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Witness: *James A. Merciel, Jr.*
Sponsoring Party: *MoPSC Staff*
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MISSOURI PUBLIC SERVICE COMMISSION
UTILITY SERVICES DIVISION

**SURREBUTTAL TESTIMONY / REBUTTAL OF
SUPPLEMENTAL DIRECT TESTIMONY**

OF

JAMES A. MERCIEL, JR.

CENNTRAL RIVERS WASTEWATER UTILITY, INC.

CASE NO. SR-2014-0247

Jefferson City, Missouri
December 2014

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TABLE OF CONTENTS

INTRODUCTION	1
EXECUTIVE SUMMARY	1
CONNECTION CHARGES	2
STEP SYSTEM INSTALLATION/CONNECTION CHARGES – PAST PRACTICE	6
UTILITY CONTRACT WORK	8
SMALL WATER AND SEWER UTILITY ISSUES	10

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2 **SUPPLEMENTAL DIRECT TESTIMONY**

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4 **JAMES A. MERCIEL, JR.**

5 **CENTRAL RIVERS WASTEWATER UTILITY, INC.**

6 **CASE NO. SR-2014-0247**

7 **INTRODUCTION**

8 Q. Please state your name and business address.

9 A. James A. Merciel, Jr., P. O. Box 360, Jefferson City, Missouri, 65102.

10 Q. Are you the same James A. Merciel, Jr. who submitted direct testimony in this
11 case on November 14, 2014?

12 A. Yes.

13 **EXECUTIVE SUMMARY**

14 Q. What is the purpose of this surrebuttal testimony / rebuttal of supplemental
15 direct testimony?

16 A. The purpose of this testimony is twofold: (1) to respond to direct testimony
17 submitted by Central Rivers Wastewater Utility, Inc.'s ("CRW" or Central Rivers) witness
18 Mark E. Geisinger on November 14, 2014, and supplemental direct and rebuttal testimony
19 submitted by Mr. Geisinger on December 5, 2014, pertaining to Connection Charges and
20 associated STEP system installations; (2) to respond to some of Mr. Geisinger's comments
21 about the Staff's proposed resolution of improper Connection Charge amounts collected by
22 CRW in the past; (3) to respond to supplemental direct and rebuttal testimony submitted by
23 Dale W. Johansen pertaining to contracts; and, (4) to discuss generally the viability of small

1 utilities and how Staff views its role in assisting small water and sewer utilities to enhance
2 viability.

3 **CONNECTION CHARGES**

4 Q. To what in Mr. Geisinger's testimony filings about Connection Charges are
5 you responding?

6 A. I am responding specifically to Mr. Geisinger's December 5, 2014,
7 supplemental direct and rebuttal testimony, in which he presents on page 14, lines 4 through
8 6, the question as to whether or not he is opposed to CRW permitting customers to have other
9 contractors of their choice undertake STEP system installations, and his answer that no, he
10 does not oppose such permission. This is a significant departure from current practice, as
11 discussed in my direct testimony, direct testimony of Mr. Geisinger, and further below.
12 Further, following this question and answer in his supplemental direct and rebuttal testimony
13 beginning on page 14, line 8 through page 17, line 3, Mr. Geisinger discusses the need for
14 some changes to tariff rules, procedures, and service charges that would be necessary if CRW
15 were to adopt this practice with the Commission's approval.

16 Q. What is your response to Mr. Geisinger's testimony?

17 A. There are several points to my response.

18 First and most fundamentally, permitting customers to select contractors for STEP
19 system installation is a newly presented position of CRW. Staff had suggested this concept,
20 both informally when discussion with CRW and in direct testimony in this case, as an
21 alternative to CRW keeping records of time and costs thereby allowing for Staff and others to
22 audit the records, as is the procedure for all regulated utilities seeking increases in rates and

1 charges. However in all the meetings and telephone discussions with CRW about rate case
2 issues and tariff updating that have occurred since before this case was filed in March of this
3 year, Mr. Geisinger has expressed a position that CRW should directly control STEP system
4 installations. This includes as expressed in Mr. Geisinger's November 14, 2014, direct
5 testimony on page 11, line 22 through page 12, line 2, as follows:

6 22 **Q. SHOULD CENTRAL RIVERS CONTINUE TO HAVE SOLE DISCRETION AS**
7 23 **TO WHO MAY INSTALL STEP OR STEG UNITS?**

8 1 A. Yes. This is extremely important from an operational and environmental
9 2 view point.

10 So, as a revised CRW position position where it now indicates other entities could install
11 these collection systems on customers' premises, it is difficult to actually take this direction at
12 this point in the rate case where negotiations have ceased in favor of turning to testimony and
13 hearing positions. But it is not impossible for CRW and Staff to work together to develop the
14 details, if this is really the direction CRW wishes to go.

15 Second, Mr. Geisinger, correctly in my opinion, outlines some specific items about
16 quality of material and labor, component performance specifications, and utility inspection
17 needs. I agree in principle with his points and that there would be a need for development of
18 rules and procedures; I also stated such in my November 11, 2014, direct testimony. There
19 may actually be points that would need to be addressed beyond what Mr. Geisinger outlines,
20 such as definitions and rules about ownership and maintenance responsibility, and
21 maintenance costs to be included in rates. But the problem, again, is that although this is
22 workable it will not be resolved in a few rounds of pre-filed testimony and then a hearing,
23 because there is too much detail to be addressed.

1 Third, in his testimony Mr. Geisinger states some costs of inspections, and work that
2 would be done by CRW to make the connection to the collecting sewer, and provide a portion
3 of the service sewer along with some ancillary components. Once again, similar to
4 developing rules and procedure, the Staff is quite willing to work with CRW in developing
5 appropriate costs, but because of time constraints it is not practical to positively respond
6 directly in this case to the costs as proposed by Mr. Geisinger. As an example, one item that
7 catches my attention is that he proposes a charge of \$150 as an inspection fee (two inspections
8 would be required), but this amount is based on a CRW proposal of \$150 as a fee for an
9 emergency service call. Staff has not agreed the \$150 charge is appropriate as an emergency
10 service call fee. In addition to a lack of such agreement, service calls could and do occur at
11 any time of day or night and require immediate response, whereas inspections may be
12 scheduled days in advance to occur during business hours, and as such inspection trips are
13 more efficient than emergency call-outs from a time and cost perspective. So it probably is
14 not appropriate to apply the same charge for these two very different functions. The point is
15 that costs need to be studied and audited as appropriate. It is also important to note that the
16 costs of making the tap to the collecting sewer, with ancillary components, as described by
17 Mr. Geisinger, would be costs of utility activities. They are not activities of a contracted
18 construction company that undertakes the work by bid process. As utility activities, the costs
19 for parts and materials, and personnel time need to be tracked by CRW, and be available for
20 audit by Staff or others. Mr. Geisinger, in his testimony on page 13 lines 1 through 8
21 discussing how he estimates CRW costs, and page 13 line 17 through page 14 line 2 giving
22 examples of comparing his construction company charges to CRW to that for outside work,

1 continues to simply provide verbiage and limited information that he apparently believes is a
2 substitute for utility audit work.

3 If CRW does not keep adequate utility records for any such activity, then there likely
4 will continue to be problems in the future when Staff is expected to support a request to
5 increase rates.

6 A fourth point is that although Mr. Geisinger now states in his testimony that he is not
7 opposed to customer-controlled installation of STEP system installation, he does not actually
8 say that he wants CRW to take this direction as a departure from current practice of CRW
9 installing STEP systems in consideration of a Commission-approved Connection Charges
10 imposed upon customers, with utility recordkeeping and audit needs that go along with
11 Commission-approved charges. If CRW continues with the present practice of installing the
12 customer-owned STEP systems, then Staff is agreeable but will continue to insist on auditing
13 invoices and time records, etc., in order to determine the actual costs of installing STEP
14 systems and thereby to determine correct Connection Charges.

15 Q. Can you summarize your response to Mr. Geisinger's testimony as filed in this
16 case?

17 A. Yes. Although Staff would agree to CRW continuing the current practice of
18 imposing Connection Charges and undertaking STEP system installations if actual costs were
19 verified by audit, Staff also is not opposed to working with CRW to develop rules, procedures
20 and new or revised service charges to reflect customers' undertaking STEP system
21 installations. However, no work has begun on such development and there likely is
22 inadequate time remaining in this case to accomplish the tasks. Staff maintains its position

1 that any costs incurred that CRW expects to pass along to customers, either as direct charges
2 or to be included in rates, must be audited.

3 Q. If, as you state, the issue cannot be timely resolved in this current case, are
4 there ways the issue can be addressed?

5 A. Yes. One possible resolution could be for the parties and/or the Commission
6 to address and resolve other issues in this rate case, while Connection Charges and STEP
7 system installation rules remain substantially as they exist, although the tariff document may
8 be replaced in this case with an updated version that is not substantially changed with respect
9 to this issue. The parties could then, either informally or in the context of a spinoff docket,
10 work on a proposal to revise CRW's STEP system installation rules, or alternatively to further
11 study Connection Charge amounts.

12 **STEP SYSTEM INSTALLATION/CONNECTION CHARGES – PAST PRACTICE**

13 Q. What is your response to Mr. Geisinger's testimony with regard to refunds for
14 past overcharging of Connection Charges?

15 A. In his testimony on page 17 lines 16 through 23, Mr. Geisinger states that
16 refunds are not appropriate because customers were charged what he believes is actual cost.
17 All utilities, regulated and unregulated, experience actual costs, but are obligated to abide by
18 published charges whether in a tariff approved by the Commission, or a municipal ordinance
19 approved by council members, or nonprofit corporation by-laws approved by boards of
20 directors, and etc. depending on the utility. Mr. Geisinger offers no further explanation,
21 logical or otherwise, why he believes it is permissible for regulated utilities to willfully ignore
22 tariff-published charges that are approved by the Commission instead of properly seeking

1 increases by utilizing procedures that are outlined by laws and regulations. Mr. Geisinger
2 goes on to state his belief that this matter should be addressed in a case other than this rate
3 case.

4 Q. Does Staff know the amounts of refunds that should be made to customers?

5 A. Staff does not have an exact amount but has an approximate figure. Using a
6 review of CRW's records of Connection Charges it has collected, Staff believes an actual
7 amount can be correctly calculated, to be refunded to Central Rivers' customers.

8 Q. Do the refunds have anything to do with a determination of actual costs of
9 STEP system installation?

10 A. No, because the refund amounts are simply the difference between the
11 approved tariff charge and what was billed and collected for the individual involved
12 customers. However, actual cost becomes a factor if CRW expects to realize recovery of
13 refund amounts in rate base. To determine if such rate base is reasonable and prudent, then
14 CRW would need to have detailed documentation that meets the reasonable expectations of an
15 audit to support the actual cost for performing the installation services.

16 Q. When it discovered the improper overcharges, did Staff consider filing a
17 formal complaint case against CRW?

18 A. Yes, Staff considered filing a formal complaint, and a formal complaint still is
19 under consideration. Any time Staff discovers a violation, it attempts to seek some efficient
20 resolution including by formal complaint when deemed necessary. Every individual situation
21 has its unique set of circumstances. Formal complaints are sometimes utilized when, for
22 example, there is evidence of non-cooperation, or if a threat of monetary penalty must be used

1 for motivation, or if a resolution to a problem needs to be formally memorialized perhaps
2 because of tariff rule variance, and there is no other good way to do so. However, for this
3 issue with CRW, there initially was not evidence that non-cooperation would carry through
4 this entire case, and further since the current rate case was and being processed pending there
5 was indeed a forum going on to formally address the matter within a timeline. Additionally,
6 should CRW raise and win an issue of whether or not CRW's refunds of Connection Charge
7 amounts, assuming actual costs are properly audited and quantified, could be included as
8 utility investment, then handling the matter in the rate case works well with including refund
9 money as rate base into rates. So far, the Staff has not believed that the added expense and
10 complexity of a separate formal case, along with threats of seeking penalties, has become
11 necessary to address the matter with CRW. But Staff is in a position to reconsider.

12 Q. Do you believe the overcharge of Connection Charges should remain an issue
13 in this rate case?

14 A. Yes. Staff maintains its position on refunds of overcharges, as outlined in my
15 direct testimony filed in this case on November 11, 2014.

16 **UTILITY CONTRACT WORK**

17 Q. Do you have any comments regarding Mr. Johansen's testimony?

18 A. Yes. Mr. Johansen discusses contract work on page 7 lines 1 through 11, page
19 9 lines 3 through 12, and page 11 lines 1 through 18. Generally, I agree that many small
20 utilities, and large utilities as well, utilize contracts for operations and construction. However,
21 I don't agree that CRW is a normal situation with its contracts, because it operates under
22 contracts with an affiliate. That is not at all the same thing as contracts with non-affiliates

1 where genuine competitive bids as well as other factors are utilized to select a contractor to
2 actually do the work. Seeking genuine competitive bids is the type of contract work Mr.
3 Johansen does as receiver on behalf of the regulated utilities he is involved with, and is the
4 type of contract work many other utilities utilize as well. It does not appear, particularly for
5 the bids CRW submitted for STEP system installation, that the bids are genuine competitive
6 bids that were prepared for the purpose of obtaining work projects. Rather, the bids were
7 created to assist CRW in purportedly justifying the costs involved with existing contracts with
8 itself.

9 Q. Can you please expand on what is meant by contract prices not being “genuine
10 competitive bids,” in the context of this testimony?

11 A. Yes. Persons or entities undertaking construction projects often seek several
12 construction companies to submit bids for doing the specified work. The construction
13 companies of course exist to earn money while performing their services for clients, but they
14 also are motivated to keep a bid price as low as possible, meaning lower than their
15 competitors, in order to actually get the job. This is the competitive bid scenario. However,
16 when the bid process is over and the work proceeds, most construction companies work
17 together by seeking or providing sub-contract work, renting equipment, sharing resources and
18 information, or in any of a number of other ways that “competitive friends” can work together
19 in furtherance of their businesses. So, the bids for the installation of a STEP system for any
20 CRW customer that CRW “sought,” referenced by Mr. Johansen and also referenced by Mr.
21 Geisinger on page 10 line 20 through page 11 line 8 in his direct testimony filed on November
22 14, 2014, were not created by those construction companies for the purpose of obtaining work

1 for any specific project, because CRW all along did not intend to utilize those construction
2 companies. Rather, they were obtained by CRW for the purpose of attempting to justify its
3 flat charge of \$6,000 for any STEP system installation for a CRW customer. As such, Staff
4 does not consider these bid prices to be genuinely competitive, and they are not dependable
5 for ratemaking consideration. Staff continues to request actual cost records, because that is
6 the appropriate way to determine actual cost for CRW's business model.

7 **SMALL WATER AND SEWER UTILITY ISSUES**

8 Q. What are your comments regarding the viability of small water and sewer
9 utilities?

10 A. All business must pay attention to their costs and their financial conditions, in
11 order to be successful. This concept certainly applies to utilities. Small water and sewer
12 utilities are especially vulnerable to financial strain, because there are frequent large new
13 capital costs, and sometimes large unexpected expenses, that are not supported by revenue. It
14 is important for all utilities to keep good records of capital costs and expenses in order for the
15 Commission to be able to see their financial condition and set just and fair rates that are
16 appropriate to the service they provide. But the record keeping is equally important to the
17 utility owner, so that the owner can be sure the utility is self-sufficient, or as nearly so as
18 possible. That does not mean the utility should not utilize contract work in place of its own
19 resources, but it does mean that the utility should know its true costs of service even if
20 contract work is utilized.

21 Q. How does this apply to CRW?

22 A. In my opinion, CRW is not being run like a utility business and certainly not as

1 a stand-alone utility. CRW has the appearance of being a part of a construction company
2 business. While Mr. Geisinger may believe this is a good business model from his own
3 perspective, there are shortcomings when viewed from a utility perspective, because the true
4 cost of service is not visible. That is an extreme problem from a regulatory viewpoint and
5 from a viewpoint of the utility service, when the goal is to set just and reasonable rates that
6 are fair for customers and adequate for the utility business.

7 Q. What do you believe is Staff's overall role in promoting the viability of small
8 water and sewer utilities?

9 A. Many of the small water and sewer utilities that are regulated by the
10 Commission, if they were studied as stand-alone utility operations, have shortcomings with
11 respect to technical, managerial, and financial (TMF) capacity, even though at the same time
12 their TMF capacities may be sufficient for them to provide safe and adequate service. The
13 TMF issues can be seen in a number of ways. Many small utilities are owned by people who
14 have primary expertise in matters other than the utility business, CRW among them. Almost
15 all of them rely to some extent on specific expertise of owners, relationships with affiliates,
16 and dependence on contract work and consultants. In addition to the issue of utility expertise,
17 Staff finds that quite often the outside assistance is not adequately funded by the utility; rather
18 the utility is subsidized by an affiliate or the owner personally. Staff thus finds it both
19 desirable and necessary to directly assist small utilities in TMF issues: dealing with customers
20 and system operations matters, making informed business decisions, and making good
21 financial decisions including studying their financial records and keeping rates up to date.

22 Q. How does Staff's role, as described, relate to CRW?

1 A. The point of describing Staff's relationship with regulated utilities is that Staff
2 has been and continues to be, in this rate case, willing to work with CRW in processing this
3 case in order that just and reasonable rates may be set. This is why Staff entered into the
4 partial Disposition Agreement, in an attempt to make things work. However, for all of the
5 concern about viability of the utility, Staff must also consider the welfare of customers
6 including rates they will be required to pay. This creates a balancing task. This is why Staff
7 is insisting upon good utility records and auditing of CRW's actual expenses in order to set
8 rates, which is why Staff finally determined that the Disposition Agreement was not
9 workable.

10 Q. Does this conclude your surrebuttal testimony / rebuttal of supplemental direct
11 testimony?

12 A. Yes.

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

In the Matter of Central Rivers)
Wastewater Utility, Inc.'s Small Company)
Rate Increase Request)

File No. SR-2014-0247

AFFIDAVIT OF JAMES A. MERCIEL, JR.

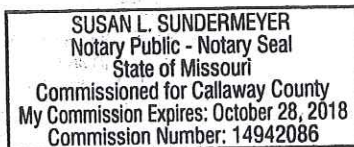
STATE OF MISSOURI)
) ss
COUNTY OF COLE)


James A. Merciel, Jr., of lawful age, on his oath states: that he has participated in the preparation of the following Surrebuttal and Rebuttal of Supplemental Direct Testimony in question and answer form, consisting of 12 pages of Surrebuttal and Rebuttal of Supplemental Direct Testimony to be presented in the above case, that the answers in the following Surrebuttal and Rebuttal of Supplemental Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



James A. Merciel, Jr.

Subscribed and sworn to before me this 15th day of December, 2014.





Notary Public