

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day
of November, 2014.

In the Matter of Central Rivers Wastewater)	
Utility, Inc.'s Small Company Rate Increase)	<u>Case No. SR-2014-0247</u>
Request.)	

ORDER GRANTING MOTION TO SUSPEND PROCEDURAL SCHEDULE

Issue Date: November 24, 2014

Effective Date: November 24, 2014

A small company rate increase request was initiated by Central Rivers Waste Water Utility, Inc. ("Central Rivers" or "Company") on March 11, 2014. On October 7, 2014, Staff of the Missouri Public Service Commission filed a *Notice of Company/Staff Agreement Regarding Partial Disposition of Small Company Rate Increase Request* ("Agreement").¹ Instead of the \$91,789.57 (approximately 100%) increase Company initially requested, the Agreement proposes an increase of \$34,461 (31.9%). Company and Staff submitted the Agreement for the Commission's consideration and requested the Commission issue an order adopting the terms of the Agreement. The Agreement also identified four contested matters needing resolution by the Commission after a hearing.²

¹ The Agreement was signed on October 6, 2014, by Mark Geisinger on behalf of Company and on October 7, 2014 by James Busch on behalf of Staff.

² The four issues for Commission determination that are identified in the Agreement are: (1) the refunding of previously collected connection fees in excess of tariff amount; (2) the amount of the connection fee to be included in the tariff; (3) whether parties other than the Company's affiliated construction company should be allowed to install STEP and STEG systems; and (4) the contract operations salary amounts allowed in rate case expense.

On October 10, 2014, the Office of the Public Counsel (“OPC”) filed its objection to the Agreement and requested an evidentiary hearing, stating that it objected to the Agreement.³ An evidentiary hearing is scheduled for December 15 and 16, 2014

Commission Rule 4 CSR 240-3.050(20) requires OPC to submit a list of unresolved issues with its request for an evidentiary hearing. In addition to the four issues identified in the Agreement, OPC asserted the four unresolved issues “may have a material effect on the revenue requirement...as reflected in the [Agreement]”⁴

On November 14, 2014, Staff filed direct testimony which recommends no increase in Company’s rates or fees, inconsistent with the Agreement, in which Staff recommends an increase.⁵ On November 19, 2014, Central Rivers filed a *Motion to Suspend Procedural Schedule and Motion to Enforce Partial Disposition Agreement* (“Motions”).

Central Rivers asserts that Staff abandoned the terms of the Agreement, as evidenced by its filed direct testimony. Central Rivers requests the Commission suspend the procedural schedule, stating it is unable to provide the type of testimony that is necessary to try a full rate case in the time allotted for rebuttal testimony.⁶ Central Rivers also seeks to enforce the Agreement by requesting the Commission direct Staff to file testimony consistent with its terms.

On November 20, 2014, Staff filed a response recommending the Commission deny the Motions. Staff contends that a modified procedural schedule is not necessary since Staff has only made one change to its direct testimony, “originally drafted to

³ ¶ 8 of *The Office of the Public Counsel’s Objection and Evidentiary Hearing Request and Request for Local Public Hearing*.

⁴ Id. ¶ 11.

⁵ Direct Testimony of James A. Merciel, Jr., pg. 17 & Direct Testimony of Matthew R. Young, pg. 5.

⁶ Rebuttal testimony is due on November 26, 2014, with Surrebuttal testimony due on December 8, 2014.

support the position taken in the [Agreement] – that change was to remove the recommendation for a rate increase.”⁷ The original negotiated Agreement proposes to increase rates by almost 32%.

Staff’s reasoning for the revised recommendation is that Company’s affiliate has not provided sufficient invoices and records in response to Staff’s data requests. This concern was first raised in Staff’s direct testimony. Company has until November 26th – two days after this order is issued - to file rebuttal testimony. Central Rivers asserts in its Motions that Staff assured Company it would submit testimony that would support the Agreement. Staff does not deny that assertion. Relying on what it believed to be Staff’s promise, Company only filed direct testimony from Company’s president, Mark Geisenger. When asked if it was his understanding that Staff would be filing direct testimony in support of the Agreement, Mr. Geisenger testified “Yes.”⁸ This clearly demonstrates Company’s belief that Staff’s position would be consistent with the Agreement.

While Staff argues that Company was put on notice of all issues involved in a full rate case contested hearing based on OPC’s October 10th filing, OPC’s filing identified issues, such as rate base and depreciation, only so far as they related to the four disputed issues, and at no point did OPC specifically state that it opposes any rate increase. Furthermore, Staff ignores the fact that Company has the burden of proof to justify a rate increase. Company reasonably assumed Staff would assist it in meeting that burden by presenting expert testimony to support the increase recommended in the Agreement. While Staff is allowed to change its position and its testimony, the

⁷ *Staff’s Response to Company’s Motion to Suspend and Enforce*, ¶ 8.

⁸ Direct Testimony of Mark E. Geisenger, pg. 4.

Commission must still ensure requirements of fairness and due process are met by allowing Company to have sufficient time to prepare and present evidence in a meaningful hearing.

In *State ex rel. Fischer v. Public Service Com'n of Missouri*, the court stated that “[d]ue process requires that administrative hearings be fair and consistent with rudimentary elements of fair play.”⁹ The court went on to state that, “[o]ne component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner.”¹⁰ As the courts have told us, it would be inappropriate to expect Company to have meaningful time to prepare and present its case under the current procedural schedule, given these particular circumstances. For that reason, the Commission will grant Central Rivers’ motion to suspend the procedural schedule, but any amended procedural schedule should allow adequate time to complete the case within the 11 month timeframe provided in 4 CSR 240.050, Small Utility Rate Case Procedure.

For reasons previously stated, the Commission will deny Central Rivers’ request to enforce the Agreement.

THE COMMISSION ORDERS THAT:

1. The procedural schedule is suspended until a new one is submitted to the Commission that allows for the conclusion of this case within the 11-month timeframe required by Rule 4 CSR 240-3.050.

2. Central Rivers’ *Motion to Enforce Partial Disposition Agreement* is denied.

⁹ 645 S.W.2d 39 at 43 (Mo. App.W.D., 1982)

¹⁰ Id.

3. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Burton, Regulatory Law Judge,