

Exhibit No.:
Issue(s): Metropolitan Sewer District Contract
Witness: Janice M. Zimmerman
Sponsoring Party: Intervenor Metropolitan
St. Louis Sewer District
Type of Exhibit: Zimmerman/Rebuttal Testimony
Case No.: WR-2010-0131
Date: April 15, 2010

MISSOURI PUBLIC SERVICE COMMISSION
REBUTTAL TESTIMONY
OF
JANICE M. ZIMMERMAN
ON BEHALF OF
METROPOLITAN ST. LOUIS SEWER DISTRICT

**IN THE MATTER OF MISSOURI-AMERICAN WATER COMPANY'S
REQUEST FOR AUTHORITY TO IMPLEMENT A GENERAL RATE
INCREASE FOR WATER AND SEWER SERVICES PROVIDED IN MISSOURI
SERVICE AREAS**

CASE NO. WR-2010-0131

Jefferson City, Missouri
April 2010

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OF
JANICE M. ZIMMERMAN
ON BEHALF OF
METROPOLITAN ST. LOUIS SEWER DISTRICT
CASE NO. WR-2010-0131

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1 **Witness Background and Experience**

2 Q: Please state your full name and business address.

3 A: My name is Janice M. Zimmerman, 2350 Market Street, St. Louis, Missouri, 63103.

4 Q: What is your occupation?

5 A: I am the Director of Finance for the Metropolitan St. Louis Sewer District (“MSD”).

6 Q: What is your educational background?

7 Q: I am a graduate of Eastern Illinois University with an undergraduate degree in Finance. I
8 received my Master of Finance degree from St. Louis University in August 1987.

9 Q: Please describe your work background and experience.

10 A: Prior to joining MSD, I was a Principal of Raine Consulting, Inc. and Executive
11 Consultant for its education practice. I also served as the Chief Financial Officer of Fox
12 River Learning, Inc., a manager in the K-12 Education Unit at Coopers & Lybrand
13 L.L.P., and filled a variety of financial positions with the St. Louis Public Schools,
14 Community Federal Savings and Loan Association, the Illini Federal Savings and Loan
15 Association and the Federal Reserve Bank of St. Louis. I have been employed by MSD
16 since April 16, 2001.

17 Q: What is your specific rate case experience?

18 A: I led the rate design efforts and development of the rate proposals for MSD’s 2002/2003,
19 2007 and 2008 rate proceedings conducted by the MSD Rate Commission as required by
20 MSD’s voter-approved Charter. These efforts used a comprehensive rate design model
21 developed by the internationally renown firm of Black & Veatch and resulted in thorough
22 cost of service and cost allocation studies. These studies provided MSD’s ratepayers and
23 the MSD Rate Commission with a detailed breakdown of all MSD costs and their

1 allocation to detailed operational functions. I have a working knowledge of the Black &
2 Veatch Rate Model which is based on current and generally accepted water and
3 wastewater industry rate design principles and standards.

4 Q: Do you believe these generally accepted water and wastewater industry ratemaking
5 principles and standards apply to Missouri-American Water Company (“MAWC”)?

6 A: I would anticipate that a water company the size and complexity of MAWC would utilize
7 these acknowledged rate design principles as part of a best practice to ensure thorough
8 transparency of its ratemaking for its customers and the Public Service Commission.

9 **Summary of Testimony**

10 Q: What is the purpose of your direct testimony?

11 A: The purpose of my testimony is to rebut the testimony of Ted Robinson, who filed
12 testimony on behalf of Missouri Office of Public Counsel (“OPC”) proposing a rejection
13 of MSD’s current contract with MAWC and, in its place, an imposition of \$545,535
14 charge for the provision of water usage data to MSD. I will also provide an overview of
15 the prior dispute and related litigation between MSD and MAWC concerning MAWC’s
16 provision of water usage data to MSD, set forth MSD’s position regarding the appropriate
17 rate, if any, that MSD should be charged by MAWC in connection with MAWC’s
18 provision of water usage data to MSD and the computation of such rate, and ultimately
19 the rationale for the continuation of the current rate established by contract between
20 MAWC and MSD.

21 **Overview of MSD**

22 Q: What is MSD?

1 A: MSD is a political subdivision of the State of Missouri and a municipal corporation
2 situated in the City of St. Louis, which provides an integrated sewer system for single and
3 multi-family residences and commercial and industrial customers throughout the City of
4 St. Louis and most of St. Louis County, Missouri.

5 Q: Does MSD bill its customers for the use of the sewer system maintained by MSD?

6 A: Yes.

7 Q: How does MSD determine what amount to bill each customer?

8 A: MSD bills its customers based on the amount of each customer's water usage.

9 **MAWC's Provision of Water Usage Data to MSD**

10 Q: How does MSD obtain the water usage data necessary for its billing purposes?

11 A: MSD obtains water usage data for billing purposes by an agreement with MAWC dated
12 November 29, 2007. Under that agreement, MAWC agrees to make available to MSD
13 water usage data relative to each of MAWC's St. Louis County customers, which is
14 collected quarterly or monthly in MAWC's ordinary course of business through meter
15 readings or estimates. In return, MSD pays MAWC an annual fee of \$350,000 payable in
16 installments of \$29,166 per month.

17 Q: What is Exhibit 1?

18 A: Exhibit 1 is a copy of the November 29, 2007 Agreement concerning the provision of
19 water usage data by MAWC to MSD.

20 Q: Has the water usage agreement between MSD and MAWC been approved by the
21 Commission?

22 A: Yes. The agreement has been approved in the last two rate cases of MAWC.

23 Q: Has MAWC proposed a change in the agreement in this rate case?

- 1 A: No. MAWC tariffs filed in initiating this case included a tariff for the MSD agreement
2 which continues the annual fee of \$350,000.
- 3 Q: Is this acceptable to MSD?
- 4 A: Yes. The November 29, 2007 agreement was developed as a result of litigation initiated
5 by MSD in the Circuit Court of St. Louis County and the 2007 rate proceeding initiated
6 by MAWC in Case No. WR-2007-0216. The fee established was a compromise between
7 MSD and MAWC on the issue of whether (1) MSD is required to pay for the water usage
8 data at all; and (2) if so, whether MSD should be required to pay only the incremental
9 cost of providing such data or, as proposed by the Office of Public Counsel, the fully-
10 distributed cost of providing such data.
- 11 Q: Please describe the litigation to which you reference.
- 12 A: Prior to 2007, MAWC provided MSD with water usage data under a 2002 agreement
13 which provided that MAWC would provide such data to MSD at a rate of \$0.54 per
14 account read. That agreement expired by its terms and the parties were unable to finalize
15 a new agreement prior to MAWC's 2007 rate case. As a result, MSD filed a lawsuit in
16 the Circuit Court of St. Louis County asking the Court to declare that, by statute, MAWC
17 was not authorized to charge MSD for the provision of this data.
- 18 Q: What was the basis for the lawsuit?
- 19 A: MSD is a "sewer district" as that term is used in the Missouri Revised Statutes. Section
20 249.645 RSMo provides that "[a]ny private water company . . . shall, upon reasonable
21 request, make available to such sewer district its records and books so that such sewer
22 district may obtain therefrom such data as may be necessary to calculate the charges for
23 sewer service." Unlike its companion statute, Section 250.233 RSMo, which expressly

1 provides that private water companies, such as MAWC, can charge municipal sewer
2 systems for the provision of water usage data, but Section 249.645 contains no language
3 suggesting that a private water company can imposed such a fee on a sewer district, such
4 as MSD.

5 Q: What transpired in the lawsuit?

6 A: MAWC moved to dismiss the lawsuit on the grounds of the Filed Rate Doctrine and
7 Primary Jurisdiction. MAWC asserted that this Commission had exclusive jurisdiction to
8 resolve the dispute. The Commission intervened in the lawsuit and also moved to
9 dismiss the lawsuit on similar grounds. On April 24, 2006, the Circuit Court of St. Louis
10 County dismissed the lawsuit on a finding that the Commission had primary jurisdiction
11 of the matter.

12 Q: Did MSD then initiate a claim against MAWC before the Commission?

13 A: Yes. MSD filed a Complaint and initiated a proceeding, Cause No. WC-2007-0040,
14 before the Commission on July 28, 2006. On December 15, 2006, MSD filed a Motion
15 for Summary Determination, seeking an Order in its favor from the Commission on
16 MSD's claim that the imposition of a fee by MAWC for making its water usage data
17 available to MSD constitutes a violation of Section 249.645.1, RSMo. The Commission
18 heard oral argument on MSD's Motion on March 7, 2007, and the parties submitted Post-
19 Hearing Briefs shortly thereafter.

20 Q: Did the Commission issued an Order in MSD's proceeding against MAWC, Cause No.
21 WR-2007-0040?

22 A: Yes. The Commission, Judge Kennard L. Jones presiding, issued its Report and Order in
23 the MSD's proceeding on May 22, 2007, determining that a reasonable request within the

- 1 context of Section 249.645, RSMo, includes a reasonable charge. The Commission
2 ordered MSD to compensate MAWC for the water usage data and held that the amount of
3 such compensation should be considered in connection with the next rate case.
4 Commission Report and Order at 9. Commissioner Gaw dissented and filed a separate
5 dissenting opinion.
- 6 Q: Do you request that Commission take official notice of the parties' submissions and the
7 Commission's Orders issued in the case of *Metropolitan St. Louis Sewer District v.*
8 *Missouri-American Water Company*, Cause No. WC-2007-0040?
- 9 A: Yes.
- 10 Q: Did MSD seek review of the Commission's May 22, 2007 Order?
- 11 A: No. By that time, MAWC's 2007 rate case had been initiated. I, along with Keith
12 Barber, filed testimony in that case concerning the issue and, while that case was
13 pending, MAWC and MSD reached an agreement which culminated in the November 29,
14 2007 agreement which was then approved by the Commission.
- 15 Q: Does MSD continue to believe that its position in the Complaint proceeding was
16 justified?
- 17 A: Absolutely. While MSD understands the uncertainties of litigation, MSD also feels that
18 the compromise which it has reached with MAWC is in the best interests of all parties.
19 However, should the Commission agree with the position taken by Office of Public
20 Counsel and impose the fully-distributed cost of providing this data upon MSD, MSD
21 will have no choice but to challenge the charge on appeal pursuant to Section 249.465
22 RSMo.

1 **MSD's Position Concerning Appropriate Rate to Be Charged by MAWC for the Provision**
2 **of Water Usage Data**

3 Q: Assuming that MSD is required to pay MAWC for the water usage data requested, what
4 is MSD's position as far as what constitutes a reasonable charge?

5 A: In the November 29, 2007 agreement, MAWC agreed, before filing its next general rate
6 case, to identify and provide to MSD, the total incremental costs MAWC incurs in
7 providing such data. In the 2007 rate case, MSD had advised MAWC and the
8 Commission that it would voluntarily pay MAWC the incremental costs incurred by
9 MAWC in providing the data to MSD in a readily-ascertainable and usable format. MSD
10 believes that the incremental costs incurred by MAWC in providing the water usage data
11 to MSD—expenses that MAWC would not otherwise incur in connection with its own
12 necessary operations and data collection efforts—constitute the only reasonable and
13 appropriate charge.

14 Q: Did MAWC provide such incremental cost information to MSD?

15 A: Yes. In March 2008, MSD received a study prepared by Baryenbruch & Company
16 entitled "Analysis of Costs for Water Usage Data Services Provided to Metropolitan St.
17 Louis Sewer District; 12 Months Ending December 31, 2007." This presumably is the
18 document referenced in Mr. Robertson's testimony and utilized by him in calculation his
19 fully-distributed cost approach.

20 Q: What does the study state with respect to the incremental costs associated with providing
21 water usage data to MSD?

22 A: The study indicates that the incremental cost associated with providing such data to MSD
23 is **highly confidential information removed** per year.

1 Q: Is this the amount that MSD believes would be the appropriate charge should the
2 Commission determine that MAWC is authorized to charge an amount notwithstanding
3 Section 249.645 RSMo.

4 A: Yes.

5 Q: Please explain.

6 A: MAWC's capital and operating costs associated with installing and reading its meters are
7 ongoing irrespective of MSD's request for the water usage data. In other words, if MSD
8 did not need the water usage data in order to bill its customers, MAWC would incur its
9 data collection costs in any event. MSD should not be required to subsidize one-half of
10 MAWC's own data collection efforts, which are necessary for MAWC's own billing
11 purposes. For several years, MSD has retrieved the water usage data from information
12 downloaded by MAWC or one of its affiliated companies on an American Water website.
13 Should MSD be required to pay MAWC for its provision of water usage data, MSD
14 believes that the only reasonable charge should be reimbursement of MAWC's expenses
15 in downloading such information and maintaining the website and any other additional
16 incremental expenses incurred by MAWC in affirmatively providing the water usage data
17 to MSD in a readily ascertainable format.

18 Q: Based on your experience and ratemaking expertise in connection with MSD's
19 ratemaking process, do you believe that a rate encompassing solely the incremental costs
20 incurred by MAWC in providing the water usage data to MSD is the appropriate rate to
21 use in this situation?

22 A: Yes, based on MSD's ratemaking process and my involvement in that process, I know
23 that a basic principle of ratemaking is that charges for special services, such as providing

1 water usage data to MSD, should be based on the incremental cost of providing such
2 data.

3 Q: You therefore disagree with Mr. Robertson's conclusions?

4 A: Absolutely. His analysis ignores the fact that the entire cost associated with collecting
5 this data, with the exception of the incremental cost, would be expended by MAWC
6 whether MSD requested the data or not.

7 Q: Do you disagree with Mr. Robertson's testimony in any other respects?

8 A: Yes. At page 5 of his testimony, Mr. Robertson suggests that it is not appropriate for the
9 customers of a regulated utility to subsidize the customers of an unregulated entity. In
10 fact, MSD is a highly regulated entity, although not regulated by this Commission, and
11 undertakes thorough rate proceedings in establishing its rates to its customer. More
12 importantly, MSD is not asking the customers of MAWC to subsidize such costs. On the
13 contrary, because the \$350,000 currently paid by MSD far exceeds the incremental cost
14 of providing this data, MSD is actually subsidizing the ratepayers of MAWC.

15 Q: Does this conclude your direct testimony?

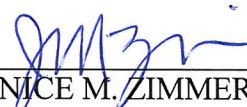
16 A: Yes.

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

AFFIDAVIT OF JANICE M. ZIMMERMAN

COMES NOW Janice M. Zimmerman, being first duly sworn upon her oath, who deposes and states as follows:

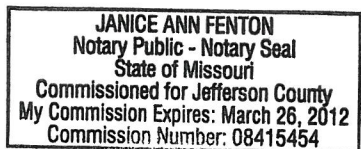
1. I am over the age of eighteen and I have personal knowledge of the facts that I recite in this Affidavit.
2. The testimony set forth above is true and accurate to the best of my knowledge, information and belief.

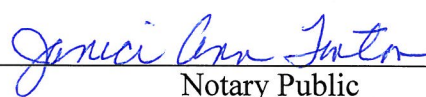


JANICE M. ZIMMERMAN
Director of Finance
Metropolitan St. Louis Sewer District

On this 14 day of April in the year 2010, before me, JANICE ANN FENTON, a Notary Public in and for said State, personally appeared Janice M. Zimmerman, known to me to be the person who executed the within Affidavit, and acknowledged to me that she executed the same for the purposes therein stated and that the sworn testimony set forth above is true and accurate to the best of her knowledge, information and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.





Notary Public

My Commission Expires: 3/26/2012

WATER USAGE DATA AGREEMENT

This WATER USAGE DATA AGREEMENT (the "Agreement") is made and entered into as of the 29th day of November, 2007, by and between Missouri-American Water Company, a Missouri corporation (hereinafter "MAWC"), and the Metropolitan St. Louis Sewer District, a political subdivision established under the Constitution of the State of Missouri (hereinafter "MSD").

RECITALS:

WHEREAS, MAWC provides water service to customers in St. Louis County, Missouri, and through meter readings and estimates collects certain water usage and customer identification information for its billing purposes; and

WHEREAS, MSD provides sanitary sewer service to customers in St. Louis County, Missouri, and has established charges for such service based upon customer water usage; and

WHEREAS, MSD has requested that MAWC provide certain water usage and customer identification information that MSD requires to compute and collect its sewer charges; and

WHEREAS, MAWC is a public utility regulated by the Missouri Public Service Commission (hereinafter "Commission"); and

WHEREAS, the Commission, in conjunction with an application for a general rate increase filed by MAWC in Commission Case Nos. WR-2007-0216 and SR-2007-0217, approved on September 20, 2007 a Stipulation and Agreement as to MSD Rate Design between MAWC and MSD (hereinafter the

“Stipulation,” a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference); and

WHEREAS, the Stipulation provides that MAWC and MSD will execute an agreement containing the specific terms and conditions of providing the water usage and customer identification data and that such agreement will be submitted to the Commission for approval.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MAWC and MSD agree as follows:

1. **DATA TO BE PROVIDED.** MAWC agrees to make available to MSD water usage data relative to each of MAWC’s St. Louis County customers, which is collected quarterly or monthly in MAWC’s ordinary course of business through meter readings or lawful estimates. Each customer’s water usage will be ascertained from readings obtained by some combination of either actual meter readings by MAWC personnel, postcard readings mailed in from customers, telephone readings called in by customers, or estimated readings by MAWC personnel when the foregoing are unavailable. The water usage data will cover a period of approximately 90 days for quarterly-billed customers and a period of approximately 30 days for monthly-billed customers.

The water usage and customer identification data (hereinafter referred to as the “Data”) shall be made available to MSD by MAWC on a weekly basis, and shall include the following Data:

A. Transaction information, including reading, usage and adjustment information for each customer account, as follows:

- (i) whether the reading is an actual reading or an estimate (estimates shall include office estimates performed by MAWC and estimates provided by the customer);
- (ii) usage adjustment(s) with appropriate code(s) (if applicable);
- (iii) cancel read (if applicable);
- (iv) closing bill (if applicable); and
- (v) the reading, which shall contain at a minimum:
 - (a) the reading date;
 - (b) days of duration;
 - (c) usage amount;
 - (d) reading frequency (bi-monthly, quarterly, monthly);
 - (e) unit of measure (gallons, hundred gallons, hundred cubic feet);
 - (f) negative and positive indicator on usage; and
 - (g) transaction number for each record.

B. Account and premise change information, including customer, service address and status information, as follows:

- (i) account name and mailing address (including address, city, state and zip code);
- (ii) premise address (*i.e.*, the service address)
- (iii) status of account
- (iv) status of premise; and
- (v) account/premise change date (if applicable).

C. Opening and closing service records, including information concerning the status of the service at the premise address, as follows:

- (i) new premise;
- (ii) inactivated premise; and/or
- (iii) killed premise.

Because an MSD customer and a MAWC customer at a specific address may be different individuals or entities, it will be MSD's responsibility to discern from the Data the appropriate customer identification information for MSD's purposes. MAWC will not be responsible for determining which of its customers are also MSD customers. In addition, MAWC does not make any representations or warranties to MSD as to the accuracy, completeness or fitness for a particular purpose of the Data.

As of the Effective Date of this Agreement, MSD retrieves the above Data via a secure website maintained by MAWC and all customer records made available to MSD are referenced by MAWC account number and premise number. To the extent MAWC intends to change the manner by which the Data will be made available to MSD or to change the manner in which MAWC

references customer records, it shall provide MSD with no less than ninety (90) days notice, per the notice provision set forth in paragraph 17 below.

2. **CONFIDENTIALITY**. MSD agrees that the Data it obtains shall be used only for the purpose of computing and collecting its sewer charges, and that it shall limit the disclosure of the Data to only those officers, employees, agents and regulatory authorities (including attorneys, accountants, collections agencies, consultants and the MSD Rate Commission) who need the Data for such purpose. MSD agrees to keep the Data confidential and shall not disclose, provide or sell the Data to any third party, firm, corporation or entity, except as otherwise provided herein.

3. **INAPPLICABLE PSC NOTICE REQUIREMENTS**. All notice and complaint procedures specified in 4 CSR 240, and Chapter's 386 and 393 RSMo that apply to customer rights to utility service from a regulated utility, shall not apply to actions or inactions by MAWC pursuant to the Agreement or MAWC's election to enter into this Agreement. All notice, complaint procedures and administrative consumer remedies, to the extent that they may exist or be alleged to exist, shall be the responsibility of MSD.

4. **FEES**. The annual fee for MAWC's provision of the Data shall be \$350,000, to be paid in installments of \$29,166 per month. Such payments shall be due on the 15th of each month, with the first payment due on December 15, 2007. Should MSD fail to pay any amounts due under the terms of this Agreement, excluding a failure to pay as a result of a short-term administrative

error, MAWC's obligations to deliver the Data under this Agreement shall cease until such amounts are paid in full.

5. **INDEMNIFICATION.** To the extent allowed by law, MSD agrees to indemnify, defend and hold harmless MAWC from and against any and all claims, complaints or causes of action asserted by MSD customers and/or other third parties concerning the Data that MAWC has made available to MSD in accordance with this Agreement including, but not limited to, claims that sewer bills were based on estimates that do not reflect actual usage; provided that the Data was not intentionally falsified or provided as a result of gross negligence by MAWC, its parents, subsidiaries, affiliated and related corporations, companies, partnerships and entities and/or their former, present, and future partners, directors, managers, officers, employees, attorneys, agents, representatives, successors and/or assigns.

6. **PUBLIC SERVICE COMMISSION APPROVAL.** The rate of compensation referred to in Paragraph 4 above will be incorporated in a revised tariff sheet number RT 16.0 to be applicable for service on and after December 1, 2007 (a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference), which has been submitted to the Commission for approval. In addition, pursuant to the Stipulation, this Agreement will be submitted to the Commission for approval. If any aspect of this Agreement or the related tariff are rejected or modified by the Commission, MAWC and MSD shall have the option to declare this Agreement void, with the exception of the indemnification requirement set forth in paragraph 5 above, which shall survive with respect to

any and all indemnification actions taken pursuant to this Agreement during the time it was in force and effect.

7. **CUSTOMER COMMUNICATIONS.** MSD shall handle all customer communications regarding the implementation of this Agreement or any actions that have been taken pursuant to this Agreement. Communications from customers to MAWC regarding MSD billings will be referred and directed to MSD, but MAWC will respond to reasonable requests for information from MSD to assist MSD in the handling of specific customer issues from time to time.

8. **FORCE MAJEURE AND CONFLICTING REQUIREMENTS.** MAWC's actions required under this Agreement shall be excused due to matters beyond its control, including but not limited to employee work stoppages, strikes, inclement weather, or emergencies requiring utilization of manpower or resources elsewhere. In addition, the aforementioned information will cease to be provided if a court of competent jurisdiction or other governmental entity having jurisdiction issues an order to MAWC so requiring.

9. **IDENTIFICATION OF COSTS.** MAWC agrees to identify and provide to MSD, before MAWC files its next general rate case, the total incremental costs MAWC incurs in making the Data accessible to MSD in a readily-ascertainable and usable format, including, but not limited to, all costs incurred by MAWC in maintaining and updating the secure website from which MSD procures such Data, and all labor, software and other costs associated with making such Data available to MSD, plus all other costs MAWC attributes to services related to the provision of such Data to MSD.

The provision of this incremental cost information by MAWC is not an admission or an acknowledgment by MAWC that incremental costs are appropriate for purposes of determining an appropriate charge for providing such billing data and related services. Both MAWC and MSD are free to propose whatever cost method they believe is appropriate in MAWC's next general rate increase.

10. EXPIRATION OR TERMINATION. MAWC and MSD agree that if this Agreement is approved by the Commission, neither MAWC nor MSD will take any action to alter or rescind the rate referred to in paragraph 4 above and identified on revised tariff sheet number RT 16.0 attached hereto as Exhibit 2 prior to MAWC's next general rate case. Upon the filing of MAWC's next general rate case or any general rate case thereafter, both MAWC and MSD shall be free to ask the Commission to review and revise the rates, terms and/or conditions regarding the provision of the Data.

This Agreement shall remain in full force and effect until the Commission issues an Order revising the rate, terms and/or conditions governing the provision of the Data to MSD or approving a new agreement or amendment to this Agreement concerning MAWC's provision of the Data to MSD.

11. NO WAIVER. MAWC and MSD reserve their rights, without prejudice, to maintain their respective positions with respect to the issues raised in Commission Case No. WC-2007-0040 in any future proceeding. This Agreement is made pursuant to a settlement and a compromise of disputed

claims and is not to be construed as a waiver of MAWC's or MSD's positions concerning the issues raised in Commission Case No. WC-2007-0040.

12. SUCCESSORS AND ASSIGNS. MAWC and MSD agree that this Agreement shall be binding upon and inure to the benefit of their respective successors and assigns.

13. ENTIRE AGREEMENT. This Agreement, including the Stipulation attached hereto as Exhibit 1 and the revised tariff sheet number RT 16.0, attached hereto as Exhibit 2, both of which are incorporated herein by reference, set forth the entire understanding between the parties and fully supersede any prior agreements or understandings between the parties relating to the subject matter set forth herein.

14. AMENDMENT. Neither this Agreement, nor any term hereof may be amended, changed, modified, altered, or waived except in writing executed by both MSD and MAWC.

15. RELIANCE OF THE PARTIES. MAWC and MSD each acknowledge that they have consulted with counsel and that they have had this Agreement reviewed by such of their attorneys and advisors as they deem necessary. MAWC and MSD further acknowledge that they have: (i) made an independent investigation of such facts as they deem necessary or appropriate in order to make the decision to enter into this Agreement; (ii) made an independent determination to enter into this Agreement; (iii) not relied upon any statement of or information received from any other party or from counsel for any other party that is not expressly reflected herein in making such independent investigation

and determination; (iv) received no written or oral representations made to induce them to execute this Agreement that are not expressly reflected herein; and (v) freely and voluntarily executed this Agreement without any duress or coercion, after having carefully and completely read all the terms and provisions of this Agreement.

16. AUTHORITY OF THE PARTIES. Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. No further approval or consent by any other person or authority is required.

17. NOTICES. All notices and other communications between MAWC and MSD concerning this Agreement (collectively, "Notices") shall be given in writing to the addresses set forth below:

MAWC: Terry L. Gloriod, President
Missouri American Water Company
727 Craig Road
St. Louis, MO 63141

With Copy To: Martin M. Kerckhoff, General Counsel
Missouri American Water Company
727 Craig Road
St. Louis, MO 63141

MSD: Jeffrey L. Theerman, Executive Director
Metropolitan St. Louis Sewer District
2350 Market Street
St. Louis, MO 63103

With Copy To: Randy E. Hayman, General Counsel
Metropolitan St. Louis Sewer District
2350 Market Street
St. Louis, MO 63103

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision.

18. **CONSTRUCTION**. The headings or captions in this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

19. **SEVERABILITY**. If any provision of this Agreement is found by the Commission or a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as part of this Agreement, which is legal, valid, and enforceable, and is as similar to the illegal, invalid, or unenforceable provision as may be possible.

20. **GOVERNING LAW**. To the extent a dispute arises between MAWC and MSD involving enforcement of this Agreement such dispute shall be governed by the internal laws of the State of Missouri, applicable to contracts made and performed entirely in Missouri, without regard to any principles of conflicts of laws.

21. **INCORPORATION OF RECITALS**. The Recitals are hereby incorporated into this Agreement.

22. **COUNTERPARTS**. This Agreement may be executed in counterparts, including facsimile or photocopy counterparts, each of which shall be deemed an original, but all of which taken together shall constitute a single document.

23. **EFFECTIVE DATE.** This Agreement shall become effective upon the entry of the Commission's Order approving this Agreement and not before.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MISSOURI-AMERICAN WATER COMPANY

By: _____
Terry L. Gloriod, President

ATTEST:

Mary G. Sullivan, Assistant Secretary

THE METROPOLITAN ST. LOUIS SEWER DISTRICT

By: Jeffrey Theerman
Jeffrey Theerman, Executive Director

APPROVED AS TO FORM
OFFICE OF GENERAL COUNSEL

By: Randy E. Hayman
Randy E. Hayman

ATTEST:

Karl J. Tyminski
Karl J. Tyminski, Secretary-Treasurer