

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

In the Matter of the Application of a Rate)
Increase of Raytown Water Company.) File No. WR-2023-0344

MOTION TO STRIKE TESTIMONY AND FOR EXPEDITED TREATMENT

COMES NOW the Office of the Public Counsel (“OPC”), by and through counsel, and for its *Motion to Strike Testimony and for Expedited Treatment*, pursuant to Commission Rule 20 CSR 4240-2.080(14), states as follows to the Missouri Public Service Commission (“Commission” or “PSC”):

1. Pursuant to the procedural schedule ordered by the Commission, the parties filed their surrebuttal testimony on November 8, 2023. Included in that testimony was the Surrebuttal Testimony of The Raytown Water Company’s (“RWC” or “Company”) witness Neal S. Clevenger and the Surrebuttal Testimony of PSC Staff Witness, Angela Niemeier.
2. This case has been pending since April 4, 2023 and RWC and the Staff of the Commission filed a *Non-Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request* on September 13, 2023. After the OPC’s objection to that document on September 19, 2023, the parties created and filed a unanimous procedural and filed direct and rebuttal testimonies on October 10, 2023, and October 24, 2023, respectively.
3. Commission Rule 20 CSR 4240-2.130(7) states as follows:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) *Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;*

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) *Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.*

(emphasis added)

4. Issues 1.a. and 1.b. of the *List of Issues, List and Order of Witnesses, Order of Opening, and Order of Cross-Examination* state as follows:

1. Advanced Metering Infrastructure (“AMI”)

a. How should this AMI investment be treated for rate making purposes?

b. Should the Commission grant a return on the AMI investment?

5. Issue 3.a.2. of the *List of Issues, List and Order of Witnesses, Order of Opening, and Order of Cross-Examination* states as follows:

3. Depreciation

a. Reserve Transfer

...

2. If [depreciation reserves should be transferred from over-accrued accounts to not-fully-accrued accounts], to which accounts should the depreciation reserves be transferred?

Surrebuttal Testimony of Neal S. Clevenger

6. Any effect that the treatment of AMI would have on the Company's EIERA Loan Agreement was first brought up in Mr. Clevenger's surrebuttal testimony.¹

6. The Company chose not to discuss concerns that the Commission's treatment of AMI investment would negatively affect the EIERA loan in rebuttal testimony. Rather, it first appeared in surrebuttal testimony and are not responsive to any new matters *raised* in another party's rebuttal testimony. Dr. Marke's recommendation that RWC not receive a return on its AMI investment was first presented in Dr. Marke's Direct Testimony, then repeated in rebuttal.

7. Despite the OPC's recommendation that the Company not receive a return on its AMI infrastructure being presented in its Direct Testimony, RWC did not choose to respond to Dr. Marke's recommendation until Mr. Clevenger presented this concern in Surrebuttal testimony. Therefore, the OPC was not provided with an opportunity to respond to this testimony in surrebuttal as it should have. If given the opportunity, the OPC's finance expert, Mr. David Murray, would have explained to the Commission that Mr. Clevenger's concerns regarding the EIERA bond are highly inaccurate and misleading in that the revenue requirement *will produce a debt service coverage ratio of 3.66x, well above the minimum of 1.25x*. Accordingly, the Company's

¹ See *Generally* Surrebuttal Testimony of Neal S. Clevenger, § IV EIERA Limitations, WR-2023-0344, Item No. 55.

presentation of the EIERA argument violates Commission Rule 20 CSR 42402.130(7)(D).²

Surrebuttal Testimony of Angela Niemeier

8. As listed in the Executive Summary portion of Ms. Niemeier's testimony, "The purpose of my surrebuttal testimony is to provide the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA") accounts for the correction to depreciation reserve discussed in *my* rebuttal testimony."³

9. Further, Ms. Niemeier's surrebuttal testimony is fully dependent on conversations with another Staff employee, who Staff does not intend to call to the stand for the purpose of cross-examination.

Conclusion

10. The EIERA portion of Mr. Neal S. Clevenger's surrebuttal testimony should be struck as improper since it does not respond to any issues *raised* in Dr. Geoff Marke's rebuttal testimony.

11. Ms. Angela Niemeier's surrebuttal testimony should be struck in its entirety as it does not respond to another party's rebuttal testimony, it constitutes hearsay, and it is not the best evidence since Staff does not intend to present the

² "Surrebuttal testimony shall be limited to material which is responsive to matters *raised* in *another* party's rebuttal testimony." (emphasis added)

³ Surrebuttal Testimony of Angela Niemeier, pg. 1 lines 19-22, WR-2023-0344, Item No. 48. (emphasis added).

witness by which Ms. Niemeier came to her conclusions around PSC Staff's treatment of depreciation reserves.

12. Based on Commission Rule 20 CSR 4240-2.130(7)(D), the OPC moves the Commission to strike the following testimony:

- Surrebuttal Testimony of Neal S. Clevenger, § IV EIERA Limitation;
- Surrebuttal Testimony of Angela Niemeier in its entirety.

10. Pursuant to Commission Rule 20 CSR 4240-2.080(14), the OPC submits that good cause for expedited treatment exists in that the hearing in this matter is scheduled for November 16-17, 2023, and resolution of this matter in an expedited fashion will allow the parties to prepare for that hearing with knowledge of what testimony may be available for admission.

WHEREFORE, the OPC respectfully requests the Commission grant this *Motion to Strike Testimony and for Expedited Treatment* and that the Commission issue such other orders as it should find to be reasonable and just.

Respectfully submitted,

THE OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 15th day of November, 2023.

/s/ Anna Martin