BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S POST-HEARING INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its *Post-Hearing Initial Brief*, states as follows:

INTRODUCTION AND BACKGROUND

On June 19, 2017, Gascony Water Company, Inc., (Gascony or Company) filed for a rate increase under the Commission's informal small company rate case process.[1] Gascony provides water service to approximately 180 customers in Gascony Village, a real estate development which consists of lots used primarily for camping.[2] There is a long history regarding the development of Gascony Village and the entity that is now incorporated as Gascony. Gascony's rates were first set in conjunction with obtaining a certificate of convenience and necessity in Case No. WA-97-510 (the CCN Case).[3] However, before Gascony was incorporated as a business entity with the state, George Hoesch as the sole shareholder of Gasc-Osage Realty Company, Inc. (Gasc-Osage),

[1] Ex. 102, Taylor Rebuttal, 3:9-15. The requested increase amount per the letter filing was fifteen thousand dollars ($15,000). Ex. 102, Taylor Rebuttal, 3:9-15. In Gascony's direct testimony the requested amount was increased to $22,260. Ex. 102, Taylor Rebuttal, 3:15-16. The requested amount later decreased when, sometime after October 11, 2017, Staff received correct customer counts which resulted in a decrease to the revenue requirement of eight hundred eighty-five dollars ($885.00). Ex. 100, Young, Rebuttal, 3: 5-14; Ex. 2, Russo, Surrebuttal, 1:19-2:8.

[2] Ex. 3, Hoesch Direct, 1:21-6, 2:10-15, 3:1.

[3] Ex. 100, Young, Schedule MRY-r7; Gascony filed on July 21, 2014, a request for a rate increase, but withdrew that request on December 16 of the same year. WR-2015-0020, EFIS Item Nos. 1-5.

developed Gascony Village along with "the water system located in the Village"[4] and Gasc-Osage was solely responsible for the operation of the well and provision of water.[5]

In 1997, George Hoesch originally applied for a certificate of convenience and necessity in his individual capacity; Gascony was substituted as a party in place of Mr. Hoesch in 1998.[6] In filed testimony in the CCN case, Mr. Hoesch represented to the Commission that "[a]ll of [Gascony's] financial accounting has been recorded on the books of its predecessor, [Gasc-Osage], the Realty Company."[7] Mr. Hoesch also represented that, upon its incorporation, Gascony was an entity separate from Gasc-Osage, but that "all the assets of [Gascony] have not yet been transferred from the Realty Company to [Gascony]."[8] Despite his sworn statement that "[t]he Realty Company and [Gascony] have begun to work with legal counsel to take the appropriate steps to transfer the assets associated with providing water service from the Realty Company to [Gascony]"[9] and notwithstanding his sworn statement that Gascony will own the land on which the well plant is situated (what is now referred to as Lot 27),[10] those asset transfers, especially as to Lot 27, did not occur.[11]

In December 1998, a prehearing conference was held and as a result of that conference, Staff filed a recommendation that the Commission approve Gascony's

[4] Ex. 3, Hoesch Direct, 1:17-19.

[5] Ex. 118, 2:¶ 6.

[6] Ex. 100, Young Rebuttal, Schedule MRY-r7.

[7] Ex. 100, Young Surrebuttal, Schedule MRY-R3, 2:24-26.

[8] Ex. 100, Young Surrebuttal, Schedule MRY-R3, 2:26-29.

[9] Ex. 100, Young Surrebuttal, Schedule MRY-R3, 2:29-31.

[10] Ex. 100, Young Surrebuttal, Schedule MRY-R3, 3:52-58. Mr. Hoesch also represented that the Company would own a trencher purchased on or about 1995 for approximately $10,800. *Id.*

[11] *See* Exs. 108-112.

application with certain conditions.[12] At bottom, the CCN case was resolved by a Stipulation and Agreement, and Staff witness James Merciel filed testimony in support of the Stipulation and Agreement in WA-97-510.[13] Mr. Merciel's testimony in support of the Stipulation and Agreement explains positions relevant to this case, especially with respect to Gascony's persisting claim that there is rate base consisting of undepreciated and non-contributed plant.[14] Despite this agreed-upon stipulation in the CCN case in which it was agreed there was $0 rate base and in which it was agreed to allow $20,000 for start-up costs to be amortized at $4,000 per year,[15] and despite the representations made by Mr. Hoesch in sworn testimony in the CCN case,[16] Gascony now seeks an overall revenue increase of $21,001—including items in rate base already addressed in

[12] Ex. 100, Young Rebuttal, Schedule MRY-r7. One requirement of Staff's recommendation in the CCN case was that "the company maintain employee time sheets, telephone usage logs, vehicle logs, equipment use logs, work orders, continuing property records and customer complaint records." *Id.* Staff at that time, including current Company witness James Russo, then completed an 18 month review of WA-97-510 and recommended that "[t]he Company and its affiliate, Gascony [sic]-Osage Realty Company maintain detailed records and supporting documentation on all affiliated transactions." Ex.100, Young Rebuttal, Schedule MRY-r7. It should be noted that despite Mr. Hoesch providing testimony in the CCN case that he is the only regular employee of Gascony, *see* Ex. 100, Young Surrebuttal, Schedule MRY-R3, 5:114, the 18 month review states that "[t]he Company does not have any employee's [sic] at this time and does not need to maintain employee time sheets. We would recommend time sheets be maintained if the Company hires any employees." *Id.* Regardless, in WR-2017-0343, Gascony seeks to include in its case an annual salary amount for Mr. Hoesch of $27,510. *See* Ex. 2, Russo Surrebuttal, 2: 15-17.

[13] Ex. 100, Young Schedule MRY-r6, 1:6-16.

[14] Mr. Merciel explained the difference between Company's initial filing position and the position to which the parties ultimately agreed:

> The Company took the position that there is rate base, consisting of undepreciated and non-contributed plant, with original cost of $229,656. The return as proposed by the Company was $10,103, and depreciation was $4,376. The Company included startup costs as an annual expense. The Staff took the position that there was no rate base, and included startup costs as a four-year amortized expense of $4,000 annually.

Ex. 100, Young Schedule MRY-r6, 2:18-2:24.

[15] Ex. 100, Young Schedule MRY-r6; Hrg. Tr. Vol. 2 70:19-72:19.

[16] *See* Notes 7-10, *supra* and accompanying text.

the CCN case—and must prove by a preponderance of the evidence that the desired increase is just and reasonable.[17]

PROCEDURAL HISTORY OF WR-2017-0343 / SETTLED AND NON-CONTESTED ISSUES

Shortly after Gascony's filing for a rate increase, a Small Utility Rate Case Timeline was filed, outlining target dates upon which certain case activities were to have occurred.[18] For example, and in accordance with the rules regarding Small Utility Rate Case Procedure,[19] day 90 marked the time in which an overview of Staff's preliminary audit results were provided to Gascony and the Office of Public Counsel (OPC); on or about day 120 Staff's settlement proposal packet was sent to Gascony, and on or about day 130 a meeting was held with Gascony and OPC regarding that settlement packet.[20] Day 150 set the date on which Staff filed an executed disposition agreement. This filing of a Partial Disposition Agreement occurred on November 17, 2017.[21]

The Partial Disposition Agreement identified issues resolved[22] and issues to be addressed at an evidentiary hearing.[23] The unresolved issues included: (a) Rate Base,

[17] Ex. 2, Russo Schedule SUR-jr1 (as corrected at hearing at Hrg. Tr. Vol. 2, 42:8-10); *see infra*, Legal Standard / Burden of Proof.

[18] EFIS Item No. 2 (filed June 21, 2017).

[19] 4 CSR 240-3.050.

[20] EFIS Item No. 2 (filed June 21, 2017).

[21] EFIS Item No. 2 (filed June 21, 2017); EFIS Item No. 8 (filed Nov. 17, 2017).

[22] EFIS Item No. 8 (filed Nov. 17, 2017). The resolved issues include: (1) Staff Auditing Department findings contained in Staff's Auditing Memorandum and Staff's Accounting Schedules were incorporated by reference, save remaining disputed items addressed below; (2) the schedule of depreciation rates was incorporated by reference as the prescribed schedule of water plant depreciation rates for Gascony; (3) the capital structure includes 100% equity, an 8.02% return on equity, and a rate of return of 8.02% for Gascony; (4) Gascony's agreement to follow Staff's Auditing Department recommendations relating to (a) Gascony to continue to maintain time sheets and travel logs and (b) Gascony, as a Class D Water Company, is required to maintain documentation of costs, sufficient under 4 CSR 240-50.020, relating to improvements of the water system; (5) distribution to Gascony's customers of information specifying the

(b) Rate Design, (c) Customer Applications, (d) Land Ownership, (e) Depreciation Rates,[24] (f) Rent, (g) Salaries, and (h) Rate Case Expense.[25] The Partial Disposition Agreement was addressed at a Procedural Conference held on December 1, 2017.[26] While the Partial Disposition Agreement was not approved at that time, the parties proceeded with the case by filing a procedural schedule utilizing "normal rate case procedures for a hearing."[27] The parties have substantially conducted themselves as if the Partial Disposition Agreement had been approved and Staff requests the approval of the same. Stated differently, the majority of issues included in the Joint List of Issues and addressed at the evidentiary hearing were issues identified as being unresolved in the Partial Disposition Agreement.[28]

LEGAL STANDARD / BURDEN OF PROOF

Pursuant to Section 393.150.2:

> At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the … water corporation …, and the commission shall give to the

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rights and responsibilities of Gascony and its customers; (6) inclusion of the Water and Sewer Department Report; (7) Staff may conduct follow-up review to ensure Gascony's compliance with the Partial Disposition Agreement; (8) Staff may file a Complaint for noncompliance with the Partial Disposition and Agreement; (9) acknowledgement that the Partial Disposition Agreement had been reviewed and that it fairly represented the Agreement, which Gascony freely entered into. EFIS Item No. 8 (filed Nov. 17, 2017).

[23] EFIS Item No. 8 (filed Nov. 17, 2017).

[24] OPC did not object to that portion of the Partial Disposition Agreement at or near the time in which the Partial Disposition Agreement was filed. OPC did address depreciation rates in written testimony as to the trencher asset and UTV asset. *See* EFIC Item No. 11, *Motion for Leave to Accept Late-Filed Response to Partial Disposition Agreement and Request for Evidentiary Hearing* (filed November Nov. 29, 2017);*see also* Ex. 200, Robinett Rebuttal 1:1-3:2 and Ex. 201, Robinett Surrebuttal 1:1-4:12.

[25] EFIS Item No. 8 (filed Nov. 17, 2017).

[26] Procedural Conference Tr., 4: 4-9, EFIS Item No. 13 (filed Dec. 11, 2017).

[27] Procedural Conference Tr., 4: 4-7, EFIS Item No. 13 (filed Dec. 11, 2017).

[28] *See* Joint List of Issues, List and Order of Witnesses, Order of Opening Statements and Order of Cross-Examination, EFIS Item No. 31 (filed February 13, 2018); *see also* Statements of Position filed March 12, 2018, EFIS Item No.35 (Staff Statement of Positions), EFIS Item No. 36 (OPC Statement of Positions), EFIS Item No. 37 (Gascony Statement of Positions).

> hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.[29]

Because Gascony requested the rate increase, Gascony "bears the burden of proving that its proposed rate increase is just and reasonable."[30] Gascony must meet this burden of proof by "the preponderance of the evidence standard."[31] To meet the preponderance of the evidence standard, Gascony "must convince the Commission it is 'more likely than not' that [Gascony's] proposed rate increase is just and reasonable."[32]

There are two components to the burden of proof – "the burden of producing (or going forward with) evidence and the burden of persuasion."[33] "[T]he burden of producing evidence is 'a party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling such as a summary judgment or a directed verdict.'"[34] "[T]he burden of persuasion is 'a party's duty to convince the fact-finder to view the facts in a way that

[29] MO. REV. STAT. § 393.150.2.

[30] ***In the Matter of Lake Region Water & Sewer Company's Application to Implement a Gen. Rate Increase in Water & Sewer Serv.***, 2010 WL 3378343 at *32 (Aug. 18, 2010) [hereinafter "***Lake Region***"].

[31] ***Lake Region***, 2010 WL 3378343 at *32 (citing ***Bonney v. Environmental Engineering, Inc.,*** 224 S.W.3d 109, 120 (Mo. App. 2007); ***State ex rel. Amrine v. Roper,*** 102 S.W.3d 541, 548 (Mo. banc 2003); and ***Rodriguez v. Suzuki Motor Corp.***, 936 S.W.2d 104, 110 (Mo. banc 1996)).

[32] ***Lake Region***, 2010 WL 3378343 at *32 (citing ***Holt v. Director of Revenue, State of Mo.***, 3 S.W.3d 427, 430 (Mo. App. 1999); ***McNear v. Rhoades,*** 992 S.W.2d 877, 885 (Mo. App. 1999); ***Rodriguez v. Suzuki Motor Corp.***, 936 S.W.2d 104, 109-111 (Mo. banc 1996); ***Wollen v. DePaul Health Center,*** 828 S.W.2d 681, 685 (Mo. banc 1992)).

[33] ***Kinzenbaw v. Dir. Of Revenue***, 62 S.W.3d 49, 53 (Mo. 2001).

[34] ***Kinzenbaw***, 62 S.W.3d at 53 n.6 (quoting BLACK'S LAW DICTIONARY 190 (Seventh ed.1999)).

favors that party.'"[35] Thus, "[t]he burden of persuasion requires [Gascony] to convince the Commission to favor its position, and this burden always remains with [Gascony]."[36]

ARGUMENT

Revenue Requirement / Expenses

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

The appropriate amount of compensation for Mr. Hoesch as the president of Gascony to include in the Company's cost of service is $15,000.[37] Staff's analysis in reaching this calculation is based on actual time reporting maintained by Mr. Hoesch and other job-related activities that are typical of an owner-operator of a small water company like Gascony.[38]

The amount of compensation for Mr. Hoesch proposed by Gascony is inappropriate for a number of reasons. The Stipulation and Agreement from the CCN Case required Mr. Hoesch to keep time sheets,[39] but those sheets for Mr. Hoesch's operational time were not kept from 1999 through 2015.[40] Moreover, no records for Mr. Hoesch's management time were kept until November 2017, some four months after Gascony filed its rate increase letter to initiate this case, after the time in

[35] ***Kinzenbaw***, 62 S.W.3d at 53 n.6 (quoting BLACK'S LAW DICTIONARY 190 (Seventh ed.1999)).

[36] ***Lake Region***, 2010 WL 3378343 at *32 n.314 (citing ***Middlemas v. Director of Revenue, State of Missouri,*** 159 S.W.3d 515, 517 (Mo. App. 2005); and ***R.T. French Co. v. Springfield Mayor's Com'n on Human Rights & Community Relations,*** 650 S.W.2d 717, 722 (Mo. App. 1983)).

[37] Ex. 102, Taylor Rebuttal, 4:19-20.

[38] Ex. 102, Taylor Rebuttal, 8:19-10:22; *see also* Hrg. Tr. Vol. 2, 159:22-160:2.

[39] Hrg. Tr. Vol. 2, 54:7-10.

[40] Hrg. Tr. Vol. 2, 54:11-14. Despite Staff questioning the accuracy of these sheets, that was the only evidence provided by the Company to Staff. Ex. 102, Taylor Rebuttal, 4:14 – 8:3.

which Staff presented its day 90 preliminary audit results, and after Staff's day 120 settlement proposal was provided to Gascony.[41]

It is not clear if those hours reported accurately reflect the time in which Mr. Hoesch spent operating and managing the utility, and as to management time, there can be no doubt that the sheets that appeared in November 2017 are *estimates* of management time based on discussions with Mr. Hoesch.[42] To be sure, in written testimony Mr. Russo agrees with Staff witness Taylor that it is likely that Mr. Hoesch did not record all of his activities in his time reporting, Mr. Russo recognizes that Gascony provided additional information, and that "[t]he Company also realizes that this additional information is still lacking."[43]

Even though Staff requested all time sheets believing the response to that request would include all the hours and duties for Mr. Hoesch,[44] Staff was nevertheless provided information based on estimates that are by the Company's expert witness' own admission "still lacking".[45] Based on the foregoing, Gascony has not proven that it actually incurred these compensation costs and therefore Gascony has not met its burden to prove that "it is more likely than not" that the inclusion of Gascony's proposed salary expense would result in just and reasonable rates.[46]

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[41] Hrg. Tr. Vol. 2, 44:15-25; 54:15-19; Ex. 102, Taylor Rebuttal, 3: 9-15; *see also* Small Utility Rate Case Timeline, EFIS Item No. 2 (filed June 21, 2017).

[42] Hrg. Tr. Vol. 2, 46:12-20.

[43] Ex. 2, Russo Surrebuttal, 6:7-11.

[44] Hrg. Tr. Vol. 2, 149: 12-24.

[45] Hrg. Tr. Vol. 2, 44:15-25; 54:15-19; Ex. 102, Taylor Rebuttal, 3: 9-15; *see also* Small Utility Rate Case Timeline, EFIS Item No. 2 (filed June 21, 2017); Ex. 2, Russo Surrebuttal, 6:7-11.

[46] ***Lake Region***, 2010 WL 3378343 at *32 (citing ***Holt v. Director of Revenue, State of Mo.***, 3 S.W.3d 427, 430 (Mo. App. 1999); ***McNear v. Rhoades,*** 992 S.W.2d 877, 885 (Mo. App. 1999); ***Rodriguez v. Suzuki Motor Corp.***, 936 S.W.2d 104, 109-111 (Mo. banc 1996); ***Wollen v. DePaul Health Center,*** 828 S.W.2d 681, 685 (Mo. banc 1992)).

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

An appropriate level of costs to assign Gascony for its share of the actual costs related to the owner's residence in the utility's service area is $1,500.[47] Staff opposes the inclusion of office rents related to a second office in the city of St. Louis.[48] The amount of rent expense proposed by Gascony for the Gascony Village office and for the inclusion of second office at the personal residence of Mr. Hoesch in St. Louis should be rejected by the Commission, as Gascony has not proven that it actually incurred these rent costs and therefore Gascony has not met its burden in establishing that the allowance of these expenses would result in just and reasonable rates.

As to the Gascony Village office, and although Mr. Russo could not obtain commercial real estate rental information for the Gascony Village area, Gascony nevertheless proposes an increase in the level of annual rent expense in the amount of $710 for a total annual rent expense amount of $2,210.[49] The justification given by Mr. Russo for this increase is based on an approximate 47% increase in the consumer price index (CPI) from 1999 through 2016, which represents all the years in which Gascony did not file or complete a rate case.[50] However, Gascony has not provided to Staff any lease agreement providing for rent adjustments, here a rent increase, based on the consumer price index.[51] Staff counsel has not uncovered a law or case that allows for such an increase absent a lease agreement containing a consumer price index adjustment clause. Moreover, it is typical for those types of agreements to be

[47] Ex. 102, Taylor Rebuttal, 27:3-12, 12-15.

[48] Ex. 102, Taylor Rebuttal, 24:15-16.

[49] Ex. 1, Russo Direct, 7:4-7.

[50] Ex. 1, Russo Direct, 7:7-10.

[51] Hrg. Tr. Vol. 2, 160:15-24.

capped at a certain percentage of the consumer price index because those types of agreements are tied to renewal terms in the lease, thereby making a 47% increase based on sixteen years of CPI "inflation" at any one time grossly excessive.[52] In the

[52] Though it is difficult to prove a negative, here the non-existence of a law stating the consumer price index (CPI) can be used to increase rent without a lease containing a clause to that effect, or cases interpreting that non-existent law, Staff counsel has conducted preliminary legal research on this issue and offers the following for the Commission's consideration. "Rent escalation involves a series of tasks. In order for it to work as it should the parties must understand and accurately act *under the clause*." Perils of rent escalation, 18 Mo. Prac., Real Estate Law--Transact. & Disputes § 37:4 (3d ed.) (emphasis added). "The escalation clause must be sensibly drafted. The parties must interpret the clause sensibly." *Id.* "The landlord must bill and the tenant must pay the correct amount due." *Id.* "Johnston v. First National Bank & Trust Co. of Joplin, illustrates how many different factors may disturb the parties' expectations. It offers fair warning of the perils that are inherent in all attempts to draft a lease that offers carefully considered protection against future exigencies." *Id.* "In *Johnston*, the shopping center landlord used a form lease which called for a base rent augmented by a percentage rent lease with an alternate CPI adjustment in the event the percentage rent increase failed to keep pace with the CPI." *Id.* The *Johnston* court noted the following:

> Previous to entering into the lease there were no negotiations or discussions between the parties as to how an increase in the Consumer Price Index would be transformed into an increase in the minimum rent. Nor after the lease was signed was there any acquiescence or agreement by these plaintiffs regarding the method of computing the claimed increase.
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> The Consumer Price Index, U.S. City average, is determined monthly. The Consumer Price Index, U.S. City average, in evidence, contains separate "All Items" categories for "all urban consumers" and "wage earners and clerical workers". It also contains separate categories for food and beverages, housing, apparel and upkeep, transportation, medical care, entertainment, and "other goods and services". The lease provisions do not indicate which category should apply.…
>
> **Any method of determining an increase in rent under the Consumer Price Index provision that we declare to be proper would create obligations upon the parties that were not agreed to nor necessarily implied from the language in the lease or from the parties' conduct. It would be pure speculation whether such method was intended by any party, by the language of the lease, or whether the parties would have agreed to such a method had they considered it. We hold that the provision regarding the Consumer Price Index is ineffective and that the rent cannot be increased based on that provision.**

Johnston v. First Nat. Bank & Tr. Co. of Joplin, 624 S.W.2d 500, 503-04 (Mo. App. S.D. 1981) (emphasis added); *see also* ***Roth v. Phillips Petroleum Co.***, 739 S.W.2d 598 (Mo. App. E.D. 1987):

> The primary question raised is, what construction is to be placed *on this clause*:
>
> > …If Lessee elects to exercise any of the three 5-year renewal options herein granted, the rent during such five (5) year extended terms shall be adjusted as follows:
> >
> > > If at the time Less[ee] exercises any of the renewal options contained in this paragraph the cost of living as established by the National Consumers' Price Index, U.S. Dept. of Labor, Bureau of Labor Statistics has varied upward or downward…".

absence of such an agreement, Staff's recommendation of $1,500, which based on Staff's schedule MJT-r9 represents the actual expenses required to operate 70% of Mr. Hoesch's home at Gascony Village,[53] is appropriate.[54]

The inclusion of a second office at the personal residence of Mr. Hoesch in St. Louis should likewise be disallowed. Similar to the management time sheets,[55] Staff was not aware of this "additional information" of a second office until after presenting its day 90 preliminary audit findings to Gascony.[56] Every document received by Staff was at the Gascony Village office and Gascony's response to a data request regarding documents stated that the information is available at the Gascony Village office.[57] Staff was never referred to the St. Louis office or aware of an option to go visit Mr. Hoesch's St. Louis home.[58] Additionally, OPC's experience in conducting an on-site audit at Gascony Village in 2014 reveals a similar pattern. OPC witness Keri Roth testified that she went on-site to perform an audit in the 2014 rate case, that all of the necessary papers or documents for that audit were on-site, and, most importantly, that she was never aware of Gascony having another office.[59] Thus, there should be no allowed expenses for a second office, because no expenses for a second office have been proven by Gascony.

Roth, 739 S.W.2d at 599 (emphasis added); *see also* ***Rosenberg v. Gas Service Co.***, 363 S.W.2d 20, 26 (Mo. Ct. App. 1962) ("A lease which, in connection with the privilege of an additional term, provides for the adjustment of the rent for such term, is deemed to require a further agreement which, being a component part of the lease, must be in writing.").

[53] Hrg. Tr. Vol. 2, 197:23-25; 198:13-15; 199:1-2.

[54] *See* Ex. 102, Taylor, Schedule MJT-r9.

[55] *See* Note 41, *supra*.

[56] Hrg. Tr. Vol. 2, 155: 14-20.

[57] Hrg. Tr. Vol. 2, 20-13.

[58] Hrg. Tr. Vol. 2, 154:25 – 155:6.

[59] Hrg. Tr. Vol. 2, 201:6-15.

Gascony's requested increase in office rents should be rejected as Gascony has not shown as a matter of law that it is entitled to pay an increase based on consumer price index or otherwise where there is no lease agreement. Furthermore, allowing the amount requested by Gascony for the Gascony Village office would require Gascony's ratepayers to pay for 104% of the expenses of Mr. Hoesch's Gascony Village home.[60] The expenses for the purported St. Louis office should not be allowed as that "office" was revealed to Staff and OPC after-the-fact and no documentation, apart from Mr. Russo's testimony on his calculation of the rent,[61] has been provided to substantiate the cost to utilize the office.[62] Stated differently, Gascony has not shown the St. Louis office as being necessary for the provision of water service to Gascony's customers and therefore Gascony should not be allowed to include that expense in its revenue requirement calculation.

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

Staff has included travel costs for Mr. Hoesch based on using the Internal Revenue Service's (IRS) 2017 standard mileage rate of 53.5 cents per mile.[63] Staff does not agree with OPC's recommendation of 37 cents per mile based on the State of Missouri's Office of Administration rates because Gascony is not a state agency.[64]

[60] *See* Ex. 102, Taylor, Schedule MJT-r9; Hrg. Tr. Vol. 2, 197:23-25; 198:13-15; 199:1-2.

[61] *See* Ex. 1, Russo Direct, 6: 9-15.

[62] To be sure, Mr. Russo testified that he is neither Mr. Hoesch's accountant nor the accountant for any one of Mr. Hoesch's businesses and he has not viewed any tax returns regarding the same. Hrg. Tr. Vol. 2, 44:3-11; Hrg. Tr. Vol. 2, 47:16-19. Thus, Mr. Russo does not know whether a home office is claimed on those tax returns. Hrg. Tr. Vol. 2, 44:3-11; Hrg. Tr. Vol. 2, 47:16-19.

[63] Ex. 103, Taylor Surrebuttal, 2:1-3.

[64] Ex. 103, Taylor Surrebuttal, 2:1-13.

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?

Staff reviewed actual costs incurred by Gascony in processing this rate case and supports actual rate case expense normalized over a 10-year period.[65] Gascony included in its calculations "a total rate case expense of $18,000 normalized over a six-year period[.]"[66] In surrebuttal, Gascony acquiesced by "reluctantly offer[ing] as an alternative to normalize rate case expense over an eight-year period."[67] OPC's recommendation is "to allow recovery of actual dollars, prudently incurred, related to rate case expense" and OPC "is agreeable to Gascony's proposal to normalize the costs over a six-year period."[68] Although all parties utilized the term "normalize", a question was asked at hearing regarding the recovery becoming a regulatory asset or a regulatory liability depending on when Gascony comes in for its next rate case and whether amortization may be utilized if the Commission were to order exact recovery, no more and no less, of rate case expense.[69] In response to this question, Staff agrees that if the Commission were to provide for exact recovery of Gascony's rate case expense, a regulatory asset should be established for amortization and the Commission could order Gascony to return for rate evaluation at the end of the amortization period.[70] Staff provides the following chart comparing the annual impact of the amortization at six (6) year, eight (8) year, and ten (10) year recovery periods:

[65] Ex. 102, Taylor Rebuttal, 31:10-12.

[66] Ex. 1, Russo Direct, 8:3-4 (emphasis added).

[67] Ex. 2, Russo Surrebuttal, 13:1-2 (emphasis added).

[68] Ex. 202, Roth Rebuttal, 3:18-4:3.

[69] Hrg. Tr. Vol. 2, 152:3-153:6; *see also* Hrg. Tr. Vol. 2, 201:16-203:12.

[70] Hrg. Tr. Vol. 2, 152:3-153:6; *see also* Hrg. Tr. Vol. 2, 201:16-203:12.

	At Gascony's Estimated Rate Case Expense	At the Level of Actual Rate Case Expense Incurred Through March 2018[71]
Regulatory Asset	$18,000	$10,478
Annual Recovery over 6 Years	$3,000	$1,746
Annual Recovery over 8 Years	$2,250	$1,310
Annual Recovery over 10 Years	$1,800	$1,048

Additionally, the Commission could recognize that the primary issues, specifically the rate base issues, which Gascony has brought before the Commission should have already been resolved, especially as indicated in Mr. Hoesch's sworn testimony in the CCN case.[72] Had Mr. Hoesch transferred the assets as he stated in sworn testimony that he would do, then the issues of the land, rent expense, and the trencher would have already been resolved.[73] Thus, the Commission could disallow any recovery of rate case expense relating to the litigation of these issues, perhaps by making a fifty-percent (50%) disallowance.[74]

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

Staff supports depreciation rates of 3.3% for Class D NARUC USOA Account 379 – Other General Equipment, and 6.7% for Class D NARUC USOA

[71] "Rate Case Expense Incurred" represents Consulting Fees through March 2018 and Legal Fees through December 2017. Staff intends to update its recommended revenue requirement as additional costs are provided by Gascony.

[72] Ex. 102, Taylor Rebuttal, 31:13-17.

[73] Ex. 102, Taylor Rebuttal, 31:18-20.

[74] Ex. 102, Taylor Rebuttal, 31:20-21.

Account 373 – Transportation Equipment.[75] Staff's recommended depreciation rates are reflective of Staff's recommended in-service dates and useful lives of the equipment booked in these accounts.[76] Further, Staff's recommended rates comport with Gascony and Staff's agreement in Attachment D of the Partial Disposition Agreement – which clearly shows Account No. 373 at a rate of 6.7% and Account 379 at a rate of 3.3%.[77] OPC did not object to that portion of the Partial Disposition Agreement at or near the time in which the Partial Disposition Agreement was filed, but did file written testimony as to the trencher asset and UTV asset.[78] In its written testimony, OPC provides a position on depreciation rates but does not state a position on the related issues of appropriate in-service dates and/or useful lives of the equipment.[79] In hearing testimony, OPC discussed its position's impact on rate base and OPC's overall position regarding the equipment is to reduce Gascony's rate base by $1,625 and to continue depreciating assets.[80] Gascony's position is equally unattractive in that the Company recommends placing the equipment in-service in 2015 while utilizing Staff's extended useful lives; Gascony's recommendation would result in 2015 being the start of a 30 year recovery period for a trencher that was manufactured in 1985.[81]

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[75] Ex. 102, Taylor Rebuttal, Schedule MJT-rt, Accounting Schedule 05, 1:36; Ex. 102, Taylor, Schedule MJT-rt, Accounting Schedule 05, 1:35.

[76] Ex. 100, Young Rebuttal, 30:6-15. Should the Commission find Staff's recommended in-service dates or useful lives inappropriate, Commission-ordered depreciation rates should reflect the ordered useful lives. *See* Hrg. Trg. Vol. 2, 134:12-16.

[77] EFIS Item No. 8, Attachment D (filed Nov. 17, 2017). Company counsel also astutely noted at hearing in response to a question from Chairman Hall that the majority of the depreciation rates were resolved in the Partial Disposition Agreement that the disagreement as to depreciation related to a couple of specific accounts. Hrg. Tr. Vol. 2, 28:6-14.

[78] *See* Note 24, *supra*.

[79] Ex. 101, Young Surrebuttal, 2:1-16.

[80] Hrg. Tr. Vol. 2, 213: 3-19.

[81] Ex. 100, Young Rebuttal, 28:14-29:3.

Mr. Hoesch agrees in written testimony with Staff's position on depreciation.[82] Company witness Mr. Russo did not provide testimony on this issue, but did include an amount for depreciation expense in his Income Statement schedules.[83] Because the Company did not provide in-depth testimony on the issue, Staff witness Stephen Moilanen provided surrebuttal testimony regarding depreciation rates on a "going-forward" basis.[84] Mr. Moilanen made clear that Staff's *recommendation* is to utilize Class D accounts on a going-forward basis.[85]

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

The Accounting Schedules attached to the rebuttal testimony of Staff Witness Taylor support $37,527 of revenues required.[86] This amount represents Staff's recommended $1,231 increase of the existing $36,296 of annualized revenue.[87]

Gascony has not and cannot meet its burden in showing "it is more likely than not" that proposed increased rates resulting from the revenue requirement calculated by Gascony's expert witness are just and reasonable.[88]

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[82] Ex. 3, Hoesch Direct, 7:14-15.

[83] *See* Ex. 1, Russo Direct, Schedule 4, line 30; *see also* Ex. 2, Russo Surrebuttal, Schedule SUR-jr1, line 30.

[84] Ex. 107, Moilanen Surrebuttal, 1:1-3:18; Hrg. Tr. Vol. 2, 186:23-187:3.

[85] Hrg. Tr. Vol. 2, 186:23-187:3 (emphasis added).

[86] Ex.102, Taylor Rebuttal, Schedule MJT-r2.

[87] Ex. 102, Taylor Rebuttal, Schedule MJT-rt, Accounting Schedule 01; Taylor Schedule MJT-rt, Accounting Schedule 9-2. Based on receipt of some updated actual rate case expense information from Gascony through March 2018, *see* Note 71, *supra*, and in updating the EMS run for this actual rate case expense information, the revenue requirement calculation is $1,681, an increase of $450 from the time of filing rebuttal testimony.

[88] ***Lake Region***, 2010 WL 3378343 at *32 (citing ***Holt v. Director of Revenue, State of Mo.***, 3 S.W.3d 427, 430 (Mo. App. 1999); ***McNear v. Rhoades,*** 992 S.W.2d 877, 885 (Mo. App. 1999); ***Rodriguez v. Suzuki Motor Corp.***, 936 S.W.2d 104, 109-111 (Mo. banc 1996); ***Wollen v. DePaul Health Center,*** 828 S.W.2d 681, 685 (Mo. banc 1992)).

Rate Base

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?

While Staff supports including Lot 27 and the Shed Property in the Company's rate base,[89] the rate base value for the properties should be $0, as there is not an unrecovered investment associated with the properties.[90] The appropriate accounting for these properties is to recognize that the assets are included in rate base, but also include an offsetting inclusion of Contributions in Aid of Construction (CIAC).[91]

Company witness Russo worked on rate base issues in the CCN case as a Staff auditor and provided written testimony with respect to rate base.[92] At that time, Mr. Russo disagreed with Company's rate base calculation on "[t]he Original Cost of Plant in Service, Cash Working Capital and Reserve for Completion."[93] The disagreement with the Original Cost of Plant in Service was because there were "several items that the Staff believes should not be included in Plant in Service" – this included various additions to Source of Supply for which the Company had "not provided any supporting documentation to identify what type of work was performed."[94] Based on this, Mr. Russo concluded, "[t]herefore, the Staff cannot recommend including these amounts in Plant in Service."[95] Moreover, Mr. Russo disagreed with the Reserve

[89] Ex. 100, Young Rebuttal, 4:15-17.

[90] Ex. 100, Young Rebuttal, 6:4-16.

[91] Ex. 100, Young Rebuttal, 7:15-9:16; *see also* Ex. 100, Young Schedule MRY-r6, 2:18-2:24.

[92] Hrg. Tr. Vol. 2, 49:7-20; Ex. 100, Young, Schedule MRY-r2, 2:5-6.

[93] Ex. 100, Young, Schedule MRY-r2, 2:15-17.

[94] Ex. 100, Young, Schedule MRY-r2, 2:18-22.

[95] Ex. 100, Young, Schedule MRY-r2, 2:22-23.

for Completion calculation because that calculation "appears to be an attempt to allocate to ratepayers a portion of the original construction costs identified as a development cost over the number of lots developed since not all of the lots have been sold."[96] Mr. Russo continued to say "[i]t is the Staff's opinion that no property development costs should be included in rates, whether or not the identified property (lot) has been sold."[97]

More importantly, Mr. Russo recited what documents he reviewed in making a determination on rate base treatment, opined on the discoveries of his review, and provided a conclusion for how his review affected the proposed rate base of the Company – this sequence is set forth in its entirety below:

> Q. Have you reviewed any other documents?
> A. Yes I have. I have reviewed all of the records of the Company that were provided to Staff. These records included documents relating to the cost of the land, expenditures for the time period September 1, 1982 to December 31, 1996, and the 1979 and 1980 federal income tax returns.
> Q. What did you discover in your review?
> A. Based on the information provided by the Company it appears that all of the identified Plant in Service costs were expensed in the year occurred as a development cost.
> Q. How does this affect the proposed rate base of the Company?
> A. Items that have been previously expensed should not be included in rate base for ratemaking purposes. If companies were allowed to include previously expensed items in future rates they would in effect be receiving the benefit of that item twice. Based on our review of the Company's records, the Staff is recommending $0 for rate base.[98]

Mr. Russo, as a Company witness, has now taken the view that there was unrecovered investment in plant.[99] To support this change of position, Mr. Russo stated:

> [o]ne of the problems back then was the company did not provide any receipts for anything, and there was no way of, as a Staff member, then determining what

[96] Ex. 100, Young, Schedule MRY-r2, 3:22-4:4.

[97] Ex. 100, Young, Schedule MRY-r2, 4:4-5.

[98] Ex. 100, Young, Schedule MRY-r2, 4:6-20; Hrg. Tr. Vol. 2, 52:4-53:2.

[99] Hrg. Tr. Vol. 2, 70:6-8.

> item was - - how it was paid for, who paid for it or anything. So it was - - it was a matter of poor record-keeping on the company back then.[100]

Mr. Russo rightly acknowledged that Gascony has the burden of proof to show what unrecovered investment in utility plant Gascony has;[101] however, Gascony has not and cannot meet this burden of proof, especially where Gascony has not made any showing whatsoever of unrecovered investment in utility plant.[102]

In contrast to Gascony's claims, Staff's position is appropriate and reasonable. As Mr. Young explained during the evidentiary hearing, he believed Mr. Russo was attempting to make a distinction between contributed plant and disallowed plant, that he had not seen anything specifying disallowed costs, and that Staff could consider disallowed costs, but that Staff would have to have something to look at in order to make such a consideration.[103] Thus, there is no unrecovered investment for the two pieces of real estate and as such, there is no unrecovered investment amount to include in rate base.[104] Just as Mr. Russo found in the CCN case, all of the identified plant in service was expensed in the year occurred as a development cost.[105] More to this point, a flyer for Gascony Village advertising riverfront and lakefront property for sale lists as the first amenity "[c]entral water and sewer".[106] Based on this, the real property at issue has no unrecovered investment associated with those parcels and Mr. Russo has no documentation to support his reversal of position from the time in which he

[100] Hrg. Tr. Vol. 2, 70:8-14.

[101] Hrg. Tr. Vol. 2, 70:15-18.

[102] Ex. 1, Russo Direct 1:1-18:21 (and attendant schedules); Ex. 2, Russo Surrebuttal 1:1-17:10 (and attendant schedules); Ex. 3, Hoesch Direct 1:1-8:19; Ex. 4, Hoesch Surrebuttal 1:1-11:16.

[103] Hrg. Tr. Vol. 2, 129:4-25.

[104] Hrg. Tr. Vol. 2, 130:2-7.

[105] Ex. 100, Young, Schedule MRY-r2, 4:6-20; Hrg. Tr. Vol. 2, 52:4-53:2.

[106] Ex. 100, Young, Schedule MRY-r4.

served as a Staff auditor in the CCN case to the time in which he serves as an expert witness of Gascony. Thus, Gascony cannot meet its burden to show what, if any, unrecovered investment in plant it believes remains. Furthermore, there are additional legal issues with the property conveyances. Due to the legal intricacies of business entities, chains of title, and the effects of certain deeds at issue, each parcel of real property will be addressed individually.

Shed Property

The Shed Property was transferred from Gasc-Osage Realty Co., Inc., to Gascony Water Company, Inc., by General Warranty Deed dated July 27, 2017.[107] This deed has not been recorded and Mr. Hoesch first stated to the Commission that he is waiting to see "if I['m] going to get paid for the land or not."[108] Mr. Hoesch later amended this sentiment to state he would record the deed whether or not he received rate base treatment of the land.[109]

It should be noted that regardless of recordation, Gascony Water Company, Inc., is likely[110] the current true owner of the Shed Property. This is because, as a matter of property law, that deed is valid between Gascony and Gasc-Osage, and parties that have actual notice of it (i.e., Mr. Hoesch), even if the deed is never recorded; in fact, there is a Missouri statute addressing this very situation. Pursuant to Section 442.400, RSMo., "[n]o such instrument in writing [the deed] shall be valid, ***except between the parties thereto***, ***and such as have actual notice thereof***, until the same shall be

[107] Ex. 113.

[108] Hrg. Tr. Vol. 2, 92:21-10.

[109] Hrg. Tr. Vol. 2, 99:6-23.

[110] Staff counsel has not completed a chain of title review as to the Shed Property, which accounts for the use of "likely".

deposited with the recorder for record."[111] However, recordation is the best practice, as it will impart notice of ownership to third parties.[112]

Lot 27

The ownership status of Lot 27, which contains the well,[113] is more complicated than that of the Shed Property. Based on review of certified deeds, Staff counsel made the following conclusions: (1) in 1986, George Hoesch transferred Lot 27 in his individual capacity to Gasc-Osage Realty Company, Inc.;[114] (2) in 1987, Gasc-Osage Realty Company, Inc., transferred Lot 27 to Christine M. Hoesch and Matthew J. Hoesch;[115] (3) on June 20, 2015, Christine M. Hoesch (now known as Ziegler) and Matthew Hoesch transferred Lot 27 to CMC Water Co. LLC;[116] (4) on July 1, 2017, "CMC water, a Missouri limited partnership" sought to transfer Lot 27 to Gascony Water Co., Inc. (the July 1 Deed);[117] (5) the notary block of the July 1 Deed states that Christine Ziegler appeared as the "President of CMC WATER, a Missouri limited partnership and that the seal affixed to the foregoing instrument is the seal of said LLP, and that said instrument was signed and sealed in behalf of said LLP by

[111] MO. REV. STAT. § 442.400 (emphasis added).

[112] *See* MO. REV. STAT. § 442.390 ("Every such instrument in writing, certified and recorded in the manner herein prescribed, shall, from time of filing the same with the recorder for record, impart notice to all persons of the contents thereof and all subsequent purchasers and mortgagees shall be deemed, in law and equity, to purchase with notice.").

[113] Hrg. Tr. Vol. 2, 80:9-11.

[114] Ex. 108.

[115] Ex. 110. Christine Hoesch (now known as Ziegler) and Matthew Hoesch are Mr. Hoesch's children. Hrg. Tr. Vol. 2, 93:14-94:6.

[116] Ex. 111.

[117] Ex. 112.

authority of its Board of Directors; and said Christine M. Ziegler acknowledged said instrument to be the free act and deed of said LLP."[118]

Based on the chain of title conclusions, and based on fundamentals of real property law and corporate law, it is likely that CMC Water Co. LLC is still the true legal owner of Lot 27. First, and importantly, Gascony is not familiar with any entity named CMC Water limited partnership (LP) or CMC Water LLP (limited liability partnership).[119] CMC Water LLC, however, is recognized as a business entity with which Gascony is familiar.[120]

As a limited liability company (LLC), CMC Water LLC is able to enjoy the benefits of corporate status while being subject to certain burdens, including following corporate formalities. Section 347.061 of Missouri's Limited Liability Company Act provides for property of the company and subsections 1 and 2 of that section provide:

> 1. Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability property.
>
> 2. Property may be acquired, held and conveyed in the name of a limited liability company. Any estate in real property may be acquired in the name of the limited liability company and title to any estate so acquired shall vest in the limited liability company itself rather than in the members individually.[121]

Section 347.063, RSMo., provides for the transfer of property and subsection 1 states that "[t]itle to property of the limited liability company that is held in the name of the

[118] Ex. 112.

[119] Ex. 116. Gascony was asked in a formal discovery request about Mr. Hoesch's involvement with purported entities, including CMC Water LP and CMC Water LLP. Ex. 116. In response to this request, the Company stated that Mr. Hoesch is family with Christine M. Hoesch, Christine M. Ziegler, and Matthew J. Hoesch. Ex. 116. Gascony further stated it purchases water from CMC Water Co., LLC, and that the "Company is not familiar with [CMC Water LP] and [CMC Water LLP]", but "they appear to be variations of [CMC Water Co, LLC]. Ex.116.

[120] Ex.116.

[121] MO. REV. STAT. § 347.061.

limited liability company may be transferred by an instrument of transfer executed by any authorized person in the name of the limited liability company."[122] Subsection 1 of Section 347.065, RSMo., provides:

> 1. Except as provided in subsection 2 of this section, every member is an agent of the limited liability company for the purpose of its business and affairs, and the act of any member, including, but not limited to, the execution of any instrument, for apparently carrying on in the usual way of the business or affairs of the limited liability company of which he is a member binds the limited liability company, unless the member so acting has in fact no authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that the member has no such authority.[123]

Taking this all together, the conclusion to be drawn is that the July 1 Deed is ineffective to transfer Lot 27 from CMC Water Co. LLC to Gascony. This is because Lot 27 was held by CMC Water LLC, and cannot be conveyed by CMC Water LP or CMC Water LLP, as a person or entity cannot legally transfer what they do not own.[124] Further, Christine Ziegler could not have authority to effectuate a conveyance as the president of a company that never held title to the property.[125]

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[122] MO. REV. STAT. § 347.063.

[123] MO. REV. STAT. § 347.065.

[124] ***Bogy v. Shoab***, 13 Mo. 365, 376–77 (1850) ("If a man conveys a tract of land, excepting such parts as he has previously conveyed, the exception amounts to nothing, ***for he cannot convey that which does not belong to him***. And if the parts excepted embrace all the land, the deed must stand merely as a conveyance of a tract of land to which the grantor has no title. No question can arise on such a deed, except in the event of an after acquired title by the grantor.") (emphasis added).

[125] *See* MO. REV. STAT. §§ 442.020, 442.130, 442.150, and 442.210.1; *see also* ***In re Jennings***, 206 B.R. 954, 956 (Bankr. W.D. Mo. 1997) ("To convey an interest in land in Missouri, ***the person having the authority to convey the interest must do so by deed***, properly acknowledged and recorded. And the deed must be signed by the grantor. It is properly acknowledged if done so by a court having a seal, by a judge, justice, or clerk, or by a notary public. The acknowledgment must also contain language stating that the person who signed the deed is who he or she purports to be.) (emphasis added); *see also* Exs. 110-112.

Based on the foregoing, it is more likely than not that CMC Water Co. LLC remains the true legal owner of Lot 27. The practical effect of this is that Gascony spent $10,000 for nothing.[126]

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

The Company should be allowed to include in its rate base values equipment identified as a trencher and a utility task vehicle (UTV) and Staff has identified the proper rate base values for the trencher and the UTV using the traditional original cost concept.[127] Staff is opposed to Gascony Water's recommended rate base values for both of these assets as reflected in promissory notes signed by related parties.[128] The appropriate June 30, 2017, net rate base value to include for ratemaking purposes is $2,887 for the trencher[129] and $1,403 for the UTV.[130]

[126] A distinction was made at hearing that Gascony is seeking rate base treatment of Lot 27 because it was not seeking to include a contract between CMC Water Co. LLC and Gascony which provided for the sale of water from CMC Water Co. LLC to Gascony. Hrg. Tr. Vol. 2, 110:12-111:13. The purported contract between the entities was provided in response to formal discovery requests; Staff counsel notes that the contract produced is undated and unsigned by either party. *See* Ex. 117, "Prod. No. 1", 1-3.

[127] Ex. 100, Young Rebuttal, 24:16-25:2; 27:13-15.

[128] Ex. 100, Young Rebuttal, 22:3-15 ("The promissory note has no relevance to the trencher valuation. Mr. Hoesch is the owner and president of Gascony Water and Gasc-Osage…In essence, the water utility entered into this 'agreement' without the benefit of independent representation. There is no market-basis for this agreement and it should not be considered an agreement that was negotiated between two willing entities, each free to serve its own interest. This 'promissory note agreement' cannot be thought of as independently bargained negotiated agreement. As such, it is not an arms-length transaction nor does it form a basis that can be or should be relied on for rate base valuation."); Ex. 100, Young Rebuttal, 26:17-27:2 (The promissory note has no relevance to the UTV valuation Mr. Hoesch owns Gascony Water. Gascony Water entered into the promissory note with Mr. Hoesch, who in essence negotiated the amount with himself. Mr. Hoesch determined the 'purchase price' for the UTV himself and, as the owner of Gascony Water, caused the utility to enter into this 'agreement' without the benefit of independent representation. Staff does not consider this to be an arms-length transaction nor does it form a basis that can be or should be relied on for rate base valuation."); *See also* Ex. 100, Young Rebuttal, 5:7 n.5 ("American Institute of Certified Public Accountants AU-C 550.10 defines 'Arm's length transaction' as '[a] transaction conducted on such terms and conditions between a willing buyer and a willing seller who are unrelated and are acting independently of each other and pursuing their own best interests.'").

[129] Ex. 100, Young Rebuttal, 25:11-15.

The UTV

Mr. Russo identified that there is great confusion regarding the UTV, stating that "[i]t gets very confusing sometimes, even to me."[131] Mr. Russo stated Staff and OPC have identified a 2007 UTV, but that after pulling the 2014 rate case, Mr. Hoesch purchased another UTV in either 2014 or 2015 for $3,200 or $3,500 from a private party.[132] Gascony states that a promissory note was used to determine the value of the UTV[133] and provided a copy of one promissory note (the Note) dated July 1, 2017;[134] Mr. Russo testified that despite his understanding that Gascony and Gasc-Osage renew the Note annually, he had not looked at any prior promissory notes.[135]

In reviewing the Note, it is difficult to see how it could be renewed annually, as the express terms state that Gascony promises to pay Gasc-Osage $3,500 with interest at 18% for "6 months after the date hereof and from month to month thereafter fo[r] 6 months until 12-31-1 [sic], 2017, payments of interest only shall be du[e] and payable in the amount of $315.00 and a final payment in the amount of $3,500."[136] Based on

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[130] Ex. 100, Young Rebuttal, 28:9-12.

[131] Hrg. Tr. Vol. 2, 72:2-6; 73:2.

[132] Hrg. Tr. Vol. 2, 72:7 – 73:12. Mr. Russo clarified that the purchase price was "paid for by the realty company", that "[t]he realty company [Gasc-Osage] gave the third party the money" and that he had forgotten Gasc-Osage paid for it until it was brought to his attention. Hrg. Tr. Vol. 2, 79:8-24. Mr. Hoesch testified at hearing that after Staff addressed intermingling of the asset between Gascony and Gasc-Osage, he purchased another UTV after pulling the 2014 rate case, stating "I just went out and bought another one so I wouldn't be intermingling." *See also* Hrg. Vol. Tr. 2, 98:3-15; 106:16-107:7 in which Mr. Hoesch described his reasoning for withdrawing the 2014 case ("Well, I could see we weren't going to get anywhere when they told me that I'm using the ATV for the real estate company and the water company. And I thought, well, okay, I'll [go] out and I'm going to go buy another one. And that way, they will have no interest in my water company and we'll have one for every - - whatever you people want to tell me I'm using it for.").

[133] Hrg. Tr. Vol. 2, 48:2-7.

[134] Ex. 100, Young, Schedule MRY-r10.

[135] Hrg. Tr. Vol. 2, 48:2-49:2.

[136] Ex. 100, Young, Schedule MRY-r10.

these terms, interest payments were made until December 31, 2017, with the purported "purchase price" of $3,500[137] to be paid on December 31, 2017; this all occurs within six months. Mr. Russo was spot on in stating "this is - - it's really confusing".[138]

The Trencher

Mr. Russo testified that "[t]he trencher goes back somewhere in the 1990s."[139] In fact, Mr. Hoesch testified in the CCN case that the trencher was purchased in 1995 and would be an asset of Gascony.[140] Regardless of this representation, Mr. Russo described during hearing the use and sale of the trencher as follows:

> **Q And when did -- when did the company buy -- or excuse me. When did the company start using the trencher?**
>
> A Okay. The trencher goes back somewhere in the 1990s. It was purchased by the realty company. And back then, it was used for anything the realty company needed to be done and anything that the water company needed to be done. It was used for everything back then.
>
> Back in that certificate case, the – if you look at the -- what Staff was doing in terms of rate base values and if you're looking at the schedules, it would have went in -- it went into the water plant at zero.
>
> Mr. Hoesch said, The heck with that. I'll just keep it in my realty business. So he used it from then until, again, about that 2015 time frame.
>
> And then he realized in 2016 that, you know, I don't use this for the realty anymore. It really is a water utility property or it should be water utility property.
>
> So he transferred it then -- did a sale that was basically to himself to get that into the utility business. I believe was $8200 at that point.
>
> He went ahead and looked at trenchers that were available. And I think he has one attached to his surrebuttal testimony, a quote for one now that's at, like, $14,000. I mean, he gave it to himself at a good deal as far as prices for those things.

[137] Hrg. Tr. Vol. 2, 72:7 – 73:12.

[138] Hrg. Tr. Vol. 2, 72:5.

[139] Hrg. Tr. Vol. 2, 73:24-25. Mr. Hoesch's testimony from the CCN case states the trencher was purchased in 1995. Ex. 100, Young Schedule, MRY-R3 3:56-57.

[140] Ex. 100, Young Schedule, MRY-R3 3:52-58.

Q $14,000 was -- was for a new trencher?

A No. No. This is for a similar used one that he did or the aged use. It's attached to his testimony.

Q Okay.

A There's something there. So it's – and all those years that this thing was used by both, the real estate company paid for all the upkeep on that thing.

So if it had to have an oil change or bad -- something go out, the realty company did all of that. The water company did anything of it. The water company was never charged from the realty for using it during those early years.

So like I say, about '15, he realized he's not using it for the realty anymore. He's winding that business down. And so he just felt it was time to dispose of it.

And if you're going to dispose of it, why not sell it to your water utility instead of selling it out there to another party.[141]

Based on this testimony, the trencher was utilized since the mid-90s for both Gasc-Osage and Gascony operations, but sometime in, about or between 2015 or 2016 Mr. Hoesch realized he was not using the asset anymore for his realty business and disposed of it by selling it to Gascony.[142] Similar to the UTV, a form promissory note was provided to show the value of the trencher transaction.[143] Despite the trencher being purchased in or about 1995 for $10,800, the purported 2015 transaction, evidenced by a July 2017 promissory note, set the value of the trencher at $8,000.[144]

The Company should be allowed to include in its rate base values equipment identified as a trencher and an UTV per Staff's recommendation. Gascony cannot show it has actually incurred the expenses or costs related to these assets, and thus cannot

[141] Hrg. Tr. Vol. 2, 73:21 – 75:22.

[142] *See supra* Notes 139 to 141.

[143] Ex. 100, Young, Schedule MRY-r9.

[144] Ex.100, Young, Schedule MRY-r9; Ex. 100, Young Schedule, MRY-R3 3:52-58.

meet its burden to show inclusion of its amounts in calculating required revenues would result in just and reasonable rates.

Rate Design

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

Staff proposes the following Customer Equivalency Factors:[145]

Full Time – 1
Part Time – 0.35
Pool/Bathhouse – 6
Kitchen – 2
Dump Station – 1.65

Although the Company has not and cannot prove a justifiable increase to the part-time customer equivalency factor with verifiable evidence such as meter readings,[146] should the Commission approve an increase to the part-time customer equivalency factor as proposed by Company, which said proposal is solely based on personal observations made by Mr. Hoesch and Mr. Russo,[147] then Staff recommends the Commission consider an increase to the Dump Station customer equivalency as well.[148]

[145] Ex.104, Robertson Rebuttal, 5:19-20.

[146] There is a master meter, and a meter for each of the pool, the kitchen, and the dump station. Hrg. Tr. Vol. 2, 103:14-104:3. Mr. Russo testified he did not have any meter readings when he made his recommendation and when he went to Gascony Village numerous times as a Staff employee, Staff "could never find the meters…[o]r if they were there, they were underneath so much water that you could never read them." Hrg. Tr. Vol. 2, 66:25-67:8. Mr. Russo also provided testimony that "there are no numbers [to] look at that I can reference you to in terms of water consumption." Hrg. Tr. Vol. 2, 68:1-8. Further, in redirect, Mr. Russo also stated that he was made aware on March 18, the day before the hearing, that Gascony had read two of the three commercial meters for water usage. Hrg. Tr. Vol. 2, 82:25-83:3. The two meters that Mr. Hoesch testified he had read were for the kitchen and the pool. Hrg. Tr. Vol. 2, 116:19-21, 117:22-118:1. Noticeably absent from these testified-to readings is the dump station. This is of particular note where Mr. Hoesch stated that the commercial meters tell him who is using more water, and where Staff has stated if the part time equivalent is increased, then the dump station should be increased as well. Hrg. Tr. Vol. 2, 103:6-104:1.

[147] Hrg. Tr. Vol. 2, 60:15-17.

[148] Ex.104, Robertson Rebuttal, 6:10-13.

Miscellaneous

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 should have an application available, per the Company's tariff, for new customers to fill out upon a request for new service.[149] This requirement (to have an application available) should be completed within thirty (30) days of the resolution of the case.[150] Contrary to Gascony's concerns and assertions, Staff is not recommending a requirement that Gascony acquire new customers within thirty (30) days; rather, Staff recommends Gascony have an application on file so that if there is a new customer then the customer would complete the application.[151]

CONCLUSION

Gascony must show that its proposed rate increase is just and reasonable. Gascony cannot meet its burden as to the great majority of items at issue in this case, especially where Gascony cannot provide evidence to substantiate that certain costs were actually incurred. Therefore, the Commission should adopt Staff's recommendations in this matter.

[149] Ex. 106, Kiesling Rebuttal, 3:2-24.

[150] Ex. 106, Kiesling Rebuttal, 3:2-6.

[151] Hrg. Tr. Vol. 2, 177:21 – 178:11.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 6th day of April, 2018.

/s/ Alexandra L. Klaus