

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**In the Matter of the Application of                    )  
Middle Fork Water Company for an                    )  
Order Initiating an Investigation to                    )  
Ascertain the Value of the Company's                    )  
Property Devoted to the Public Service                    )**

**Case No. WO-2007-0266**

**STAFF'S NOTICE REGARDING  
THE ABSENCE OF LEGAL AUTHORITY TO INCLUDE  
CONTRIBUTIONS IN AID OF CONSTRUCTION  
IN RATE BASE**

**COMES NOW** the Staff of the Missouri Public Service Commission and, for its Notice Regarding the Absence of Legal Authority to Include Contributions in Aid of Construction in Rate Base, states to the Missouri Public Service Commission as follows.

On December 21, 2007, the Staff submitted its Explanation of the Factual and Legal Bases for its Recommendation that Plant in Service be Classified as Contributions in Aid of Construction (“Staff’s Explanation”). On January 11, 2008, Middlefork Water Company filed its Response to Staff’s Recommendation and Explanation (“Middlefork’s Response”). The Staff, Middlefork, and the Office of Public Counsel participated in oral argument on the issues in this case on February 5, 2008.

Based upon discussions at the Agenda meetings on March 11, 2008 and March 13, 2008, it appears the Commission may rule that the disputed plant should be classified as Contributions in Aid of Construction (“CIAC”), but that it should nonetheless be included in the Company’s rate base. Such a ruling would run afoul of Supreme Court precedent and Staff believes that it must so advise the Commission.

The Staff believes that none of the parties considered the possibility that the Commission might decide that CIAC should be included in rate base. Accordingly none of the parties have briefed or argued the issue of whether CIAC may lawfully be included in rate base. The parties believed that the issue was not whether CIAC should be included in rate base, but rather whether the plant at issue was, in fact, CIAC.

The Staff hereby respectfully advises the Commission that Missouri law does not permit plant that has been classified as CIAC to be included in rate base. See *State ex rel. Martigney Creek v. Public Service Commission*, 537 S.W.2d 388 (Mo. 1976). In *Martigney Creek*, the Supreme Court said:

The court has construed 393.270(5) earlier in this opinion to mean that the value of the plant is one of the elements to be considered by the PSC in arriving at a rate base, but that it does not authorize the PSC to include in the rate base property donated or paid for by the rate payers by contributions in aid of construction.<sup>1</sup>

See, also, *State of Missouri ex rel. Valley Sewage Company v. Public Service Commission*, 515 S.W.2d 845 (Mo. App. 1974).

Because the parties have not briefed or argued the issue of whether CIAC may be included in rate base, the Staff requests that the Commission take notice of the above-cited cases, permit the other parties to respond to this pleading, if they desire to do so, and schedule an oral argument to address this specific legal issue, if the Commission deems it appropriate.

**WHEREFORE**, the Staff submits its Notice Regarding the Absence of Legal Authority to Include Contributions in Aid of Construction in Rate Base.

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<sup>1</sup> *Martigney Creek, supra*, at 396.

Respectfully submitted,

/s/ **Keith R. Krueger**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or e-mailed to all counsel of record on this 19<sup>th</sup> day of March 2008.

/s/ **Keith R. Krueger**