

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

In the Matter of a Request for Increases)	
in Annual Sewer and Water System)	<u>Case No. SR-2013-0258</u>
Operating Revenues.)	

In the Matter of a Request for Increases)	
in Annual Sewer and Water System)	<u>Case No. WR-2013-0259</u>
Operating Revenues.)	

**STAFF'S LOCAL PUBLIC HEARING REPORT AND
RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for *Staff's Local Public Hearing Report and Response to the Public Counsel*, states as follows:

1. On June 3, 2013, the Office of the Public Counsel ("OPC") filed its *Request for Evidentiary Hearing* as required by §§ (19) and (20) of the Commission's *Small Company Rate Case Procedure* at 4 CSR 240-3.050.

2. Staff concurs in the procedural history of this case stated in Paragraphs 1 through 5 of OPC's *Request*.

3. The above-cited rule, at § (19), requires Staff to "file a pleading no later than five (5) working days after the hearing indicating whether any material information not previously available was provided at the local public hearing and stating whether that information might result in changes to the utility/staff disposition agreement."

4. A local public hearing was held in this matter on May 29, 2013, and this is the fourth business day thereafter. Staff reports that only one customer appeared at the local public hearing and that no material information, not

previously available, was provided at the local public hearing and therefore there are no changes to the utility/staff disposition agreement.

5. Staff makes the following response to OPC's request for an evidentiary hearing and the specific list of issues set out therein. As a preliminary response, It is Staff's view that an evidentiary hearing in this matter is not necessary and constitutes a needless expense that the approximately 60 ratepayers will necessarily have to absorb in addition to the costs of operating and improving the water and sewer systems. As an example, take the issue of grass mowing expense. Staff adjusted the test year mowing expense figure of \$250 to \$1,000 in order to annualize it. The Company is required to pay \$250 for each mowing of its sewer treatment facility. Although it is true that the Company has generally mowed only once each year, Staff contends that four mowings, at a total annual cost of \$1,000, are necessary for the adequate operation and maintenance of the facility. OPC objects to this additional \$750¹ and now will force this small company to hearing in part over this trivial amount – how much more than that will additional rate case expense add? Should the Commission grant OPC's hearing request, Staff will take the position that every dollar of additional rate case expense, to the extent reasonable and prudent, should be recovered by the Company.

a. **Special Amortization** -- The capital improvements that the special amortization is intended to fund are required by the Missouri

¹ $\$750 / 60 / 12 = \1.05 ; in other words, the monthly per customer impact of \$750 is about \$1.05. By contrast, the monthly per customer impact of \$12,000 in rate case expense amortized over three years would be about \$5.56, or about five times as much.

Department of Natural Resources (“MDNR”). As a MDNR permittee, Gladlo has no choice but to make such mandated improvements and they should therefore be allowed in rates. For example, MDNR has issued a letter of warning to Gladlo and placed a requirement on its permit that it install chlorination and dechlorination wastewater disinfection facilities not later than December 31, 2013. MDNR has also required Gladlo to install a security fence and gate to prevent access to the facility by unauthorized persons. Contrary to OPC’s assertion, the present revenue flow will not support these improvements and the proposed increased rates will not support these improvements, either. For this reason, Staff and the Company have agreed to a special two-year amortization mechanism and tracker that will fund these mandated improvements while ensuring that the ratepayers pay nothing more than their actual cost. If this mechanism is approved, Gladlo will be required to initiate another rate case within 24 months, during which Staff will audit the special amortization tracker and make any necessary revenue requirement adjustment. Staff notes that it will agree to a mechanism of this kind only in unusual circumstances such as those facing this company.

b. **Return on Equity** – While the identity of Gladlo’s shareholders are presently in doubt, it is a constitutional requirement that a fair return be allowed on and of the value of the private property devoted to the public service. ***State ex rel. Utility Consumers’ Council v. P.S.C.***, 585 S.W.2d 41, 49 (Mo. Banc 1979). “There can be no argument but that the

Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment.” ***State ex rel. Missouri Public Service Company v. Fraas***, 627 S.W.2d 882, 886 (Mo. App., W.D. 1981). OPC’s position on this issue is unlawful.

c. **Capital Structure** – Staff used a hypothetical capital structure that is representative of typical water and sewer company capital structures.

d. **Grass-Mowing Expense** – Staff has allowed \$1,000 for grass-mowing expense based on four mowings per annum at \$250 each. Gladlo has generally mowed only once each year in the past, but that level is inadequate.² Regular mowing of the sewer treatment facility is necessary to remove vegetation that actually impedes the bacterial action in the lagoons by blocking sunlight and wind. Additionally, unchecked vegetation growth encourages damage to lagoon berms by burrowing animals. Such damage can lead to environmental contamination which is costly to remediate. Staff asserts that \$1,000 is necessary for mowing expense.

6. Staff states emphatically that OPC is jeopardizing the continued delivery of safe and adequate service by this utility to its customers. Gladlo is presently operated by a court-appointed receiver because its owner abandoned it. A receiver is a caretaker and a receiver’s duty is to operate the company and to improve it to the point that it can be sold, hopefully to a viable operator. While

² Due to the need to divert funds to repairs.

a receiver is not required to invest funds in a system, the fact of the matter is that the Gladlo receiver has advanced funds to the system for a variety of reasons. Unable to secure traditional debt financing, both the receiver and a third-party vendor have made advances to the system. These advances were required because MDNR mandates improvements based upon the water-quality considerations that it implements and enforces. The Staff/Company Disposition Agreement in this case is specifically designed to allow the receiver to make the MDNR-mandated improvements. Staff considers OPC's opposition to this agreement under these circumstances to be directly contrary to the public interest.

7. OPC also asserts both that Gladlo's capital structure consists of 100% equity and that no return should be allowed on that equity. As Staff pointed out above, OPC's position is actually unlawful in addition to being unreasonable. Gladlo requires investment and the Constitution requires a return on that investment. The receiver's use of rate revenues to operate and improve the Company is well-within the powers entrusted to it by the Circuit Court.

8. The receiver has also had to make ongoing repairs to the Gladlo system in order to permit its continued operation. The Staff/Company Disposition Agreement will allow the Receiver to recoup the cost of those repairs. The requirement to hire legal counsel imposed on the receiver by OPC could result in the receiver advising the Circuit Court to liquidate the utility rather than continue its operation.

WHEREFORE, in consideration of all the foregoing, Staff prays that the Commission will deny OPC's request for an evidentiary hearing and approve the Staff/Company Disposition Agreement and associated tariffs as quickly as is reasonably possible.

Respectfully submitted,

s/ Kevin A. Thompson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **4th day of June, 2013**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Kevin A. Thompson