

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

In the Matter of the Application of)	
Gascony Water Company, Inc. for a)	File No. WR-2017-0343
Rate Increase)	

GASCONY’S POST-HEARING REPLY BRIEF

COMES NOW Gascony Water Company, Inc. (“Gascony” or “Company”), by and through counsel, and submits its Post-Hearing Reply Brief for consideration by the Missouri Public Service Commission (“Commission”):

Introduction, Legal Mandates, and Policy Arguments

Gascony was incorporated in January of 1998 and became a regulated water company under the jurisdiction of the Commission in April of 1999 (Case No. WA-97-510). The Company provides service to approximately 180 customers, consisting of 26 full-time, 156 part-time, and 3 commercial customers, and, as such, is a “small utility” under the Commission’s rules.

George Hoesch and Jim Russo provided testimony on behalf of the Company. Mr. Hoesch, the certified operator for the utility, is the Company’s president. Mr. Russo, a former Commission Staff member, is self-employed as a consultant and was retained by Gascony to assist the Company with expert witness matters. Mr. Russo’s testimony is included in the record as Exhibits 1 and 2. Mr. Hoesch’s testimony is included in the record as Exhibits 3 and 4.

The Company is seeking an increase from the rates which were originally authorized in the 1998-99 CCN proceeding – nearly 20 years ago. The request was made pursuant to Commission Rule 4 CSR 240-3.050, which applies to water utilities serving 8,000 or fewer customers. Rule 3.050(2) provides that a “small utility may initiate a rate case by filing a letter requesting an increase in its overall annual operating revenues with the secretary of the

commission. A utility filing such a request shall specify the amount of the revenue increase that it is seeking, but shall not submit any proposed tariff revisions with the request.”

Pursuant to Rule 3.050(25), to conclude this small utility rate case, the Commission “shall set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease. In doing so, the commission may approve, reject or alter a disposition agreement, or an arbitration opinion and any related partial disposition agreement.” If deemed necessary and appropriate by the Commission, Gascony suggests that the Commission consider exercising its ratemaking discretion to authorize a higher rate of return for the Company in order for the authorized rates to be truly just and reasonable.

There must be a reasonable basis in the record for each finding or conclusion by the Commission.¹ The Commission, however, has considerable discretion in rate setting due to the complexities involved.² The Commission may adopt or reject all or any portion of a witness’ testimony, choose between conflicting evidence, and adopt a position anywhere within the range of options presented by the witnesses.³ The Commission must exercise its considerable discretion and expertise in setting just and reasonable rates.⁴

The Commission is not limited to precise party positions as set forth in pre-filed testimony. In the Commission proceeding underlying *State ex rel. KCP&L v. MoPSC*, the Commission did not adopt any party’s recommendation on rate case expense and applied a formula comparing the requested revenue requirement to the awarded revenue requirement.⁵ The appellate court upheld this decision by the Commission in all respects. “We find the remedy

¹ *State ex rel. Capital City Water Co. v. MoPSC*, 850 S.W.2d 903, 912 (Mo.App. W.D. 1993).

² *State ex rel. KCP&L v. MoPSC*, 509 S.W.3d 757, 765 (Mo.App. W.D. 2016).

³ *Id.* at 767-768.

⁴ *Id.* at 768.

crafted by the PSC was a reasonable exercise of the PSC's discretion and expertise in determining just and reasonable" rates.⁶

Gascony is cognizant of the requirement that the utility bears the burden of proof to demonstrate that the requested rate increase is just and reasonable. To carry its burden, Gascony must meet the preponderance of the evidence standard and convince the Commission that it is "more likely than not" that Gascony's requested rate increase is just and reasonable.⁷ The Commission, however, has broad discretion to set just and reasonable rates and requires flexibility in exercising its ratemaking function.⁸ The Commission must establish rates which are "in all respects just and reasonable," without being limited by the parties' allegations.⁹

Revenues generated by current tariffed rates (those set in 1999) are approximately \$36,296. The Company is requesting an increase of \$21,001, while Staff supports an increase of only \$1,231, and the Office of the Public Counsel ("OPC") supports an increase of only \$952. How can a small utility remain viable when Staff and OPC fight to keep a revenue requirement increase at approximately \$1,000 over a 20-year period?

Discussion of Contested Issues

1. Revenue Requirement / Expenses

a. What amount of managerial and operational compensation should be included in the Company's cost of service? A total annual salary for Mr. Hoesch of \$27,510 should be included in the Company's cost of service. Mr. Hoesch, as the certified operator for the utility and the owner and manager of the Company, has both managerial and operational

⁵ *Id.* at 775-776.

⁶ *Id.* at 775-779.

⁷ *In the Matter of the Water Rate Request of Hillcrest Utility Operating Company, Inc.*, File No. WR-2016-0064, et al., Opinion effective August 11, 2016.

⁸ *State ex rel. Capital City Water Co. v. MoPSC*, 850 S.W.2d 903, 910-911 (Mo.App. W.D. 1993).

⁹ RSMo. 393.130; RSMo. 393.150; RSMo. 393.270.

responsibilities. The is a small utility with no complaints against it at the Commission and no environmental orders or penalties. Mr. Hoesch is doing his job, and he is doing it well.

OPC and Staff both argue that Mr. Hoesch's time sheets are insufficient pursuant to the stipulation reached in the original CCN case, but Mr. Hoesch's alleged failure to comply with recordkeeping requirements from nearly 20 years ago is not a reasonable and lawful basis to limit the Company's cost of service and thus create rates which are not just and reasonable. OPC asserts that repeated timesheet descriptions of "read meter, check property" mean the timesheets are unreliable and "useless as evidence."¹⁰ OPC's argument in this regard is nonsensical.

Mr. Hoesch is the operator for the utility. It is his duty to read the meter and check the property over and over again, week after week, month after month, year after year. Also, timesheets are not an evidentiary requirement. Mr. Hoesch offered ample testimony on this issue. Although the Commission is not required to believe Mr. Hoesch, the Commission is most certainly allowed to rely on his sworn testimony.

Staff and OPC recommend that the cost of service for the Company include only \$15,000 for Mr. Hoesch's salary, including both operational and managerial duties. This is the exact amount included for Mr. Hoesch's salary approximately 20 years ago. Staff witness Taylor was asked about this recommendation, and he testified that Staff's recommendation for Mr. Hoesch is in line with the salaries for other small utilities, pointing to Schedule MJT-r7 of Ex. 102. Tr. Vol. 2, pp. 153-154. This schedule includes only one case that was not resolved through company-Staff settlement agreements. Staff's testimony in this case is simply that its recommendation for Mr. Hoesch's salary is consistent, in terms of the average annual cost per customer, with Staff's positions in other cases.

¹⁰ OPC's Initial Brief, p. 4.

The Report and Order in the one case listed in Staff's exhibit which was tried to the Commission (File No. SR-2013-0321) authorized inclusion of approximately \$34,500 for salary in the cost of service for the utility serving 122 customers. Gascony serves 180 customers and is requesting that an annual salary for Mr. Hoesch of \$27,510 be included in the Company's cost of service. Staff's and OPC's unreasonable recommendations for salary expense should be rejected by the Commission, and a total overall annual salary of \$27,510 for Mr. Hoesch should be included in the Company's cost of service.

b. What amount of office rents should be included in the Company's cost of service?

The appropriate level of rent for the Saint Louis office is \$2,159 annually. The appropriate level of rent expense for the Gascony Village office is \$2,210 annually. Staff and OPC argue that only \$1,500 should be included in the cost of service for rent. Again, this is the exact amount included almost 20 years ago; with no adjustment for inflation, no recognition of the fact that the current Gascony Village office is larger than the office used 20 years ago, and no recognition of the fact that both the St. Louis in-home office and the on-site office are necessary for the provision of utility service.

As explained by Mr. Russo, Gascony is unique in its remote location and customer composition. Gascony Village consists of camping lots that are visited primarily on weekends from property owners that live outside of the area. Approximately 85% of the Company's customers are comprised of these weekend visitors. Mr. Hoesch performs the majority of the operational activities on weekends, which makes him available to meet with the customers of the Company during their visits.

These weekend visits are during what would be considered non-normal business hours. Mr. Hoesch then uses his small Saint Louis office to complete the management activities that

take place during normal business hours. In addition, the Company's business records are kept at this location. It would not be practical, from an economic or logistical standpoint, for the Company to maintain only one office location.

Based on the testimony of Staff and OPC, it appears they do not believe the St. Louis office exists. The Commission, however, is most certainly allowed to rely on Mr. Russo's and Mr. Hoesch's sworn testimony that this office does exist and is used to provide services to the utility and its customers. Staff and OPC's unreasonably low recommendation of \$1,500 annually for rent expense should be rejected, and, based on the evidence presented by Gascony, an annual amount of \$4,369 should be included in the Company's cost of service for office rent.

c. What amount of travel expense relating to President of Company's travel costs should Company be allowed to include? The Commission should continue the practice of allowing the Company to recover mileage reimbursement at the federal mileage rate. OPC's recommendation to the contrary should be rejected. In addition to his pre-filed testimony, Mr. Hoesch explained at the hearing that he generally visits the utility weekly to read the meters, as required by DNR, and "keep up with what's going on." Tr., Vol. 2, pp. 95-96. He also stated that he visits the site monthly to check the water quality and does not have any non-utility business to tend to at the location. *Id.* at 96-97, 102.

d. What is the appropriate amount of rate case expense to include in the cost of service for the Company and what is the appropriate mechanism to apply to rate case expense costs for the Company? Gascony should be allowed to include in its cost of service the total amount of prudently incurred rate case expenses, including legal and expert witness fees, to be amortized over a period of six years. Gascony kept rate case expenses to a minimum, with a

total of only three people working on this rate case for the Company – George Hoesch, Jim Russo, and Diana Carter.

e. What amount of depreciation expense should be included and what is the mechanism to apply such depreciation? \$3,358 in depreciation expense should be included.

f. What is the total annual revenue required to recover the cost of providing utility service to Company's customers? Gascony carried its burden and satisfied the preponderance of the evidence standard by demonstrating that it is “more likely than not” that Gascony’s requested rate increase is just and reasonable. The Company may not have presented exactly the evidence expected – or done so in the manner to which regulators in this industry have grown accustomed. But the evidence is there, primarily through the sworn testimony of Mr. Hoesch and Mr. Russo.

As the United States Supreme Court explained, a regulatory commission is not bound to the use of any single formula or combination in determining rates and that ratemaking involves the making of pragmatic adjustments. It is the result – not the method employed that is controlling. It is the impact of the rate order that is significant – not the theory.¹¹ And as this Commission explained:

Even if the Commission had the legal authority to “just say no” to a rate increase, doing so could cause great harm to the public. No one benefits when a utility is deprived of the ability to charge its customers a just and reasonable rate. Customers may initially be happy when the rates they pay are kept low, but as a utility’s income is reduced beyond a reasonable level, it must begin to cut corners to reduce its expenses. When that happens, the reliability of the service offered by the utility will suffer.¹²

The total revenue requirement for the Company is approximately \$57,300. Revenues generated by current tariffed rates (those set in 1999) are approximately \$36,296. An increase of

¹¹ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

\$21,001 is required in order for the Company to recover the present cost of providing utility service to its customers.

2. Rate Base

a. Should the Company be allowed to include in its rate base values real property identified as Lot 27 and real property identified as the Storage Building Lot? Yes, rate base should include values for the real property identified as Lot 27 (\$10,000) and the Storage Building Lot (\$7,500).

In his direct testimony in the CCN case, Mr. Hoesch testified that the utility *will* own the land. The Company did not own Lot 27 at the time. In 1989, Gasc-Osage Realty Company, Inc., the predecessor to the regulated water company, deeded the land to the children of Mr. Hoesch. This event occurred approximately ten years before the existence of the regulated utility. It would be unjust and unreasonable to exclude this newly acquired property from the Company's rate base.

Similarly, the real estate on which the storage building sits should not be excluded from rate base. The storage building lot was a necessary purchase long after the original CCN case and the original development of the system and had nothing to do with the original development. Although Staff described this as a "shed," Mr. Hoesch explained that "shed" does not do this steel building justice. Tr. Vol. 2, pp. 108-109.

b. Should Company be allowed to include in its rate base values equipment identified as a trencher and a utility task vehicle ("UTV")? Yes, rate base should include values for the trencher (\$8,000) and the UTV (\$3,500). The Company placed the trencher in

¹² *In the Matter of Union Electric Company*, File No. ER-2011-0028, Report and Order effective July 23, 2011, p. 20.

service in July of 2015, and the Company placed the UTV in service in September of 2015. The uses for these items are described in Mr. Hoesch's Direct Testimony, Ex. 3.

The Company is seeking an increase from the rates which were originally authorized in the 1998-99 CCN proceeding – nearly 20 years ago. Nothing has been included in the cost of service or in rate base since that time. Staff and OPC, however, are recommending that the values for the trencher and UTV be reduced due to depreciation, although there has been no corresponding cost to ratepayers for these items.

3. Rate Design

What are the appropriate Customer Equivalency Factors that will be used to determine rates for the various customer classes? Mr. Hoesch explained that back in the 1998-99 CCN proceeding, the projected water usage was 2,225,000 gallons and that today he is pumping between 6,500,000 and 7,000,000 gallons. Tr., Vol. 2, pp. 94, 111-112. He also stated that usage for the full-time residents is approximately the same as it was 20 years ago, but that usage has increased dramatically for the part-time customers. *Id.* at 95. Mr. Hoesch also provided evidence regarding the water usage at the pool and the kitchen, based on readings of the meters dedicated to those locations. *Id.* at 130-104. Based on these meter readings, the pool and kitchen account for 10 to 15 percent of the total water used. *Id.* at 117.

Based on the competent and substantial evidence in the record, the customer equivalent factor (for comparing part-time and full-time customers) should be increased from .35 to .5. Additionally, the swimming pool customer equivalent factor should be increased from 3.56 to 6 and the kitchen customer equivalent factor should be increased from 0.565 to 2.

WHEREFORE, Gascony respectfully submits its Post-Hearing Reply Brief. Gascony requests a revenue requirement increase of \$21,001 and such additional relief as is just and proper under the circumstances.

/s/ Diana C. Carter
Diana C. Carter MBE #50527
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
E-mail: dcarter@brydonlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 13th day of April, 2018, with notice of the same being sent to all counsel of record.

/s/ Diana C. Carter