

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

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

Case No. WR-2023-0344

THE OFFICE OF THE PUBLIC COUNSEL'S REPLY BRIEF

Respectfully Submitted,
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INTRODUCTION

The Office of the Public Counsel's¹ stance is that The Raytown Water Company² is entitled to a \$833,426.31, or 19.31% rate *increase*. If the Public Service Commission³ were to grant the increase that PSC Staff⁴ and RWC support, the revenue requirement would go up 140% in a three (3)-year period.⁵ The general sentiment that Staff seems to believe is that what a healthy regulated monopoly needs to be successful is more money and less oversight. Staff's view is exceedingly limited, contradicting RSMo § 393.140(5), which empowers the Commission to:

Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon a complain, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory, or unduly preferential or in any way in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding a higher rate or charge that has heretofore been authorized by statute, and the just and reasonable regulations be done and observed[.]

Water is an essential resource.⁶ With such a small customer base for a resource as important as water, managerial imprudence plays an outsized role.⁷ Therefore, the Commission should take a more nuanced and practical view than Staff and RWC's briefs submit.

¹ Hereinafter "OPC."

² Hereinafter "RWC," "Raytown Water," or "Company."

³ Hereinafter "PSC" or "Commission."

⁴ Hereinafter "Staff"

⁵ $(\$5,483,801 / \$3,917,699)100 = 139.98\%$

⁶ Jobeth Davis, CLASSES CANCELED AT 2 RAYTOWN SCHOOLS AFTER WATER MAIN BREAK, KMBC News (3:33 PM Oct. 17, 2023), <https://www.kmbc.com/article/raytown-missouri-high-school-central-middle-closed-water-main-break/45561242>.

⁷ *Tr.*, pg. 404 lines 10-13.

The revenue increase that the OPC is recommending is only slightly higher than the Company's initial increase request. Therefore, the increase that the OPC recommends remains consistent with customer expectations due to the original notice they received. The evidence in this case fully supports this Commission finding that the OPC's recommendation is just, is reasonable, and provides the Company with a sufficient revenue requirement to provide safe and adequate service.

Missouri Law states that Raytown Water bears the burden of proof in this case.⁸ The OPC's expert testimony, and initial brief provide a thought-out and detailed analysis of why the rate increase proposed by Staff and RWC is excessive for what the Company needs. The public relies upon this Commission and its staff to closely scrutinize the regulated utilities that provide an essential service to a captive population.

The OPC asks the Commissioners to view the Company's actions as the actions of a private entity, as well as a natural monopoly with access to limited resources. The OPC asks the commissioners to view the Company's actions as though each commissioner owned that company. Would commissioners expect the person they put in charge to seek bids on a \$5 million expense? It is easy to defer to Staff and conclude that the audit was thorough and approve the request, as Staff's past audits have.⁹ It is far more challenging for the Commission to scrutinize each issue, weigh the

⁸ Mo. Rev. Stat. § 393.150(2).

⁹ Ex. 212, Schaben Surrebuttal Testimony pg. 3 lines 19-21.

evidence objectively, and reach a decision after it has carefully scrutinized the competing positions and evidence.

The public that the PSC serves deserves a Commission review that does not presume the outcome of any issue. The public deserves a Commission review that reaches a decision only after carefully scrutinizing all of the parties' evidence and arguments and deliberating on the issues as a body. The outcome of each issue in this case is not as important to the public as an engaged Commission. The OPC believes this Commission is a regulatory body that approaches each individual issue with an open mind and an intent to truly understanding the basis of each party's position.

I. ADVANCED METERING INFRASTRUCTURE (“AMI”)

Recommendation: Include entire \$4.2M system in rate base, if—and only if--it does not permit the Company to receive a return *on* the investment.

A. The Commission should grant a return of, but not a return on RWC's AMI

a. RWC's AMI investment does not follow the Prudent Management Theory¹⁰

Foundational to the OPC's analysis of the Company's AMI case is RWC's choice to make a huge investment in a luxury asset, AMI, as its distribution system was allegedly crumbling.¹¹ The Company's decision to invest in AMI at this point is tantamount to a car-buyer purchasing expensive heated seats for a vehicle despite that car having a busted engine. The Company invested in an indulgence, the AMI,

¹⁰ *State ex rel. Missouri Power & Light Co. v. Public Service Com.*, 669 S.W.2d 941, 947 (MO.App.W.D. 1984).

¹¹ RWC Initial Brief, pg. 13 (*quoting* Ex 203, Robinett Surrebuttal Testimony, pg. 5; *quoting* Ex. 2 Thompson Rebuttal Testimony, pg. 12).

without considering the expense required to fix a central component of its obligations, the distribution system.

Moreover, despite RWC's¹² and Staff's¹³ assertions otherwise, Raytown Water did not take the proper steps to ensure it made a prudent AMI investment. To be clear, the OPC's argument is not that all AMI investment is bad. This office is not relying on the Commission finding that Raytown Water's decision to invest in AMI is imprudent, on its face. Instead, OPC is saying that this Company invested in a utility's version of heated seats requires more research than RWC's Vice President ("VP") attending what appears to be one (1) single event.^{14 15}

The OPC is not swayed by RWC's VP having informal discussions with "about five (5)" different water companies that have AMI,¹⁶ where she did not determine¹⁷ pretty important facts those utility systems, such as their:

- (1) number of customers;¹⁸
- (2) service area;¹⁹ or
- (3) dispersed versus compact nature.²⁰

¹² Id. at pg. 9.

¹³ Staff's Initial Brief, pg. 3

¹⁴ Though the OPC does recognize that the event had multiple vendors. *Tr.* pg. 62, lines 2 & 3.

¹⁵ *Tr.*, pg. 60 lines 22-24; *Tr.*, pg. 62 lines 2 & 3.

¹⁶ Id. at pg. 60 lines 23 & 24.

¹⁷ RWC Witness Thompson was able to state that she believed that Jackson County District Two was about the same size as Raytown Water, but Jackson County District Two is the other water company that serves part of Raytown, so it is quite possible that Ms. Thompson knew that fact more due to the Company's proximity to Jackson County District Two.

¹⁸ *Tr.*, pg. 61 lines 6-22.

¹⁹ Id.

²⁰ Id.

Ms. Thompson has a BBA in Business Management from UMKC.²¹ She worked in mortgage financing for sixteen (16) years before coming to work at Raytown Water.²² It is a basic business practice to ask more than one (1) company for a bid on a multi-million-dollar project before determining whether the bidder is appropriate for the business's needs.

Staff²³ and RWC²⁴ highlight that the benefits of AMI, generally, to support their view that Raytown Water's investment was prudent. Yet, the Company failed to engage in two (2) basic business practices: competitive bidding, and completing an independent needs analysis.²⁵ Instead, Raytown Water, whose annual revenue requirement would amount to \$5,483,801 if the Commission *did* approve the *Non-Unanimous Stipulation Agreement* ("Agreement"),²⁶ agreed to a \$5,731,357.²⁶²⁷ investment without any analytical, data-driven research.²⁸ The Company decided to implement technology that a USG²⁹ representative, himself,³⁰ stated cost as much as Raytown Water's entire annual revenue requirement if the Agreement were granted, plus an extra \$247,556.²⁶ without looking at the price of *any other AMI option*.³¹

²¹ Ex. 1 Thompson Direct Testimony, pg. 1 line 10.

²² Id. at lines 12-14.

²³ Staff Initial Brief, pgs. 2 & 3.

²⁴ RWC Initial Brief, pgs. 5-7.

²⁵ *Tr.*, pg. 162 lines 2-4.

²⁶ *Non-Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request*, Case No. WR-2023-0344, Item No. 10.

²⁷ *Tr.* pg. 76, lines 17-19.

²⁸ Id.

²⁹ "Utility Services Group."

³⁰ Though, in different terms.

³¹ Raytown Water does state that it considered other meter reading *systems* in its initial brief (*see* pg. 5) but the Company only placed one (1) bid to USG and AMI it's partner, Aclara, for its AMI system.

The reliability of the AMI provider, which is not in question in this case, does not automatically make the investment a prudent one. The benefits of the AMI that RWC implemented,³² while questionable,³³ does not alone make the AMI investment an imprudent one. The OPC's argument that RWC's AMI implementation relies on the fact that Raytown Water failed to take basic steps to ensure that this AMI option is the best for customers. "The prudent management theory," analyzes how a utility makes a decision, rather than the results of that decision.³⁴ The OPC believes that the Commission does not need to look further than the Company's method of deciding on this AMI option, rather than the benefits or drawbacks of the management decision, itself.

a. State regulation does not require the Company to replace its meters every four (4) to ten (10) years.

Throughout the evidentiary hearing ("Hearing") the Company repeatedly states that the Company switched to this AMI because Raytown Water "needed to update the metering system."³⁵ RWC's initial brief cites Ms. Thompson's testimony to clarify its stance that Commission regulation allegedly "provides that meters are to be removed, inspected and tested or replaced every four (4) to ten (10) years, depending on the meter size."³⁶ However, this is not an accurate statement of law. The regulation, which the Company is inaccurately representing, actually states the following:

³² RWC Initial Brief, pgs. 5-7.

³³ The Office of the Public Counsel Initial Post-Hearing Brief, pgs. 24-29.

³⁴ *Supra* FN 19.

³⁵ *Tr.*, pg. 93 lines 11 & 12.

³⁶ RWC Initial Brief, pg. 4 (*quoting* Ex. 2 Thompson Rebuttal Testimony, pg. 8)

(38) Unless otherwise ordered by the commission, each water service meter installed shall be periodically *removed, inspected, and tested* in accordance with the following schedule, or as often as the results obtained may warrant to ensure compliance with section (37) of this rule:

- (A) Five-eighths inch (5/8") meter—ten (10) years or two hundred thousand (200,000) cubic feet which ever occurs first; [sic]
- (B) Three-fourths inch (3/4") meter—eight (8) years or three hundred thousand (300,000) cubic feet which ever occurs first; [sic]
- (C) One inch (1") meter—six (6) years or four hundred thousand (400,000) cubic feet which ever occurs first; [sic] and
- (D) All meters above one inch (1")—every four (4) years.³⁷

In fact, the word “replace” does not appear a single time throughout all of chapter 10. In written testimony, and in the brief, RWC cites to Commission rule 20 CSR 4240-10.030(38) to support its stance that all of its meters needed to be “removed, inspected and tested or replaced every four (4) to ten (10) years.”³⁸ The Company goes further stating, “[A]s 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.”³⁹ These statements come from the Company’s incorrect characterization of 20 CSR 4240-10.030(38), to assert a requirement for this investment to fulfill. That requirement, in reality, does not exist.

In fact, the Company’s brief provides a reasonable meter replacement program than the one RWC chose to implement with its AMI, the previous one. “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.”⁴⁰ This procedure, rather

³⁷ 20 CSR 4240-10.030(38)(emphasis added).

³⁸ RWC Initial Brief, pg. 4.

³⁹ Id. at pg. 5 (*quoting* Ex. 2 Thompson Rebuttal Testimony, pgs. 7 & 8; Ex. 3 Thompson Surrebuttal pgs. 4 & 5).

⁴⁰ Id. at pg. 4.

than the Company's AMI overhaul, was a measured and thoughtful approach designed to avoid rate shock.

b. Even if the Commission believes Raytown Water's process of choosing its AMI was prudent, the AMI investment, itself, was not.

The OPC, in the interest of reducing rhetorical redundancy, believes it proper to respond to Staff's Initial Brief by directing the Commission to pages 24 through 31 of the OPC's own brief, which has already addressed most, if not all, of Staff's arguments regarding whether Raytown Water's AMI choice was prudent. Therefore, the OPC will direct its response to RWC.

In RWC's initial brief, the Company lists five (5) benefits Raytown Water and its customers gain through this AMI option:

- 1) Less estimated billing and more billing accuracy;
- 2) The potential for customers to view their personal water consumption more frequently;
- 3) Hourly water consumption could assist the Company and ratepayers with detecting leaks;
- 4) The AMI Vendor⁴¹ will be monitoring the AMI system on a daily basis, including informing the Company of unusual water use in a home or business with the AMI;
- 5) Alleged "positive impacts on employee safety and public safety."⁴²

The first benefit that the Company proffers is that the Company will have less estimated billing and more billing accuracy.⁴³ However, as OPC Witness Dr. Geoff Marke states "so few customers actually contact the Company about meter related

⁴¹ In RWC's case, USG.

⁴² RWC Initial Brief, pg. 7.

⁴³ Id. at pg. 4.

issues, that no party could assign a monetary value to this alleged benefit.”⁴⁴ The OPC believes there could be a marginal benefit, due to the meters being newer and Raytown Water’s shift towards automation decreasing the likelihood of human error. However, RWC’s method of checking one fourth (1/4th) of the service area meters for four (4) consecutive days, then spending the fifth (5th) day correcting “mis-reads”⁴⁵ appears to be a perfectly adequate method of addressing this heretofore unreported problem. Further, the AMI vendor’s cost assumptions for meter-related service calls in Case No. WF-2021-0427 were 13.64⁴⁶ times the real cost of calls related to meter concerns that the OPC calculated.⁴⁷

The next benefit Raytown Water proposes is *the potential for* customers to be able to check their water usage more frequently.⁴⁸ The OPC’s first concern pertains to the Company’s phrasing. RWC is not saying that customers undoubtedly *will* be able to check their water usage on a more frequent basis. Rather, because of AMI, it is *possible* that customers will be able to check their water usage more frequently. During the Hearing, the Company stated, in no uncertain terms, “[Customers] will be able to see [their water usage] by daily reads[.]”⁴⁹ This subtle change in RWC’s language raises doubt in the reality of this feature that Raytown Water is touting.

⁴⁴ Ex. 216, Marke Rebuttal Testimony, pg. 3 lines 11-13.

⁴⁵ RWC Initial Brief, pg. 4 (*quoting* Ex. 1, Thompson Direct Testimony, pg. 4).

⁴⁶ \$19,500 / \$1,430 = 13.64

⁴⁷ Ex. 200, Marke Direct Testimony, pg. 10.

⁴⁸ *Id.*

⁴⁹ *Tr.*, pg. 54 lines 20 & 21.

Moreover, as the OPC has *very* recently experienced, it is not common practice for customers to review their utility usage.⁵⁰ With Evergy's⁵¹ time of use ("TOU") rates, customers could earn more savings if they chose a TOU rate fitting that household's lifestyle.⁵² Also, electricity costs, unlike water costs, fluctuate throughout the day, providing active customers an even higher benefit if they properly adjust their usage. Still, ratepayers have rarely engaged with Evergy's customer portal,⁵³ and RWC's portal will not even provide those cost savings.⁵⁴

The Company then proposes that the more frequent water usage tracking *may* assist customers with finding leaks. The OPC does not wish to repeat its positions on issues discussed in its initial brief.⁵⁵ However, it is important to recognize, three (3) facts when considering the prudence of RWC's choice of AMI:

- 1) The Company decided *not* to opt for leak-detection valves, which would provide Raytown Water customers with certainty as to whether there is a leak within the domicile it is attached to and the location of that leak⁵⁶;
- 2) This AMI's version of "leak detection" is not possible without customer assistance;⁵⁷ and
- 3) In order for the Company's customers to utilize the notification part of this particular benefit, that customer would have to "opt-in" through the customer portal which, as discussed *supra* pg. 11, customers are not wont to do.⁵⁸

⁵⁰ Ex. 216, Marke Rebuttal Testimony, pg. 3 lines 23-25.

⁵¹ Referring to Evergy Missouri Metro and Evergy Missouri West.

⁵² Ex. 216, Marke Rebuttal Testimony, pg. 3 lines 23-25.

⁵³ Id. at lines 24 & 25

⁵⁴ Id. at line 25.

⁵⁵ The Office of the Public Counsel's Initial Post-Hearing Brief, pgs. 26-28.

⁵⁶ *Tr.*, pg. 55 line 19 to pg. 56 line 5.

⁵⁷ Id.

⁵⁸ Id. at pg. 117 lines 19-22.

Therefore, even the rare circumstance that a customer “opts-in” to notification through the customer portal, this AMI’s leak detection feature is not possible without customer assistance.^{59 60}

Next, the Company lists USG’s daily system monitoring as a separate attribute.⁶¹ However, this feature is, in effect, redundant due to benefit 3). Further, RWC does not mention of the more than \$100,000 annual maintenance fee that comes with this feature. Notably, that same maintenance fee is what increases the total cost of the approximately \$4.2 million AMI investment to over \$5.7 million before adding the suggested return on this investment.⁶²

Raytown Water’s final argument in support of these meters is the AMI’s alleged “positive impacts on employee safety and public safety.”⁶³ The OPC has already addressed Raytown Water’s assertion that the Company’s decision to purchase locking lids depend on its purchase of AMI in its initial brief.⁶⁴ Regarding the locking-lid issue, the safety feature’s relationship to the AMI purchase exemplifies the phrase “correlation does not equal causation.” The Company’s decision to improve the safety standards of the lids on its meter wells did not rely on its decision to implement AMI. In fact, the Company could have gotten locking lids without AMI⁶⁵ or the Company could have gotten AMI without locking lids.

⁵⁹ Or without Raytown Water investing more money to purchase “leak detection valves.”

⁶⁰ *Tr.*, pg. 55 line 19 to pg. 56 line 5.

⁶¹ RWC Initial Brief, pgs. 6 & 7.

⁶² Ex. 201, Marke Surrebuttal Testimony, pg. 20 lines 9-14.

⁶³ RWC’s initial brief, pg. 7.

⁶⁴ The Office of the Public Counsel’s Initial Post-Hearing Brief, pgs. 30 and 31.

⁶⁵ *Tr.*, pg. 100 lines 8-10.

Ultimately, the Company's investment in locking lids and its investment in AMI are completely unrelated.

Concerning employee safety, specifically, the Company lists *possible* dangers to meter readers face as “potentially unsafe environments, inconvenient locations, inclement weather, and exposed to vehicular traffic, animals, and the like[.]”⁶⁶ There are two (2) issues with this logic. The first issue is that no Company witness could give even one (1) specific example of employees injuring themselves while on duty.⁶⁷ Neither Staff nor the Company provided any evidence that employee safety was a notable concern, speaking instead in hypotheticals with speculation.⁶⁸

The second issue with RWC's logic is this: the meter readers that AMI purports to make safer are shifting to different positions will still deal with the same hazards they face without it.⁶⁹ While RWC plans to utilize two (2) meter readers as meter service technicians, the third meter reader will shift to a field tech position.⁷⁰ However, the OPC does not have the ability to determine whether these positions will increase meter readers' safety because we do not have any actual data about this issue.

⁶⁶ RWC Initial Brief, pg. 7.

⁶⁷ *Tr.* pg. 114 line 2 to pg. 115 line 10.

⁶⁸ *Id.* pg. 113 lines 9-19.

⁶⁹ *Id.* pg. 112 lines 22-25.

⁷⁰ RWC Initial Brief, pg. 10.

B. Raytown Water’s rate base should include its entire AMI investment if, and only if, the Commission grants the Company a return of, but not a return on its AMI.

The OPC already addressed Staff’s arguments against the inclusion of RWC’s entire AMI investment in rates on pages 33 through 35 of its initial brief. The only additional point that Raytown Water makes in its brief is that the Company’s first \$100,000 maintenance expense for its AMI should be included in rate base if the entire AMI investment is included in rate base. The OPC has no issue with the Commission including the \$100,000 maintenance fee as it is a known and measurable expense, in this case. In response, the OPC added the AMI maintenance fee to its recommended revenue increase.

II. RAYTOWN WATER’S OPERATION AND MAINTENANCE (“O&M”) EXPENSE SHOULD NOT INCREASE FROM 2020 LEVELS. AT THE VERY LEAST, THE COMMISSION SHOULD ORDER THAT O&M EXPENSE SHOULD BE NORMALIZED OVER THREE (3) YEARS.

Recommendation: RWC did not provide the requisite evidence to increase its O&M expense, especially by \$263,327. Therefore, Raytown Water’s O&M expense should either be \$211,279 or should be normalized from the last three years, \$345,494.

In RWC’s brief, the Company cites to *State ex rel. Missouri Power & Light Co. v. Public Service Com.* to support its view that the proper amount of O&M expense is \$474,606.⁷¹ Specifically, Raytown Water quotes, in relevant part, “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.”⁷² Raytown Water argues that the evidence in this case supports a finding that the cost is rising which supports the \$474,606 amount.⁷³ The

⁷¹ RWC Initial Brief, pg. 14.

⁷² 669 S.W.2d 941, 945 (MO.App.W.D. 1984).

⁷³ RWC Initial Brief, pg. 14.

OPC further notes that this number, which does not match any of the numbers Staff provided for O&M expense in this case, seems to be the only point of contention between Staff and the Company.

However, the OPC does not believe that it is appropriate for the Company to review the O&M amounts in 2020, 2021, and 2022, alone, because the limited number of data sets creates the impression of pattern that does not truly exist. If the Commission included the data points from the 2020 rate case, the O&M amount with the most support is actually \$217,196. Another data point that could have supported RWC's insistence that its distribution system needed the repair work that the Company suggested would be an analysis of the Company's water loss data. However, as the OPC has discussed,⁷⁴ RWC's water loss data is highly flawed.⁷⁵ As the data from Staff and RWC is either flawed or hard to understand, the OPC recommends that the Commission keep the fully-supported 2020 O&M number of \$211,279. However, if the Commission does still that Raytown Water has supported its allegation that it prudently spent more funds on O&M expense than it did prior to the 2020 case, the Commission should only raise the amount of O&M to \$345,494.

One issue that is tangential to the arguments that the OPC is addressing in this brief relates to Staff's handling of O&M expense. While Staff's position statement supported one number⁷⁶ its initial brief supported a different number.⁷⁷ Moreover,

⁷⁴ The Office of the Public Counsel Initial Post-Hearing Brief, pgs. 6-11.

⁷⁵ Ex. 112, Williams Rebuttal Testimony, pg. 4 lines 6 & 7; pg. 6 lines 11 & 12; pg. 7 line 9; pg. 8 lines 3 & 4.

⁷⁶ \$410,770; *Position Statements*, pgs. 2 & 3, Case No. WR-2023-0344, Item No. 63.

⁷⁷ \$411,370; Staff Initial Brief, pg. 5.

the Income Statement attached to the Agreement lists yet a third number.⁷⁸ Then, the number that the Company's initial brief supports is the number produced for its 2022 O&M expense in response to Staff's data request ("DR") 0022.⁷⁹ This integer, differs from the three (3) numbers that Staff used in previous filings.

It is incredibly difficult to address Staff's arguments when the number that it endorses repeatedly changes during the course of a case. The inability for Staff to adequately express the numerical value of its position has caused confusion within the OPC and, apparently, with RWC, as well. Moreover, due to the volatile nature of Staff's O&M number, the OPC believes the appropriate action for the Commission to take is to throw Staff's O&M argument out in its entirety.

III. DEPRECIATION ISSUES

A. The Commission should order the Company to place depreciation reserve into Account 346.000 Meters—Plastic, ending depreciation on that account. Then, remaining depreciation reserve should then go to Account 346.200 Meters—Hot Rod.

Recommendation: The Company's depreciation reserve should be transferred to Account 346.000 Meters—Plastic, which would cause that account—which covers meters that have almost entirely been replaced with AMI—to be fully accrued, ending its depreciation. Then, the left-over depreciation reserve should go into Account 346.200 Meters—Hot Rod.

The OPC has already addressed Staff's arguments around its handling of depreciation reserve in its initial brief. The Commission should note, the OPC originally added Amanda Coffey an engineer from Staff's Depreciation Department to the *List of Issues, Witnesses, and Order of Opening*, but Staff removed her from

⁷⁸ \$490,641; *Non-Unanimous Agreement* Attachment A, Case No. WR-2023-0344, Item No. 10.

⁷⁹ \$474,606; RWC Initial Brief, pg. 14.

that list. If Staff wanted to fully address the issue of RWC's depreciation reserves, Staff should have kept Ms. Coffey on the *List of Witnesses* and Ms. Coffey, herself, should have provided written testimony in this case.

B. The Kelly Blue Book value of the vehicles that RWC sold in 2022 and 2023, should be included in depreciation reserve.

Recommendation: The Commission should order RWC's cars to be entered into depreciation reserve as salvage, and reduce the Company's revenue requirement by \$3,436.

As OPC Witness, Angela Schaben, testified Raytown Water sold its old fleet of vehicles for a questionably low price. Further, while Mr. Clevenger testified that this fleet was in a poor state,⁸⁰ ⁸¹ he also stated that he did not look into the Kelly Blue Book value of any of these trucks.⁸² Therefore, the Commission should determine a reasonable estimate for the price of those vehicles and allot that estimated amount into the Company's depreciation reserve.

The OPC also believes that is important to highlight the fact that Staff, who was tasked with auditing RWC for the purpose of ratemaking, did not take a position on the proper treatment of the Company's "salvage" vehicles.⁸³ Further, RWC, itself, noted that "it has previously recorded 2022 sales and will also record 2023 sales."⁸⁴ The OPC would also like to point out that the individual who discovered the Agreement's failure to take into account the sold vehicles is not a depreciation expert,

⁸⁰ With the exception of "his" vehicle.

⁸¹ *Tr.* pg. 144 lines 9-11.

⁸² *Id.* at pg. 145 lines 11-14.

⁸³ Staff Initial Brief, pg. 5.

⁸⁴ RWC Initial Brief, pg. 12.

but—rather—an auditor.⁸⁵ However, the OPC’s main concern is the fact that Staff did not recognize or address the Company selling multiple vehicles in 2022. The salvage was enough to result in *at least* a \$3,436 reduction in the Company’s revenue requirement.

IV. RAYTOWN WATER OVEREXTENDED ITS AUTHORITY TO ISSUE PREFERRED STOCK AFTER WF-2021-0131.

Recommendation: The Commission should recognize the OPC’s Return on Common Equity (“ROE”) value rather than the ROE that Staff Calculated. This recognition would result in a \$70,413.80 reduction of RWC’s revenue requirement.

In Raytown Water’s Initial Brief, the Company maintains that “...it is clear that 7.5% is the appropriate Preferred Stock dividend rate to be used for the rate of return [(“ROR”)] calculation in this case.”⁸⁶ However, RWC’s preferred stock has been a murky and convoluted issue ever since the Company applied for Commission authority to issue this preferred stock.⁸⁷ However, the transaction that Staff recommended for Commission approval was quite different than the transaction Raytown Water ultimately executed. RWC’s Application stated the following stipulations around the proposed terms of the preferred stock transaction:

- Such stock will be sold quarterly;
- Such stock will be subject to dividends to be paid quarterly by the corporation at the prime rate published in the Wall Street Journal at the time of issuance (for the first year) and updated annually on the first business day of the year;
- The dividends due on such stock shall accumulate if not paid; and

⁸⁵ *Tr.*, pg. 386 lines 5 & 6.

⁸⁶ RWC Initial Brief, pg. 15.

⁸⁷ *See* Case No. WF-2021-0131.

- Such shares shall be redeemable by RWC after the date five (5) years from the date such stock was sold, solely at the discretion of corporation, and upon request therefor by the shareholder.⁸⁸

Moreover, in WF-2021-0131 Staff, stated the following condition in its recommendation:

Preferred stocks, just like common equity, do not represent an obligation that will force Raytown into bankruptcy in the event that Raytown misses payment of dividends. According to the Board Resolution, the preferred stock shall be redeemable “solely at the discretion of the corporation, and upon request therefor by the shareholder.” While proposed preferred stocks are redeemable, which is normally a liability, Raytown does not have to redeem the stocks but it shall do so if it is favorable to do so. Consequently, the impact of the proposed issuance of preferred stock on Raytown’s financial risk is insignificant. For these reasons, Staff concludes that the Application is not detrimental to the public interest and Raytown’s rate payers because it allows Raytown to upgrade its aging infrastructure at reasonable cost in order to provide safe and adequate water service.⁸⁹

During this case, Staff witness Randall Jennings stated that he relied on Mr. Clevenger’s statements to conclude that the final terms of the preferred stock were more like debt than equity. Specifically, Mr. Jennings relied on Mr. Clevenger’s representation that RWC’s preferred stock investors have the right to redeem their preferred stock two (2) years after purchasing it. What Mr. Clevenger told Mr. Jennings does not comport with the transactional conditions Staff recommended, nor the one the Commission approved.

Additionally, Raytown apparently informed its preferred stock investors that it *will* pay dividends quarterly rather than indicating it *may* pay dividends each

⁸⁸ *In the Matter of the Application of The Raytown Water Company for an Order Authorizing Issuance of Preferred Stock*, Application, Exhibit B, p. 2, Case No. WF-2021-0131, Item No. 1.

⁸⁹ *Id.* at Item No. 8.

quarter. The terms of the preferred stock transaction that the Commission actually approved indicated that preferred dividends *may be deferred at Raytown Water's discretion*. Staff's view is that the *potential* financial consequences of the unapproved preferred stock transaction causes Raytown to have a higher financial risk profile.⁹⁰ It is this potential risk that Staff uses to support RWC's estimated junk bond rating. However, even if Staff's assumptions were correct, Raytown should not receive a higher ROR as a result of possibly executing a transaction that the Commission did not authorize.

The Commission should also know that the OPC was not able to obtain a copy of the final executed copy of the preferred stock agreement, despite this office's best efforts. The actions the OPC took included:

- 1) Asking Staff to provide a copy of the executed agreement, which Staff chose not to do;⁹¹
- 2) Requesting a final executed copy of the preferred stock agreement from RWC, which resulted in the Company providing a copy of an unexecuted Preferred Stock Subscription Agreement without identification of redemption or dividend terms;⁹²
- 3) Finding a copy of the Preferred Stock Subscription Agreement on Raytown Water's website, which even Mr. Clevenger did not know existed;⁹³ and

⁹⁰ Ex. 212, Murray Rebuttal Testimony, pg. 1 lines 20-22.

⁹¹ Tr. pg. 253 line 24 – pg. 254 line 12.

⁹² Ex. 212, Murray Rebuttal Testimony, DR No. 3005.

⁹³ Tr. pg., 141 lines 13-16.

- 4) Presenting the different versions of the Preferred Stock Subscription Agreements to Staff witness Jennings, who indicated that the Company did not give him either document.⁹⁴

Ultimately, Mr. Jennings indicated the only document he ever received from Raytown Water was a preferred stock certificate.⁹⁵

The OPC understands that RWC advertised its preferred stock securities through the flyers posted to its website. However, the Commission does not have a final executed preferred stock agreement to verify the representations that these flyers made. Therefore, despite the Company's statement to the contrary,⁹⁶ it is not clear that 7.5% is the appropriate preferred stock cost that should be applied in this case.

V. AUDITING ISSUES

A. PSC regulations require Staff to calculate Cash Working Capital ("CWC") in Staff-assisted rate cases as it has done in the past.

Recommendation: The Commission should reduce the Agreement's revenue requirement by \$9,888 to account for CWC.

In this portion of the rate case, the Company held the position that it "will rely on the position taken by the Staff."⁹⁷ Staff, stated that the lead/lag studies needed for CWC are not usually performed for small utility rate cases because they (1) are labor intensive and (2) produce a minimal impact on the revenue requirement.⁹⁸

⁹⁴ Id. at pg. 257 line 4.

⁹⁵ Id. at pg. 254, line 13 to pg. 255 line 15.

⁹⁶ RWC Initial Brief, pg. 15.

⁹⁷ Id.

⁹⁸ Staff Initial Brief, pg. 7.

Regarding Staff's assertion that estimating CWC is "labor[-]intensive," OPC Witness John S. Riley, CPA, who estimated the CWC for this case, is a part-time auditor who, if Staff is to be believed, only had six (6) calendar days, and three (3) workdays⁹⁹ to calculate CWC for this case. Furthermore, 20 CSR 4240-10.075(8)(E) permits the Commission to estimate some numbers "in order to include reasonable levels of those costs."

Also, Commission rules 20 CSR 4240-10.075(4)¹⁰⁰ and 20 CSR 4240-10.075(8)(D),¹⁰¹ provide further support that Staff should have calculated CWC in this case.

Finally, Staff Counsel incorrectly equates Mr. Riley's inability to recall where his numbers regarding cash vouchers expenses lag originated during the Hearing with not being able to justify his position.¹⁰² It is slightly troubling that Staff appears unaware of the origin of Mr. Riley's numbers, given that they came from Staff, itself.¹⁰³

Therefore, with OPC Witness John S. Riley's CWC numbers accounted for, and his calculation being the only CWC calculation that the Commission has to go on, the Commission should find that the Company has a CWC amount of \$9,888.

⁹⁹ Two (2) of the calendar days were on the weekend and one (1) was a state holiday.

¹⁰⁰ The Office of the Public Counsel Initial Post-Hearing Brief, pg. 40.

¹⁰¹ Id.

¹⁰² Staff's Initial Brief, pg. 9.

¹⁰³ *Non-Unanimous Disposition Agreement*, Accounting Schedule 08 Case No. WR-2023-0344, Item No. 10.

B. Payroll Expense

c. Normalizing overtime

Recommendation: The Commission should order RWC to normalize, rather than annualize, employees' overtime.

When the OPC suggests that the Commission should normalize, rather than annualize, RWC's overtime expenses, Staff¹⁰⁴ and the Company¹⁰⁵ both seem a bit bewildered by the recommendation. Staff simply responded to the OPC's recommendation by reiterating how it handled RWC's overtime¹⁰⁶ while the Company appeared to conflate the OPC's recommendation that the hourly employees' overtime pay should be normalized with the OPC's other recommendation regarding Ms. Thompson, Ms. Smart, and Ms. Baier-Ross' overtime,¹⁰⁷ discussed below.

The only recommendation that the OPC is making regarding overtime pay for any hourly worker other than the three (3) discussed in §V.B.b, *infra*, is that Staff normalize it over a three (3)-year period.

d. Raytown Water's captive customers should not be forced to pay exorbitant overtime pay for RWC's employees who play a senior role in the Company.

Recommendation: The Company should add Ms. Thompson, Ms. Smart, and Ms. Baier-Ross's Staff-determined annual income into rate base, but give RWC the power to determine whether those employees should be hourly, with their overtime paid by Shareholders, or salaried.

The OPC believes that Raytown Water misunderstands what this office believes is the proper treatment of Ms. Thompson's, Ms. Smart's, and Ms. Baier-

¹⁰⁴ Staff Initial Brief, pg. 8.

¹⁰⁵ RWC Initial Brief, pg. 16.

¹⁰⁶ Staff Initial Brief, pg. 8.

¹⁰⁷ RWC Initial Brief, pg. 16.

Ross's pay. What RWC appears to believe is that the OPC is seeking to completely disallow overtime for these three (3) employees.¹⁰⁸ This office is not demanding the Company stop paying these employees an hourly rate, if that is what RWC so chooses.¹⁰⁹ Rather, the OPC believes that, if the Company wishes to continue paying these employees at an hourly rate, with the opportunity for overtime, that choice should not fall on ratepayers.¹¹⁰

The OPC does believe that it would be appropriate for these three (3) employees to be salaried at the COLA rates Staff provided, if the Commission so chose. Ms. Thompson (even before overtime is included) equates to a "highly compensated employee"¹¹¹ or falls under the "executive exemption."¹¹² Ms. Smart would fall under the "professional exemption."¹¹³ Finally, Ms. Baier-Ross would likely fall under the "administrative exemptions."¹¹⁴

¹⁰⁸ See RWC Initial Brief, pgs. 15-20.

¹⁰⁹ Ex. 208, Payne Surrebuttal Testimony, pg. 8 lines 6 & 7.

¹¹⁰ Id. at lines 7-9.

¹¹¹ Which requires the employee to perform office or non-manual work; receive an annual salary of over \$107,432; and customarily and regularly perform at least one of the duties of an exempt executive. Wages and the Fair Labor Standards Act, UNITED STATES DEPARTMENT OF LABOR (last visited, December 12, 2023), <https://www.dol.gov/agencies/whd/flsa>.

¹¹² Which requires the employee to be managing the company or a recognized subdivision thereof; regularly overseeing the work of two (2) or more other full-time employees; and have the ability to hire, fire, advance, promote, or change the status of other employees. Wages and the Fair Labor Standards Act, UNITED STATES DEPARTMENT OF LABOR (last visited, December 12, 2023), <https://www.dol.gov/agencies/whd/flsa>.

¹¹³ Which requires the performance of work that requires advanced knowledge and is perceived as "intellectual" work; Must have advanced knowledge in science or learning; and that knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. Wages and the Fair Labor Standards Act, UNITED STATES DEPARTMENT OF LABOR (last visited, December 12, 2023), <https://www.dol.gov/agencies/whd/flsa>.

¹¹⁴ Which requires the performance of office or non-manual work directly related to management with a primary duty that includes the exercise of discretion and independent judgment regarding matters of significance. Wages and the Fair Labor Standards Act, UNITED STATES DEPARTMENT OF LABOR (last visited, December 12, 2023), <https://www.dol.gov/agencies/whd/flsa>.

e. RWC’s meter reader expense should enjoy a significant decrease.

Recommendation: The Commission should reduce RWC’s meter reading expense by \$72,661 so captive customers can earn at least one (1) concrete benefit from this AMI.

Regarding Meter Reader Expense, Staff¹¹⁵ and the Company¹¹⁶ insist that the Commission should keep RWC’s Meter Reading Expenses at \$170,755. Staff states that the two (2) meter readers who become “meter service techs” duties will “expand¹¹⁷ to include water testing required by the Missouri Department of Natural Resources and Environmental Protection Agency.”¹¹⁸ The Company further argues that “all meter readers were employed as of the end of the update period in this case[.]”¹¹⁹ However, it is hard for the OPC to see the prudence in RWC’s decision to hire a third meter reader while it was switching to AMI, causing the employee to need retraining.¹²⁰

If nothing else, RWC’s decision to keep these employees on, increasing another expense for its captive ratepayers, further emphasizes the fact that the Company’s decision to invest in AMI at this time was a poor one.

¹¹⁵ Staff Initial Brief, pg. 9 & 10.

¹¹⁶ RWC Initial Brief, pg. 20.

¹¹⁷ It appears Staff may be confused, however, as Ms. Thompson testified at the hearing that one of the meter readers already performs the water testing, which takes a total of four (4) hours on a monthly basis. *Tr.*, pg. 116.

¹¹⁸ Staff Initial Brief, pg. 10.

¹¹⁹ RWC Initial Brief, pg. 20.

¹²⁰ Ex. 206, Riley Surrebuttal Testimony, pg. 3 lines 9-13.

C. The Commission ordering a 50/50 sharing mechanism in this case aligns with its precedent and supports the theory that both utilities and customers benefit from rate cases.

Recommendation: The Commission should order the Company and customers to engage in 50/50 sharing for rate case expense. Following this recommendation would add only \$20,646.31¹²¹ to RWC's revenue requirement.

In its initial brief, Staff goes against its own case precedent by suggesting that RWC's customers be the only party that pays for the Company to go to hearing in this case.¹²² Staff's initial brief quickly lists some cases with larger utility companies that Mr. Payne referred to in testimony.¹²³ However, Staff implies that Spire Missouri, The Empire District Gas Company, and Missouri-American Water Company were the only cases that Mr. Payne discussed to support his argument for a 50/50 sharing mechanism.¹²⁴ However, in its initial brief Staff address WR-2017-0259, the small water rate case where the Staff witness supported the utility, Indian Hills Utility Operating Company ("Indian Hills"), sharing its rate case expense with customers.¹²⁵

Further, in this same testimony, Ms. Grisham reiterates a theme supported by 50/50 rate sharing "Rate cases are sometimes necessary in order for the ratepayers to benefit from utility services that are safe and adequate; however, rate cases also benefit the utility company by way of increased profits. By sharing rate case expenses, the Company recognizes the benefits received by both groups."¹²⁶ Further, in that case, Indian Hills only served 715 customers.¹²⁷ Therefore, unlike the companies Staff

¹²¹ Once the Gratuity that the Company left in its calculation is properly removed.

¹²² Staff Initial Brief, pg. 12.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Ex. 111, Grisham Surrebuttal Testimony, pg. 2 lines 13-15, Case No. WR-2017-0259.

¹²⁶ Id. at lines 17-20.

¹²⁷ *Report and Order*, pg. 9, Case No. WR-2017-0259, Item No. 184.

Counsel acknowledged were referenced by Mr. Payne, Indian Hills did not have to hire legal representation until OPC requested a hearing.

Raytown Water unduly implied that OPC Witness Payne was suggesting incredibly blatant retroactive ratemaking, referring merely to Mr. Payne's entire rebuttal testimony.¹²⁸ At no point has Mr. Payne suggested that the Commission adjust any rate in any previous case.

Mr. Payne's reference to prior rate case expense recoveries simply highlighted the significant over-recovery of rate case expense Staff's approach has allowed. In fact, throughout the pendency of this case, the Company has continued to recover rate case expense beyond what it incurred in the last case, effectively already compensating the Company throughout this year for its current rate case expenditures.

VI. OTHER ISSUES

A. The Commission should review the small utility rate case regulation to ensure that utilities' customers are adequately notified of their possible rate increase amount.

Staff did not take a position on this issue and Raytown Water merely said that the Company followed all of the laws and regulations that it must abide. The OPC agrees with RWC, and hopes that Staff and the Company would both be willing to adjust 20 CSR 4240-10 to ensure the customers are not blindsided like they would be if the Commission granted the rate increase suggested by the Agreement.

¹²⁸ RWC Initial Brief, pg. 23.

B. Late Fees do not change customer behavior and their implementation does not follow the cost causative principle.

Recommendation: The Commission should order the removal, or reduction, of late fees from RWC's tariff, and should remove the resulting revenues from the Company's rate cases moving forward.

The OPC has already addressed Staff and Raytown Water's arguments during the course of the initial brief. However, the OPC will take the time to reiterate its belief that proper treatment by the Company supports decreasing the Company's late fee to \$2.50, which follows the cost-causation principle that supports RWC using late fees in the first place, by permitting the Company to receive a return of the postage cost related the delinquent notice in its tariff.

As it stands, Raytown Water's late fees are arbitrary. The Company states that it would be harmed by removing the five-dollar (\$5.00) fee and, instead, stick to the one percent (1%) of the customer's bill as that charging method would cost the Company every time a customer made a late payment.¹²⁹ However, the five-dollar (5.00) fee, itself, is an arbitrary number. There is no better proof of the arbitrary nature of the Company's late fee than RWC's use of the late fee payments as Company revenues.¹³⁰

C. Truck 206 is clearly Mr. Clevenger's property. The Commission should make him act like it.

Recommendation: The Commission should remove Truck 206, and all of its related costs, from rates and should order Mr. Clevenger to pay the rental rate for it.

¹²⁹ Ex. 201, Marke Surrebuttal Testimony, pg. 11 lines 3-5.

¹³⁰ Id.

One of the Company's more whimsical arguments is that Mr. Clevenger, the President of RWC, should receive both a return of and return on a Company vehicle that he has access to whenever he needs and that he does not pay any insurance on.¹³¹

In its brief, Staff writes that Mr. Clevenger's personal use of Truck 206 is "minimal."¹³² However, how Mr. Clevenger's uses Truck 206 perfectly exemplifies Staff's lack of professional skepticism in this case. Staff's own workpaper calculating Mr. Clevenger's personal mileage reimbursements to RWC shows that Staff merely accepted the personal mileage amount RWC supplied rather than conducting an in-depth review of how Mr. Clevenger and the Company calculate said mileage.¹³³

For example, in January 2022, Mr. Clevenger reported only 4.6 miles of personal use. In February of the same year, he reported 2.1 miles. These numbers are uncharacteristically low given the average mileage reported between that March and April 2023 averages at 30.47 miles per month, with Mr. Clevenger personally using the vehicle for 40.10 miles, similar to 45.70 miles reported for July 2021, the log RWC submitted in response to Staff DR 0044 showing that Mr. Clevenger's company vehicle remained idle at an unregulated family business while he was on vacation.¹³⁴ The remaining log shows that Mr. Clevenger does not reimburse RWC for the after-hours use of the company vehicle¹³⁵, mileage driven to and from work, and weekend mileage to the family's unregulated business.

¹³¹ RWC Initial Brief, pg. 24.

¹³² Staff Initial Brief, pg. 7.

¹³³ Ex. 400, Workpapers for Truck 206

¹³⁴ Ex. 209; Schaben Direct Testimony, Schedule ADS-D-11.

¹³⁵ Id. page 12, lines 16-17.

For mileage incurred in 2021, Mr. Clevenger only reimbursed for mileage driven to and from RWC and his unregulated business during his lunch periods, and mileage to and from medical appointments. As RWC’s system currently works, it appears that Mr. Clevenger merely states that he is “on call” and does not record his mileage when he does not want to reimburse the Company. This reimbursement, if Mr. Clevenger paid it, would provide ratepayers with more revenue.—The OPC noted that even the mileage is incurred traveling to the family’s unregulated business on the weekends or utilized by other family members to haul furniture is not recorded. Therefore, the Company does not truly calculate Mr. Clevenger’s after-hours personal use. Nor does Mr. Clevenger, himself, adequately reimburse RWC for that use.

In a poor attempt to distract from the fact that this vehicle is really Mr. Clevenger’s, RWC points to logs that show field personnel used this vehicle “on 27 different days in the first two months of its purchase,”¹³⁶ between July 1, 2022, and August 1, 2022.¹³⁷ Before providing further context for that statement, the OPC would like to focus on the *diction*. Raytown Water does *not* say “field personnel *alone* used this vehicle on 27 different days” just that field personnel also used the truck. Conceivably, on those twenty-seven (27) days, Mr. Clevenger could drive the truck to RWC, field personnel then “borrow” it for Company use, then Mr. Clevenger regains personal control of it to go to lunch¹³⁸ or drive back home.

¹³⁶ RWC Initial Brief, pg. 24.

¹³⁷ Ex. 211, Schaben Surrebuttal Testimony, Schedule ADS-S-5.

¹³⁸ *Tr.*, pg. 147 lines 16-17.

Now, for context. In the first two (2) months that Raytown Water had Truck 206, RWC was transitioning its fleet and Mr. Clevenger still had access to this truck's predecessor, which was not sold until December 23, 2022 for \$3,000.¹³⁹ Additionally, Mr. Clevenger consistently accumulated personal mileage of different Company vehicles at that time.¹⁴⁰ RWC attempts to inflate other employees' use of Truck 206 during the first six (6) months of 2023 by comparing it to the 122 work days¹⁴¹. However, the fact is that other employees utilizing the truck for—at most—twenty-two percent (22%)¹⁴² of the time from January 1, 2023, to June 30, 2023. It is incredibly clever for Mr. Clevenger to:

- purchase a new vehicle on Raytown Water's customers' dime;
- utilize that vehicle to the point where both he *and* the Board of Directors refers to that truck as "Neal";
- *manually* fill out his own personal mileage,¹⁴³ while blatantly ignoring mileage that was clearly for personal use;
- assert that his reimbursement to the Company for the vehicle only needs to be at the IRS mileage rate; and

¹³⁹ Ex. 211, Schaben Surrebuttal Testimony, Schedule ADS-S-1.

¹⁴⁰ Ex. 400, Workpapers for Truck 206.

¹⁴¹ RWC Initial Brief, pg. 24.

¹⁴² The OPC recognizes that RWC's insistence that "A review of vehicle logs shows that this truck has been used by others in the Company on approximately 40 different days[.]" is not the same thing as other Raytown Water employees taking the truck for their own use for the entire twenty-four (24) hour period that each of those days consists of. RWC Initial Brief, pg. 24

¹⁴³ *Tr.*, pg. 146 lines 10-13.

- pay that reimbursement *with the business account related to your car wash.*

The OPC asks the Commission to consider RWC's captive ratepayers. As the Company's brief highlights "The Company has chosen [to permit Mr. Clevenger to reimburse it on] a per mile basis."¹⁴⁴ However, Mr. Clevenger is the President and General Manager of Raytown Water. Mr. Clevenger owns fifty-five percent (55%) of this company. Along with being the President, General Manager, and majority shareholder, Mr. Clevenger is the Chairman of the Board for RWC. Moreover, the entire "Auditing Committee" is filled with Mr. Clevenger's relatives, as is almost half of the Board, itself.¹⁴⁵

It is not uncommon for presidents of large, private corporations to earn luxury benefits such as meals, trips, or even cars. However, the purpose of utility regulation is to align private action with the public interest.¹⁴⁶ When the managerial actions of the public utility increases rates by 40% in a three (3)-year time span, it is not on captive ratepayers to make up the Company's imprudently-caused shortfalls. When RWC seeks an astronomical rate increase, the President should not get to drive a 2022 Dodge Ram without paying an adequate price for it.

As the OPC has already noted, Staff's original stance was that Mr. Clevenger should reimburse the Company for his use of RWC's vehicle at a rental rate.¹⁴⁷ If Mr. Clevenger wishes to continue utilizing Truck 206 as though it was his private vehicle,

¹⁴⁴ RWC Initial Brief, pg. 24 (*quoting* Ex. 6 Clevenger Rebuttal Testimony, pg. 9).

¹⁴⁵ Ex. 209, Schaben Surrebuttal Testimony, pg. 14 line 20 to pg. 15 line 2.

¹⁴⁶ Scott Hempling, *PRESIDE OR LEAD? THE ATTRIBUTES AND ACTIONS OF EFFECTIVE REGULATORS* SECOND EDITION, pg. xiii (2013).

¹⁴⁷ Ex. 6 Clevenger Rebuttal Testimony, pg. 9 lines 10-14.

then it should either be taken out of rates or reimbursed at daily or monthly rental rates.

D. RWC has repeatedly shown the Commission that it does not follow basic business practices, resulting in pain and hardship for its captive ratepayers.

Recommendation: Raytown Water, along with OPC and Staff, need to review the 1993 Management Audit and determine the practices that the Company should still be following, but is not. Then, RWC should provide Staff and the OPC with quarterly reports to make sure it is adequately following these basic managerial practices.

Staff and the Company both asserted that Staff’s management audit case is from thirty (30) years ago and closed in 2000.¹⁴⁸ RWC seems to believe that not violating any statute, regulation, order, or tariff equates to running a business well.¹⁴⁹ However, in a competitive market, companies also go bankrupt despite not violating any statute or regulation. For Raytown Water, it appears as though the only thing keeping the Company afloat is the fact that it is a public utility and a natural monopoly, so the Public Service Commission will ensure its longevity.

The more concerning view is that of Staff, who believes “RWC should not be required to follow any recommendations spelled out and agreed upon in the 1993 management audit.”¹⁵⁰ The Staff’s Jefferson City auditing department’s assertion that this company is well-run is based on a four (4) to five (5) hour¹⁵¹ conversation with Raytown Water employees—with Ms. Thompson and Mr. Clevenger

¹⁴⁸ Staff Initial Brief, pg. 13; RWC Initial Brief pg. 25.

¹⁴⁹ RWC Initial Brief pg. 25.

¹⁵⁰ Staff Initial Brief, pg. 13,

¹⁵¹ *Tr.* pg. 176 lines 14-17. The fact that the Staff’s Jefferson City auditors, and not its nearby Kansas City auditors, conducted the review in this case could suggest a basis for the brevity of the review.

present—and review of RWC’s physical system. ¹⁵² Staff relies on the opinion of Mr. Spratt, who proves in written and oral testimony, that he is not the most reliable source of information regarding proper managerial practices.

In his rebuttal testimony, Mr. Spratt states “Staff has assisted RWC with numerous cases since [the management audit] and has not found any cause for concern with the Company.”¹⁵³ However, Mr. Spratt’s assertion is not true.¹⁵⁴ Staff has addressed concerns with Raytown Management in the past four (4) RWC rate cases.¹⁵⁵

Staff believes that anecdotal evidence in informal conversations provides “more valuable”: information that an RFP.¹⁵⁶ The same Mr. Spratt stated that RFPs put parties in a position where the following happens:

- 1) the buyer and seller agree to a price on a system;
- 2) the seller raises that price due to inflation, supply chain issues, etc.;
- 3) the seller informs the buyer that it will have to invest in another expensive program for the original system to work; then
- 4) certain features and benefits that the buyer may have originally assumed came with the item’s purchase turn out to be “purchasable upgrades.”¹⁵⁷

The very same Mr. Spratt who listed these drawbacks to conducting an RFP, later agreed with the OPC’s counsel that every example he had given for why RFPs would not have improved Raytown Water’s position as a market customer, actually occurred

¹⁵² Id. at pg., 167 lines 17-22.

¹⁵³ Ex. Spratt Rebuttal Testimony pg. 7 lines 14 & 15.

¹⁵⁴ Ex. 211 Schaben Surrebuttal Testimony pg. 4; pg. 6 line 9 to pg. 7 line 11; and pg. 9 lines 1-7.

¹⁵⁵ Id. at pg. 3 lines 16-19.

¹⁵⁶ *Tr.*, pg. 172 lines 9-11.

¹⁵⁷ Id. at lines 12-18.

in this case.¹⁵⁸ Eventually, Staff and Mr. Spratt themselves acknowledged that he does not review bids, contracts or RFPs in his role with Staff.¹⁵⁹ Given the importance of the Company's managerial prudence with those exact issues in this case, the OPC does not believe that Mr. Spratt was the appropriate witness for Staff to rely on, in this instance.

In contrast, the OPC's witness, Ms. Schaben, testified as to her extensive experience in contracting for the State of Missouri, and importantly testified that a contract for as low as \$20,000 required an RFP.¹⁶⁰ As a branch of the same government that places a high importance on RFPs for purchases, it would be highly unreasonable for the Commission to conclude that a similar process should not be followed for a regulated entity contracting for a \$5 million purchase. RWC's AMI purchase is 250 times greater than the RFP threshold followed by state agencies.

It is impossible to miss the connections that problems highlighted in the 1993 management audit have a direct correlation with problems the OPC has found in this case.¹⁶¹ RWC has not shown itself to be either willing or able to improve its managerial practices on its own. Therefore, the OPC suggests that the Commission reassess the Company's compliance with the *relevant* recommendations from this management audit, and require the Company to work with Staff or the OPC to begin following these practices again.

¹⁵⁸ Specifically, because of inflation; Id. at pg. 173.

¹⁵⁹ *Tr.*, pg. 177 lines 3-5.

¹⁶⁰ Id. at pg. 404, lines 21 & 22.

¹⁶¹ The Office of the Public Counsel's Initial Post-Hearing Brief, pgs. 61-74.

VII. STAFF'S HANDLING OF THIS CASE

The OPC is compelled to respond to a falsehood levied towards the OPC in the Staff's opening statement that was repeated again in the Staff's initial brief. That is the Staff's knowingly false assertion that the OPC did not become active in this case until September 29, 2023, when it requested a hearing.¹⁶² Staff provides no basis for this assertion. In fact, the OPC was actively engaged—with both the Company and Staff—before Staff Counsel's involvement in this case. The OPC sent data requests to the Company as early as June 29, 2023, *four (4) months before Staff claimed the OPC was involved*. Further, the OPC met with Staff and RWC at 2:00 pm on August 8th, 2023,¹⁶³ and brought several concerns that it had to Staff and Raytown Water then. The OPC met with Staff again at 1:00 pm on August 21. The OPC also met with Staff at 1:00 pm on August 31, 2023, for a Day 150 review of the case. Then, the OPC, Staff and RWC had another settlement meeting at 3:30 pm on September 7, 2023—six (6) days before Staff filed the Agreement.

The reasons for Staff's false *ad hominem* assertion against the OPC's advocacy in this case is not clear, but it does suggest the strategy of a party with little basis for its position. A famous quote attributed to Cicero states, "When you have no basis for an argument, abuse the plaintiff." That appears to be the Staff's strategy, and the OPC ask that the Commission see it for what it is and base no findings on this assertion, other than a reflection of the weakness of the Staff's audit and positions.

¹⁶² *Tr.*, pg. 21 line 24 to pg. 22 line 8.

¹⁶³ Please note: During the Hearing and in the OPC's initial brief, the OPC mistakenly believed this meeting took place on August 9, 2023.

The OPC's frustration with Staff's treatment of this case is that it seems Staff inexplicably did not provide the same thorough review the OPC has become accustomed to from the Commission's Staff. From Staff's technical experts taking the Company at its word for just about every numerical value, to Staff's inability to produce a consistent number that it is requesting for O&M expense.¹⁶⁴ While the OPC respects RWC's attempts to actually argue the facts and law in this case, Staff's initial brief is more akin to a position statement and is reflective of the depth of the Staff's audit and testimony.

The tone that Staff took when cross-examining the OPC's experts exemplifies the mindset Staff had during this case.¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ Rather than producing a robust audit as Staff did in the past,¹⁶⁹ this team:

conducted a quick investigation of the Company's system,¹⁷⁰

accepted RWC's answers without an ounce of professional skepticism, then

tried to divert attention away from Staff's half-hearted work on this case with obfuscation and *ad hominem* attacks on the OPC.

Staff's work-product, in this case, is insufficient. The Commission deserves better.

¹⁶⁴ *Supra* pg. 17.

¹⁶⁵ *Tr.*, pg. 327 lines 9-15; Please note, the Transcript incorrectly identifies the questioner as Ms. Martin when it was Ms. Aslin.

¹⁶⁶ *Id.* at pg. 346, lines 14 & 15; pg. 347 lines 4 & 5.

¹⁶⁷ *Id.* at pg. 375 lines 14-18; pg. 376 lines 5-10

¹⁶⁸ *Id.* at pg. 390 line 19 to pg. 391 line 7; pg. 392 lines 7-11.

¹⁶⁹ Ex. 212, Schaben Surrebuttal Testimony pg. 3 lines 19-21.

¹⁷⁰ *Tr.*, pg. 176 lines 14-17

CONCLUSION

The case at hand may be a small, staff-assisted rate case. However, the Commission should not confuse a small, staff-assisted rate case with one that does not matter. RWC has 6,541 customers. Some of those connections go to family homes, others go to schools and businesses. Staff's focus this entire case has been on the ability for Raytown Water, and its seventeen (17) employees, to thrive, while ignoring the thousands of community members that the Company serves. The OPC is not the villain trying to cause Raytown Water's downfall. The OPC is not even disputing the Company's request for a rate increase. The OPC's only goal is to ensure RWC's customers are receiving safe and adequate service at just and reasonable rates, which the OPC believes Raytown Water can provide with a \$MATH increase.

WHEREFORE, the OPC submits this Reply Brief to the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13th day of December, 2023.

/s/ Anna Martin