BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Request for	)	
An Increase in Annual Water	)	File No. WR-2017-0343
System Operating Revenues for	)	
Gascony Water Company, Inc.	)	

OFFICE OF THE PUBLIC COUNSEL'S

INITIAL BRIEF

COMES NOW the Office of the Public Counsel ("Public Counsel" or "OPC") and in compliance with the Missouri Public Service Commission's ("Commission") February 16, 2018 Order Granting Motion to Continue Hearing and Amending Procedural Schedule and submits its Initial Brief in this case.

INTRODUCTION

Gascony Water Company ("Company" or "Gascony") provides service to three commercial customers, approximately 26 full-time customers and 157 part-time customers in a fishing resort area, in Gasconade County. The lots are primarily used for camping.

In this case, pursuant to the provisions of the Small Company Procedure, Staff audited Gascony's books and records, reviewed the Company's customer service and general business practices, reviewed Company's current tariffs, and evaluated the Company's operation of its facilities. This resulted in a November 17, 2017 Partial Disposition Agreement.

In issuing its Report and Order in this Small Utility Rate Case, the Commission should adopt the positions recommended by OPC. OPC calculated a total annual revenue requirement of

$37,248. This equates to an annual revenue requirement increase of $952, as the amount necessary for the Company to recover the cost of providing safe and adequate utility service to customers.[1]

In considering OPC's recommendation, it is helpful to recognize the Gascony Water Company ("Gascony of "Company") overcollected the start-up costs approved in its Certificate of Convenience and Necessity ("CCN") case.[2] In the CCN the Company was to amortize start-up costs of $20,000 over five years. The Company continued to collect that amount meaning that: "as of June 30, 2017, customers have paid a total of $73,000 for this amortization during the prior 18 and a quarter years . . . ." "So that's $55,000 in excess of the actual expenses [approved in the CCN case]."[3]

Procedural History

On June 19, 2017, under the Small Utility Rate Case Procedure rule, 4 CSR 240-3.050 Gascony filed for a rate increase in its annual water operating revenues, seeking an increase from its Commission ordered rates in its 1999 CCN Proceeding, WA-97-510. The Company initiated this small company revenue increase request by submitting a letter to the Secretary of the Commission in accordance with the provisions of Commission Rule 4 CSR 240-3.050, Small Utility Rate Case Procedure ("Small Company Procedure"). In its June 19, 2017 Request Letter, the Company set forth its request for an increase of $15,000.00 in its total-annual-water-service operating revenues.

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1 This amount of increase takes into account the Company had over collected start-up costs. Tr. Vol. 2, p. 71, EFIS No. WA97150xxxxx.

2 Tr. Vol. 2, p. 71.

3 *Id*.

On November 17, 2017, Staff filed a Partial Disposition Agreement ("Agreement").[4] The Agreement listed both resolved issues,[5] and unresolved issues for hearing.[6] Issues taken to hearing are: (a) Rate Base, (b) Rate Design, , (c) Transfer of Land, (d) Commission-Ordered Depreciation Rates,[24] (f) Rent, (g) Salaries, and (h) Rate Case Expense.[7]

This is the first rate case that has gone to hearing since 1999. Mr. George Hoesch, the current owner of Gascony, applied to the Commission for a Certificate of Convenience and Necessity ("CCN"). That application resulted in a Stipulation,[8] in which Mr. Hoesch made many commitments to the Commission, and, as discussed below, he failed to follow through on his commitments.

I. Revenue Requirement / Expenses

1. What amount of President of Company's compensation should be included in Company's cost of service?

OPC supports Staff's position of $15,000 annual compensation for Mr. George Hoesch[9] and recommends the Commission order this amount be included in rates as just and reasonable. Section 393.130 RSMo (2016). OPC believes, however, that Staff is recommending more compensation than it has evidence to support. The Stipulation and Agreement in Case No. WA-97-510[10] to which Mr. Hoesch agreed, requires Company to "maintain employee timesheets" and

[4] Small Utility Rate Case Timeline, June 21, 2017; Partial Disposition Agreement and Request for Evidentiary Hearing, November 11, 2017.
[5] Partial Disposition Agreement. Resolved issues: issues in the Staff's Auditing Memorandum and Staff's Accounting Schedules; the capital structure includes 100% equity, an 8.02% return on equity, and a rate of return of 8.02% for Gascony; Gascony's (second) agreement (a) maintain time sheets and travel logs.
[6] *Id*.
[7] *Id*.
[8] Exh. 200, Robinett Rebuttal,
[9] Staff witness Michael Jason Taylor, Rebuttal Testimony, page 4, lines 19 – 20
[10] Exh, 200, Robinett Rebuttal, Sch. Jar-R-2, p. 4.

to “maintain its books and records.”[11] Mr. Hoesch readily admits that he did not keep timesheets at all until 2015, and did not maintain timesheets for management duties until around November 2017.[12] While OPC agrees with Staff’s recommendation, it is not supported by contemporaneous detailed time sheets.[13]

Staff witness Taylor’s estimation is consistent with Mr. Hoesch’s own testimony regarding the hours per week he works. Mr. Taylor estimates that Mr. Hoesch works 622 hours per year, or roughly 12 hours per week.[14] Mr. Hoesch confirmed, twice, that he works about 12 hours per week.[15] And, that “includes the travel time.”[16] It was not until re-direct, when counsel as trying to rehabilitate this telling testimony, that Hoesch changed his story.[17] Company’s only expert, Mr. James Russo, relied upon after-the-fact discussions with Mr. Hoesch to calculate management hours Mr. Hoesch claimed to have worked.[18] Moreover, the timesheets that Hoesch did provide were not reliable evidence in that each week contains the exact same two descriptions: “Read meter check property,” over and over and over again.[19] The lack of any accurate description renders the timesheets useless as evidence. Absent competent evidence to prove the hours Mr. Hoesch worked, or what he was doing when he worked, the Commission must accept Staff’s recommendation of $15,000 as a reasonable salary. OPC supports that recommendation.

2. What amount of office rents should be included in Company’s cost of service?

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[11] *Id*. at p.10-11.
[12] Tr. Vol. 2, pp 54, 90.
[13] Tr. Vol. 2, p 146.
[14] Taylor Rebuttal, page 14.
[15] Tr. Vol. 2, pp 89, 96.
[16] Tr. Vol. 2, p 96, lines 15-17.
[17] Tr. Vol. 2, pp 109-10.
[18] Tr. Vol. 2, p 55, lines 10-11.
[19] Exh. 102, Taylor Rebuttal, Schedule MJT-r4.

OPC supports Staff's position to include $1,500 annually for rent expense for the office located at Mr. Hoesch's vacation home located near Hermann, Missouri. OPC is supportive of Staff's position to disallow any rent expense for a second office located in Mr. Hoesch's home in St. Louis.[20] OPC recommends the Commission order rent expense of $1,500 for the Gascony office as just and reasonable. Section 393.130 RSMo (2016).

There is no record proof customers benefit from a second office located in Mr. Hoesch's home office. Hoesch testifies that "the home office allows the president to conduct Company business without having to travel back and forth to the Villages."[21] But Mr. Hoesch testified he travels to Gascony on a weekly basis.[22]

Further, Mr. Hoesch testified that he has a part-time employee who works out of the Gascony Village office.[23] That employee's timesheets reflect that the employee is preparing statements, paying bills, making deposits, balancing a checkbook, and preparing tax documents.[24] There is benefit to customers for the a second office to prepare bills, make deposits, and prepare tax documents, as those duties can be, and are, being done at the Gascony Village office.

3. What amount of travel expense relating to President of Company's travel costs should Company be allowed to include?

OPC recommends the Commission use the 2017 State of Missouri mileage rate of 37 cents per mile. Using the Missouri mileage rate would equate to $2,893 of mileage expense to include

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[20] Exh. 102 Taylor, Rebuttal Testimony, page 27, lines 12 – 15, and page 28, 6 – 9
[21] Exh. 3, Hoesch Direct, p 95: 20-25.
[22] Tr. Vol. 2, p. 95.
[23] Hoesch Surrebuttal, p 10, line 7.
[24] Taylor Rebuttal, Schedule MJT-r3.

in Gascony's cost of service.[25] OPC recommends the Commission order $2,893 as a just and reasonable amount for customers to pay for this mileage expense. Section 393.130 RSMo (2016).

OPC's recommendation is based upon a number of factors. First, the State of Missouri mileage rate better represents the cost of fuel in Missouri. Each of the parties agreed with OPC that the IRS rate applies to the entire country and that Missouri's gas prices are lower than at least some of the other states.[26]

Second, the IRS rate represents a tax *deduction*[27] whereas the Missouri rate is a full *reimbursement*.[28] In contrast to full reimbursement, a tax deduction only reduces someone's taxable income;[29] with a reimbursement, a person is given that cost back in full.[30] As Staff witness, Jason Taylor describes it: "[a] deduction is a percentage . . . [a] reimbursement is 100 percent."[31] Taylor agrees that a deduction: "might be *lower* than a reimbursement."[32] It would be inappropriate to reimburse the company/Hoesch at a rate designated as a deduction, because it would allow him to overrecover an expense. Rather, the appropriate rate would be Missouri's reimbursement rate.

Next, Mr. Hoesch's trips to Gasconade County have purposes other than business.[33] Mr. Hoesch testified that he spends personal/leisure time while in Gasconade County.[34] He maintains

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[25] Exh. 202, Roth Rebuttal, p. 3:6 – 8.
[26] Tr. Vol. 2. p. 56: 146-47.
[27] Ex. 203.
[28] Ex. 204.
[29] Tr. Vol. 2 pp 58, 147, 207.
[30] Tr. Vol. 2 pp 58, 147, 207.
[31] Tr. Vol. 2 p 147.
[32] Tr. Vol. 2 p 147.
[33] Tr. Vol. 2 pp 197-98.
[34] Tr. Vol. 2 pp 105-06.

a home on his property in Gasconade County.[35] Hoesch also has a real estate business in Gasconade County, though the actual time he spent on that business became foggy during the hearing.[36] Based on these facts, it is apparent Mr. Hoesch's travel is not entirely for utility business. It is reasonable, therefore, to reimburse him at the Missouri state rate.

Importantly, the Stipulation from the CCN case required Hoesch to maintain, "vehicle logs."[37] Mr. Hoesch also admits that he did not submit mileage to the Commission.[38] Thus, the Commission has no competent evidence to substantiate mileage reimbursements.

Finally, taxpayers cannot claim mileage as a deduction for driving to their job.[39] It would be unreasonable to include in mileage that does not qualify for the IRS deduction. Importantly, Mr. Hoesch is not a contractor of Gascony, he is an employee. As an employee, he cannot deduct mileage from his main residence in St. Louis to his job at Gascony Water Company.[40]

Staff's witness, Jason Taylor, testified Staff calculated mileage with the IRS rate because "businesses are able to deduct on the federal income tax returns."[41] In doing so, Mr. Taylor fails to recognize the distinction between a deduction and a reimbursement. Again, because the Company is seeking a reimbursement, they should not be provided the deduction rate.

Additionally, Taylor opined that Gascony is not a state agency. While it is true that the Office of Administration's mileage reimbursement rate applies to state employees, it is the only mileage calculation that is *specific* to Missouri and which is a reimbursement rate rather than a tax

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[35] Hoesch Surrebuttal, p 10, line 7.
[36] Tr. Vol. 2 p 92.
[37] Case No. WA-97-510 Stipulation and Agreement, ¶10.
[38] Tr. Vol. 2, p. 91.
[39] Tr. Vol. 2, p. 200.
[40] Tr. Vol. 2, p.
[41] Taylor Surrebuttal, page 2, line 3.

deduction rate. OPC's recommendation of 37 cents per mile is the most accurate figure presented to the Commission. The Commission should approve OPC's recommendation as reasonable.

4. **What is the appropriate amount of rate case expense to include in the cost of service for Company and what is the appropriate mechanism to apply to rate case expense costs for Company?**

OPC recommends the Commission allow recovery of only the actual amount of prudently incurred rate case expense. OPC proposes to normalize the costs over a six-year period.[42] Public Counsel, however, strongly agrees with Staff that a substantial amount of the legal fees incurred in this case could have been avoided if Mr. Hoesch had actually executed the commitments he made in his sworn testimony in the CCN case, as well as his obligations under the Stipulation to which he agreed.[43]

5. **What amount of depreciation expense should be included and what is the mechanism to apply such depreciation?**

Public Counsel is the only party to offer an accurate, straightforward recommendation on the mechanism to apply depreciation. First, Public Counsel determined the Commission's current ordered rates to be reasonable going forward.[44] These original Commission-ordered depreciation rates are based on the NARUC USoA Class "C" depreciation rates for water utilities.[45] Further, the current ordered depreciation rates, are consistent with many of the other small-water depreciation rates currently ordered for other regulated small water systems in the state.[46]

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[42] Exh. 202, Roth Rebuttal, p. 4:1-3.
[43] Tr. Vol. 2, 150:1-18.
[44] Exh. 200, Robinette Rebuttal, Sch. JAR-R-2 *Order Approving Stipulation and Agreement*.
[45] Exh 200, Robinett Surrebuttal, p. 3: 19-20.
[46] Exh. 200, Robinette, Rebuttal, p. 3:18-20.

Staff admits it did not use the current Commission ordered depreciation rates.[47] Staff's testimony has led to some confusion about what it is recommending. When asked if he had reviewed the Company's workpaper, Staff witness Moilanen, answered: "Briefly. Yes. Are you talking about Mr. Russo's work paper?"[48] When asked what USoA Class the Company had used, Mr. Moilanen replied: "Looking at this it is not clear. For the general plant, it uses two accounts that are 370 accounts which would be Class D. And then the remaining five accounts are 390 accounts, which would be something other than Class D." Mr. Moilanen agreed it was reasonable to assume Class C for those accounts.[49]

Another example of this confusion is found in Mr. Young's testimony, where he "appears to recommend using two different NARUC USoA Classes.[50] "Mr. Young states that the trencher should be" placed into a Class D account and the UTV be placed into an account that does not exist in Class D.[51] Based on the depreciation rates ordered by the Commission as attached to Mr. Robinett's rebuttal testimony[52] the trencher should be booked in one of two accounts – either account 394 Tools, Shop, Garage Equipment or account 398 Miscellaneous Equipment.

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[47] Exh 100, Young Rebuttal, p. 31 (If [Commission] approved depreciation rates were applied . . . the rate base of both pieces of equipment would be $)).

[48] Mr. Moilanen recognized that Exh. 200, Robinette, Rebuttal, Sch. JAR-R-3 was Mr. Russo's workpaper.

[49] Tr. Vol. 2, 184: 4-23.

[50] Exh. 100, Young Rebuttal, p. 30:12 to p. 31:2.

[51] Exh. 20, Robinett Surrebuttal p. 4:1-10; *see also* Tr. Vol. 2, p. 186:1-6. (Mr. Young recommended the company use two different USOA Accounts).

[52] Exh. 200, Robinette, Rebuttal, Sch. JAR-S-1 is schedule 3 from the Order Approving the Stipulation and Agreement (Case No. WA- 97-510).

As the Applicant Gascony bears the burden of proof that its proposed rates are just and reasonable, Section 393.150.2. The Commission should adopt Public Counsel's expert's recommendations as competent and substantial evidence.

6. What is the total annual revenue required to recover the cost of providing utility service to the Company's customers?

Based on this combination of testimonies, with OPC's recommendations, Public Counsel calculates a total annual revenue requirement of $37,248. This equates to an annual revenue requirement increase of $952, as necessary for the Company to recover the cost of providing safe and adequate utility service to customers. In considering OPC's revenue requirement, it is helpful to consider Gascony has overcollected $50,000 from its customers above the amount ordered by the Commission as articulated in the original CCN Stipulation. In a colloquy with Mr. Russo, the Chairman addressed the fact the Company continued to collect $4,000 annually originally included in rates for start-up costs with a 5-year amortization:

> **Q In the -- in the 1997 CCN case, there was a five-year amortization of -- of start-up costs; is that your understanding as well?**
> A Yes. Four or five years, yes.
> **Q I'm -- I'm looking at, again, Mr. --Mr. Young's testimony on that same page. And he asserts that it's five years.**
> A That's fine. It would be 4,000 a year, then.
> **Q So is it -- is it true, then, that there -- that there hasn't been a rate case since then, and so -- and so the company has continued to recover that $4,000 a year?**
> A That is a correct statement, yes.
> **Q So would you agree with -- would you agree with Mr. Young that as of June 30th, 2017, customers have paid a total of $73,000 for this amortization during the prior 18 and a quarter years?**
> A I trust Mr. Young's math. Yes.
> **Q So that's $55,000 in excess of actual costs, correct?**
> A I'm not sure what you're saying there. I apologize.
> **Q Well, $20,000 in costs and the company received --**
> A Okay. Okay. Yes.
> **Q -- in excess of $73,000. So is it safe to assume that the -- the $55,000 was**

collected by the company without any corresponding expense amounts, so these dollars theoretically covered other costs of service amounts?

This is the reason Public Counsel's recommended total cost of service is what might appear under other circumstances to be low.

II. Rate Base

7. Should 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 (also referred to as the Shed Property or Shed Lot)? If so, what is a reasonable amount to be allowed?

OPC supports Staff's treatment and recommendations related to the land.[53] In terms of Lot 27, Staff recommends that CMC Water and Gascony Water should validly transfer ownership of Lot 27 from CMC Water to Gascony Water. Staff further recommends that rate base should contain a $0 value for Lot 27.[54] The company has no investment in the land; that has all been collected through Mr. Hoesch's sale of the land to his customers.[55] The Company has no unrecovered investment in land, which has been recovered "through the sale price of Gascony Village's lots."[56] To allow further recovery from utility customers would result in double recovery of development costs, once through payment for the lot sales themselves, and twice through utility rates for water services.[57]

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[53] Exh. 201 Robinett, Surrebuttal, p. 1.
[54] Exh. 100, Young Rebuttal p. 6.
[55] Exh. 100, Young Rebuttal p. 6 and p. 8:3-16.
[56] Exh. 100, Young Rebuttal p. 7.
[57] Exh. 100, Young Rebuttal p. 6 and p. 8:14-16.

OPC supports Staff's recommendation for the "Shed Property." Staff further recommends that rate base should contain a $0 value for this property as well, for the same reason noted above, the Company has no unrecovered investment in this property.[58]

8. Should Company be allowed to include in its rate base equipment identified as a trencher and a utility task vehicle ("UTV")? If so, what is a reasonable amount to be allowed?

Yes. For the trencher, OPC agrees with Staff that the correct original cost for the trencher is $10,800. OPC recommends 1999 as the in service year for the trencher consistent with the approval of the CCN.[59] In terms of the UTV/Gator OPC is in agreement with Staff that the correct original cost for the UTV/Gator is $4,200 based on Gascony's 2007 Annual Report. OPC recommends 2007 as the in service year for the UTV/Gator.[60]

Rate base for both the trencher and Gator, however, would be negative (or fully depreciated). Using the recommended in-service dates authorized depreciation rates from File No. WA-97-510, to calculate depreciation accruals through June 2017, Public Counsel determined these two items are fully depreciated.[61] This does not mean these assets are no longer used and useful.[62]

In contrast Staff used unauthorized depreciation rates to determine rate base value for these items. There is no question this equipment fit into Commission a class of property authorized by the Commission in the CCN case. But Staff did not apply those rates. Instead tried to rationalize

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58 Exh. 100, Young, Rebuttal, p. 20: 1-4.
59 OPC witness John A. Robinett, Surrebuttal Testimony, page 1, line 19-21
60 OPC witness John A. Robinett, Surrebuttal Testimony, page 2, line 3-5
61 Exh. 201, p. 2:3-32.
62 Exh. 201, p. 3:2-9.

its failure to comply with a Commission order "to recognize that the trencher and UTV are still used and useful in providing utility services."[63]

In his sworn testimony in the CCN case, Mr. Hoesch told the Commission: "[t]he trencher was purchased on or about 1995 for approximately ten thousand eight hundred dollars ($10,800). All of those assets (referring to trailer, the land, a computer and other equipment, office equipment, a trencher, and shop tools) have been and will be used exclusively by the Company, not by the Realty Company. That is not what happened.

In its testimony, OPC did not provide specific calculations on rate base related to trencher and gator but information was requested by Staff in a data request. Rate base for both the trencher and Gator would be negative (or fully depreciated) using OPC's recommended in-service dates and calculating depreciation accruals through June 2017 using the Commission authorized depreciation rates from File No. WA-97-510.

III. Rate Design

9. **What are the appropriate Customer Equivalency Factors that will be used to determine rates for the various customer classes?**

OPC is supportive of Staff's position[64] and recommends the Commission adopt Staff's rate design proposal.

10. **Should the Commission approve an increase to the part-time customer equivalency factor as proposed by Company, then Staff recommends the Commission consider an increase to the Dump Station customer equivalency as well.**

[63] Exh. 100, Young Rebuttal, p. 31:12 to 31:2.
[64] Exh. 104, Robertson, p. 5.

No there was no competent and substantial evidence to support any change to the customer equivalency factor.[65]

IV. Miscellaneous

11. Should the Company ensure all new customers complete an application for service per the Company's tariff and should this requirement be completed within thirty (30) days of the resolution of the case?

The Company has agreed all new customers should complete an application. [66]

WHEREFORE, Public Counsel recommends the Commission issue its orders in this case to set just and reasonable rates as recommended by the Office of the Public Counsel in its testimony.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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[65] Tr. Vol. 2, p. 164-167:6.
[66] Exh. 106, Kiesling Rebuttal, p. 3.

CERTIFICATE OF SERVICE

On this 6th day of April 2018, I hereby certify that a true and correct copy of the foregoing motion was submitted to all relevant parties by depositing this motion into the Commission's Electronic Filing Information System ("EFIS").

/s/Lera L. Shemwell