STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increases for Water and Sewer Service provided to Customers in the Missouri Service Area of the Company	)))))))	**WR-2000-281**

APPLICATION FOR REHEARING OF ORDER ON SECOND REMAND BY ST. JOSEPH INDUSTRIAL INTERVENORS

COME NOW St. Joseph Industrial Intervenors (SJII) and for their Application for Rehearing with respect to the Commission's Report and Order on Second Remand dated December 4, 2007 (December 4 Order) respectfully state:

1. While SJII recognizes the challenge that was laid before the Commission by the reviewing courts, the Commission has, in attempting to justify its original Order of August 31, 2000, nonetheless taken several legal missteps that should be corrected.

2. The Commission correctly interprets the evidence in the record in Finding of Fact No. 3 that single-tariff pricing results in rates that do not reflect the actual costs of serving particular customers and that Missouri-American's districts vary significantly in cost of production and distribution for the reasons stated. However, the Commission fails to apprehend that single-tariff pricing is also unlawful and expressly prohibited in Missouri under Section 393.130.3 RSMo. 2000.

3. In Finding of Fact No. 8, the Commission also errs in making a finding that "district-specific pricing is not in the public interest . . . ." in that this is a legal conclusion and one that has already been determined by the people of Missouri through their elected representatives in the General Assembly that enacted Section 393.130.3. Accordingly it is not within the Commission's grant of authority from that same General Assembly to redetermine what is in the "public interest" when the General Assembly has already so determined. Doing so is unlawful, unreasonable, arbitrary and unsupported by law or competent and substantial evidence on this record.

4. In Finding of Fact No. 10, the Commission also errs in a statement that a "phase-in of rates . . . is not in the public interest." No record evidence is cited for this finding and there is no evidence in this record that supports this finding of fact. Accordingly it is not supported by competent and substantial evidence on the whole record and is unlawful, unreasonable and arbitrary.

5. In Finding of Fact No. 11, the Commission errs in failing to note and determine that single-tariff pricing is in violation of Section 393.130.3 RSMo. This failure should be corrected.

6. Unfortunately in Finding of Fact No. 14, the Commission replicates the original error that brought this matter to the Commission this second time. By approving such an open and direct subsidization, the Commission's December 4 Order again

plainly violates Section 393.130.3. Had the Commission characterized its decision as a transitional measure moving from the unlawful single-tariff pricing mechanism to a proper district-specific mechanism while mitigating otherwise resultant rate shock, a better and more sustainable principle might have been developed. As a result the Commission attempts to apply public policy principles to a different policy decision that was made by the General Assembly.

7. In paragraph 4 of its Conclusions of Law, the Commission also makes an unsupported finding in that it states that "prior to the Commission's Report and Order in this case, the rates and charges applied to . . . Joplin customers were the same . . . to other ratepayers of the same class." This is incorrect and has no support in the facts of this case or in the evidence. Prior to the Commission's August 31, 2000 Report and Order, the customers of Missouri-American were classed according to the size of their meter installation and were not charged differently depending on whether they were residential, commercial or industrial. As a result of a Staff error that compounded the deleterious effects of the rate increase on customers served from the St. Joseph district facilities, rate differentials based on residential, commercial and industrial (and public authority and the like) were erroneously introduced into the rates of Missouri-American where such differentiation did not previously exist. Again, had the Commission limited its conclusion to recognition that the single-tariff pricing model had been used

and characterized its August 31, 2000 Report and Order as a transitional mechanism to mitigate rate shock, the Commission might well have been supported. However as drafted, its December 4, 2007 Order is unlawful, unreasonable, arbitrary and unsupported by competent and substantial evidence of record in the particular stated.

8. In paragraph 8 of its Conclusions of Law the Commission states that movement to district-specific pricing "would not be discriminatory under §393.130.3." While a correct statement taken in isolation, the Commission did not take into account that its prior pricing mechanism ***did*** violate that section by charging customers in different localities different rates that are not justified by actual differences in the cost of providing water service in those localities. Thus, transitional movement from an unlawful pricing system to one that is lawful is laudable and self-justified.

9. In paragraph 10 of its Conclusions of Law, the Commission includes the statement that "Single-tariff pricing is not discriminatory under §393.130.3." Given the Commission's earlier findings of fact that the costs of production and distribution of water differ from district to district, this statement is an incorrect interpretation of the law and, as such, the Commission's statement is unlawful, unreasonable, arbitrary and unsupported by competent and substantial evidence on the whole

record.[1/] The Commission is not the judge or determiner of law but, rather, that role is left to the courts. Further, an attempt to justify a "surcharge" as a means of evading the strictures of Section 393.130.3 is no less unlawful.

10. In its discussion on page 16 of the December 4, 2007 Order, the Commission appears to attempt a policy argument that when "capital expenditures are necessarily huge and the customers base . . . is tiny" as a means of making a policy argument that smaller, higher-cost districts can only be added by subsidizing them through shifting costs to other districts. This policy argument has, again, already been determined by the General Assembly through Section 393.130.3. The Commission's statement is not supported by competent and substantial evidence on the whole record and is therefore unreasonable, unlawful and arbitrary. Moreover it incorrectly characterizes violations of Section 393.130.3 as "the only reasonable approach." This statement is also without evidentiary support and is unreasonable, unlawful and arbitrary. Further it overlooks the potential for the organization of rural water districts and other means that have been provided by the General Assembly. With respect, the Commission receives its powers by delegation from the General Assembly; it is not the General Assembly. Policy matters such as this are given by the people of this state to

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[1/] Indeed, on page 15 of the December 4 Order, the Commission states: "In fact, the evidence in the case showed that there is a great disparity in the costs of providing service among the various districts Missouri-American served."

their elected representatives, not to public service commissioners. If concerns such as those that appear to trouble the Commission exist, they should be addressed by the people's elected representatives in the General Assembly, not by causing one group of captive customers to pay for services provided to a different group.

11. The Commission also suggests that its decision on district-specific pricing may be revisited. Absent a change in law, it should not. This is a matter for the legislature. The St. Joseph customers that were involved in this case advocated for district-specific pricing. The Commission, however, chose to approve an unnecessary plant when the specific problems in St. Joseph could have been addressed by a substantially less costly alternative. However, having already "ponied up" through the application of district-specific pricing for their water service and have paid and are paying for the extraordinarily expensive and unnecessary plant addition in the St. Joseph district that was a major part of this case, the customers in St. Joseph are simply not in a position to absorb the costs and expenses that are associated with this utility's acquisition of smaller districts as an additional charge to them in any form, direct or through a surcharge. Moreover, having borne that burden for several years, to attempt now or in the future to shift additional costs that are not caused by their service to them is patently unfair, unreasonable, unlawful and not supported by competent and substantial evidence on the whole record. Accordingly the

Commission, to the extent it is seeking to do so, is weakening its stand against unlawful single-tariff pricing, that portion of the December 4, 2007 Order should be withdrawn.

WHEREFORE St. Joseph Industrial Intervenors pray that the Commission consider and grant rehearing as set forth above.

Respectfully submitted,

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ATTORNEYS FOR ST JOSEPH INDUSTRIAL INTERVENORS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to the parties of record or by electronic means to the addresses as disclosed by the Commission's records in this proceeding.

Dated: December 13, 2007

/s/ Stuart W. Conrad

Stuart W. Conrad