

Exhibit No.:
Issues: Overall Policy
Witness: James A. Busch
Sponsoring Party: MO PSC Staff
Type of Exhibit: Surrebuttal & Rebuttal to
Supplemental Direct
Testimony
Case Nos.: SR-2014-0247
Date Testimony Prepared: December 15, 2014

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

**SURREBUTTAL & REBUTTAL TO SUPPLEMENTAL DIRECT
TESTIMONY**

OF

JAMES A. BUSCH

CENTRAL RIVERS WASTEWATER UTILITY, INC.

CASE NO. SR-2014-0247

*Jefferson City, Missouri
December 2014*

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

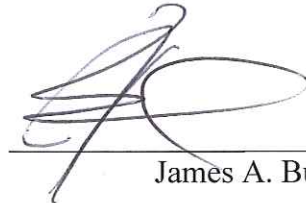
In the Matter of Central Rivers)
Wastewater Utility, Inc.'s Small Company)
Rate Increase Request)

File No. SR-2014-0247

AFFIDAVIT OF JAMES. A. BUSCH

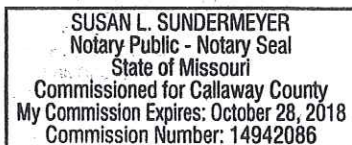
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James A. Busch, of lawful age, on his oath states: that he has participated in the preparation of the following Surrebuttal and Rebuttal of Supplemental Direct Testimony in question and answer form, consisting of 13 pages of Surrebuttal and Rebuttal of Supplemental Direct Testimony to be presented in the above case, that the answers in the following Surrebuttal and Rebuttal of Supplemental Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



James A. Busch

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





Notary Public

**SURREBUTTAL & REBUTTAL TO SUPPLEMENTAL
DIRECT TESTIMONY**

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1 **SURREBUTTAL & REBUTTAL TO SUPPLEMENTAL**
2 **DIRECT TESTIMONY**

3
4 **OF**

5 **JAMES A. BUSCH**

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

7
8 **CASE NO. SR-2014-0247**
9

10
11
12 Q. Please state your name and business address.

13 A. My name is James A. Busch and my business address is P. O. Box 360,
14 Jefferson City, Missouri 65102.

15 Q. By whom are you employed and in what capacity?

16 A. I am employed by the Missouri Public Service Commission (Commission) as
17 the Regulatory Manager of the Water and Sewer Unit, Regulatory Review Division.

18 Q. Please describe your educational and professional background?

19 A. I hold Bachelor of Science and Master of Science degrees in Economics from
20 Southern Illinois University at Edwardsville. From April 2005 through January 2008, I
21 worked as a Regulatory Economist III with the Energy Department of the Commission.
22 Previously, I worked as a Public Utility Economist with the Office of the Public Counsel
23 (Public Counsel) from 1999 to 2005. Prior to my employment with Public Counsel, I worked
24 as a Regulatory Economist I with the Procurement Analysis Department of the Commission
25 from 1997 to 1999. I have been employed as the Regulatory Manager of the Water and Sewer
26 Unit with the Staff of the Commission (Staff) since February 2008. In addition, I am a
27 member of the Adjunct Faculty of Columbia College. I teach both graduate and
28 undergraduate classes in economics.

29 Q. Have you previously filed testimony before the Commission?

1 A. Yes. The cases in which I have filed testimony before the Commission are
2 listed on Schedule JAB-1 attached to this testimony.

3 Q. What is the purpose of your Surrebuttal & Rebuttal to Supplemental Direct
4 Testimony?

5 A. The purpose of my Surrebuttal & Rebuttal to Supplemental Direct Testimony
6 is to provide the Commission with Staff's general policy considerations regarding the Partial
7 Disposition Agreement that Staff and Central Rivers Wastewater Utility, Inc. (Central Rivers
8 or Company) entered into as a result of the Company's rate request. This testimony will also
9 give a brief overall description of the small company rate request process and how
10 Disposition Agreements are eventually reached.

11 Q. Are there any other Staff members filing testimony?

12 A. Yes. Staff has various experts filing testimony in response to the Company
13 and Public Counsel. Staff experts Cary Featherstone, James Merciel, Matthew Young, and
14 James Russo are filing testimony in response to various items discussed in the testimony of
15 Company witnesses Mark Geisinger and Dale Johansen and Public Counsel witness William
16 Addo.

17 **I. EXECUTIVE SUMMARY**

18 Q. Please summarize your Surrebuttal & Rebuttal to Supplemental Direct
19 Testimony.

20 A. In order to attempt to make a rate request procedure as cost effective as
21 possible for small water and sewer companies (fewer than 8,000 customers), the Commission
22 approved and implemented a small company rate request rule. Under this rule, Staff does a
23 majority of the work to determine if a rate increase is needed by the utility upon the submittal
24 of a rate request letter. The general outcome is that either: the company and Staff come to a

1 full resolution of the issues and Public Counsel can either sign on to the agreement, not sign
2 and not oppose, or oppose and request a local public hearing/evidentiary hearing; or, the
3 company and Staff come to a partial disposition agreement that resolves some of the issues
4 and the rest of the issues are set for further disposition by the Commission through either
5 arbitration or evidentiary hearing. Again, Public Counsel may or may not sign the agreement
6 and may even request further issues to be determined by the Commission.

7 In this proceeding, Staff and the Company entered into a partial disposition agreement
8 that was opposed by Public Counsel. A request for a local public hearing was made and
9 granted. Further, a procedural schedule was agreed to that allowed for various rounds of
10 written testimony to be followed by an evidentiary hearing. As testimony has already
11 indicated, in Staff's audit and investigation, the Company has not provided the level of
12 financial detail normally required by Staff to determine the actual cost of service for the
13 Company. Despite Staff's efforts and requests for more information, Staff was unable to
14 secure the proper documentation and support. Despite lacking this vital information and
15 relying on assurances received from Company representatives that the necessary
16 documentation would be forthcoming, Staff worked with the Company and was able to agree
17 to a Partial Disposition Agreement (Partial Agreement) in this case. When Staff entered into
18 the Partial Agreement, Staff was under the impression that the Company was going to provide
19 it with more information to provide a better foundation for the cost of service that had been
20 agreed to by the Company and Staff.

21 Unfortunately, as the deadline for filing direct testimony approached, the additional
22 documentation from the Company was never received by Staff. At this time, unaware of
23 Public Counsel's position on the various issues already agreed to, Staff made the very difficult

1 decision to no longer support the increase it had previously agreed to with the Company. This
2 was a necessary step to ensure that Staff could have the most defensible position in front of
3 the Commission for the Commission to make a just and reasonable decision.

4 The regrettable part of Staff's decision is that Staff failed to contact the Company
5 prior to the filing of the testimony letting it know that Staff was abandoning the cost of
6 service that was previously agreed. Staff regrets that lack of communication and takes full
7 responsibility for that error.

8 **II. SMALL COMPANY RATE REQUEST PROCESS**

9 Q. Please provide a brief overview of the small company rate request process.

10 A. A small utility company can request a rate increase simply by submitting a
11 letter to the Commission requesting a rate increase. A small utility, within the water and
12 sewer industries, is generally one that has fewer than 8,000 customers. The entire process is
13 described in detail in Commission Rule 4 CSR 240-3.050.

14 The small company rate request process is a cooperative process and is not supposed
15 to be an adversarial process. The model calls for Staff and the company to work together to
16 determine the cost of service and to determine whether or not the evidence supports a rate
17 increase. Once the rate request letter is filed with the Commission and the Commission
18 establishes a file number, Staff's investigation begins. Staff files a timeline and assigns
19 various Staff members to the case. In every case, a member of the Staff's Water and Sewer
20 Unit is assigned as Case Coordinator who works in conjunction with the Project Coordinator
21 in Staff's Auditing Department. The Case Coordinator in the small company rate request is
22 responsible for making sure that the company's required filings are filed, serves as the main
23 contact between the company and the various staff departments, is responsible for assisting
24 the company in understanding the process, is responsible for ensuring that the various Staff

1 units' work is collected and formed into a single document, and is responsible for sending out
2 Staff's workpapers, offers, and setting negotiations among the various parties to meet all
3 established deadlines. In most every proceeding, the case coordinator is Staff expert James
4 Russo of the Commission's Water and Sewer Unit.

5 Q. What is the purpose of the timeline filed by Staff?

6 A. The purpose of the timeline is to establish the various deadlines that are
7 required by the small company rate request rule. Some of the important dates are as follows:

8 Day – 90 – Staff's submits its preliminary investigations results to the parties.

9 Day – 120 – Staff makes its offer to the other parties.

10 Day – 150 – Staff and the company have to either file a Disposition
11 Agreement, Partial Disposition Agreement, or request arbitration/mediation/evidentiary
12 hearing.

13 9 – month date – The date by which the full case must be submitted in total to
14 the Commission for the Commission's determination.

15 11 - month date – The date by which new rates go into effect.

16 Q. Who are the other parties in a small company rate request?

17 A. Typically, the only parties in a small company rate request are the utility, Staff
18 and Public Counsel. Sometimes, the Missouri Department of Natural Resources also
19 participates.

20 Q. Please continue your discussion of the small company rate request process.

21 A. By Day-90 of the timeline, Staff, through the coordinator, provides its
22 preliminary audit and investigation findings to the company and Public Counsel. This starts a
23 general 60-day negotiation phase. By Day-120 of the timeline, Staff presents its offer to the

1 various parties. Further negotiations continue, and by Day-150, at least Staff and the
2 company should come to either a full or partial disposition agreement. Again, most, if not all,
3 of the communications between Staff and the other parties at this point are established
4 through the case coordinator.

5 Q. Can extensions be requested if it appears that an agreement cannot be reached
6 by the initial 150-day deadline?

7 A. Yes. By rule, there can be two total extensions requested by Staff or the
8 company for no more than 60 days in total. These extensions are usually discussed between
9 the company and Staff.

10 Q. Why are extensions requested?

11 A. Extensions are requested for a variety of reasons. Generally, extensions are
12 requested when information needed by Staff has not been provided by the Company by the
13 appropriate deadline.

14 Q. During the small rate case process, do the utilities generally hire legal counsel?

15 A. No. The process was established to avoid the need for small companies to hire
16 outside legal counsel, thereby avoiding a significant expense. The process is supposed to be
17 cooperative, not adversarial. This is why most of the communications between Staff and the
18 utilities is coordinated through the Case Coordinator. Staff works directly with the
19 owner/operator and not with in-house counsel or hired legal counsel.

20 Q. When does legal counsel for a small utility generally become involved in a rate
21 request?

1 A. Legal counsel is generally retained once it becomes apparent that the case
2 cannot be settled amongst the parties and an evidentiary hearing is scheduled. At that point,
3 the case becomes adversarial.

4 **III. CENTRAL RIVERS RATE REQUEST: CASE NO. SR-2014-0247**

5 Q. How did Central Rivers' rate request differ from most other small company
6 rate requests?

7 A. Central Rivers' request differed in one significant manner. It was adversarial
8 from the beginning, although Staff did not at first realize it. The owner of Central Rivers also
9 owns another entity called Construction Services and Management, LLC (Construction
10 Company). All of the work provided for the utility customers is not performed by the utility
11 company, but rather through this other entity pursuant to a contract between Central Rivers
12 and the Construction Company. For a further explanation of the relationship between these
13 two companies, please see the direct testimony and rebuttal/surrebuttal testimony of Staff
14 experts Featherstone, Merciel, and Young. Staff requested various documents from the
15 utility, but time and again was blocked from receiving the necessary information. The
16 explanation that Staff received was that the information was not in the possession of the
17 utility, but rather in the possession of the affiliate, even though both companies shared
18 identical ownership. The cooperation expected from the utility under the small company rate
19 request process was lacking.

20 Q. Was Staff still able to perform an audit?

21 A. Sort of. Staff was frustrated with the Company's lack of willingness to fully
22 cooperate by providing actual costs to perform the services needed by Central Rivers to
23 provide sewer service to its regulated customers. The audit performed and the cost of service
24 created was not ideal from Staff's perspective. As noted in the direct testimony of Staff

1 expert Young, Staff still performed an audit and created a cost of service based upon its
2 general knowledge of small water and sewer utilities and by further outside research using
3 cost estimates. Staff's audit could not review actual data and the cost of service was built on
4 assumptions rather than historical information.

5 Q. When was the Day-150 date that required a full or partial agreement to be
6 filed?

7 A. The original Day-150 date was August 8, 2014.

8 Q. Were there any extensions requested and approved in this proceeding?

9 A. Yes. The first extension request was filed by Staff on August 6, 2014, and was
10 granted by the Commission on August 7, 2014. This extension pushed the Day-150 date back
11 to September 8, 2014. The second extension request was filed by Staff on September 4, 2014,
12 and was granted by the Commission on September 5, 2014. This extension pushed the Day-
13 150 date back to October 7, 2014.

14 Q. Why were extensions requested?

15 A. Staff requested extensions because, as noted, documentation and support was
16 not provided to Staff from the Company and Staff was hopeful that, by having the rate request
17 extended, that the Company would actually provide further data.

18 Q. Did the Company indicate that it would provide additional data and supporting
19 documentation to Staff?

20 A. It is my understanding that at various times throughout the course of Staff's
21 audit that the Company indicated it would provide the necessary information required by
22 Staff.

23 Q. And did the Company ever provide Staff with the additional information?

1 A. No.

2 Q. If the Company never provided Staff with its required information, why did
3 Staff sign a Partial Agreement?

4 A. Staff works very closely with small water and sewer utilities and it recognizes
5 that all information required or needed is not easily available. Therefore, Staff has to make
6 certain assumptions as to what an appropriate cost of service would be to help ensure that the
7 utility can maintain safe and adequate service at just and reasonable rates. With this
8 Company, Staff was leery of this route due to the close relationship of the utility and the
9 affiliated Construction Company. Since dollars were flowing through the utility to the
10 Construction Company and the ownership is the same, red flags were noted by Staff.

11 Even so, Staff still created a cost of service and entered into a Partial Agreement with
12 the Company. This Partial Agreement was filed on October 7, 2014.

13 Q. Who on Staff signed the Partial Agreement?

14 A. I, as Manager of the Water and Sewer Unit, sign all full and partial disposition
15 agreements for small water and sewer utilities.

16 Q. Why do you sign the agreements instead of Staff's legal counsel?

17 A. As noted above, Staff is working with the owner/operators of small utilities
18 directly. The utility does not have legal counsel at the time when disposition agreements are
19 negotiated and signed. Therefore, in Staff's opinion, the best way to keep the process on a
20 level playing field is to have the Commission's technical staff sign the agreements instead of
21 the Commission's Staff's Counsel Office.

22 Q. Did Staff have reservations at the time the Partial Agreement was signed?

1 A. Yes. As noted above, Staff was concerned about the lack of information
2 received from the Company. However, Staff was under the impression that even after the
3 signing of the Partial Agreement, the Company would provide the necessary documentation.
4 Please see the testimony of Staff expert James Russo for a further discussion of Staff's
5 understanding of Central Rivers' commitment to provide information. It was also important
6 for Staff to receive this support when it became known Public Counsel did not agree with the
7 Partial Agreement and could challenge the entire revenue increase in its testimony in this
8 case, if it went to an evidentiary hearing.

9 Q. When did it become apparent that this case was going to go to evidentiary
10 hearing?

11 A. On October 10, 2014, Public Counsel filed *The Office of the Public Counsel's*
12 *Objection and Evidentiary Hearing Request and Request for Local Public Hearing*. A
13 prehearing was ordered to be held on October 22, 2014. On October 24, 2014, a *Joint Motion*
14 *to Set Test Year and to Establish Procedural Schedule* was filed by the parties and the
15 procedural schedule was ordered by the Commission on October 30, 2014. Thus, it would be
16 fair to say that during the last week of October, it became apparent that a complete settlement
17 was not going to be reached and that an evidentiary hearing was inevitable.

18 Q. Why did Staff decide not to support its cost of service in its direct testimony in
19 this proceeding?

20 A. As described earlier in this testimony, Staff was under the impression that
21 additional supporting documentation would be forthcoming from the Company. As the date
22 of testimony approached, the additional documentation was not provided to Staff. At that
23 point, Staff felt it had no choice but to no longer support the revenue requirement that it had

1 | agreed to in the Partial Agreement because Staff lacked the necessary evidence to support that
2 | position in an evidentiary hearing.

3 | Q. From Staff's point of view, was the Partial Agreement in the nature of a
4 | proposed settlement?

5 | A. Yes, it was. In Staff's opinion, based on its knowledge of the water and sewer
6 | industry in Missouri and the costs incurred by small regulated water and sewer companies, the
7 | cost of service contained in the Partial Agreement is reasonable. However, Staff lacks the
8 | detailed Company financial information necessary to defend that cost of service at trial. Staff
9 | finds itself in this position entirely because of the lack of cooperation from the owner of
10 | Central Rivers and the Construction Company.

11 | **IV. THE COMPANY'S RESPONSE**

12 | Q. According to the testimony of Company witnesses Geisinger and Johansen, the
13 | Company was shocked when it read Staff's direct testimony. What is Staff's response?

14 | A. Staff completely understands the Company's position. As noted in the
15 | Company's testimony and various filings after direct testimony was filed, the Company did
16 | not find out about the Staff's changed position until it read Staff's direct testimony.

17 | Q. Are you aware of Staff not supporting a disposition agreement that it agreed to
18 | in any past cases?

19 | A. No. It is my recollection that Staff has always supported the agreements that it
20 | has entered into with any utility in previous rate requests.

21 | Q. Does Staff believe it had good reasons for its decision to not support the partial
22 | disposition agreement in this proceeding?

1 A. Yes. Due to the continued lack of supporting documentation that has been
2 highlighted throughout Staff's testimony in this case, Staff felt it had no other choice but to
3 abandon its previous position.

4 Q. If Staff works with companies on other cases, why is this case so different?

5 A. As has been highlighted throughout Staff's testimony in this proceeding, the
6 affiliated relationship between the utility and the construction company raises serious
7 concerns about the actual cost of providing service to the utility's customers. Staff worked
8 hard to obtain the information needed and extended the case by 60 days to get the information
9 it needed. Further, Staff filed a partial agreement to move the case forward in hopes that the
10 appropriate documents would be given to Staff. Unfortunately, no matter how often Staff
11 asked and Staff waited, the utility was not willing to provide the information. It is this
12 affiliated relationship and the lack of willingness to provide actual cost information that made
13 this case different than previous cases.

14 Q. Did Staff attempt to contact the Company prior to filing its direct testimony?

15 A. I am not aware of any such attempt by anyone on Staff.

16 Q. Should Staff have reached out to the Company prior to Staff's direct filing?

17 A. Absolutely. Staff regrets its failure of not informing the Company of Staff's
18 position that it no longer was going to support the revenue requirement that was agreed to in
19 the Partial Agreement. Staff did provide the results of its study with its testimony and it is
20 still available for the Commission's consideration. But ultimately, Staff erred in not
21 communicating with the Company and there is no excuse for the lack of communication.

22 **V. CONCLUSION**

23 Q. Please summarize your testimony.

1 A. Staff relies upon the Company to provide as much support and documentation
2 as possible so that Staff can present a cost of service that will result in safe and adequate
3 service at just and reasonable rates. With small systems, the level of detail required is not
4 always available and Staff has to work beyond its normal scope to ensure that a fair result can
5 be obtained. In this case, the reasoning for the lack of documentation was different; it was not
6 that it was not there, it was portrayed as not being available because it was held by the
7 owner's affiliate. This is different than many other instances and must result in a higher level
8 of scrutiny. Staff worked diligently with the Company and made various requests throughout
9 the course of its investigation to obtain the documentation needed to support Staff's findings.
10 Ultimately, despite Staff's best efforts, the required documentation never materialized and
11 Staff had to pull its support for its original agreement. It was a tough decision for Staff to
12 make and Staff's biggest regret is that it did not communicate that decision to the Company
13 before filing its direct testimony.

14 Q. Does this conclude your Surrebuttal & Rebuttal to Supplemental Direct
15 Testimony?

16 A. Yes.

Cases of Filed Testimony
James A. Busch

<u>Company</u>	<u>Case No.</u>
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GO-98-484
Laclede Gas Company	GR-98-374
St. Joseph Light & Power	GR-99-246
Laclede Gas Company	GT-99-303
Laclede Gas Company	GR-99-315
Fiber Four Corporation	TA-2000-23; et al.
Missouri-American Water Company	WR-2000-281/SR-2000-282
Union Electric Company d/b/a AmerenUE	GR-2000-512
St. Louis County Water	WR-2000-844
Empire District Electric Company	ER-2001-299
Missouri Gas Energy	GR-2001-292
Laclede Gas Company	GT-2001-329
Laclede Gas Company	GO-2000-394
Laclede Gas Company	GR-2001-629
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company d/b/a AmerenUE	EC-2001-1
Laclede Gas Company	GR-2002-356
Empire District Electric Company	ER-2002-424
Southern Union Company	GM-2003-0238
Aquila, Inc.	EF-2003-0465
Missouri-American Water Company	WR-2003-0500
Union Electric Company d/b/a AmerenUE	GR-2003-0517
Aquila, Inc.	ER-2004-0034
Aquila, Inc.	GR-2004-0072
Missouri Gas Energy	GR-2004-0209
Empire District Electric Company	ER-2004-0570
Aquila, Inc.	EO-2002-0384
Aquila, Inc.	ER-2005-0436
Empire District Electric Company	ER-2006-0315
Kansas City Power & Light	ER-2006-0314
Union Electric Company d/b/a AmerenUE	ER-2007-0002
Aquila, Inc.	EO-2007-0395
Missouri-American Water Company (Live)	WC-2009-0277
Missouri-American Water Company	WR-2010-0131
Review of Economic, Legal and Policy Considerations Of District Specific Pricing and Single Tariff Pricing (Live)	SW-2011-0103
Timber Creek Sewer Company	SR-2011-0320
Missouri-American Water Company	WR-2011-0337
Emerald Pointe Utility Company	SR-2013-0016
City of Pevely and CPWSD C-1 of Jefferson County	WC-2014-0018

Hickory Hills Water and Sewer Company, Inc
Peaceful Valley Service Company (Live)

SR-2014-0166/WR-2014-0167
SR-2014-0154/WR-2014-0155