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 REPLY BRIEF

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

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INTRODUCTION

This *Reply Brief* addresses *The Office of the Public Counsel's Initial Post-Hearing Brief* ("OPC Brief") and the *Post-Hearing Brief* of the Staff of the Commission ("Staff Brief").

Given the length of the OPC Brief, RWC will not attempt to respond to every allegation made therein. It will instead attempt to highlight few of the issues as they relate to the revenue requirement in this case.

RWC will also respond to a few of the timing allegations to provide context. For example, OPC states early in its brief that there was "something strange" "going on in Raytown Water's case" in regard to the "recorded amount of water loss," as "noticed" by Mr. Robinett. (OPC Brief, p. 5-6). OPC later suggests that this situation was due to some failure on the part of RWC to review Kansas City meter readings. (OPC Brief, p.73).

In fact, the situation in regard to the Kansas City meter readings was well known to Staff and RWC, the two parties that were closely involved in this case from its filing. Staff indicates in its Auditing Unit Recommendation, dated August 23, 2023, that "In a meeting with RWC on July 19, 2023, RWC informed Staff that there were months when RWC was selling more water than it was purchasing." (Exh. 101, Foster Dir., Sched. KDF-d2, p. 6 of 9). RWC had known about this problem for some time and had "tried more than once to bring this matter to Kansas City's attention but did not hear anything back until Kansas City changed those meters in June and July of this year." (Exh. 2, Thompson Reb., p. 11). RWC was neither "asleep at the switch," nor was this an issue discovered by OPC.

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?

The OPC Brief essentially alleges that the AMI project was not prudent for a variety of reasons. The Commission prudence standard finds its origin in a 1985 case involving the costs incurred by Union Electric Company in the construction of the Callaway Nuclear Plant.[1] Under this standard, the Commission recognizes that a utility's costs are presumed to be prudently incurred and that the prudence standard is not based on hindsight, but upon a reasonableness standard. The Commission cited with approval a statement of the New York Public Service Commission that a utility's conduct "should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company." Missouri courts have adopted this standard as well.[2]

RWC's *Initial Brief* provided citation to evidence of the reasonableness of the Company's actions. The Commission should find the AMI investment to have been prudent.

Missing Analysis

The OPC's discussion of prudence in regard to the AMI investment excludes a critical element of such analysis. OPC witness Marke pointed out that even where a decision is determined by the Commission to not be prudent, a question remains as to the "detrimental

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[1] In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues. In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, 27 Mo. P.S.C. (N.S.) 183, 192-193 (1985).

[2] *See State ex rel. Associated Natural Gas v. Public Service Commission*, 954 S.W.2d 520, 528-29 (Mo. App. W.D. 1997) (quoting with approval the Commission's adoption of the standard quoted in the Union Electric case involving Callaway).

impact of that imprudence on the utility's ratepayers." (Exh. 200, Marke Dir., p. 4).[3] Neither Dr. Marke nor the OPC Brief appear to take into account what RWC would have done in the absence of the AMI deployment.

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. (Exh. 2, Thompson Reb., p. 7-8).

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). 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.

The *Non-Unanimous Agreement* proposes to include only 45.12% of the AMI meters in rate base for purposes of this case. (Exh. 3, Thompson Sur., p. 5).

RWC witness Thompson provided an estimate of a meter replacement, not using AMI, based upon her years of experience in the water industry. She first noted that manufacturers have generally moved beyond direct read meters. Thus, cost comparisons must be to AMR or AMI meters. (Exh. 2, Thompson Reb., p. 8).

Ms. Thompson estimated the costs of completing the needed meter replacement with non-AMI (AMR) meters. That estimate was $2,685,495.48. The meters acquired at this price

[3] *See State ex rel. Associated Nat. Gas Co. v. PSC*, 954 S.W.2d 520, 529-30 (Mo. Ct. App. 1997).

would be for radio read (AMR) but would not have any additional wiring or equipment necessary to be read by a radio. The Company would still be required to direct read and required to have at least the number of meter readers currently employed. If Raytown Water later tried to go to AMI with these meters, they would have to be retro-fit, which would likely be significant additional expense down the road. (Exh. 2, Thompson Reb., p. 9).

Interestingly, the approximate difference between this figure and the cost of AMI for RWC (about $4,200,000) is about $1,500,000.[4] Even OPC witness Marke calculated a savings related to AMI that would cost justify the difference between continuing with a direct read system and utilizing AMI. (Exh. 200C, Marke Dir., p. 10).

If the Commission were to entertain a finding that the AMI deployment were not prudent, the Company should still receive a return on and of the alternative investment of $2,685,495.48.

Size of Project

A part of OPC's suggestion of imprudence concerns the size of the AMI project. OPC argues as follows:

- "No reasonable person would request the authority for a loan that is more than the Company's entire revenue requirement at that time." (OPC Brief, p. 17).
- "RWC has chosen to invest in metering technology that will end up costing more than Raytown Water's current rate base." (OPC Brief, p. 18).
- "No reasonable actor would put themselves in the same position, unless he or she (or they) knew that the utility's regulated status meant that the government would ensure that company's financial protection." (OPC Brief, p. 18).

These statements are not true and do show any lack of prudence, as suggested by OPC.

The total AMI investment is $4,200,000. RWC's normalized revenues prior to this case

[4] $4,200,000 minus $2,700,000.

were $4,309,019. (Exh. 101, Foster Dir., Sched. KDF-d3, p. 25). The rate base in this case (with only $1.7 million of AMI investment) prior to this investment was $9,144,649. (Exh. 101, Foster Dir., Sched. KDF-d3, p. 3, 4). Thus, the investment is neither greater than annual revenue requirement, nor rate base.

However, the most important point is that neither of these "tests" is of any import as to prudence. If a homebuyer could not purchase a home at a price greater than their annual salary, few homes would be purchased. This is an irrelevant comparison. The comparison to rate base is likewise of no import to prudence. The question is whether a lender finds the borrower to have sufficient income (or prospect of such) and assets to support the borrowing. *In this case, the State of Missouri (EIERA) believed that RWC did have sufficient income and assets to support the transaction*.

Remote Disconnect

The OPC Brief alleges that a possible benefit would be a remote disconnect feature. (OPC Brief, p. 29). RWC did not include that feature at this time in its purchase because of the cost associated with it. However, the system is built to include that feature and it can be added at a later date. Moreover, with the system purchased by RWC, the meters can still be read remotely for move in and move out situations, which avoids sending someone out separately to manually read the meter. (Exh. 2, Thompson Reb., p. 3).

Additional Information

The OPC Brief suggests that the customers' ability to view their billing and usage online is not a new benefit with AMI. (OPC Brief, p. 30). This is a misleading statement. It is true that customers prior to AMI could see their "billing and usage." (Tr. 66-67, Thompson). However, what they could see was only the usage as billed each month - the information shown on their bill. With the deployment of AMI, Customers are able to obtain their monthly usage, daily usage, billing and payment data online at any time during the month. Customers are able to further request an hourly usage report, which will be sent to them by RWC's customer service department. In the future, customers will be able to "sign-up" for automatic notifications either by email or text for high/low usage. (*Id*.; Exh. 2, Thompson Reb., p. 4-5). This is far beyond the information available to customers prior to AMI deployment.

AMI in Densely Populated Areas

OPC suggests that the Commission has concluded that the use of AMI is not appropriate in a densely populated area. (OPC Brief, p. 23). This is based on a finding from the Confluence Rivers rate case that the scattered nature of Confluence Rivers' system provides support for AMI. (*Id*. at FN 115). Contrary, to the OPC's suggestion, however, the Commission did not find in the Confluence Rivers' case that AMI is inappropriate or imprudent in a densely populated area. That question was not presented.

Here, RWC witness Noel testified that "[t]he benefits of AMI extend to all customers and companies regardless of the density of the population." (Exh. 4, Noel Sur., p. 5). He further provided examples of the use of AMI in densely populated areas during his testimony. (Tr. 80, Noel).

Investment Amount

OPC suggests that RWC has "invest[ed] nearly six (6) million dollars in technology." (OPC Brief, p. 23, 29). This is misleading as it tries to combine both capital "investment" and ongoing "expense." The capital investment is $4,231,257.26. (Exh. 4, Noel Sur., p. 8). It is that amount upon which RWC believes it should receive a return on and of (excepting natural regulatory lag, which will keep RWC from receiving returns on some portion of the investment).

The remainder of the money referenced by OPC is the annual maintenance fee (multiplied by 15 years), which is an expense, not a capital "investment." That fee will provide benefits to the Company and its customers as USG will be managing, monitoring and maintaining the system and storing and analyzing data for up to fifteen years. (Exh. 4, Noel Sur., p. 5-8).

Employee Changes

Moreover, the monitoring, managing, and maintaining functions USG provides as part of its maintenance program, and the AMI itself, allows RWC to utilize existing personnel for other functions. (Exh. 4, Noel Sur., p. 5-8). OPC suggests that the Company's plans for its current meter readers result in an "unrealized benefit for customers." (OPC Brief, p. 27). As RWC explained in its *Initial Brief*:

> 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. ([Exh. 2, Thompson Reb.,] p. 14-15).

(RWC Ini.Brf., p. 20).

It is misleading to suggest, as does OPC, that these two Service Techs will be doing nothing but water sampling. Ms. Thompson explained that the "Meter Readers" currently have duties related to water sampling, collections, responsibilities as to service orders, disconnection and reconnections in delinquent situations, and leak investigations. (Tr. 106-108, Thompson).

The current field staffing level is hindering the Company's efforts to get more work done as to repairs, water breaks, and leak fixes. Moving the former meter reader to the field full-time will help fill some of the gaps. The Company would still like to add more people to the field staff. (Tr. 110-111, Thompson).

The addition of AMI will benefit customers long-term in that the Company will be able to reach full staffing levels with fewer total employees than it would otherwise.

Return On

OPC argues that RWC should receive a "return of" its investment, but not a "return on." (OPC Brief, p. 33). As stated in RWC's *Initial Brief*, if the investment is found to have been prudent, the Commission must grant a return on this investment.[5]

Further, as addressed above, even if the Commission were to find the investment to not be prudent, it must consider what RWC would have done in the alternative. In this case, that is the approximate $2.7 million non-AMI project. If the Commission believes AMI was not prudent for some reason, it is that alternative project upon which the Company should earn a return on and of.

There is no circumstance where a "return of" only could be ordered by the Commission.

Conclusion

As a final observation, it would be a strange situation if RWC received permission to enter into State Environmental Improvement And Energy Resources Authority (EIERA) financing, based in large part on the installation of AMI, from the State of Missouri (Commission Case No. WF-2021-0427)[6]; the State of Missouri (EIERA) approved the issuance of those bonds, based in large part on the installation of AMI; and then the State of Missouri (the Commission) denied recovery of investments because they were used in large part to install AMI, based on the recommendations of the State of Missouri (Office of the Public Counsel).

The Company's decisions and expenditures associated with the deployment of AMI were

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[5] *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).

[6] The OPC Brief asserts that RWC "incorrectly assumed that Case No. WF-2021-0427 proved that its AMI investment is prudent." (OPC Brief, p. 31). RWC does not take that position. However, the fact that the use of the EIERA funds would largely support the deployment of AMI is evidence that AMI itself was not thought to be wholly inappropriate for RWC.

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).

Late Fees

Should the Commission eliminate or reduce late fees?

OPC argues that neither Staff nor RWC "has provided evidence" to support their claim "that late fees incentivize customers to pay their water bills." (OPC Brief, p. 57). RWC would argue with the allegation that there is no evidence as RWC witness Thompson, based on her years of experience, has testified:

> 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).

Further, without such late fees, she stated:

> I believe the number of delinquent accounts would increase, therefore, we would need to hire additional help to handle the calls for payments, payment arrangements, and complete the disconnect/reconnect process. Of course, this may also increase our printing and posting expenses because e these processes require additional customer notifications.

(Exh. 2, Thompson Reb., p. 10).

However, the bigger point is that it is not RWC's, or Staff's, burden to show that this provision in RWC's existing tariff should remain unchanged. As described in RWC's *Initial Brief*, given that the existing late fee is found in an existing tariff (and "prima facie lawful and reasonable"), the burden is on OPC to show why this tariff is <u>not</u> just and reasonable.[7] This is not the approach that OPC has taken.

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[7] Section 386.270, RSMo.

On a somewhat related matter, the OPC Brief, in an attempt to identify ways to save costs associated with customer notices of non-payment, casually suggests that the Company "could make two (2) phone call attempts to each delinquent customer, which would satisfy Commission Rule 13, without increasing Company cost." (OPC Brief, p. 59). Of course, OPC also notes that "from 2019 to 2022, the company had an average of about 2,201 delinquent water bills per month." (OPC Brief, p. 60). It is unclear how the Company will make an additional 4,402 calls, per month, "without increasing costs."

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?

As to salvage values, OPC suggests that "the amount placed in depreciation reserve on behalf of the vehicles RWC sold in 2023 be calculated to the vehicles' estimated value, rather than the low prices the Company sold them for." (OPC Brief, p. 14). Moreover, Raytown Water notes that it has previously recorded 2022 sales and will also record the 2023 sales."

The salvage value received by RWC (as opposed to the "estimated value" of those vehicles) is what should be recorded in depreciation reserve. The vehicles that were sold for small amounts were maxed out and in constant need of repairs. (Tr. 143, Clevenger). Mr. Clevenger explained as follows:

> . . . the other trucks were drove mainly by the field, and they were drove hard.· They'd go water breaks, pulling trailers, pulling backhoes, track -- track loaders behind them. They were tore up bad. And they were constantly being repaired.

> When we got to the point of no return, they sat out in the back and they -- nobody drove them.

(Tr. 144, Clevenger).

The subject trucks were all sold to third parties. (Tr. 145, Clevenger). Given that, and the described condition of the trucks, the best evidence of their salvage value is the sale price.

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 OPC indicates that, as to this case, any order that the Commission issued regarding an additional notice would be moot. (OPC Brief, p. 51). The OPC also indicates it is not implying that Staff and/or the Company failed to follow the letter of Commission Rule 20 CSR 4240-10.975(14) in regard to customer notice. (*Id*.). Accordingly, RWC believes no further response to this issue is required at this time.

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

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

In its *Initial Brief*, RWC suggested that because of the increasing nature of this expense, the Commission should not normalize (average) the expense but should instead utilize the test year figure. RWC suggested that this test year expense was $474,606, based on Mr. Robinett's testimony. Staff suggests that the correct number is $411,370, as used in its Day 150 revenue requirement (and the *Non-Unanimous Agreement*). (Staff Brief, p. 5). Ultimately, it is RWC's position that the expense level used in the *Non-Unanimous Agreement* as to this expense remain unchanged.

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?

OPC suggests a return on equity (ROE) in the amount of 9.12% for purpose of establishing the rate of return in this case. (OPC Brief, p. 41). For comparison purposes, RWC notes that in the recent Confluence Rivers general rate case, the Commission found as follows as to the "average" returns for the water industry:

> The water utility rate case decisions across the United States from 2022 have an average rate award of 9.61%. The median awarded ROEs for water utilities in 2022, nationally, was 9.75%.[8]

Given this average rate, the Commission identified a zone of reasonableness in the range of 8.61% with 10.61%.[9] Ultimately, the Commission arrived at an ROE of 9.9% in that case.[10]

There are at least two differences between this case and the Confluence Rivers case. First, RWC is a smaller utility than Confluence Rivers – certainly nationally, but also specifically in Missouri. Second, the Confluence Rivers' rate case was a general rate case. RWC has proceeded under the Staff Assisted Rate Case Rule. In a Staff Assisted case, the Staff recommends the allowed rate of return using its "Small Utility Return on Equity ('ROE')/Rate of Return ('ROR') Methodology" ("ROR Methodology"). (Exh. 101, Foster Dir., Sched. KDF-d2, p. 4-5).

Staff witness Jennings' calculation of the return on equity is within the zone of reasonableness and, in turn, the agreed to rate of return, is reasonable. While OPC may certainly challenge aspects of that rate of return, such as the return on equity, if successful, the

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[8] *In the Matter of Confluence Rivers Utility Operating Company, Inc.'s Request for Authority to Implement a General Rate Increase*, Report and Order, p. 49, Finding 146, File No. WR-2023-0006 (October 25, 2023).
[9] *Id*. at p. 55-56, Finding 185; at p. 59.
[10] *Id*. at p. 60.

Commission should also 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. Any revised rate of return should be calculated using that 7.5% dividend rate.

Cash Working Capital ("CWC")

Should cash working capital be included in rate base?

OPC points out that "Staff did not provide an alternative calculation to refute the OPC's [cash working capital] numbers, stating that it did not determine [cash working capital] in small utility cases." (OPC Brief., p. 41).

Staff stated that "[t]he amount of CWC included in rates is based on the results of a lead/lag study." (Exh. 110, Niemeier Reb., p. 4). A lead/lag study is described as follows:

> The lead/lag study involves analysis of the timing of when funds are paid to suppliers and when the utility receives the goods or services, compared to when the utility receives revenues from customer bills for the utility services it provides. Analysis is also performed for pass-through expenses where funds are collected and remitted such as sales taxes and employee payroll withholdings. The lead/lag study results in either a negative or positive CWC requirement that can increase or decrease the revenue requirement depending on who supplies the funds, ratepayers or shareholders.

(*Id.*).

Thus, no party provided a true CWC adjustment, as no party, to include OPC witness Riley, performed a lead/lag study in this matter, a critical part of the cash working capital process.

Instead, Mr. Riley relied on leads and lags from Missouri-American Water Company and Confluence Rivers Utility Operating Company, Inc. cash working capital studies, without explanation or analysis as to whether those numbers accurately represented RWC's experience. (Tr. 346-351, Riley).

Mr. Riley did recognize that larger utility companies tend to hire someone to perform their lead/lag studies, and that "they spend a great deal of time putting them together." (Tr. 354, Riley). Staff agrees, but recognizes that small utility companies typically do not have the resources to perform a lead/lag study and, even if they did, ratepayers should not bear the cost of an outside consultant to complete a lead/lag study for small utility companies. The timing also impacts the decision as Staff Assisted rate cases have a short timeline of 150 days, making it difficult to review costs and related invoices necessary to perform a CWC lead/lag study. (Exh. 110, Niemeier Reb., p. 4-5).

The result is that there is no compelling reason to include cash working capital in this Staff Assisted rate case and no sufficient lead/lag study or other calculations related to RWC to do so, even if such was desired.

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?

The OPC Brief argues that "ratepayers should not have to pay the collective $63,676 in overtime pay that pushed some senior management above the income range for their positions." (OPC Brief, p. 39). The OPC makes this allegation in regard to the Company's Vice President, Sr. Accounting Clerk, and Sr. Customer Service/Admin Assistant. (*Id*.).

First, OPC treats the issue of overtime as if it is completely within RWC's discretion whether to pay overtime or not. As explained in the Company's *Initial Brief*, the Fair Labor Standards Act (FLSA) has much to say as to when overtime must be paid, regardless of the salary structure chosen by an employer.

However, setting that aside, there is a second, and fundamental, question as to what "income range' is referred to by OPC. OPC suggests these were the "ranges provided for DR 0019." (OPC Brief, p. 39, FN 196). The referenced DR 0019 was a response RWC provided to a Staff data request asking, in part, for information concerning "comparable utilities to justify the current Raytown employee wage or salary positions." (Exh. 208, Payne Sur., Sched. MMP-S-1, cover page). Among other information, RWC provided the salary ranges and job descriptions for the Public Water Supply District No. 2 of Jackson County, a neighboring water system. (*Id*. at Sched. MMP-S-1, p. 2). It is those Jackson County Water District salaries that OPC witness Payne attempted to use as his "income range" for comparison. (*Id*. at p. 7).

Mr. Payne mentions, but then ignores, the more appropriate Missouri Economic Research and Information Center ("MERIC") salary information that is commonly used by the Commission to assess reasonable salary amounts.[11] (Exh. 208, Rayne Sur., p. 5-6). Additionally, in his analysis, OPC witness Payne uses hypothetical hourly pay rates (taken from the Jackson County information) for the Vice-President ($42.00-$48.00), 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 persons "nonexempt" employees under the FLSA and legally entitled to overtime pay. (*See* RWC *Initial Brief*, Appendix A).[12] This hourly salary rate further begs the question of how much overtime the comparable Jackson County employees may have earned. That information is not available in OPC's testimony.

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[11] *See In the Matter of the Water Rate Request of Hillcrest Utility Operating Company, Inc*., 2016 Mo. PSC LEXIS 395 (July 12, 2016)**;** *In the Matter of Argyle Estates Water Supply's Request for a Water Rate Increase*, 2023 MO. PSC LEXIS 82, (January 4, 2023).

[12] *See also* "RWC's Personnel Policy Manual, non-exempt employees will be paid one and one-half (1 ½) times their hourly rate for all time worked in excess of forty (40) hours in a payroll week." (Exh. 101, Foster Dir., Schedule KDF-d2, p. 6) (emphasis added).

The Staff, on the other hand, reviewed wages for prudency to determine ongoing costs. For example, in regard to Ms. Thompson, MERIC "reported $166,570 for median pay for chief executive positions in the KC region. Thus, Staff's annualized wage for Ms. Thompson, that includes overtime, is below MERIC's median pay for chief executives." (Exh. 110, Niemeier Reb., p. 9-10).

Meter Reading Expense

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

Meter readers are discussed in RWC's *Initial Brief* and in the AMI section above.

All meter readers were employed as of the end of the update period in this case (June 30, 2023). (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.

No disallowance or adjustment should be made to the Company's meter reading expense in this case. When RWC returns for a rate case after the full deployment of the AMI, the facts as to the meter readers will be better known and it will be appropriate to assess their positions at that time.

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?

OPC continues to suggest that rate case expense from the last three cases should be treated as if the Commission had ordered that such expenses be "amortized." However, there was no such amortization as 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).

In addition to the issues raised in RWC's *Initial Brief*, this suggestion ignores the fact that other expenses may rise between rate cases without corresponding adjustment to revenues. For example, in this case, even OPC has stated that it believes that the Company "is entitled to receive a rate increase." (OPC Brief, p. 5). Thus, any "extra" rate case expense money that OPC might identify is needed for increased costs that the Company has been experiencing. There is no "over-recovery" to use as an off set to current rate case expense.

As to the 50/50 sharing proposal, when the Court of Appeals first addressed a Commission rate case expense sharing decision, it was considered based on the following Commission justification:

> The PSC found that this formula was appropriate for this case based on a number of factors. The PSC found the following:
>
> > The evidence shows that the expenses in this case are driven primarily by issues raised by KCPL, which has complete control over the content and methodologies proposed when it files its rate cases. In this case, KCPL has requested three new trackers, two of which have never been requested before in Missouri. KCPL has also requested recovery in rates of the expenses from the Clean Charge Network, which is a type of expense that has never been raised in a rate case before this Commission. Each of these issues are unique to KCPL, and while KCPL always has the opportunity to pursue new and unique issues in a rate case, the decision to do so is entirely with[in] KCPL's power. In addition, KCPL has pursued some issues that only directly benefit shareholders, such as the La Cygne accounting authority and, of course, a higher ROE. In recent rate cases, KCPL has incurred rate case expenses substantially higher than historical levels and higher than other utilities in Missouri.

Kansas City Power & Light Co.'s Request v. Missouri Public Service Commission, 509 S.W.3d 757, 776-77 (Mo. Ct. App. 2016) (emphasis added).

This reasoning has little to do with the Staff Assisted case brought by RWC:

- the expenses in this case ARE NOT driven primarily by issues raised by RWC;
- RWC DOES NOT have complete control over the content and methodologies proposed when it files its rate cases;
- RWC HAS NOT has requested three new trackers;
- RWC HAS NOT requested recovery in rates of the expenses from any type of expense that has never been raised in a rate case before this Commission;
- RWC HAS NOT pursued issues that only directly benefit shareholders (such as accounting authority); and
- RWC HAS NOT incurred rate case expenses substantially higher than historical levels and higher than other utilities in Missouri.

Additionally, RWC does not have any rate case expense associated with the hiring of the common professional expert witness (for example, consultants for rate of return, depreciation, rate design and cash working capital).

Further, the Court in *Kansas City Power & Light* stated that the Commission had "clearly established that the formula was proper *in* [that] *case* due to the unique circumstances of [that] rate case and [the Commission] was not announcing a new policy of general applicability to all utilities." *Id*. at p. 777.

Under the circumstances of *this* case, RWC should not be subject to a 50/50 sharing of rate case expenses.

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?

OPC points out that Mr. Clevenger transports "himself both to and from work on a daily basis" and "does not own his own vehicle." (OPC Brief, p. 54). While true, Mr. Clevenger lives about five (5) blocks from the Company offices and his wife has a car that he also drives. (Tr. 147, 148, Clevenger). Further, taking the vehicle home is also important for late night calls (something Mr. Clevenger does often) and to protect vehicles from vandalism. (Tr. 147-148, Clevenger).

Mr. Clevenger has a handwritten log associated with the truck he drives and he records wherever he goes on a daily basis. (Tr. 146, Clevenger). Mr. Clevenger's usage of the Company vehicle is extremely insignificant. For example, during the 2022 calendar year, his personal use of a Company truck totaled 337.04 miles. (Exh. 400).

Mr. Clevenger usually uses a check from Clevenger Enterprises, LLC to pay for this personal usage. (Tr. 149, Clevenger). Clevenger Enterprises, LLC, as the name suggests, is a limited liability company, and it is owned by Mr. Clevenger and his wife. (Tr. 154, Clevenger). Given that Mr. Clevenger and his wife are the only owners of the LLC, the car wash operated by the LLC is not rate regulated, and the gain or loss of an LLC is generally taxed on the returns of its owners, there does not seem to be any issue of "cross-subsidization" indicated by this situation.

Lastly, OPC suggests that Mr. Clevenger should not be the primary driver of this truck because of his salary. (OPC Brief, p. 55-56). First, these two things are not connected in the least. Second, OPC alleges that Mr. Clevenger's salary exceeds that of "an employee in the same, or a comparable, position." (*Id.*). This second allegation is contrary to OPC's own testimony. OPC witness Payne reported that "For 2022, the Missouri Economic Research and Information Center ("MERIC") reported $166,570 for median pay for chief executive positions in the KC region." (Exh. 208, Payne Sur., p. 5-6). Mr. Payne then stated that in this case "Mr. Clevenger is the chief executive." (*Id.* at p. 6). Comparing this MERIC median pay of $166,570 to Mr. Clevenger's salary, as reported by Mr. Payne on p. 7 of his Surrebuttal Testimony, shows that Mr. Clevenger actually makes less than "an employee in the same, or a comparable, position."[13]

There should be no disallowance for Mr. Clevenger's use of Truck 206 and, going forward, the Company should continue to be reimbursed for any personal use of Truck 206 at the Internal Revenue Service (IRS) mileage reimbursement rate for the reasons stated in RWC's *Initial Brief*.

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?

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).

The audit was purported to have been conducted pursuant to Section 393.140(5) which states in part that:

> The Commission shall:
>
> (5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the

[13] The source to which OPC cites for its comparison is the salaries of the Public Water Supply District of Jackson County.

transaction of their business.[14]

There was no allegation or finding that the Company's conduct had violated any statute, rule, tariff, or order. OPC indicates that Staff was attempting "to help RWC's management work more efficiently." (OPC Brief, p. 62). Specifically, the Commission ordered as follows:

> That a focused management audit by the Commission's staff of The Raytown Water Company be authorized hereby as to the following specific management processes of Company, including policies, systems, procedures and practices:
>
> a. organization structure - review job descriptions, management functions, time requirements, management control processes and practices;
>
> b. strategic planning processes - review the mission statement, short and long term capital planning and budgeting processes, short and long term operations planning and budgeting processes, performance reporting and management follow-up process; and
>
> c. operations and maintenance - review company's work order system, work planning and assignment process, documentation and reporting process, performance reporting and management follow-up process.[15]

Ultimately, a Management Audit was produced that contained 48 recommendations. RWC worked with Staff to show a level of compliance with those recommendations, subsequently, the case was closed.

While the items included in the Management Audit may be valid points for consideration by RWC, these matters should remain within the discretion of management to pursue or operate as they see fit, as long as they are not violating statute, rule, tariff or order.

Bidding Procedures

OPC recommends the Company "develop and implement formal competitive bidding procedures for all major equipment purchases and contracts and develop and implement a formal

[14] Staff Motion Requesting the Commission to Authorize a Management Audit, *In the Matter of a Management Audit of The Raytown Water Company*, Case No. WO-93-140 (December 16, 1992).
[15] Order Authorizing Management Audit, *In the Matter of a Management Audit of The Raytown Water Company*, Case No. WO-93-140 (January 6, 1993).

vehicle replacement policy that includes elements such as vehicle purchasing justification, procedures for competitively bidding vehicles, and vehicle specification." (OPC Brief, p. 63-64).

RWC has not used "formal" competitive bidding procedures in recent years. However, it has not abandoned the need to compare pricing. For example, during the purchase of its vehicles, RWC employee Chiki Thompson spent time discussing and negotiating with various dealerships as to the Company's vehicle needs, what vehicles were available, and at what price those vehicles could be obtained. Ultimately, the Company felt that it got the best price it could for the vehicles that were available. (Exh. 6, Clevenger Reb., p. 8; Exh. 3, Thompson Sur., p. 5-6).

The AMI purchase process has been addressed in the AMI section. However, at a high level, RWC had been studying this issue for several years and had discussed the possible purchase with various providers. Through this process and the Company's experience in the water industry, it was aware of what a reasonable price would be for this project. Given that the price offered by Utility Service Group (USG), the ultimate AMI provider, was reasonable and Raytown Water has had a long and satisfactory relationship with USG, the Company entered into the resulting contract. (Exh. 6, Clevenger Reb., p. 8).

RWC believes that the processes it has used have allowed it to make quality purchases based on reasonable pricing.

Documented Needs Analysis

OPC recommends that the Company "develop and implement a formal policy for performing documented needs analysis prior to making major equipment purchases." (OPC Brief, p. 68). OPC's definition of a "needs analysis" seems to be "that senior management assess the needs of the organization and its workforce prior to implementing a plan of action." (*Id.*).

OPC further suggests that a "successful needs analysis requires management to discuss, with employees, the required needs and capabilities that the equipment must have prior to RWC making either purchasing or contracting decisions." (*Id.*).

While not having a "formal" policy, the path towards AMI certainly included these steps. It can be seen from the testimony that senior management assessed the needs of the organization and its workforce prior to implementing the Company's plan of action. Also, given that all of RWC's employees can fit in its meeting room at the same time, and its president and vice-president are personally involved in all aspects of the office and field operations, there is plenty of interaction with employees as to the required needs and capabilities that the equipment must have.

Automated General Ledger

OPC recommends that the Company "'automate,'" otherwise called 'digitize' its general ledger." (OPC Brief, p. 69). RWC has had electronic accounting software since the time of the Management Audit and it intends to keep all records in an automated format. (Exh. 6, Clevenger Reb., p. 6).

However, for many years, the Company contracted with an accountant that worked for an outside accounting firm. Very late in his career, he worked as an employee for the Company. This gentleman believed in doing things "old school," which resulted in some of the manually created documents and issues referenced by the OPC witness. This gentleman no longer works either directly or indirectly for RWC and the Company is again fully using the automated forms and is committed to doing so going forward. (Exh. 6, Clevenger Reb., p. 6).

Reimbursement of Personal Usage

OPC recommends that Company be required to seek "reimbursement to the Company on a monthly basis for personal usage of Company business office labor and equipment." (OPC Brief, p. 71).

The Company is doing this today. In the case of vehicles, the Company bills employees for the usage of Company vehicles 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).

RWC believes that this is consistent with the treatment in the Management Audit as trucks may be rented on a per day, per hour, or per mile basis. The Company has chosen to use a per mile basis. (Exh. 6, Clevenger Reb., p. 10).

This billing method has been consistent for many years. Mr. Clevenger provided an excerpt of the Staff's February 25, 1999, filing in Case No. WO-93-194 representing that the Company's actions in response to Staff Recommendation 20 (Reimbursement to the Company) were "Complete." That Staff filing notes that "[m]ost of the billings were for *mileage* . . . ." (Exh. 6, Clevenger Reb., Sched. NSC-3-R, 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 (*See* Exh. 6, Clevenger Reb., Sched. NSC-4-R). (Exh. 6, Clevenger Reb., p. 10).

Moreover, the IRS mileage rate used by RWC contemplates "the variable costs of operating a 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."[16] (Exh. 6, Clevenger Reb., p. 10-11).

Kansas City Meter Reading

OPC suggests that the Company "Read the City of Kansas City's water meter monthly to

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[16] https://www.forbes.com/sites/markkantrowitz/2023/02/01/new-2023-irs-standard-mileagerates/?sh=5b1aa6a87932

verify the accuracy of the bill received." (OPC Brief, p. 73). Its stated reason for this suggestion is the situation RWC has experienced with Kansas City where the volumes sold have exceeded the volumes purchased during fourteen months. OPC believes that "[i]f RWC was checking these meters on a monthly basis as it agreed to do in 1993, the Company would have recognized the water loss issue sooner, and the OPC would need to address that issue in this case." (OPC Brief, p. 74).

This is a complete misunderstanding of the situation with Kansas City. There was no misreading of the Kansas City meters. The billings accurately reflected the readings. The problem was that the meters, were apparently recording fewer volumes than were flowing through the meters. No amount of "checking these meters" would have discovered the problem.

The problem did not go unnoticed by RWC, however. The problem was discovered by RWC's comparison of amounts billed by Kansas City, with amounts sold by RWC. RWC had "tried more than once to bring this matter to Kansas City's attention but did not hear anything back until Kansas City changed those meters in June and July of this year." (Exh. 2, Thompson Reb., p. 11). It is unclear how checking the meters themselves would have avoided OPC's "need to address that issue in this case."

Conclusion

OPC suggests that "there are several recommendations from the Management Audit that the Company should still be encouraged, if not ordered, to follow." (OPC Brief, p. 62). RWC has responded to those recommendations above. RWC does not believe there are sufficient facts to justify any order in this regard. However, the Company will certainly take into account any concerns the Commission may express in regard to these matters.

WHEREFORE, RWC respectfully requests the Commission consider this R*eply Brief* and issue such orders as it shall 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 13th day of December, 2023, to:

General Counsel's Office	Office of the Public Counsel
staffcounselservice@psc.mo.gov	opcservice@opc.mo.gov
casi.aslin@psc.mo.gov	Anna.Martin@psc.mo.gov

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