

**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

RWC’S INITIAL BRIEF

COMES NOW The Raytown Water Company (“RWC” or “Company”), by and through counsel, and, as its *Initial Brief*, states as follows to the Missouri Public Service Commission “Commission”):

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INTRODUCTION

The Company's predecessor was formed on January 22, 1925, by RWC witness Clevenger's grandfather, and was certificated by the Commission on July 7, 1925, in Commission Case No. 4408. (Exh. 5, Clevenger Dir., p. 2).

The Company's certificated service area includes approximately one-half of the City of Raytown and a small portion of the City of Independence, in Jackson County. Raytown Water purchases all of its water requirements from the Kansas City Water Department. The Company's water system consists of approximately 379,210 feet of water main distributing water through the service area. It has three elevated storage tanks, which in total can store 2.5 million gallons of water. (Exh. 5, Clevenger Dir., p. 3).

RWC initiated this case on April 3, 2023, by submitting a letter to the Secretary of the Commission in accordance with the provisions of Commission Rule 20 CSR 4240-10.075, Staff Assisted Rate Case Procedure. Its requested increase was based on information known through December 31, 2022. (Exh. 5, Clevenger Dir., p. 3-4).

On September 13, 2023, Staff and Raytown Water filed a *Non-Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request* ("*Non-Unanimous Agreement*"), designed to resolve this case. Based on an audit using the 12-month period ended December 31, 2022, updated to June 30, 2023, the parties recommended a water revenue requirement increase of \$1,174,782, added to the level of current revenues of \$4,309,019, which results in overall annual revenues of \$5,483,801. (Exh. 5, Clevenger Dir., p. 4).

The Company adopts the findings and recommendations stated in the *Non-Unanimous Agreement*, including the recommendation the Company be allowed a water revenue requirement

increase of \$1,174,782¹, plus, as discussed below, whatever rate case expense the Commission may authorize as a result of this hearing. (Exh. 5, Clevenger Dir., p. 4).

ISSUES

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?**
- c. Should the Commission include all known and measurable AMI investments that the Company has either in service or in inventory in rate base?**

a.

The Project

Raytown Water has been replacing its meter system with AMI. This will consist of an Aclara AMI system with Neptune meters. Raytown Water will pay approximately \$4,200,000 for AMI. This amount includes meters, new locking meter lids, the programming update and changes to our billing software, the interface with the Aclara meter reading, equipment, deployment, installation and monitoring of the Aclara system. There will also be an annual maintenance fee on a going-forward basis. This will initially be about \$100,000 annually. (Exh. 1, Thompson Dir., p. 2).

This project was first presented to the Commission in File No. WF-2021-0427, Raytown Water applied for, and was granted, authority to issue Water Facilities Refunding and Improvement Bonds through the Environmental Improvement and Energy Resources Authority (“EIERA”) not to exceed \$5 million at an interest rate not to exceed 4.0% per year.² Among other things, the loan proceeds were to be used to update the entire water metering system to AMI by replacing all manually read meters with radio readers; to upgrade meter wells as needed;

¹ Reduced by \$4,297, as described in Depreciation Issue 1.a.

² Order Approving Finance Authority, *In the Matter of the Application of The Raytown Water Company for an Order Authorizing Issuance of Water Facilities Refunding and Improvement Bonds Series 2021*, File No. WF-2021-0427 (Issued February 23, 2022).

to install new data collectors; and, to update metering software and make live metering information available to customers through the Company website. (Exh. 1, Thompson Dir., p. 3). EI ERA ultimately approved the bonds for the same purpose.

Reasons for Project

The Company has historically obtained its meter reads manually. This required individual employees to walk to each meter, pull the lid up and read, enter the read into a handheld device, stomp the lid back down and then walk to the next meter well. Once a set of meters had been read, the handheld device was taken back to office and given to a billing tech to unload. The reader would then wait for the handheld device to be reloaded with the next reading route. (Exh. 1, Thompson Dir., p. 4).

Approximately one-fourth ($\frac{1}{4}$) of the entire system (a little over 1,600 accounts) was billed out weekly. With full meter reading staff and perfect weather conditions, it took four (4) days each week to read meters and one (1) day each week to reread and correct mis-reads prior to release of bills. Any disruption in the available personnel or weather conditions made it very difficult for the Company to send out consistent and accurate bills due to the need to estimate bills during some weeks. (Exh. 1, Thompson Dir., p. 4).

Moreover, RWC needed to replace meters, whether it was done with AMI or something else. (Exh. 2, Thompson Reb., p. 2). Commission Rule 20 CSR 4240-10.030(38) provides that meters are to be removed, inspected and tested or replaced every four (4) to ten (10) years, depending on the meter size. (Exh. 2, Thompson Reb., p. 8).

The Company last installed meters as part of its meter replacement program (approximately 1/10th of the system each year) during the 2009-2016 timeframe. After 2016, meters were changed only as needed due to damage. The Company did not have enough staffing

in field and office to proceed with the annual meter change out program during that time. Subsequently, in anticipation of the AMI 2020 project, the Company did not place large orders of direct read meters. Thus, as of 2023, approximately 59% of the 5/8"X 3/4" meters and 96% of meters 1" and larger were due to be removed and replaced. (Exh. 2, Thompson Reb., p. 7-8; Exhibit 8; Exh. 3, Thompson Sur., p. 4-5). More meters would need to be replaced as each year passes.

Options Considered

This project had been under consideration for several years. RWC began to speak with other water utilities to explore what meter reading system might be best suited for Raytown Water's operation and to provide more customer service options in the future. (Exh. 1, Thompson Dir., p. 3).

The Company reviewed the options of AMI, as well as other meter reading options such as: drive-by; touch; radio vs cellular intelligent meter reading; or continuing manual meter reading. (Exh. 1, Thompson Dir., p. 4).

The Company even took the step of experimenting with approximately 800 Mueller radio read/drive-by meters. The experience was not a good one as the antennas continued to fall off and the Company had a hard time getting meter reads. Additionally, the battery life was not good and it was necessary to go and make manual reads quite often. (Tr. 120-121, Thompson).

Ultimately, the Company decided that the AMI technology would improve customer service, as well as employee and public safety. AMI will allow Raytown Water to redeploy personnel previously focused on meter reading to other work. (Exh. 1, Thompson Dir., p. 4).

Benefits

The implementation of AMI will increase billing accuracy and reduce the likelihood of

estimated bills due to weather events, personnel issues, human error, or other obstacles by providing accurate reads without manual reading. (Exh. 1, Thompson Dir., p. 5). Said another way, AMI will provide better timing and greater accuracy for meter reads by eliminating the need for meter readers to put eyes on each meter and by eliminating the human error necessarily associated with direct reads. (Exh. 4, Noel Sur., p. 7).

AMI also has the potential to provide the Company and, in turn, customers with a view to their personal consumption more frequently than monthly, allowing them to see the timing of any unusually high usage. Customers will be able to obtain their monthly usage, daily usage, billing and payment data online. Customers will be able to further request an hourly usage report, which will be sent to them by our customer service department. Additionally, during the billing process, an exception list for lower or higher usage than normal is produced for the Company. Each account effected is reviewed for reason for lower or higher usage and a letter is generated if no valid reason is visible. In the future, customers will be able to “sign-up” for automatic notifications either by email or text for high/low usage. (Exh. 1, Thompson Dir., p. 5).

This hourly information is important as the majority of customers are asleep from midnight to at least 5:00 am. It is very easy to see if water is running through the meter during that time period. This can help explain when the water is being used and about how much per hour in the case of a toilet leak or timed irrigation. RWC is able to provide this information to customers with the AMI in place. (Exh. 1, Thompson Dir., p. 5 and Schedule CT-1). This information makes it much easier to explain high water bills to customers and find solutions to issues. Being able to show customers the amount of water that is running through the meter at an hourly rate has reduced the number of customer complaints. (Exh. 1, Thompson Dir., p. 6).

The system is also monitored daily by the vendor to assure that it is operating correctly

and to see if there are any significant consumption issues on the part of RWC's customers (constant consumption, continuous consumption, abnormal consumption). Any significant consumption issue is sent to the Company daily. This was not possible with Raytown Water's previous system. (Exh. 4, Noel Sur., p. 6).

AMI also has positive impacts on employee safety and public safety. Having employees in the field reading meters in potentially unsafe environments, inconvenient locations, inclement weather, and exposed to vehicular traffic, animals, and the like, creates an exposure to potential injuries and accidents. Being able to read meters remotely reduces this potential risk, both for injuries to our employees and injuries and damage to third parties. With AMI, the Company needed to replace all meter lids from metal to composite to fasten the antenna for the meters. Since the upgrade of meter lids was necessary, RWC chose to have all meter lids lock. This is to prevent customers from tampering with the new investment in equipment and help stop kids and others from loosening the meter well lid, which allows a person to accidentally fall in the well. (Exh. 1, Thompson Dir., p. 6).

Equipment Utilized

The Company tested several meters such as Neptune, Zenner, Master Meter, ABB, Octave, Sensus and Badger in its system over the past 10 years and found that Neptune has been the most reliable meter we have used for the price. As for the AMI software, Aclara was the most user friendly and adaptable to the Company's present system. It is RWC witness Thompson's understanding that the Aclara software is also being used by Missouri-American Water Company, the City of Kansas City, Concordia, Missouri, and many other small and large water utilities nationwide. Lastly, the fact that both the Neptune meters and the Aclara software work hand in hand with the Company's current Tower Maintenance Vendor also provided the

opportunity for a discount on the installation of the system. (Exh. 1, Thompson Dir., p. 7).

Additionally, a propagation study was performed to meet the standard of performance for an AMI system. A propagation study is an evaluation that is conducted by the AMI manufacturer to plan the layout of the wireless network to ensure optimal performance. It determines the amount of AMI infrastructure required to provide full meter reading coverage of RWC's water meters. This study ensured that the appropriate equipment was installed. (Exh. 4, Noel Sur., p. 4).

There are hundreds of small municipal water utilities across the country, including in Missouri, that have deployed AMI, resulting in benefits for both the utilities and their customers. (Exh. 4, Noel Sur., p. 5). Mr. Noel, at the hearing, provided the following examples: Lamont, Missouri (about 500 water meters); Lockwood, Missouri has 500 water meters; Concordia, Missouri (about 1,200 meters); and, Richmond, Missouri (about 2000 meters). (Tr. 79-80, Noel).

Vendor

The Company made its decision on a vendor for this project utilizing its many years of experience. First, the Company, through its experience in the water industry, was aware of what a reasonable price would be for this project. Given that the price offered by Utility Service Group (USG), was reasonable and RWC has had a long and satisfactory relationship with USG, the Company entered into a contract with USG. (Exh. 1, Thompson Dir., p. 7).

USG has been in the water industry for many years. It is responsible for managing and maintaining water access in various forms. Since the 1960's, the company has touched on access, quality and, today, metering. (Tr. 78, Noel).

This vendor also will monitor, manage and maintain the AMI system and its components. It will send daily emails notifying the Company of any customer who has a potential leak so we

can proactively reach out to the customer to take action and avoid a large bill. The maintenance program also includes labor to repair or replace any failed component. Field maintenance and support of the AMI system is the responsibility of the vendor for the next 15 years. Lastly, standard fees from manufacturers or service providers required to operate an AMI system, to include licensing, hosting of data, software upgrades, backhaul, maintenance contracts, etc. are included in the annual maintenance fee. (Exh. 2, Thompson Reb., p. 5-6; Exh. 4, Noel Sur., p. 5-6; Tr. 81, 88-89, Noel).

AMI Conclusion

The Company's decisions and expenditure associated with the deployment of AMI were prudent. Thus, Raytown Water should receive both a return on and return of that portion of the meters installed as of the update period in this case (June 30, 2023).

b. The AMI Assets included in the *Non-Unanimous Agreement* are used and useful. As of June 30, 2023, 3,073 AMI meters had been installed and were in working order. (Exh. 1, Thompson Dir., p. 3).

If the AMI investment is found to have been prudent, the Commission must grant a return on this investment:

The United States Supreme Court established as far back as 1898 that a utility is entitled to ask a fair return upon the value of that which it employs for the public convenience. *Smyth v. Ames*, 169 U.S. 466 (1898).

In determining the reasonableness of rate base inclusion, the Commission determines that a utility is entitled to a fair return on its prudent investment in property devoted to public service. This principle has been developed from early United States Supreme Court cases, including *Smyth*, *Hope*, and *State ex rel. Southwestern Bell Telephone Company v. Missouri Public Service Commission*, 262 U.S. 276 (1923).

In the matter of Kansas City Power & Light Company of Kansas City, Missouri, for authority to file tariffs increasing rates for electric service, et al., 1986 Mo. PSC LEXIS 32, *115, 28 Mo.

P.S.C. (N.S.) 228, Case Nos. EO-85-185 and EO-85-224 (Mo. P.S.C. April 23, 1986).

c. Consistent with the *Non-Unanimous Agreement*, the Commission should include in rate base for purposes of this case that portion of the AMI investment that was installed as of the end of the update period. However, if it were to contemplate inclusion of the entire AMI project, at a minimum, it should also include in the revenue requirement the annual maintenance fee associated with the AMI project that the Company began to pay in September of 2023. (Exh. 2, Thompson Reb., p. 4).

Late Fees

Should the Commission eliminate or reduce late fees?

The late fee should not be eliminated. RWC's current late fee of \$5 or 1%, whichever is greater, is found in 1st Revised Sheet No. 12. This tariff sheet has been effective since December 21, 2012, and was filed as a compliance tariff sheet as a result of Commission Case. No. WR-2012-0405.

Section 386.270, RSMo, states:

All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

(emphasis added).

Accordingly, the burden of proof (and persuasion) in this situation is not on RWC, but instead on the party challenging such rate and schedule (here OPC)³. The OPC, while

³ See *PUC v. Office of Pub. Counsel (In re Emerald Pointe Util. Co.)*, 438 S.W.3d 482, 490 (Mo. Ct. App. 2014) ("In cases where a complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with complainant.").

questioning the support for such a late fee, has not offered any support for its elimination, as would be necessary to carry its burden.

The Court of Appeals has supported the use of a late fee as a way to direct costs associated with late payment to the causer of those costs:

. . . expenses imposed on the utility by customers who pay late will be reflected in the operating costs of the company. As the court observed in *State ex rel. Utilities Commission v. North Carolina Consumers Council, Inc.*, 18 N.C.App. 717, 198 S.E.2d 98 (1973), the cost of collecting past due accounts is an operating expense which has an influence on the fair rate of return a company should earn and, in turn, is a factor taken into account in setting rates. If a utility is denied the opportunity to charge late payment customers, those who pay their bills promptly will be indirectly penalized by sharing collection costs entirely disassociated from their own accounts and the service they consume.

State ex rel. Ashcroft v. Public Service Commission, 674 S.W.2d 660, 662 (Mo. Ct. App. 1984).

Further, RWC witness Thompson has testified as follows:

It is my experience that late fees encourage customers to pay in a timely manner. I believe that without a late fee, our number of delinquent bills would increase as the number of accounts that progress to disconnection is much smaller than the number that are assessed late fees.

(Exh. 2, Thompson Reb., p. 9).

Ms. Thompson also believes that the Company's costs associated with collections would increase without the late fee. (Exh. 2, Thompson Reb., p. 10-11).

Having said this, if the Commission decides to reduce or eliminate late fees, it should be noted that the *Non-Unanimous Agreement* has included revenues in the amount of \$93,090 for late fees in this case. That amount, or an appropriate percentage, would need to be subtracted from normalized revenues or added to RWC's cost of service if the Commission decides to eliminate or reduce late fees. (Exh. 2, Thompson Reb., p. 10).

Depreciation

a. Reserve Transfer

1. Should depreciation reserves be transferred from over-accrued accounts to not-fully-accrued accounts?

2. If so, to which accounts should the depreciation reserves be transferred?

b. Should depreciation expense be removed for the existing plastic meters?

c. Should depreciation reserve be adjusted to reflect the salvage values from the Company's vehicle sales in 2022 and 2023?

a. Raytown Water has not employed a depreciation expert for the purposes of this case and will rely on the Staff testimony. Staff has taken \$51,559 of over recovery in Accounts 346.1, 395, 396 and 397, and applied that amount to accounts 346.2 and 390. The result of that application is a \$4,297 reduction in the agreed-to revenue requirement. (Exh. 116, Niemeier Sur., p. 2). RWC does not object to this adjustment.

b. Raytown Water has not employed a depreciation expert for the purposes of this case and will rely on the Staff testimony.

c. Raytown Water has not employed a depreciation expert for the purposes of this case and will rely on the Staff testimony. Moreover, Raytown Water notes that it has previously recorded 2022 sales and will also record the 2023 sales.

Customer Notice

In what instance should the Company send additional notice of a proposed rate increase that differs from the original, noticed rate increase?

The Commission certainly has the discretion to order notice as it deems necessary. However, the Commission's rules do contemplate the situation in this case – a resulting rate increase that is greater than the Company's original request. Commission Rule 20 CSR 4240-10.075(14) states:

[t]he commission must set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease.

(Exh. 5, Clevenger Dir., p. 5; Exh. 6, Clevenger Reb., p. 3).

Additionally, the notice that was previously sent by the Company acknowledged that a different rate could result as it included the following statement:

At the end of this Notice is a table that compares the Company's current residential customer rates and the proposed residential rates. The proposed rates and proposed amount of rate change identified in the table reflect estimates based on the amount of the Company's requested increase only. The new rates and their effects on customers' bills have not yet been determined. The Commission will determine what it believes to be just and reasonable rates.

(Exh. 6, Clevenger Reb., p. 3-4).

The notice provided in this case has been in accordance with Commission rules and provided an indication that the resulting rates could be different than the proposal that was in place as of the initiation of the case. This is a known and common situation in Small Water Company cases. (Exh. 111, Spratt Reb., p. 10).

Distribution Mains Operations and Maintenance ("O&M")

What value of non-labor operations and maintenance expense should be included for distribution mains?

Test year expense should be utilized for the revenue requirement for this expense. RWC has been experiencing an increased number of main breaks over the last several years, combined with an increase in the cost of materials. (Exh. 2, Thompson Reb., p. 12-13). As OPC witness Robinett notes, this expense has been increasing year over year (\$217,196 in 2020, \$344,678 for 2021, and \$474,606 for 2022). (Exh. 203, Robinett Sur., p. 5). In calendar year 2021, the Company had sixty-four (64) main breaks and in calendar year 2022, the Company had one hundred and one (101) main breaks. (Exh. 2, Thompson Reb., p. 12).

A normalization, or average of some number of prior years' expenses, as recommended by OPC witness Robinett, is not appropriate in the situation where an expense has risen year over

year. In *State ex rel. Missouri Power & Light Co. v. Public Service Com.*, 669 S.W.2d 941, 945 (Mo.App.W.D, 1984), the Court of Appeals indicated as follows:

The test year is a period past, but is employed as a vehicle upon which to project experience in a future period when the rates determined in the case will be in effect. Normalization of a test year cost by multi-year averaging of the cost based on experience assumes that the cost rises and falls, with the consequence that the actual cost incurred in the test year is not representative.

The evidence in this case indicates that this expense is rising and not a cost that “rises and falls.” Thus, this expense, for purposes of the revenue requirement, should be based upon the test year amount of \$474,606.

Rate of Return

a. What is the appropriate return on common equity?

b. If the Commission agrees to change the return on common equity, should the dividend rate on preferred stock change for the purposes of rate of return?

a. The appropriate rate of return in this case is 6.8%, as agreed to in the *Non-Unanimous Agreement*. The return on equity (ROE) used to determine that rate of return for RWC is 10.37%, as supported by the testimony of Staff witness Jennings. (Exh. 102, Jennings Dir., p. 7-8, 10; Exh. 114, Jennings Sur., All). If the Commission uses a ROE that is anything other than 10.37%, and all other components remain unchanged, the rate of return will be something other than 6.8%. (Tr. 252, Jennings).

b. If the Commission decides not to use the 10.37% ROE agreed to by RWC and the Staff, it should calculate the resulting rate of return by also utilizing the Company’s current Preferred Stock dividend rate. The *Non-Unanimous Agreement* utilized a Preferred Stock dividend rate of 3.25%, which was the prime rate per annum as of January 1, 2022. (Exh. 102, Jennings Dir., p. 9). As of January 1, 2023, well within the update period for this case (which ended June 30, 2023), the prime rate per annum as reported in the Wall Street Journal was 7.5%.

(Exh. 6, Clevenger Reb., p. 14). That is the rate upon which Raytown Water made dividend payments to its holders of preferred stock at the end of the first and second quarters of 2023 at the rate of 7.5%. (*Id.*).

RWC's agreement with Staff was a negotiated settlement that arrived at the 6.8% rate of return. While OPC may certainly challenge aspects of that rate of return, such as the return on equity, if successful, the Commission should take a look at other aspects of the rate of return. If it does so, it is clear that 7.5% is the appropriate Preferred Stock dividend rate to be used for the rate of return calculation in this case.

Cash Working Capital ("CWC")

Should cash working capital be included in rate base?

Raytown Water has not performed a lead/lag study or any other cash working capital calculations for the purpose of this case as it has neither the personnel nor the expertise to do so. The Company will rely on the position taken by the Staff. (Exh. 2, Thompson Reb., p. 16).

Payroll Expense

- a. Should all of the Company's employee overtime be normalized?**
- 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?**

a. The question of normalizing "all of the Company's employee overtime" first appeared in the OPC surrebuttal testimony (and is the subject of a pending *Motion to Strike*).

The only reference to this issue in testimony is the following from the Surrebuttal Testimony of OPC witness John Riley:

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)).

Thus, as the testimony contains no proposed disallowance related to this issue, it is unclear whether this is an observation or a separately proposed disallowance.

The OPC's *Position Statements* (which are, of course, not evidence) include a proposed disallowance of overtime for what OPC calls "Senior Management." (OPC Position Stmt., p. 11). A "normalization," as stated previously herein, is an average of some number of prior years' expense levels.⁴ The elimination of "Senior Management" overtime is not a normalization. Thus, not only has OPC made a proposal in surrebuttal testimony for the first time, such that RWC has been unable to respond in its testimony, OPC has tried to modify that proposal in its *Position Statements*.

OPC lists several persons in relation to "Senior Management" - Neal Clevenger,⁵ Mitsuo Clevenger, Chiki Thompson, Toni Stubblefield, Leslie Smart, and Erica Baier-Ross. (OPC Position Stmt., p. 11). Some of these people - Neal Clevenger, Chiki Thompson, Leslie Smart, and Erica Baier-Ross - were discussed to some extent in the Surrebuttal Testimony of OPC Witness Manzell Payne. (Exh. 208, Payne Sur., p. 4-8). The others were not.

FLSA – Exempt and Nonexempt Employees

More importantly, Mr. Payne did not consider in his proposal federal legislation that would require the Company to pay overtime. (Tr. 370-371, Payne). The Fair Labor Standards

⁴ See *State ex rel. Missouri Power & Light Co. v. Public Service Com.*, 669 S.W.2d 941, 945 (Mo.App.W.D, 1984) ("Normalization of a test year cost by multi-year averaging of the cost based on experience assumes that the cost rises and falls, with the consequence that the actual cost incurred in the test year is not representative.").

⁵ Mr. Clevenger receives no overtime. (Exh. 208, Payne Sur., p. 7).

Act (FLSA) is a federal law that is intended to protect workers against certain unfair pay practices. Among many other things, the FLSA requires the payment of overtime to workers. Only if a worker is shown to be “exempt” is that obligation to pay overtime overcome.⁶ Whether a worker is exempt (or “nonexempt”) is based on the type of work they perform, and not merely by whether they are paid a salary or hourly.

“Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684 per week.”⁷ The specific work duties that are considered in regard to determining executive, administrative, professional and outside sales employee status are found on [Appendix A](#) hereto.

OPC has made no investigation into whether or not the employees for whom it seeks to disallow overtime pay are “exempt employees.” For example, Mr. Payne indicated at the hearing he did not know whether the office manager, accounting clerk, or customer service person (as listed in his testimony) would or would not have the authority to hire or fire anyone and did not know whether these employees had the authority to exercise their own discretion and independent judgment with respect to matters of significance. (Tr. 368-370, Payne). These are both questions that are important to the question of whether employees are exempt or non-exempt under the FLSA. (See [Appendix A](#)). In fact, Mr. Payne did not appear to be familiar with the impact of the FLSA on the payment of overtime. (Tr. 370-371, Payne).

There is no evidentiary, or other basis, upon which to disallow overtime for the named

⁶ Title 29 USCS Chapter 8, Section 213, Exemptions.

⁷ [Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor \(dol.gov\)](#).

employees.

b. Issue b. concerns what “pay to include in rates for the Company’s Vice President, Sr. Accounting Clerk, Jr. Accounting Clerk, and Sr. Customer Service/Admin Assistant.” Essentially, OPC proposes that all overtime associated with these employees be disallowed. RWC will address these employee positions in separate sections below.

Jr. Accounting Clerk

There appears to be no discussion or proposed disallowance for the Company’s “Jr. Accounting Clerk” in testimony and no evidence to support any such adjustment. As a result, RWC is unable to respond directly to any proposals related to this employee. However, it does note that the initial question would be whether the employee qualified as an “exempt” employee under the FLSA, as discussed above. Without evidence of such, it must be assumed that RWC would be required by federal law to pay this employee overtime.

Sr. Accounting Clerk and Sr. Customer Service/Admin Assistant

Adjustments have been proposed for the first time in OPC’s surrebuttal testimony for the Sr. Accounting Clerk and the Sr. Customer Service/Admin Assistant. (Exh. 208, Payne Sur., p. 7) Because of that timing, Raytown Water has not been provided an opportunity to respond to those adjustments in testimony and a *Motion to Strike* is pending.

Having said that, if the Commission considers this proposed disallowance, the initial question would be whether the employees qualify as “exempt” employees under the FLSA, as discussed above. Without evidence of such, it must be assumed that RWC would be required by federal law to pay this employee overtime.

Additionally, in his analysis, OPC witness Payne uses hypothetical hourly pay rates for both Sr. Accounting Clerk (\$33.00-\$41.00) and the Sr. Customer Service/Admin Assistant

(\$21.00-\$26.00). (Exh. 208, Payne Sur., p. 7; See also Sched. MMP-S-1, p. 2 (Public Water Supply District No. 2 of Jackson County Salary Ranges)). Such hourly pay rates would make these employees nonexempt under the FLSA. (See Appendix A hereto).

Vice-President

Similarly, OPC witness Payne uses a hypothetical hourly rate for Ms. Thompson. (Exh. 208, Payne Sur., p. 7; See also Sched. MMP-S-1, p. 2 (Public Water Supply District No. 2 of Jackson County Salary Ranges)). Such hourly rates pay would make her nonexempt under the FLSA. (See Appendix A hereto).

However, there are several other reasons that Ms. Thompson's overtime pay should be allowed. First, the recorded hours accurately reflect the extra work she puts in to keep Raytown Water running. (Exh. 2, Thompson Reb., p. 16).

Second, calling Ms. Thompson the Company's "Vice-President" is accurate, but very incomplete. Her full title also includes Customer Service Representation, Billing Clerk, HR Tech, and Corporate Liaison. (Exh. 208, Payne Sur., p. 7; Tr. 37-39, Thompson). During her hearing testimony, she explained the combination of office and field duties that brings her to describe herself as a "working vice-president." (Tr. 37-39, Thompson). A larger public utility vice-president would not perform this wide range of duties.

Third, because of Staffing needs, there were no other options than for her to take on extra work. (Exh. 2, Thompson Reb., p. 17). The Ms. Thompson's overtime includes preparation for the utility's collection day, billing, after hour calls, program updates for the computer system, end of day back-up, emergency call outs (water breaks), cover for short office/field staff as needed to meet deadlines, and after hour turn-ons on collection day for both water and sewer (through disconnect agreements). (Exh. 2, Thompson Reb., p. 16; Exh. 6, Clevenger Reb., p. 5).

Further, Ms. Thompson holds a DS III certification and someone with this certification (currently, either herself or Mr. Clevenger) must be involved with repairs of all water breaks per Missouri Department of Natural Resources regulations. (Exh. 2, Thompson Reb., p. 17). Again, this hands-on, after-hours work performed by Ms. Thompson is beyond that that would be performed by a vice president in a larger public utility.

For the reasons identified above, Ms. Thompson's overtime pay's overtime pay should be included in RWC's revenue requirement.

Meter Reading Expense

What is the just and reasonable amount to include in rates for meter reading expense?

No disallowance or adjustment should be made to the Company's meter reading expense.

RWC has employed three (3) meter readers. As was explained in the AMI section above, that has not always been enough personnel to comfortably complete the meter reads much of the time. (Exh. 2, Thompson Reb., p. 14). Moreover, these employees already perform many duties beyond "reading meters." (Tr. 106-108, Thompson).

Once the AMI deployment has been completed, there will be fewer demands on the meter readers related to the monthly reads. The Company then plans to employ two (2) Meter Service "Techs" to complete meter rereads, service orders, water sampling and collection disconnect/reconnects. It is planned that the 3rd meter reader will be transferred to the Field Crew. With that addition, the Field Crew will still be short five (5) Field people. (*Id.* at p. 14-15).

Moreover, it should be remembered that all meter readers were employed as of the end of the update period in this case (June 30, 2023), as 45.12% of the AMI meters were complete and included in the *Non-Unanimous Agreement*. (Exh. 2, Thompson Reb., p. 14). Thus, the

Commission would have to go beyond the test year and update period to assume a change in meter readers.

Rate Case Expense

- a. What amount of rate case expense should be included in the cost of service?**
- b. Should rate case expense be amortized or normalized?**
- c. Should the rate case expense follow a 50/50 sharing mechanism?**

a. Up to the filing of the *Non-Unanimous Agreement*, Raytown Water had processed this case without legal representation. Once an evidentiary hearing was requested by the OPC, and because Raytown Water is a corporation, it was required to hire legal counsel. (Exh. 5, Clevenger Dir., p 7).

Rate case expense, for purposes of calculating the revenue requirement in this case, should be updated throughout the case to reflect RWC's prudent legal expenses, any other third-party costs, and expenses related to notices and other requirements of processing this case. (Exh. 5, Clevenger Dir., p 7). In most rate cases, rate case expense would be collected through the filing of briefs. (Tr. 291, Lesmes).

RWC should be allowed an opportunity to recover in rates the normalized level of reasonable and prudently incurred rate case expense that include costs incurred during this rate case. (Exh. 115, Lesmes Sur., p. 2). As of the conclusion of the hearing in this case (November 17, 2023), RWC's rate case expense totaled \$38,190.71. (Exh. 401). That amount included \$3,118.73, for the initial customer notice. (*Id.*) The *Non-Unanimous Agreement* would require a separate notice at the end of this case. As a result, the known and measurable rate case expense at this time is \$41,309.44.

It is appropriate to normalize rate case expenses over a two-year period, given the known

future purchased water rate increases and the fact that slightly less than one-half of Raytown Water's AMI investment is included in this case and another rate case will be required in the near future. (Exh. 5, Clevenger Dir., p 7; Exh. 115, Lesmes Sur., p. 4).

b. Staff normalized the rate case expense over a two-year period using the rate case expense incurred in Case No. WR-2020-0264 and the costs incurred in the current proceeding. The cost of service is based on an ongoing level of expense for these items, and the amount of normalized expenses included in the cost of service are generally not subject to any tracking for future over or under recovery. (Exh. 115, Lesmes Sur., p. 2).

Normalization adjustments are intended to reflect normal ongoing operations. Specific to rate case expense, the costs incurred by the utility can fluctuate from one case to another. (Exh. 115, Lesmes Sur., p. 2). Further, in years where there is no rate case, the Company will incur no rate case expense. Therefore, Staff normally evaluates these costs from case to case to determine a normalized level of such costs. (Exh. 115, Lesmes Sur., p. 2-3). In fact, Staff included a normalized level of rate case expense in RWC's last three rate cases - Case Nos, WR-2012-0405, WR-2015-0246, and WR-2020-0264. (Exh. 115, Lesmes Sur., p. 3).

Amortization is similar to depreciation where it's taken over a period of time at a certain expense. amortizations can be tracked for either an over or an under-recovery where normalizations are not tracked. (Tr. 181, McMellen). Thus, amortization attempts to accomplish a dollar-for-dollar recovery. (Tr. 185, McMellen). When amortization will be used, the Commission will direct such accounting at the time the expense is included in rates, so that an account may be set up to track the recovery. (Tr. 185, McMellen).

OPC witness Payne has proposed to treat the rate case expense ordered in RWC's last three rate cases - Case Nos, WR-2012-0405, WR-2015-0246, and WR-2020-0264 – as if it was

amortized - although it was not. (Exh. 207, Payne Reb., All). Further, his testimony admits that the rate case expense in those cases was normalized. (*Id.* at p. 2, line 10) To go back at this point and treat “normalized” expenses as if they had been “amortized,” would certainly invoke questions concerning the filed rate doctrine⁸. The Commission may not reduce RWC’s rate case expense in this case as proposed by OPC witness Payne.

If the Commission prefers to amortize, rather than normalize, rate case expense in this case, it should only do so on a prospective basis.

c. This case is not appropriate for the 50/50 sharing of rate case expenses that the Commission has used in prior cases. This case is unlike the general rate cases where this issue has historically been tried. This is a Staff Assisted Rate Case where the goal is to reach agreement on a going-forward rate. In this case, the Company did reach such an agreement, as it has in many prior cases. As indicated above, only after the objection and request for hearing made by the OPC was RWC required to hire an attorney and incur more significant rate case expense. (Exh. 5, Clevenger Dir., p. 7). It also does not have any rate case expense associated with the hiring of the normal professional expert witness (for example, outside witnesses for rate of return, depreciation, rate design and cash working capital). Under those circumstances, RWC should not be subject to a 50/50 sharing of such expenses in this case.

⁸ *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348, 353 (Mo. 1951) “The [PSC] fixes rates prospectively and not retroactively. Our courts do not fix rates. Our courts may only review, and affirm or set aside or reverse and remand the [PSC]’s rate-fixing orders. Our courts cannot make the [PSC] do retroactively and our courts cannot retroactively do that which the [PSC], or other rate-making body, only does prospectively.”). See *PUC v. Office of Pub. Counsel (In re Emerald Pointe Util. Co.)*, 438 S.W.3d 482, 490 n.8 (Mo. Ct. App. 2014) (“The Commission . . . does not have the authority to retroactively correct rates or to order refunds. Nor can the Commission take into account overpayments when fashioning prospective rates.” *State ex rel. Pub. Counsel v. Pub. Serv. Comm’n of State of Mo.*, 259 S.W.3d 23, 31 (Mo. App. 2008) (citations omitted)).

Truck Disallowance

a. What amount of the Company's Truck 206 should be included in revenue requirement?

b. How should the Company be reimbursed for the personal use of its vehicles?

a. While primarily driven by the Company's President, vehicle logs show that Truck 206 is being used in the provision of utility service by both the President and other Raytown Water employees. A review of vehicle logs shows that this truck has been used by others in the Company on approximately 40 different days between January 1 and June 30, 2023 (a period including approximately 120 work days). Additionally, vehicle logs show field personnel used this vehicle 27 different days the first two months after it was purchased. (Exh. 6, Clevenger Reb., p. 11)

The purchase price of Truck 206, minus accumulated depreciation associated with Truck 206, as of June 30, 2023, should remain in rate base for the purpose of setting the revenue requirement in this case.

b. Currently, the Company is reimbursed for any personal use of Truck 206 at the Internal Revenue Service (IRS) mileage reimbursement rate. These amounts are billed on a monthly basis, on a per mile basis, although payments may sometimes be received for more than one month. (Exh. 6, Clevenger Reb., p. 9). This is appropriate as trucks can be rented on a per day, per hour, or per mile basis. The Company has chosen to use a per mile basis. (*Id.* at p. 10).

The IRS mileage rate applies to cars, vans, pickups or panel trucks and encompasses all factors involved with operations of the vehicle, such as the cost of gas, oil, tires, maintenance and repairs, as well as the fixed costs of operating the vehicle, such as insurance, registration and depreciation or lease payments. (Exh. 6, Clevenger Reb., p. 10-11).

A mileage-based reimbursement has been used by Raytown Water for many years. In the

Staff's February 25, 1999 filing in Case No. WO-93-194 (the management audit case), Staff described the Company's actions in response to Staff Recommendation 20 (Reimbursement to the Company) and indicated they were "Complete." That Staff filing notes that "[m]ost of the billings were for *mileage . . .*" (p. 34) (emphasis added). This is further supported by a personal use invoice supplied by the Company during the course of Case No. WO-93-194 identifying billing on a per mile basis. (Exh. 6, Clevenger Reb., p. 10, Schedule NSC-3-R (p. 34), Schedule NSC-4-R).

1993 Management Audit

a. Should the Company be required to follow any recommendations spelled out and agreed upon in the 1993 management audit?

b. If so, which of the 1993 audit recommendations should the Company be required to follow?

c. If so, what benchmarking policy should the Company follow to ensure it is following these recommendations?

a. This question concerns a management audit conducted by the Staff around 30 years ago in Commission Case No. WO-93-194. That matter was closed about 23 years ago. (Exh. 6, Clevenger Reb., p. 7).

There has been no allegation that the Company's conduct has violated any statute, regulation, order or tariff. Accordingly, these matters should remain within the discretion of management.

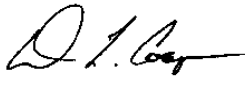
b. The Company should not be ordered to follow any of the 1993 audit recommendations.

c. Because of its answer to Issue b above, RWC believes there is no need for a benchmarking policy.

WHEREFORE, RWC respectfully requests respectfully requests the Commission consider this *Initial Brief*.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:  _____

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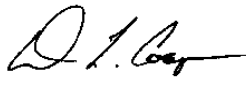
ATTORNEYS FOR
THE RAYTOWN WATER COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 6th day of December, 2023, to:

General Counsel's Office
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 _____

APPENDIX A⁹

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

⁹ [Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor \(dol.gov\)](#) .

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$684* per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684* per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.