2016 MERIC wage data would be less than one year old at the end of the test year in this case and there is no need to add an inflation adjustment.²⁰³

d. What allocation factor (actual or assumed) should be used to determine payroll?

The Commission finds a 16.61% allocation factor is supported by the testimony of Ms. Keri Roth and Ms. Ashley Sarver, who rely on an analysis of the time log records.²⁰⁴

The Commission finds that the appropriate allocation factor is based upon First Round employee hours spent at Indian Hills during the test year period.²⁰⁵

The Commission does not find credibility in Mr. Phil Macias' claim that an allocation based on customer count is a more accurate allocation.²⁰⁶

The Commission finds that the utilization of whole numbers rather than numbers with decimals is not a reasonable justification to choose one methodology over another methodology and an allocation factor based on whole numbers is not "eas[ier] for everyone to understand."²⁰⁷

What level of experience should be used to set the labor expense associated with each employee?

The Commission finds that a mean-experience level is appropriate for calculating labor expense associated with each employee because the Parent's employees only have experience of approximately three and half years or less with regulated water and sewer utilities.²⁰⁸

²⁰³ Exhibit 202, Rebuttal Testimony of Keri Roth, Pg. 8, Lines 5-12.

²⁰⁴ Exhibit 104, Direct Testimony of Ashley Sarver, Pg. 5, Lines 9-21 and Exhibit 200, Direct Testimony of Keri Roth, Pg. 5, Lines 2-9.

²⁰⁵ *Id.* at Roth Direct, Lines 8-9.

²⁰⁶ Exhibit 4, Direct Testimony of Phil Macias, Pg. 11, Line 5; Evidentiary Hearing Volume 3 11/27/2017, Pg. 196, Lines 5-6.

²⁰⁷ *Id.* at Pg. 197, Lines 16-18.

²⁰⁸ Exhibit 202, Rebuttal Testimony of Keri Roth, Pg. 8, Lines 13-15.

As further support for the prior finding, the Commission finds support in the record for its finding including that, in the case of Mr. Todd Thomas, he has “been with CSWR for nearly a full year.”²⁰⁹

II. Auditing and Tax Preparation Fees

a. What is the appropriate amount of Indian Hill’s auditing and tax preparation (accounting) costs to include in Indian Hill’s cost of service?

The Commission finds in favor of disallowing \$1,250 as non-recurring retainer for 2015 tax preparation fees for the Parent, and the Commission finds that it should allocate a portion of the remainder of the fees to the Company equaling a 16.61% allocation.²¹⁰

The Commission finds it appropriate to disallow \$500 as non-recurring retainer for 2015 preparation of an audited financial statement for the Parent, and the Commission finds it appropriate to allocate a portion of the remainder of the fees to the Company equaling a 16.61% allocation. The Commission is persuaded by the testimony of Staff witness Ms. Ashley Sarver, who testified these costs should be disallowed from recovery and reasoned that these retainer fees are non-recurring costs.²¹¹

The Commission finds that audited financial statements are not needed for every small utility based, in part, on the “large cost associated with an audited financial statement.”²¹²

The Commission finds that audited financial statements are not legally required for this Company unlike the preparation of taxes.²¹³

²⁰⁹ Exhibit 9, Surrebuttal Testimony of Todd Thomas, Pg. 3, Line 12

²¹⁰ Exhibit 112, Surrebuttal Testimony of Ashley Sarver,

²¹¹ Exhibit 112, Surrebuttal Testimony of Ashley Sarver, Pages 2-4

²¹² Evidentiary Hearing Volume 3, 11/27/2017, Pg. 212, Lines 4-6

²¹³ *Id.* at Pg. 212, Lines 14-21.

However, the Commission finds that no party objected or challenged the prudence of obtaining an audited financial statement for the Parent and its inclusion is reasonable given these facts.

b. Should accounting costs paid outside the test year be included in Indian Hill's cost of service?

The Commission finds that it is appropriate to deny 2016 tax preparation fees and audited financial statement fees because these occurred outside the test year because these costs were paid outside of the test year.²¹⁴

The Commission's finding is consistent with its decision in the Hillcrest rate case, WR-2016-0064 holding that the "costs would occur outside of the test and update periods, which would violate the matching principle."²¹⁵

The Commission does not need to reach the issue of the prudence of these costs because the costs were incurred outside of the test year. However, the Commission does find, as noted earlier, that there is no legal requirement for this Company to obtain audited financials.²¹⁶

The Commission finds that OPC witness Ms. Roth also corroborates that the cost-savings practice of many small utilities is to avoid spending large fees on outside auditors to produce audited financial statements.²¹⁷

III. Management Consulting Fees

a. Should a management consulting fee be included in the cost of service for Indian Hills?

²¹⁴ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 214, Lines 18-23.

²¹⁵ Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 5, Lines 15-22.

²¹⁶ *Id.* at Pg. 212, Lines 14-21.

²¹⁷ *Id.* at Pg. 227, Lines 8-11.

The Commission finds the management consultant fee should be denied because, among other reasons, there are is no way to quantify the work provided by this consultant because no time logs were maintained.²¹⁸

The Commission also finds that the quality of work provided by this consultant does not warrant a multi-year contract because of the work history of the consultant and their lack of reliable information.²¹⁹

The Commission finds that the second-hand anecdotes of Mr. Cox are not credible or substantial evidence to support these costs.²²⁰

The Commission need not find whether this transaction reflected an acquisition premium because substantial evidence exists to deny recovery of the consultant fee in rates; however, the Commission does acknowledge that the consultant's contract was executed at or near the time of the sale of the system.²²¹

IV. Bank Fees

a. What is the appropriate level of bank fees to include in the cost of service for Indian Hills?

The Commission finds it appropriate to deny rate recovery of bank fees because of self dealing and the lack of evidence presented by the Company that it sought lower cost options.²²²

²¹⁸ Id. at Pg. 231-232.

²¹⁹ Exhibit 200, Direct Testimony of Keri Roth, Pg. 10, Lines 12-18 (citing to WO-2016-0045, Staff Memorandum, Pg. 2); Pg. 232, Lines 22-25, and Pg. 233, Lines 1-23 (the consultant relies on her own memory); Pg. 234, Lines 3-6 (the consultant's memory is not fresh); Pg. 235, Lines 11-15 and Exhibit 7, Direct Testimony of Todd Thomas, Pg. 7, Lines 5-7. (the consultant neglected the system)

²²⁰ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 233, Lines 15-18 and Pg. 238, Lines 1-15.

²²¹ Evidentiary Hearing Volume 3, 11/27/2017, Page 237, Lines 1-2

²²² Evidentiary Hearing Volume 4, 11/28/2017, Pg. 434, Lines 1-8, Lines 9-16 and Pg. 249, Lines 2-10

The Commission finds that the burden of proof exists in the current rate case, and the Company cannot meet their burden in a future rate case as argued by Staff and the Company.²²³

The Commission finds that OPC and Staff raised serious doubts as to whether existing personnel could be used rather than paying additional fees to an entity with an interconnection with the family of the investors.²²⁴

V. Rate Case Expense

a. What is the appropriate rate case expense to include in the cost of service for Indian Hills?

The Commission finds it appropriate to deny recovery of a before and after video because the Company waived the issue during the hearing.²²⁵

The Commission finds merit in OPC's recommendation to allow recovery of no more than \$250 per hour normalized over a five year period.²²⁶

The Commission finds that the hourly rate charged by one of the consultants is much higher than typically seen of hourly rates charged by other consultants in utility rate case proceedings, even with large utility companies.²²⁷

The Commissions finds that it is appropriate to normalize the recovery of attorney's fees and customer notices over three years.²²⁸

VI. Treatment of Leak Repair Costs

²²³ Id. at Page 253, Lines 24-25; Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 6 Lines 5-11; Exhibit 208, Direct Testimony of Greg Meyer, Pg. 6, Lines 10-17 and Pg. 7, Lines 1-2; *also see* Exhibits 227, Biennial Registration Report American Bank of Missouri; Exhibit 230, 2017 Annual Registration Form, Indian Hills Utility Holding Company, Inc. (listing the treasurer as David Glarner and the secretary as Robert Glarner and also listing Robert and David Glarner on the Board of Directors); Exhibit 235, Articles of Organization of GWSD LLC.

²²⁴ Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 6 Lines 5-11.

²²⁵ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 259, Lines 11-16

²²⁶ Exhibit 203, Surrebuttal Testimony of Keri Roth, Pg. 10, Lines 13-22 and Schedule KNR-3

²²⁷ Id. at Pg. 10, Lines 1-4

²²⁸ Id. at Pg. 10, Lines 13-15

a. and b. What are the appropriate accounts to book leak repair and what is the appropriate level of leak repair to include in the cost of service?

The Commission finds no merit in utilizing a two-way tracker and the Commission finds this proposal lacks an evidentiary foundation.²²⁹

The Commission finds that the Company did not have a plan as to how to manage leak repairs which caused inefficiencies in the administration of leak repairs and replacements.²³⁰

The Commission finds that recovery of leak repair should include OPC's level of expense and should include the capitalization of certain leak repair expense, which should be placed into Account 343 Transmission and Distribution Mains.²³¹

The Commission finds that the Company maintained poor records and their practices and policies constituted an "an imperfect system" causing the contractors to make mistakes in terms of certifying the addresses where the leak occurred.²³²

The Commission finds merit in Ms. Jennifer Grisham's testimony stating that a "review of the documentation provided to dates regarding repair invoices shows that not all entries in the expense accounts in the general ledger are truly repair expense. On some invoices, line replacement is classified as and charged to expense when it should be recorded as plant in service. Other items included in repair expense invoices are not recoverable through rates, including an instance where the contractor agreed to repair a water leak on the customer owned portion of the lines, but then billed the Company for it. See Confidential Schedule JKG-r1, for examples of booking anomalies in repair invoices."²³³

²²⁹ See Generally the transcripts of the evidentiary hearing and all of the pre-filed testimony

²³⁰ Id.

²³¹ Exhibit 205-207 and 217

²³² Id. at Pg. 291, Lines 19-22.

²³³ Rebuttal Testimony of Jennifer Grisham Pg. 5, Lines 21-24; Pg. 6, Lines 1-3; and Schedule JKKG-r1

The Commission finds that the Company admits problems with documenting leak repairs and replacements.²³⁴

The Commission finds that the Company did not give clear direction to contractors about the criteria for when a line should be replaced or repaired.²³⁵

The Commission finds that the Company's lack of detailed guidance to its contractors caused higher costs for ratepayers when the Company had to re-repair the same line multiple times.²³⁶

The Commission, in support of its findings, points to an instance where one customer had a leak repair for the sixth time because of the high churn of leak repairs rather than replacements.²³⁷

The Commission similarly finds that, in some instances, service lines were either replaced several times or the addresses were inaccurately recorded.²³⁸

The Commission finds that OPC presents an appropriate level of repair expense and capitalization compared to Staff or to the Company.²³⁹

VII. Extension of Electric Service

a. Should the Company be able to capitalize the electric line extension?

²³⁴ Exhibit 201, OPC Data Request 50

²³⁵ *Compare* Evidentiary Hearing Volume 3, 11/27/2017, Pg. 292, Lines 18-25 and Pg. 293, Lines 1-15 (describing the default rule as giving contractor full discretion to implement repairs) *with* Evidentiary Hearing Volume 3, 11/27/2017, Pg. 298, Lines 1-10 (describing that contractors received a vague, verbally conveyed policy of replacing service lines rather than repairing service lines in some instances)

²³⁶ Evidentiary Hearing Volume 3, 11/27/2017, Pg. 301, Lines 19-21

²³⁷ E.g., Exhibit 105, Direct Testimony of David Spratt, Schedule DAS-d2, Page 4 of 6, Item 167

²³⁸ E.g., Exhibit 105, Direct Testimony of David Spratt, Schedule DAS-d2, Page 6 of 6, Items 8-12

²³⁹ Exhibit 200, Direct Testimony of Keri Roth, Attached Audit Rate Design Schedule- Water; Exhibit 102, Direct Testimony of Jennifer Grisham, Pg. 2, Lines 1-9 and Evidentiary Hearing Volume 3, 11/27/2017, Pg. 334, Lines 8-15; Evidentiary Hearing Volume 3, 11/27/2017, Pg. 335, Lines 20-25; *Compare* the testimony of Staff witness Stephen Moilanen Evidentiary Hearing Volume 3, 11/27/2017, Pg. 332, Lines 13-15 (repairs shouldn't be a part of plant regardless) *with* the testimony of Staff witness Jennifer Grisham Evidentiary Hearing Volume 3, 11/27/2017, Pg. 334, Lines 20-24 and Pg. 334, Lines 8-15. (recommending a three year amortization with a return on and of expense).

The Commission finds that the Company does not own the electric line extension given the credible evidence presented in the form of the affidavit attached to the testimony of Mr. John Robinett.²⁴⁰

The Commission finds that the plain language of NARUC USoA 101 does not allow recovery of non-utility owned plant of this type.²⁴¹

b. If so, what are the appropriate accounts to book the extension of electric line service?

The Commission need not answer this question because the Company does not own the electric line extension and the electric service line extension should not be capitalized.²⁴²

VIII. Rate Design

a. And b. How should rates be developed based on the cost of service approved in this case? Should a seasonal rate design be adopted in this case, and if so, what should be the structure of the seasonal and non-seasonal rates?

The Commission finds that quarterly reporting of water usage is reasonable because the parties' rate designs lack robust usage data.^{243 244}

²⁴⁰ Exhibit 207, Surrebuttal Testimony of John Robinett, Schedule JAR-S-1 Affidavit of Brett Palmer, Manager of Operations with Crawford Electric Cooperative, Inc.; and Exhibit 206, Rebuttal Testimony of John Robinett, Pg 2., Lines 26-30; Pg. 3, Lines 1-16; and Schedule JAR-R-1

²⁴¹ Exhibit 206, Rebuttal Testimony of John Robinett, Pg. 2, Lines 16-25

²⁴² Exhibit 207, Surrebuttal Testimony of John Robinett, Schedule JAR-S-1 Affidavit of Brett Palmer, Manager of Operations with Crawford Electric Cooperative, Inc.; and Exhibit 206, Rebuttal Testimony of John Robinett, Pg 2., Lines 26-30; Pg. 3, Lines 1-16; and Schedule JAR-R-1

²⁴³ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 506, Lines 12-24.

²⁴⁴ Exhibit 212, Direct Testimony of Dr. Geoff Marke, Pg. 8, Line 8

The Commission finds that Staff and the Company's rate design does not account for shut-offs and disconnects, but OPC's rate design addresses this issue by reducing the customer charge.²⁴⁵

The Commission finds that OPC's rate design gives customers more control over their utility bills which could potentially mitigate rate shock relative to a high fixed customer charge.²⁴⁶

The Commission finds the high fixed charge recommended by Staff and the Company to be "uncommon" and gives customers less control over their bill.²⁴⁷

The Commission finds merit in OPC's seasonal rate design recommendation, and the Commission finds this to be the appropriate treatment.²⁴⁸

The Commission finds additional customer notice to correspond with changing seasonal rates to be a reasonable recommendation by Staff and OPC.²⁴⁹

IX. Rate of Return

a. What capital structure should be used for determining rate of return?

The Commission finds that a 50-50 capital structure is appropriate for the reason stated by Mr. Michael Gorman, which is that the capital structure should reflect what the Company should be working toward, over time, in order to improve its financial standing.²⁵⁰

²⁴⁵ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 520, Lines 10-21; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 507, Lines 1-17.

²⁴⁶ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 520, Lines 10-21.

²⁴⁷ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 506, Line 2 and Pg. 514, Lines 1-4.

²⁴⁸ Exhibit 212, Direct Testimony of Dr. Geoff Marke, Schedule GM-2, Pgs. 1-4

²⁴⁹ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 514, Lines 10-16.

²⁵⁰ Exhibit 213, Direct Testimony of Mr. Michael Gorman, Pg. 3, Lines 3-24

The Commission finds that the actual capital structure of the Company is outweighed with debt in the range of 77.12% long-term debt to 97.2% long-term debt depending on different sources.²⁵¹

The Commission finds that, as between Staff and OPC's pre-filed testimony, capital structure and rate of return alone could result in as high as a \$10.78 per month per customer difference.²⁵²

The Commission finds merit in using an imputed capital structure.²⁵³

b. What cost of debt should be used for determining rate of return?

The Commission finds that a market rate cost of debt of 6.75% is appropriate. The Commission finds the rationale of OPC to be persuasive.

The Commission finds the Company is not doing everything in its power to seek a lower cost of debt on the market.²⁵⁴

The Commission finds this Company is without incentive to seek a lower cost of debt on the market.²⁵⁵

The Commission finds that the Company's current debt agreement is the product of self-dealing and the Company is without incentive to obtain a lower market cost of debt.²⁵⁶

²⁵¹ Exhibit 214, Rebuttal Testimony of Mr. Michael Gorman, Pg. 3, Lines 8-11 and Exhibit 10, Direct Testimony of Dylan D'Ascendis, Pg. 3, Table 1, Lines 1-2.

²⁵² Exhibit 106, Rebuttal Testimony of Matthew Barnes, Pg. 3, Lines 18-26

²⁵³ Exhibit 106, Rebuttal Testimony of Matthew Barnes, Pg. 2, Lines and Evidentiary Hearing Volume 6, 11/30/2017, Pg. 554 Lines 1- 25 and Pg. 555, Lines 1-3

²⁵⁴ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 5-24; Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 16-18; Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 18-22; Exhibit 208, Direct Testimony of Greg Meyer, Pg. 11, Lines 22-24 and Pg. 12, Lines 1-2; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 489, Lines 6-19; Pg. 490, Lines 1-3 and 15-25; Pg. 496, Lines 6-13; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 425, Lines 21-25 and Pg. 426, Lines 1-6;

²⁵⁵ Evidentiary Hearing Volume 4, 11/28/2017, Pg. 426, Lines 7-20; Exhibit 208, Direct Testimony of Greg Meyer, Pg. 7 Lines 8-9; Pg. 8, Lines 9-12 (Table 7); Pg. 9- Lines 1-11; Pg. 10, Lines 1-12; Pg. 14, Lines 17-23; and Pg. 16, Lines 6-8.

²⁵⁶ Exhibit 232, First Round CSWR LLC Statement of Change of Registered Agent; See, e.g., Exhibit 1, Direct Testimony of Josiah Cox, Pg. 3, Lines 7-13 and Evidentiary Hearing Volume 3, 11/27/2017, Pg. 297, Line 19 and

The Commission finds that the Company and Staff's Non-Unanimous Stipulation and Agreement shows that a 14% cost of debt is unreasonable.²⁵⁷

The Commission finds that OPC's cost of debt is consistent with what a below investment grade cost of debt and is a reasonable proxy of the Company's market cost of debt.²⁵⁸

The Commission finds that the Company has not acted with credibility in response to the Commission's orders and the Commission's directions in past proceedings.²⁵⁹

The Commission finds that the cost of debt combined with the prepayment penalty compound to create a toxic transaction that raises serious concerns about ratepayer harm and the prudence of the transaction.²⁶⁰

The Commission finds that the Company's plan to lower the cost of debt is misleading and harmful to ratepayers.²⁶¹

Pg. 299, Lines 9-10; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 419, Lines 16-25; Exhibit 235, Articles of Organization, GWSD LLC; Exhibit 230, 2017 Annual Registration Form; Exhibit 233, Articles of Organization Water Fund LLC and Evidentiary Hearing Volume 4, 11/28/2017, Pg. 420, Lines 1-10; and See e.g., Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-23; Evidentiary Hearing Volume 4, Pg. 433, 11/30/2017, Lines 17-20; Exhibit 2, Rebuttal Testimony of Josiah Cox, JC #4 Confidential and JC #5 Confidential; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 491, Lines 11-16; Exhibit 211, Surrebuttal Testimony of Greg Meyer, Pg. 8, Lines 11-18; Pg. 10, Lines 1-10; and Pg. 11, Lines 1-2..

²⁵⁷ Non-Unanimous Stipulation and Agreement, EFIS Item No. 87, WR-2017-0259, Pg. 5, Paragraph 5; Exhibit 10, Direct Testimony of Dylan D'Ascendis, Pg. 19, Lines 5-20; and Evidentiary Hearing Volume 6, 11/30/2017, Pg. 563, Lines 15-25 and 564, Lines 1-4.

²⁵⁸ Exhibit 213, Direct Testimony of Michael Gorman, Pg. 4, Lines 13-23 and Pg. 5, Lines 1-8 and Evidentiary Hearing Volume 6, 11/30/2017, Pg. 558, Lines 19-25; Evidentiary Hearing Volume 6, 11/30/2017, Pg. 558, Line 2-7; Exhibit 2, Rebuttal Testimony of Josiah Cox, Pg. 17, Lines 1-12 and Exhibit 10, Direct Testimony of Dylan D'Ascendis, Schedule DWD-3, Pg. 1-9 and Schedule DWD-4, Pg. 2 of 12.

²⁵⁹ Exhibit 200, Direct Testimony of Keri Roth, Pg. 12-14

²⁶⁰ Exhibit 208, Direct Testimony of Greg Meyer, Pg. 13, Lines 4-6; Pg. 14, Lines 1-7 and 8-12; Exhibit 211, Surrebuttal Testimony of Greg Meyer, Pg. 8, Lines 11-18; Pg. 10, Lines 1-10; and Pg. 11, Lines 1-2; Evidentiary Hearing Volume 6, 11/30/2017, Pg. 552, Lines 15-18.

²⁶¹ Exhibit 211, Surrebuttal Testimony of Greg Meyer, Pg. 8, Lines 11-18; Pg. 10, Lines 1-10; and Pg. 11, Lines 1-2; Evidentiary Hearing Volume 4, 11/28/2017, Pg. 491, Lines 11-16.

The Commission finds Staff testimony as to the unreasonableness of the loan transaction to be true, and the Commission finds factual support in a lower cost of debt in the Staff's preliminary audit.²⁶²

c. What return on common equity should be used for determining rate of return?

The Commission finds in favor of OPC's recommendation to order an embedded cost of capital of 9.34% resulting in an overall rate of return of 8.045% and pre-tax rate of return of 9.874% (using a composite tax rate of 27.98%) because it will provide a reasonable return on equity for the Company.²⁶³

²⁶² Evidentiary Hearing Volume 3, Pg. 181, Lines 1-4, 9-10; Pg. 183, Lines 7-11; Pg. 185, Lines 18-21; Pg. 177, Lines 1-10; and Exhibit 245, Recommended Rate of Return Workpaper.

²⁶³ Evidentiary Hearing Volume 6, Pg. 558, Lines 22-25 and Pg. 559, Lines 1-8; Exhibit 213, Direct Testimony of Mr. Michael Gorman, Pg. 2 Lines 16-22; Pg. 5, Lines 1-8; and Schedule MPG-2

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on January 4, 2017 to all counsel of record.

/s/ Ryan D. Smith