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March 23, 2010

Secretary's Office
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17105

Re: Pa. Public Utility Commission
v.
Clean Treatment Sewage Co.
Docket No. R-2009-2121928

Dear Secretary:

Enclosed for filing are the Reply Exceptions of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Sincerely yours,

Erin L. Gannon

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Assistant Consumer Advocate
PA Attorney I.D. # 83487

Enclosures
cc: Honorable Ember S. Jandebeur
Office of Special Assistants
Certificate of Service
123538

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	Docket No. R-2009-2121928
	:	
CLEAN TREATMENT SEWAGE COMPANY	:	

REPLY EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

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DATED: March 23, 2010

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Administrative Decisions

Statutes

Regulations

I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Replies to the Exceptions of Clean Treatment Sewage Company (CTSC or Company). CTSC filed six exceptions to the Recommended Decision (R.D.) of Administrative Law Judge Ember S. Jandebeur (ALJ), issued on March 2, 2010. The ALJ properly recommends an adjustment to the Company's rate base claim to eliminate double-counting for Material & Supplies. The ALJ's decision to impute revenues associated with availability fees is warranted, reasonable and consistent with relevant case law. As discussed in its Exceptions, however, the OCA encourages the Commission to impute revenues for all availability customers, rather than a portion of them.

In addition, the ALJ properly recommends eliminating CTSC's Management Fee expense related to the Vice President's salary, and making a downward adjustment to its expense claim for Administrative Service Contract Labor.

For the reasons below, and those contained in the ALJ's Recommended Decision, the OCA's Main Brief and the OCA's Reply Brief, the Exceptions of CTSC should be rejected.

II. OCA REPLIES TO EXCEPTIONS

Reply to CTSC Exception 1: The ALJ Correctly Rejected CTSC's Claim for Materials and Supplies. (R.D. at 7-8; OCA M.B. at 18-20; OCA R.B. at 22-23).

In her Recommended Decision, ALJ Jandebeur correctly rejected CTSC's claim of $9,114 for Materials and Supplies (M&S). R.D. at 8. ALJ Jandebeur relied upon the testimony of OCA witness Kraus that small sewer companies, including CTSC, charge M&S directly to expenses because it is cost prohibitive for the small companies to maintain an inventory account on their balance sheets. See R.D. at 7-8, citing OCA St. 1S at 7. Allowing the Company to also claim M&S would result in a double-count of the inventory balance in rate base. R.D. at 8.

In its Exceptions, the Company asserts that it made its inventory claim based upon 1% of the Company's net plant-in-service, which is a method accepted by the Commission. CTSC Exc. At 2-3. However, the Company fails to provide any authority in support of its argument in its Exceptions.[1] Id.

Importantly, CTSC has never denied that it charges M&S directly to an expense account on an ongoing basis. The OCA has not recommended any adjustment to that process or to the Company's M&S expense claim. The OCA only recommended denial of the double-counting of the M&S costs by eliminating the Company's M&S *rate base* claim.

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[1] In its Main and Reply Briefs, in support of its claim, the Company relied on OTS's purported acceptance of this method of accounting for M&S in Pa. P.U.C. v. CMV Sewage Co., 2006 PaPUC LEXIS 55 (CMV). See CTSC M.B. at 8-9; CTSC R.B. at 3-4. As discussed in the OCA's Main and Reply Briefs, CMV involved a black box settlement between the parties regarding revenue requirement and cost of equity, and since there were no specific findings of fact made regarding the accounting of M&S, there can be no viable assertion as to how OTS reached its position with regard to revenue requirement. See OCA M.B. at 19 and OCA R.B. at 22.

Also, the Company asserted that the 2005 CMV case trumps a 1998 case cited by the OCA because the Commission's Order accepting the parties' settlement regarding revenue requirement in CMV came later. See CTSC R.B. at 4, citing Pa. P.U.C. v. Western Util., Inc., 1998 PaPUC LEXIS 145, *32 (Western Utilities). Such argument ignores the Commission's policy of encouraging settlements (see 52 Pa. Code § 5.231(a)), which are, by their very nature, compromises of the parties' litigation positions. Because the issues are not litigated and determined by the Commission, they hold no precedential value. Furthermore, the OCA was not a party to the CMV settlement and, therefore, none of the settlement provisions therein are binding on the OCA.

The Commission has specifically determined that when a utility charges its inventory costs directly to an expense account on an ongoing basis, the M&S claim should be removed from rate base in order to avoid the utility recovering M&S costs twice. See OCA M.B. at 19-20 and OCA R.B. at 22-23, citing Western Utilities at *32. Consistent with Western Utilities, the $9,114, which represents a double-count of the M&S costs, should be removed from rate base. Consequently, the ALJ's recommendation to disallow the costs should be accepted.

In that event, CTSC proposes to initiate the perpetual inventory process and create an inventory account on its balance sheet. CTSC Exc. at 2-3. There is no need for CTSC to do that. As Mr. Kalbarczyk testified, the cost of maintaining inventory accounts can be prohibitive for smaller companies. CTSC St. DMK-1R at 30-31. "This is precisely why the small utilities are allowed to charge expense accounts directly for the entire cost of M&S purchases." OCA St. 1S at 7; OCA R.B. at 23. Accordingly, if the Commission adopts the ALJ's recommendation to deny the duplicative M&S rate base claim, it should likewise deny CTSC's proposed additional annual expense allowance of $1,200 associated with initiating the perpetual inventory process.

Reply to CTSC Exception 2: The ALJ Correctly Determined that Imputation of Annual Revenues Associated with the Availability Class Is Lawful and Appropriate. (R.D. at 9-11; OCA M.B. at 22-25; OCA R.B. at 26-33)

A. Introduction

In May 2009, this Commission found that CTSC is not providing adequate service to its availability and usage customers. Stephen Sutter, *et al.* v. Clean Treatment Sewage Co., Order at 16-17, 18-20 (May 15, 2009) (Sutter). With regard to the availability customers, the Commission concluded that it was not reasonable for CTSC to collect a stand-by charge when a moratorium on new connections had been in effect for three years (now five years). Id. at 16. Two months after CTSC was prohibited from charging availability customers, it filed a rate case, in which it seeks to shift recovery of the availability fee revenues to the usage customers. It made this claim despite the Commission's determination in Sutter that the usage customers are *also* receiving inadequate service. It also made this claim despite the Commission's refusal to increase usage fees in the Sutter case:

> In its Reply Exceptions, CTCS argues if the Commission orders it to cease collecting availability fees. the Commission is constitutionally required to immediately increase usage fees by a like amount. R. Exc. at 14. We are not persuaded that we have the authority to raise usage rates in this Order in a complaint proceeding. In any event, we are not inclined to do so.

Id. at 18.

Consistent with Sutter, and as recommended by the OCA and Office of Trial Staff in this proceeding, the ALJ rejected CTSC's proposal to increase usage rates to recover the $156,034 it is prohibited from recovering through availability rates. Accordingly, the ALJ imputed annual revenues associated with availability customers to CTSC's total proforma revenues. R.D. at 11.

The ALJ did not, however, impute *all* of the availability revenues, which means that usage customers would be required to pay for a portion of the availability service *that is not*

available to the availability class, in addition to the revenue requirement that is related to the usage class. See OCA Exc. at 13-17. To avoid this absurd result, the OCA recommends that revenues from all 367 availability customers should be imputed because that is the number of customers who were being charged the availability fee as of March 2009 (OCA St. 1 at 6) and that is the number of customers to whom CTSC would begin charging the availability fee again, if the moratorium is lifted. Tr.3 at 77-79; see OCA M.B. at 22-25.

The ALJ recommends that the revenues from 192 out of the 367 availability customers should be imputed. R.D. at 11. Her recommendation was a compromise between the OCA recommendation of $156,034 and CTSC's claim of $0, and based on a secondary argument by OTS. R.D. at 11; OTS M.B. at 40, n. 104. OTS's initial recommendation was that the full the full $156,034 in annual fees formerly charged to availability customers should be imputed. OTS St. 1 at 3-7; OTS M.B. at 40, n. 104. The OCA submits that there is no basis for compromise because CTSC is not providing adequate service to usage or availability customers. Until the Company is providing adequate service, it is not entitled to receive full price for its service. Pa. P.U.C. v. Pennsylvania-American Water Co., 1989 PaPUC LEXIS 170, *16 ("[T]he risk of an inability to provide adequate service properly rests upon the Company and its stockholders, not upon the customers") (PAWC).

Yet, in its exceptions, CTSC argues that it would be inconsistent with Commission precedent to impute *any* revenues to the Company and that, if any revenues are imputed, only $33,000, or 20%, of the revenues associated with availability fees should be imputed. The ALJ rejected these arguments and the OCA submits that the Commission should likewise reject them. Further, the Commission should impute $156,034 to reflect all 367 availability customers and to

ensure that the Company, not the usage customers, are held responsible for CTSC's failure to serve its availability customers. Additional support for this recommendation is provided below.

B. The ALJ's Conclusion that Availability Revenues Should Be Imputed Is Correct; the Cases Cited by CTSC Do Not Support Its Argument That Its Availability Revenues Are Hypothetical or Phantom.

Quoting at length from the Commission's Order in Sutter, the ALJ agreed that the responsibility for providing service to its availability customers rests with CTSC, alone. R.D. at 10 quoting Sutter at 17. On this basis, the ALJ adopted the OCA and OTS recommendation to impute revenues associated with availability charges that CTSC cannot recover due to its failure to provide service. R.D. at 11. Implicitly, the ALJ also concluded that the Commission has authority to impute availability fee revenues to CTSC.

In its Exceptions, CTSC argues that imputing the availability revenues is inconsistent with prior Commission decisions where it has rejected the imputation of hypothetical or phantom revenue. CTSC Exc. at 5. In support of its argument, the Company cites four cases. Pa. P.U.C. v. Total Envtl. Solutions, Inc. – Treasure Lake Water Div. and Treasure Lake Wastewater Div., 103 PaPUC 110 (2008); Pa. P.U.C. v. Aqua Pennsylvania, Inc., 236 PUR4th 218 (PaPUC 2004) (Aqua); Pa. P.U.C. v. PECO, 61 PaPUC 589 (1986); Pa. P.U.C. v. Pennsylvania Gas & Water Co. – Water Div., R-80071265, Order (Apr. 24, 1981) (PG&W 1981). As discussed in the OCA's Reply Brief, the cases are readily distinguished. The first three involve revenues that were not being collected due to customer nonpayment. Here, the revenues are not being collected because the utility is prohibited by the Commission from collecting the charges due to inadequate service. OCA R.B. at 29.

In the fourth case, PG&W 1981, the utility failed to charge its affiliate any overhead expenses for office space. PG&W 1981 at 12. The ALJ directed the utility to adjust its revenues

for the amount that the utility should have been charging. The utility imputed $180 in annual revenues, based on the utility's estimate of what costs were created by its affiliate's use of utility office space, despite not having charged or received those revenues. Id. at 15. Applying that standard, it is clear that the availability revenues in the present case, which are based on a tariffed rate are not "phantom" revenues. This is supported by other Commission decisions where it has approved the imputation of revenues where there was a reasonable basis in the record for the amount imputed. See, e.g., Pa. P.U.C. v. Philadelphia Suburban Water Co., 2002 PaPUC LEXIS 55 at *24-25 (approving utility's imputation of revenue for an acquired system that were not collected because of rate mitigation agreed to as a condition of sale); Pa. P.U.C. v. Quaker State Tel. Co., 61 Pa. PUC 120, 135-36, 72 PUR4th 503, 518 (1986) (adopting OCA recommendation to impute the revenues associated with discounted telephone service to utility employees).

Finally, CTSC points to Aqua for the proposition that usage customers should bear the entire costs of its system, *i.e.* no imputation of revenues, because most availability customers do not pay the charge. CTSC Exc. at 5. As noted above, however, uncollectibles are not the reason why CTSC is not charging and collecting availability charges. At no time in this proceeding has CTSC proposed to eliminate availability charges. Indeed, its witness indicated that the Company would resume billing availability charges as soon as the Commission allows. Tr.3 at 77-79. To the extent availability charges are not paid by customers, the uncollectibles are reflected in the Company's bad debt expense. CTSC Exh. 1, Sch. H1.

Moreover, the Company ignores the language in Aqua that specifically limits its holding to large utilities where the availability charge no longer serves its original purpose.

> Historically, availability charges were useful during the 1960s and 1970s when developers owned the systems and the developments were only partially built. At

> that time, the purpose of the charge was to share the cost of maintaining the water system's infrastructure, so that the system would be ready to accommodate the vacant lot owners when they were ready to connect. Based upon the evidentiary record herein, however, we conclude that those charges are no longer necessary in order for AP to assure future water service to vacant lots. *However, those charges may continue to be utilized by other utility systems, when they can serve their original purpose.*

Id. at 253 (emphasis added). For CTSC, availability charges continue to serve their original purpose. There is an almost 50/50 split between availability and usage customers. CTSC St. DMK-1R at 16. Another important distinction is that the utility in Aqua did not uniformly charge an availability fee to all owners of vacant lots, which the Commission found to be inequitable and reason to eliminate the charge entirely. Id.

As discussed in the OCA's Main and Reply Briefs, and its Exceptions, the Commission has statutory authority to deny rate increases because of inadequate service and to give effect to its authority "by making such adjustments to specific components of the utility's claimed cost of service as it may determine to be proper and appropriate." 66 Pa. C.S. §§ 523(a), 526. The cases relied on by CTSC do not support a conclusion that the Commission should fail to exercise its authority here, where the evidence establishes that CTSC continues to provide inadequate service to usage and availability customers.

C. CTSC's Argument That It Is Entitled to, and Usage Customers Are Required to Pay, Its Total Cost of Service Is Groundless and Should Be Rejected.

CTSC also argues in its Exceptions that the plant is used fully by usage customers and, therefore, usage customers must pay the total cost of service. CTSC Exc. at 6-7. In making this argument, CTSC ignores that it is not "entitled" to the total cost of service – the legal standards that protect utility investors from the confiscation of their property do not take precedence over the utility's obligation to provide safe, adequate and reasonable service. 66 Pa. C.S. §§ 523(a), 526, 1501; Market Street Ry. Co. v. Railroad Comm'n of Ca., 324 U.S. 548 (1945); Pa. P.U.C. v.

Pennsylvania Gas & Water Co., 68 PaPUC 191 (1988); Colonial Products Co. v. Pa. P.U.C., 188 Pa. Super 163, 172-73; 146 A.2d 657, 663 (1959); National Util. Inc. v. Pa. P.U.C., 709 A.2d 972, 977-80 (Pa. Commw. 1998); Pa. P.U.C. v. Pennsylvania Gas & Water Co., 68 PaPUC 191 (1988) (PG&W 1988); Pa. P.U.C. v. Pennsylvania Gas & Water Co., 61 PaPUC 409, 415-16, 74 PUR4th 238, 244-45 (1986). The Commission's discretion was aptly summarized in PG&W 1988:

> A utility is not *guaranteed* rate increases necessary for a return on its property; it is only entitled to rates sufficient to earn a fair return if it provides adequate service.

Id. at 197 (emphasis in original); see also PAWC at *16 ("the Company is not entitled to receive full price for such inadequate service").

CTSC also ignores the evidence that the facility is not being used at full capacity. First, the actual capacity of the treatment plant is not known. There is ample evidence suggesting that the installed plant has capacity to treat 200,000 gpd but is operated as a 100,000 gpd plant. See OCA R.B. at 19-21; Tr.2 at 52-53, 73 (Crowley); Tr.3 at 200-01 (Fitzgerald); Tr.4 at 137-38 (Fought); OCA Exhs. TLF-5, TLF-16; OCA St. 2S at 9; CTSC Exh. SAM-2 at 11300-3. Department of Environmental Protection (DEP) witness Crowley agreed that the actual capacity of the treatment plant should be determined. Tr.2 at 89-91. On the basis of this evidence, CTSC agreed to investigate the possibility of rerating the treatment plant, *i.e.* asking DEP to approve additional connections because the existing facility is capable of serving more than 378 customers. CTSC M.B. at 55.

Regardless of the treatment plant capacity, the collection system in rate base was constructed to serve both the current usage customers and the availability customers. CTSC witness Kalbarczyk admitted that the collection mains are installed and maintained throughout

the Company's service territory, which includes 378 usage lots and 367 availability lots. See Tr.3 at 64; CTSC St. DMK-1 at 5; CTSC St. DMK-1R at 33. The Company's collection system was designed and constructed throughout the entire development to serve each and every lot in order to ensure that each lot had the value of utility service. See OCA St. 1S at 9. Further, in a Finding of Fact adopted by the Commission in Sutter, the ALJ found that the availability fee was charged to "compensate CTSC for parts of the system that are already installed and that will be providing service in the future …." See Stephen Sutter, *et al.* v. Clean Treatment Sewage Co., C-20078197, Initial Decision at 16 (Jan. 2, 2009). As discussed above, availability fees remain appropriate where developments are only partially built and the charge serves to "share the cost of maintaining the water system's infrastructure, so that the system would be ready to accommodate the vacant lot owners when they were ready to connect." Aqua at 253.

Further, the Company's argument is internally inconsistent because if the treatment plant was designed to serve only 378 usage customers and the system has been at full capacity since the connection of the 378th customer to the system, then the Company effectively admits that it illegally charged and collected an availability fee since imposition of the moratorium on February 11, 2005. See OCA R.B. at 28. CTSC also takes the position that when the moratorium is lifted, it will charge *all* availability customers – not the number of availability customers that DEP approves for connection. Tr.3 at 78-79.

Finally, CTSC relies on a statement in the OCA's Main Brief that "the system has reached capacity." CTSC Exc. at 6, n. 8. A review of the OCA's brief in its entirety shows that the reference was to the DEP's limitation of 378 connections and not to the physical capacity of the treatment plant. OCA M.B. at 11-12, 16.

D. Reasonable Rates Are Not Premised on a Utility's Efforts.

As a last effort to justify why no revenues should be imputed, CTSC argues that it has made every reasonable effort to lift the moratorium and blames its failure on Delaware Township. CTSC Exc. at 7-8. This argument was already rejected by the Commission in Sutter.

> Section 1501 makes the public utility responsible for providing reasonably continuous service to its customers. The actions/inactions of the Township do not excuse the Company's protracted inability to provide service to availability customers who wish to hook up to CTSC's system. We understand the complexities of the Act 537 planning process and the difficulties of negotiating that process in a timely manner. However, DEP notified the Company in December 1999, that additional sewage planning and approvals would be necessary to expand beyond 378 customers. I.D. at 17. Consequently, we are not persuaded by CTSC's argument. The Company's position also suggests that any wastewater utility in the Commonwealth could use the Act 537 planning process as an excuse for failing to comply with the Public Utility Code. Where, as here, a public utility charges an availability fee, a public utility cannot use Act 537 as an excuse for its inability to hook up new customers for a period of more than three years.

Sutter at 17 quoted in full R.D. at 10. Moreover, this Commission has held in prior decisions that rates should be premised on *the actual service being provided* and not on whether the utility has made efforts to improve service.

> We agree with the OCA's position that the Company's focus upon its efforts, rather than the result, is misplaced.
>
> The effect of the ALJ's recommendation is that the Abington District customers not pay full price for inadequate service. Regardless of the Company's efforts, it has not fulfilled its statutory obligation to "furnish and maintain adequate, efficient, safe, and reasonable service. . . ." (66 Pa. C.S. § 1501). Having failed to provide such service, the Company is not entitled to receive full price for such inadequate service.

PAWC at *15-16; see also PG&W 1988 (despite the utility making "substantial progress towards" improvement projects the Commission ordered zero increase because the service being received by customers remained inadequate); PG&W 1986 (holding that the utility must demonstrate actual evidence of improved service before any increase will be allowed).

In its Reply Brief, the OCA corrects and clarifies a number of the claims repeated in CTSC's exceptions about the actions it has taken to improve service. Rather than repeat that discussion here, the OCA refers the Commission to pages 15 to 18 of that brief. The bottom line, however, is that the Company has no current plan to get the moratorium lifted or otherwise get approval to perform the projects necessary to improve service. It conceded in its Main Brief that "[w]ith the Township having rejected the Planning Module, the matter is at a standstill." CTSC M.B. at 53.

Where it stands today is that availability customers cannot receive wastewater service, CTSC cannot collect revenues from half its customers, the Company's customer base cannot be expanded to share the revenue burden, and CTSC's pumping stations will continue to cause sewage overflows until they are upgraded or replaced. This is not adequate service. As long as service remains inadequate, CTSC's usage customers should not be required to pay the revenues associated with the unlawful availability rate. National Util. Inc. v. Pa. P.U.C., 709 A.2d 972, 977-80 (Pa. Commw. 1998); PG&W 1988.

E. The Record Does Not Support CTSC's Argument That an Amount Less Than $156,000 Should Be Imputed.

In the event that the Commission adopts the ALJ's recommendation that revenues be imputed, CTSC argues that the amount of revenue should be based on 192 customers. CTSC Exc. at 4. As explained on pages 15 and 16 of the OCA's Exceptions, however, the 192 figure has been misinterpreted. The number 192 arose from OCA witness Fought's opinion that the treatment plant could serve "at least" 570 connections (570-378 usage customers = 192). See OCA M.B. at 24-25; OCA R.B. at 33. It is important to note that Mr. Fought testified that this number was conservative and calculated using a relatively high *assumed* flow per household, *i.e.* it was likely that the actual flow would be less and would mean that CTSC's existing treatment

plant could serve more than 570 customers. OCA St. 2 at 14. Thus the 570 number was taken somewhat out of context and used by CTSC to argue that the imputed revenues for availability fees should be based on fewer than 367 availability customers. But this argument is discredited because CTSC admitted that it would begin charging *all* the availability customers if the moratorium were not in place – even though the Company has also claimed that it may not be able to serve some or all of them. If CTSC believes that it does not have capacity to serve any availability customers, why did it charge a fee to 367 availability customers for *four* years after the moratorium took effect?

CTSC next argues that if the Commission agrees with the ALJ that availability revenues should be imputed, that it should use a ratio of 34% to reduce the revenue requirement adjustment. CTSC Exc. at 4. CTSC argues that this percentage represents the portion of asset value that would be allocated to the availability customers. Id. The ALJ properly ignored this recommendation in her Recommended Decision. The availability rates of $35.53 were set at a level that the Commission deemed reasonable in CTSC's last rate case. Pa. P.U.C. v. Clean Treatment Sewage Co., Docket No. R-00038688, Order (Aug. 10, 2004). They are roughly 50% lower than the usage rates of $68 per month that were approved in the same case. Thus, the difference in costs associated with providing service to usage and availability customers has already been reflected in the availability revenues. The Company's "availability ratio" is redundant.

F. Conclusion

For all of the reasons discussed above and in the OCA's briefs, the ALJ's decision to impute revenues associated with availability charges should be adopted. The OCA respectfully submits that the Commission should affirm the intent and purpose of its Order in Sutter by

refusing to burden usage customers with any portion of the revenues CTSC is unable to recover from availability customers because it is not providing adequate service. To this end, the Commission should modify the ALJ's recommendation by imputing the entire amount of revenue associated with the availability class ($156,034).

Reply to CTSC Exception 3: The ALJ Correctly Rejected CTSC's Claim for Vice President's Salary and Correctly Required Substantiation of Future Officer Salary and Management Fee Claims (R.D. at 11; OCA M.B. at 26-28; OCA R.B. at 34-35).

In her Recommended Decision, ALJ Jandebeur recommended deducting the Vice President's salary, also referred to as the management fee expense, in the amount of $33,488 for failure to provide adequate documentation of the time records and wage information for both the President, also referred to as the officer salary expense, and Vice President of CTSC. R.D. at 11. The ALJ also recommended that CTSC be specifically ordered to substantiate its claims for officer salary and management fee expenses in future rate cases. Id.

In its Exceptions, the Company asserts that it provided appropriate evidence justifying its claims for President and Vice President salaries. CTSC Exc. at 9. This statement is inaccurate. The Company provided responses to discovery requests, which specifically indicate that there are no functions performed by the Vice President that are not also performed by the President. See OCA St. 1S at 2; OCA Exh. MJK-3. Furthermore, the Company could only provide an estimate that the Vice President spends more than 5.12 hours per week, on average, on CTSC business, and the President spends more than 5.25 hours per week, on average. See OCA Exh. MJK-3.

The Company asserts in its Exceptions that both the President and Vice President spend more time on CTSC business than is reflected in the Company's claims. CTSC Exc. at 10. However, both CTSC's President and Vice President own and operate various other businesses, and the fact remains that the Company could not produce time records for either person. See OCA St. 1S at 2. The Commission has disallowed managerial expense claims when the record is devoid of time records and wage information of managerial personnel. See Popowsky v. Pa. P.U.C., 674 A.2d 1149, 1153 (Pa. Commw. 1996) (The company was afforded the opportunity to

present actual evidence of its managerial expenses at the hearing but neglected to do so, thereby failing to prove that the expenses were reasonable and just). Quite frankly, it would be entirely reasonable and permissible pursuant to Popowsky to disallow both salaries in this proceeding for the complete lack of evidence substantiating the claims.

However, the OCA recommended, and the ALJ adopted OCA's recommendation, to disallow only the claim for the Vice President's salary in the amount of $33,488 and to require the President and Vice President to keep time records. See OCA M.B. at App. A, Table II; OCA St. 1 at 7. Such recommendation is reasonable in light of the Company's "poor job of proving each element of the requested salaries as required by statute in order to recover them in a rate increase request." R.D. at 11. Therefore, the ALJ's recommendation to disallow management fee expense in the amount of $33,488 should be accepted.

Reply to CTSC Exception 5: The ALJ Correctly Disallowed a Portion of CTSC's Claim for Administrative Services Contract Labor. (R.D. at 12; OCA M.B. at 28-31).

In her Recommended Decision, ALJ Jandebeur recommended that CTSC's claim for administrative services in the amount of $40,678 be reduced to $28,473 because of the lack of documentation of the hours spent on CTSC work. R.D. at 12. Debbie Sorchik is the owner of A.D.S. Support Services and provides the administrative services claimed. See CTSC St. DMK-1R at Att. 2.

As explained in OCA's Main Brief, the evidence in this matter indicates an affiliated interest issue with regard to the time spent by A.D.S. Support Services on business for some of CTSC President Linde's other companies, Delaware Sewer Company (DSC) and Consolidated Pocono Utilities, Inc (CPU). See OCA M.B. at 28-31. The Commission may take a public utility's failure to properly account for time spent by a contractor common to its affiliated interests into account in setting rates. See 66 Pa.C.S. §2106. Section 2106 of the Public Utility Code states:

> In any proceeding, upon the commission's own motion, or upon application or complaint, involving rates or practices of any public utility, the commission may disallow, in whole or in part, any payment or compensation to an **affiliated interest** for any services rendered . . . under existing contracts or arrangements with such **affiliated interest** unless such public utility shall establish the reasonableness thereof. In such proceeding no payment shall be approved or allowed by the commission, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the **affiliated interest** of rendering the service . . . to the public utility. **No proof shall be satisfactory, within the meaning of the foregoing sentence, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated.** The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

66 Pa.C.S. § 2106 (emphasis added).

Ms. Sorchik does not account separately for her time devoted to CPU and DSC business and her time devoted to CTSC. Tr.3 at 90. At first Mr. Kalbarczyk testified that 90 percent of Ms. Sorchik's time is devoted to CTSC business and 10 percent of her time is devoted to DSC business, of which Mr. Linde is also president. See Tr.4 at 93, 102-103. Yet, CTSC made an expense claim in this case based on a 40-hour work week by Ms. Sorchik in the amount of $40,078. Tr.3 at 92.

Further indication of an affiliated interest issue is the amounts paid to A.D.S. Support Services by Mr. Linde's other utility companies. DSC pays A.D.S. Support Services $50 per week for Ms. Sorchik's services. Tr.4 at 100. Although Mr. Kalbarczyk testified that Ms. Sorchik spent 10% of her time doing DSC work, DSC's payment of $50 per week to A.D.S. Support Services is much less than 10% of the amount paid by CTSC to A.D.S. Support Services ($700 * 10% = $70). CPU also pays A.D.S. Support Services $25 per week. Tr.4 at 101. Yet, when requested to do so based on the companies' bank statements, Mr. Kalbarczyk could not provide a breakdown of the percentage of Ms. Sorchik's time spent doing work for CTSC, DSC and CPU but indicated that the notion that Ms. Sorchik spent 90% of her time at CTSC "seemed reasonable."[2] Tr.4 at 106. Further, based on exhibits admitted into the record, it is clear that Ms. Sorchik spends some of her time on combined CTSC, DSC and CPU business. See CTSC Exh. SAM-3; Tr.4 at 88-93.

In addition to the affiliated interest issue, the Company failed to meet its burden of proof with regard to the claimed expense for administrative services. The Commission may deny in

[2] CTSC asserts that according to the bank statements (OCA Cross Exh. 2 and 3), 10% of Ms. Sorchik's compensation is paid by CPU and DSC, combined. See CTSC Exc. at 14. However, this statement is not supported by Mr. Kalbarczyk's testimony or discovery responses provided by the Company. See generally Tr.3 at 88-93; Tr.4 at 102-106; CTSC St. DMK-1R at Attach. 2 (Response to D states: "Ms. Sorchik's services are limited solely to Clean Treatment and its parent [CPU]"). (Emphasis added). Furthermore, there is no way to verify that Ms. Sorchik actually spends 90% of her time doing CTSC business because the Company did not provide time records.

whole or in part an expense claim when the record is devoid of time records and wage information of managerial personnel. See Popowsky at 1153. Although wage and hour information was requested during discovery in this matter, CTSC did not supply supporting documentation of wages paid to Ms. Sorchik until hearings. Yet, even the information supplied at the hearings did not support the level of wage expense claimed. According to the bank statements provided by the Company at the hearings, CTSC pays A.D.S. Support Services $700 per week each week of the year. See Tr.4 at 98, 101; OCA Cross Exh. 2. Such payments amount to only $36,400 per year, not the $40,078 proposed by the Company in its filing. Tr.4 at 102.

In its Reply Brief, the Company asserts that Ms. Sorchik's work for CTSC fluctuates from week to week, and therefore, it cannot be assumed that she is paid exactly $700 per week by CTSC. See CTSC R.B. at 12-13. This argument refutes the Company's own evidence in this matter, as the Company verified that Ms. Sorchik works forty hours per week for CTSC, and A.D.S. Support Services is paid the same amount each week by CTSC. Tr.3 at 92; Tr.4 at 101.

In its Exceptions the Company asserted that it "has no better, more cost effective option than A.D.S." See CTSC Exc. at 13. However, Mr. Kalbarczyk testified that Company had not solicited bids for administrative services since he began working with the Company.[3] Tr.3 at 91, 92.

Based on the foregoing, ALJ Jandebeur's recommended adjustment to reduce the Company's claim to $28,473 is reasonable and should be accepted. Furthermore, the Company should be directed to provide time records and wage information regarding A.D.S. Support Services' work for CTSC, CPU and DSC in future rate cases.

[3] Mr. Kalbarczyk has been providing accounting-related services for the Company since at least 2003. Tr.3 at 84.

III. CONCLUSION

For the reasons set forth above and in its Main Brief and Reply Brief, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of Clean Treatment Sewage Company.

Respectfully Submitted,

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DATED: March 23, 2010
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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Clean Treatment Sewage Company
Docket No. R-2009-2121928

I hereby certify that I have this day served a true copy of the Office of Consumer Advocate's Reply Exceptions upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 23rd day of March 2010.

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