

**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 RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission and, for its Response to Order Directing Filing, states to the Missouri Public Service Commission as follows.

Procedural Background and Overview

1. On January 12, 2007, Middle Fork Water Company filed an Application with the Commission, in which it requested that the Commission institute an investigation to ascertain: 1.) The value of the Company's current investment in plant devoted to the public service; 2.) The standards and principles that will govern the valuation of future investments that the Company may make in plant betterments, improvements, additions, or extensions; and 3.) How these investments will be characterized and treated by the Commission for ratemaking purposes.

2. On January 19, 2007, the Commission issued an order directing the Staff to file a pleading analyzing the Company's application and setting forth Staff's legal position as to whether the Application states a claim on which relief may be granted by the Commission.

3. The Company's Application requests that the Commission ascertain three things, which are described in Paragraph 1 hereof. The Staff submits that the Application does state a claim for the first item of relief that the Company requested, but that it does not state a claim for the second and third items of relief that the Company requested.

Item 1 of Middle Fork's Request for Relief

4. The Company relies upon § 393.230¹ as authority for the requested relief. Subsection 1 thereof provides in relevant part as follows:

1. The commission shall have the power to ascertain the value of the property of every ... water corporation ... in this state and every fact which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions and additions to the property of every ... water corporation.

5. This subsection authorizes the Commission to make the exact determination that the Company has requested as the first item in its prayer for relief. It grants this authority to the Commission unconditionally. It does not say that the relief is only available to certain companies, or only to companies that meet certain requirements, or only in certain types of proceedings (such as rate cases), and it imposes no procedural requirements upon a company that desires such relief. Although the statute says only that *the Commission has the power* to make these valuations, and does not explicitly state that *a company may request them*, it does not prohibit a company from doing so, either, and the Staff submits that the statute implicitly permits a company to do so. The Staff has not found any case law to the contrary.

6. It cannot be said that the Company's request is a request for single-issue ratemaking. This is so, because the Company is not requesting a ratemaking at all. If the Commission would provide all of the relief that the Company seeks, it would not have any immediate effect on rates. Rather, it would only determine the value of the Company's rate base. There is thus no risk that the Commission would be setting rates without "considering all relevant factors," as required by law. The Commission's determination of the Company's rate base – in the present case – could, of course, be used to help determine the Company's rates in a future rate case. But if that

¹ All statutory references are to RSMo 2000, as currently supplemented.

happens, the rate base that is determined in the present case would be used in the future case *in conjunction with all other relevant factors* to determine the appropriate rates.

7. It is obvious that the Commission most often determines rate base in the context of a rate case, rather than in a separate proceeding brought only for the purpose of valuing a company's property. And the Staff has not found any reported case where the Commission has determined a company's rate base merely upon the request of the Company that it do so.

8. There has been a case, however, which the Commission apparently heard for the sole purpose of determining the Company's rate base, outside of the context of a rate case. *Aluminum Goods Mfg. Co. v. Laclede Gas Light Co.*, 16 Mo. P.S.C. 114 (1926), was such a case. That case was "originally brought" by Laclede in 1918 as a rate case. The Commission thereafter issued several rate orders and then, in 1923, "ordered its Engineering Department to make an appraisal of the company's property." This apparently created a new case. The Commission's Report and Order in *Aluminum Goods Mfg. Co.*, issued November 20, 1926, valued the property of Laclede's Gas Department at \$45.6 million, and also valued the company's other property. It entered no order whatsoever with regard to rates or to any other substantive issue. A subsequent rate case, which Laclede filed in 1927, was eventually appealed to the Supreme Court, where the parties and the court consistently referred to the Commission proceeding in the *Aluminum Goods Mfg. Co.* case as the "Valuation Case." *State ex rel. City of St. Louis v. Public Service Commission of Missouri, et al.*, 47 S.W.2d (Mo. banc 1931).

9. It is true that even though the *Aluminum Goods Mfg. Co.* case, *supra*, was apparently an evaluation case and not a rate case, it did spring from one or more rate cases. But this is also true of the present case. Middle Fork's Application in the present case sprang from the small company rate increase case that Middle Fork filed in 2005 (Case No. WR-2006-0212). That case was settled and a rate increase order was entered, but some issues were left unresolved. Middle

Fork now asks the Commission to resolve those unresolved issues, just as the Commission did in the *Aluminum Goods Mfg. Co.* case.

10. Subsections 2, 3 and 4 of § 393.220 do not alter the above analysis in any material way. Subsection 2 pertains to the hearing procedure and notice. Subsection 3 pertains to the procedure for reviewing the Commission's decision and the effect to be given to the Commission's decision. And Subsection 4 describes the procedures to be followed in connection with the subsequent revaluations that are mentioned in Subsection 1.

Items 2 and 3 of Middle Fork's Request for Relief

11. The relief that Middle Fork requests as the second and third items of its prayer clause is not, however, authorized by § 393.230, nor by any other authority that the Staff has found. The Company makes the bald, unsupported statement in ¶10 of its Application that: "Thus, the Commission is, authorized by law to make determinations as to: ... 2) the principles that will govern the valuation of future investment; and 3) how plant investments will be treated for ratemaking purposes." This language in items 2 and 3 of the Company's request is not found in § 393.230. The Company has not cited any authority for these conclusions, and the Staff knows of none.

12. In items 2 and 3, the Company is essentially requesting either that the Commission render an advisory opinion regarding how future investments will be treated for ratemaking purposes, or that the Commission issue an order that will be binding on future Commissions. Neither of these actions is permitted under present law.

Analysis of Other Aspects of Middle Fork's Application

13. In ¶ 6 of its Application, Middle Fork repeatedly refers to the Staff's "proposed adjustment" in the Company's most recent rate case (No. WR-2006-0212). The Staff notes that the Company's assumption about that "adjustment" is incorrect and requires clarification. For the

audit related to Case No. WR-2006-0212, the Staff based its calculation of the Company's ratemaking rate base upon its belief that the debt issued to fund the construction of the Company's facilities was issued by the two cities (Stanberry and Grant City) that take wholesale service from the Company, and not by the Company. As a result, the Staff did not consider the amounts of these debt issuances to be Company "investment," and the amounts were thus treated as contributions-in-aid-of-construction when calculating the Company's ratemaking rate base.

14. In ¶ 6 of its Application, the Company also referred to the resolution of Case No. WR-2006-0212 as a "black box" settlement. The Staff does not believe this is an accurate description of the settlement agreement that the parties reached in that case. It is true that the Staff and the Company disagreed regarding the Staff's calculation of the Company's ratemaking rate base. But the Staff believes that certain provisions of the Disposition Agreement, which the Staff, the Company and the Office of the Public Counsel executed, but which the Company did not quote in its Application, clearly establish that the agreement was not a "black box" agreement. In fact, the Staff's supporting workpapers, all of which were filed in Case No. WR-2006-0212, show that the Company could have justified a significantly higher revenue increase than it requested – even considering the manner in which the Staff calculated the Company's ratemaking rate base. The Staff does acknowledge, however, that the Company was correct to state, in ¶ 6 of its Application, that the resolution of Case No. WR-2006-0212 did not require the Commission to rule on the Staff's "proposed adjustment" regarding the calculation of the Company's ratemaking rate base.

WHEREFORE, the Staff respectfully submits its Response to Order Directing Filing for the Commission's consideration in this case.

Respectfully submitted,

/s/ Keith R. Krueger

Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9285 (Fax)
keith.krueger@psc.mo.gov

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 as shown on the attached service list this 2nd day of February, 2007.

/s/ Keith R. Krueger