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

In the Matter of the Application of a Rate  
Increase of Raytown Water Company

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)

**Case No. WR-2023-0344**

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**REPLY BRIEF**

Respectfully Submitted,

**Casi Aslin**

Deputy Counsel

Missouri Bar No. 67934

Attorney for Staff of the

Missouri Public Service Commission

December 13, 2023

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**REPLY BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and files its Reply Brief:

When trying to organize this Reply Brief, Staff Counsel was uncertain how it should be structured, because the Office of the Public Counsel’s (“OPC”) Initial Post-Hearing Brief does not follow the List of Issues filed on November 9, 2023. This Reply Brief is organized by areas of concern as identified in OPC’s Initial Post-Hearing Brief.

**Cash Working Capital (“CWC”)**

Staff does not wish to restate the same arguments on CWC made in its Post-Hearing Brief, but would like to remind the Commission that OPC witness John Riley, when questioned by Counsel for Staff at the hearing, was not able to identify where some of the information in his spreadsheet originated.<sup>1</sup>

**Rate Case Sharing Mechanism**

According to OPC, “In past cases, the Commission has ordered utilities to follow a 50/50 sharing mechanism when the utility’s rate case goes to hearing due to its recognition that consumers and companies both benefit from rate cases.”<sup>2</sup> OPC cites to a Report and Order in Case Nos. GR-2017-0215 and GR -2017-0216 in which a 50/50 sharing mechanism for rate case expense was ordered.

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<sup>1</sup> *Staff’s Post-Hearing Brief*, p. 7.

<sup>2</sup> *The Office of the Public Counsel’s Initial Post-Hearing Brief* , p. 48.

However, the shared benefit of rate cases is not the only reason the sharing mechanism was ordered. The Report and Order states that "...the just and reasonable sharing mechanism is based on the fact that the issues controlled by the company amounted to about half of the contested issues at hearing."<sup>3</sup> While Raytown Water Company ("RWC") did file this rate case, they were not the driving factor in this case going to hearing, and therefore, it is inappropriate to apply the 50/50 sharing mechanism to this case.

### **Staff and RWC's Joint Position**

OPC's concern about Staff and RWC's joint position in the hearing is misguided. Counsel for OPC is absolutely correct that "asserting that Staff and RWC's positions 'align'...is telling the Commission that Staff is advocating and justifying the Company's numbers in this case."<sup>4</sup> Staff is advocating for justifying the numbers that were put forward in the Non-Unanimous Stipulation and Agreement filed on September 13, 2023. OPC states that this is a violation of 20 CSR 4240-10.075(4) which states:

Staff will assist a small utility in processing a small utility rate case insofar as the assistance is consistent with staff's function and responsibilities to the commission. Staff may not represent the small utility and may not assume the small utility's statutory burden of proof to show that any increased rate is just and reasonable.

Staff is uncertain as to how conducting an investigation, coming to an agreement with Raytown, and subsequently defending that agreement is improper. 20 CSR 4240-10.075(11)(D) states, in part:

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<sup>3</sup> *Report and Order*, Case Nos. GR-2017-0215 and GR-2017-0216, p. 53.

<sup>4</sup> *The Office of the Public Counsel's Initial Post-Hearing Brief*, p. 8.

If a disposition agreement is not executed by all parties, and a hearing is requested, then no party is bound to any position stated or implied by the disposition agreement or supporting documents if the company determines it no longer wants to pursue positions in the disposition agreement.

20 CSR 4240-10.075(11)(E) continues:

If any party requests an evidentiary hearing where the disposition agreement filed by staff provides for a full resolution of the small utility rate case and is executed by at least the utility and staff, either the utility or staff may present evidence in support of the disposition agreement.

In this case, the Company decided to pursue the position in the disposition agreement, and both Staff and Raytown are permitted by Commission Rule to justify that agreement. Staff hopes that Counsel for OPC merely failed to read the *Staff Assisted Rate Case Procedure* in its entirety and that this oversight was an honest mistake.

### **The Role of Regulation**

OPC seems to be confused about the role of regulation and the role of the regulator. OPC's Initial Post-Hearing Brief includes many concerning statements in support of its argument that the Commission and Commission Staff should engage in the practice of business management:

- “The OPC is seeking to guide Raytown Water to be a better utility for its captive Missouri Customers...”<sup>5</sup>
- “...the OPC believes that Staff’s current approach to Raytown Water in this case will not guide the Company towards success.”<sup>6</sup>
- “...the OPC implores the Commission to provide guidance to this Company. Help RWC improve. Guide this company to be better on behalf of the Missourians its serves.”<sup>7</sup>

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<sup>5</sup> *The Office of the Public Counsel’s Initial Post-Hearing Brief*, p. 5.

<sup>6</sup> *The Office of the Public Counsel’s Initial Post-Hearing Brief*, p. 76

<sup>7</sup> *The Office of the Public Counsel’s Initial Post-Hearing Brief*, p. 77.

Even when putting aside the infantilizing language OPC uses to describe a Company that has been operating for nearly a century, OPC misses the mark. It is not the Commission or Commission Staff's role to make decisions for a company about how their business should be run. Regulated utilities must operate within a framework on statutes, rule, and Commission-approved tariffs. Decisions made within that framework are reviewed for prudence to determine whether a utility will have the opportunity to recover certain costs in rates. Staff wants to ensure that utilities are providing safe and adequate service at just and reasonable rates; business decisions beyond that are up to the company.

### **Staff's Willingness to Offer a Depreciation Witness**

While discussing depreciation reserve, Counsel for OPC states:

For the sake of transparency, the OPC would like to inform the Commission that Staff Witness Angela Niemeier did work with, Amanda Coffey, from the Engineering Analysis Department to add the depreciation reserve to other Company accounts. However, Ms. Coffey provided no written testimony for this case. Ms. Niemeier, a Lead Senior Utility Regulatory Auditor, is an inappropriate vehicle to address this issue as it is not in her expertise to assess such transfers.<sup>8</sup>

OPC's statement reads as if Staff was attempting to deceive someone, which could not be further from the truth. OPC cites to lines 9 and 10 on page 2 of Ms. Niemeier's Surrebuttal Testimony; on the same page on lines 13 and 14, Ms. Niemeier states that "auditing worked with Amanda Coffey, an engineer from the Engineering Analysis Department..." This was not hidden from anyone; in fact, Staff Counsel had a conversation with Counsel for OPC offering to call Amanda Coffey as a witness, and Counsel for OPC declined that offer.

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<sup>8</sup> *The Office of the Public Counsel's Initial Post-Hearing Brief*, p. 12-13.

## Staff's Investigation

Staff would like to clarify the scope of its investigation in this rate case. OPC asserts that "...during the hearing Staff Witness David Spratt acknowledged that Staff's investigation of RWC lasted only four (4) or five (5) hours..."<sup>9</sup> However, the following exchange occurred between Mr. Spratt and Counsel for Staff during redirect examination:

Q: Was your investigation in this case limited to your in-person visit to Raytown's office?

A: There were other reviews of DNR documents, company documents.

Q: So the information contained in your testimony is not just based on your visit to Raytown's office. Correct?

A: Correct.

As OPC knows, Mr. Spratt was not the only Staff witness assigned to this case; Staff had eight witnesses testify at the evidentiary hearing. In the course of Staff's investigation, other Staff witnesses conducted in-person RWC site visits over multiple days to review and obtain documents and interview RWC employees. Staff also issued over 100 data requests in this case; OPC has access to all of these data requests and their responses.<sup>10</sup> For OPC to assert that Staff's investigation of RWC was limited to four or five hours is mistaken at best and deceitful at worst.

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<sup>9</sup> *The Office of the Public Counsel's Initial Post-Hearing Brief*, p. 75.

<sup>10</sup> RSMo 386.480. *Information not to be divulged — exception — penalty.* — No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. **The public counsel shall have full and complete access to public service commission files and records.** Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor. [emphasis added]

## **Conclusion**

In conclusion, Staff stands by the arguments made in its *Post-Hearing Brief*, and asks the Commission to acknowledge the statements made here regarding OPC's *Initial Post-Hearing Brief*.

**WHEREFORE**, Staff submits this Reply Brief for the Commission's consideration and information.

Respectfully Submitted,

**/s/ Casi Aslin**

Casi Aslin  
Deputy Counsel  
Missouri Bar No. 67934  
Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Mo 65102-  
0360  
(573) 751-8517  
[casi.aslin@psc.mo.gov](mailto:casi.aslin@psc.mo.gov)

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all counsel of record this 13<sup>th</sup> day of December, 2023.

**/s/ Casi Aslin**