

**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

**REPLY TO OPC’S RESPONSE TO
RWC’S MOTION TO STRIKE TESTIMONY**

COMES NOW The Raytown Water Company (“RWC” or “Company”), by and through counsel, and, as its *Reply to OPC’S Response to RWC’s Motion to Strike Testimony*, states as follows to the Missouri Public Service Commission (“Commission”):

Background

1. Pursuant to the procedural schedule ordered by the Commission, the parties filed their surrebuttal testimony on November 8, 2023. Subsequently, a list of issues was filed on November 9, 2023 (which indicated in footnote 1 that “Opinions differ among the parties regarding the proper characterization for one or more issues.”) and Statements of Position were filed on November 13, 2023. On November 14, 2023, RWC filed its *Motion to Strike Testimony*, concerning certain sections of the Surrebuttal Testimony of Office of the Public Counsel (OPC”) witnesses John Riley and Manzell Payne.

2. Based on Commission Rule 20 CSR 4240-2.130(7)(D), RWC had moved the Commission to strike the following testimony:

- Surrebuttal Testimony of John Riley, p. 12 (lines 11-17)); and,
- Surrebuttal Testimony of Manzell Payne, p. 7 (lines 8-17).

3. On November 15, 2023, OPC filed *Public Counsel’s Response to Staff and RWC’s Motions to Strike Testimony* (“OPC Response”).

Riley

4. Issue 8.a. (“Should all of the Company’s employee overtime be normalized?”)

was first raised in the Surrebuttal Testimony of John Riley as follows:

Q. How did Staff witness, Angela Niemeier, view Ms. Thompson’s wage and overtime?

A. Ms. Niemeier questions neither Ms. Thompson’s wage increase, nor Ms. Thompson’s amount of overtime, which demonstrates a lack of professional skepticism. Total Company overtime has fluctuated over the years but seems to spike in the test year periods of 2014 and 2019. This should have led Staff to approach this issue more critically and perform a more robust analysis. It is odd that Staff chose instead to accept this overtime pay as a salary expense without applying any testing, three-year average, or other normalization method.

(Riley Sur., p. 12 (lines 11-17)) (emphasis added).

5. Mr. Riley’s subject testimony appears in a Surrebuttal Testimony Section titled “Thompson Overtime” and the only proposed disallowance identified in this section concerns Ms. Thompson’s overtime. (Riley Sur., p. 12 (line 18) through p. 13 (line 4)).

6. The OPC Response claims that Mr. Riley was responding to Staff witness Niemeier’s Rebuttal Testimony, where she states that “it is not staffs place to tell a private business how to pay their employees. Staff reviews wages for prudence to determine ongoing costs.” (Niemeier Reb., p. 9, ln. 20-21). (emphasis added) In purported response to this testimony, Mr. Riley responded with a proposed disallowance related to all of RWC’s employees.

7. This is a significant and improper disallowance to propose in surrebuttal testimony, especially as to an issue where RWC is considered to have the burden of proof.

Payne

8. Issue 8.b. (“What is the just and reasonable amount of pay to include in rates for the Company’s Vice President, Sr. Accounting Clerk, Jr. Accounting Clerk, and Sr. Customer

Service/Admin Assistant?") was first raised in the Surrebuttal Testimony of Manzell Payne on page 7, lines 8-17. That Surrebuttal Testimony, for the first time, recommends "that overtime for all office employees with a managerial or senior role be disallowed from annualized payroll."

9. OPC's Response to RWC's *Motion to Strike* seems to assume this disallowance can be created and first pitched in a party's surrebuttal testimony. Again, OPC purports to work in response to Ms. Niemeier's Rebuttal Testimony statement that "it is not staffs place to tell a private business how to pay their employees. Staff reviews wages for prudencey to determine ongoing costs." (Niemeier Reb., p. 9, ln. 20-21). (emphasis added)

10. OPC's Response also defends this expansion of its proposed disallowances by arguing that it had earlier proposed a disallowance related to Ms. Thompson. Of course, RWC did respond in testimony to the proposed Thompson disallowance and did not move to strike matters related to Ms. Thompson's pay.

11. Mr. Payne has now expanded his disallowance to include not just Ms. Thompson, but an additional 5 employees. The arguments as to those additional five employees are necessarily different than they would be in regard to Ms. Thompson. In addition to violation of Commission Rule 20 CSR 4240-2.130(7)(D), given that the burden as to these issues rests with RWC, the Company should always be provided an opportunity to respond with evidence to such a proposed disallowance. Being presented with a new, specific disallowance for the first time in surrebuttal does not provide such an opportunity.

Conclusion

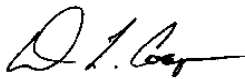
12. Because of the timing, Raytown Water has not been provided with an opportunity to respond to those identified adjustments. Accordingly, these adjustments violate Commission Rule 20 CSR 4240-2.130(7)(D) ("Surrebuttal testimony shall be limited to material which is

responsive to matters raised in another party's rebuttal testimony."). Therefore, the portion of the Surrebuttal Testimony of Mr. Riley and M. Payne identified above should be stricken.

WHEREFORE, RWC respectfully requests the Commission grant its *Motion to Strike Testimony* and that the Commission issue such other orders as it should find to be reasonable and just.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: 

Dean L. Cooper #36592
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
Telephone: (573) 635-7166
E-mail: dcooper@brydonlaw.com

ATTORNEYS FOR
THE RAYTOWN WATER COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 28th day of November, 2023, to:

General Counsel's Office
staffcounsel@psc.mo.gov
casi.aslin@psc.mo.gov

Office of the Public Counsel
opcservice@opc.mo.gov
Anna.Martin@psc.mo.gov

