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	))))	Case Nos.: WR-2000-281 SR-2000-282 (Consolidated)

INITIAL BRIEF OF THE CITIES OF JOPLIN, WARRENSBURG, ST. PETERS, O'FALLON, WELDON SPRING AND ST. CHARLES COUNTY AND WARRERNSBURG INDUSTRIAL INTERVENORS

INTRODUCTION

The Cities of Joplin, Warrensburg, St. Peters, O'Fallon, Weldon Spring, St. Charles County, Central Missouri State University, Hawker Energy Products, Inc., Harmon Industries, Inc., Stahl Specialty Company, Swisher Mower and Machine Company, Inc., (hereinafter "The Municipal Intervenors" or "The Intervenors") join together in this Brief because they are united in their firm belief that district specific pricing ("DSP") is not only the proper way to set rates for a public utility configured as Missouri American Water Company ("MAWC"), but it is the most clearly lawful method of setting rates under current Missouri Law. The critical issue in this case and the primary issue addressed in this brief is whether, based upon the law and the facts, this Commission should authorize rates set under a single tariff or district specific pricing method. The Municipal Intervenors maintain that single tariff pricing is inappropriate for use in the MAWC system as a matter of law and fact. The evidence of record on the issue is clear that past utilization of single tariff pricing has produced none of the advantages the Company relies upon to support its proposed use of single tariff pricing in future rates and is unlikely to achieve any such advantages in this system; instead, STP has

produced substantial distortion of, discrimination in and public dissatisfaction with the Company's single tariff water rates. Intervenors respectfully suggest, based upon the facts in evidence, that the Commission must abandon single tariff pricing for MAWC and return to district specific pricing for the setting of rates in this case because single tariff pricing lacks legal and evidentiary support, while district specific pricing is supported by law and the evidence in this case.

Although MAWC has utilized single tariff pricing (STP) for at least five years to establish its water rates, the issue has not heretofore been presented to the Commission whether such single tariff pricing is authorized in Missouri or whether, if authorized, it should be utilized by this Company. As a matter of law, single tariff pricing, as set forth in the evidence of this case, is not authorized for use by a water corporation in Missouri. Section 393.130.3, RSMo. STP is not authorized because such method on the evidence makes and grants undue and unreasonable preference or advantage to persons and corporations in one district or area served at the expense of other persons, corporations and localities. It is virtually undisputed that STP subjects water customers in one locality to undue and unreasonable prejudice and disadvantage by passing on to such customers the costs of service of other customers in distant districts for the sole benefit of the favored district and to the prejudice and disadvantage of the disfavored district. Such unnecessary and undue discrimination, which is the essence and purpose of single tariff pricing, is prohibited under Missouri law. This Commission should therefore reject any rates proposed for MAWC which are set on the basis of single tariff pricing.

Should this Commission find that STP is otherwise authorized by Missouri law, however, its use by this Company in this water utility system should be rejected as

unsupported by any persuasive evidence and, ultimately, as an inferior method of rate design to the more appropriate district specific pricing method.

In support of its preference for single tariff rates, the Company has presented testimony purporting to demonstrate the superiority of STP over the traditional rate setting method of district specific pricing. A review of the evidence and testimony indicates that, as utilized by MAWC in its current system, none of the purported advantages of STP have or likely will occur, and that all such purported advantages are purely theoretical and hypothetical. At best, it is an unproven, experimental method which has been used only in circumstances and systems quite different than MAWC's. When measured against the actual history of its use in this state, as reflected in the facts of this case, it is clear that STP is not only not superior but is actually destructive of and contrary to basic rate making goals and principles traditionally adhered to by the Missouri Public Service Commission.

Single tariff pricing conflicts with accepted cost of service principles; subsidizes high cost customers and penalizes lower cost customers; discourages economic efficiency and water conservation; distorts price signals to customers; provides unnecessary incentives to utilities to expand systems; encourages over-investment in infrastructure and imprudent acquisition of existing service providers; is offensive to the majority of customers; and is inappropriate for setting rates in MAWC's non-interconnected system of districts of varying sizes, operating characteristics, populations, water sources, treatment requirements and customers.

District specific pricing most accurately serves cost of service principles; it more closely recovers costs from the cost-causer; it minimizes subsidization; it rewards efficient use of water and water conservation; it gives accurate price signals to customers and builds a much needed element of customer choice into a monopoly system; it requires companies to make

prudent investment and acquisition decisions; and is more understandable, and therefore, more acceptable to customers.

I. The Missouri Public Service Commission is not authorized as a matter of law to set uniform rates for a water company whose districts are configured as MAWC's; on the contrary, the Commission is bound by statute to price water to the districts based on the recognized cost to serve each district.

Single tariff pricing, as proposed by MAWC, clearly and necessarily engages in a rate design of economic preferences and disadvantages among the various districts. Because MAWC's proposed STP creates substantial "locality preferences" and substantial "locality disadvantages", Section 393.130.3 RSMo., which expressly prohibits such locality preferences and disadvantages, is immediately brought into play. Given MAWC's present seven district configuration, the relevant rate design question for the Commission is: Are locality price preferences and disadvantages conferred?, If so, can the magnitude of such subsidies be justified or are such preferences undue and unreasonable? The Municipal Intervenors believe that MAWC's proposed STP rate design creates a system of substantial and egregious inter-district subsidies that are unlawful and wholly unsupportable by any evidence.

The starting point in any rate design analysis for a multi-district water company is determining whether it is possible to identify the cost of service for each district. The record in this case demonstrates that calculating a district specific cost of service for MAWC's seven districts is not a difficult task and has been done by Staff, Office of Public Counsel, MAWC and the Municipal Intervenors, with little significant differences in the gross district costs. (See Exhibit 9, Table 1-A (Stout); Exhibit 57, Schedule 3-RD (Harwig); Exhibit 27, Schedule JAB-3 (Busch); Exhibit 41 (Hubbs). Any rate design that recovers revenues materially differently

from a district's individual cost of service study is prima facie legally suspect under §393.130.3 RSMo. Competent and substantial evidence and reasons must be present to support any preferences conferred and disadvantages imposed.

The Commission's jurisdiction is determined by the General Assembly's statutory delegation of regulatory power to the Commission. Section 393.130, RSMo. 1994, both grants and limits the commission's power in this particular case. This statute provides in pertinent part:

> 1. ..... All charges made or demanded by any... water corporation... for water... service rendered or to be rendered shall be just and reasonable... Every unjust or unreasonable charge made or demanded for... water ... service, or in connection therewith... is prohibited.
>
> 3. No... water corporation... shall make or grant any undue or unreasonable preference or advantage to any... locality, ... in any respect whatsoever, or subject any... locality... to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [Emphasis Added]

Subsection 1 is the statutory provision requiring rates to be just and reasonable for the "water... service rendered." Charging rates for service in a district that are deliberately and substantially higher than the determined cost to render the water service in that district is inconsistent with the clear legislative mandate that rates be just and reasonable.

Subsection 3 contains the anti-discrimination and anti-preference provision of the Public Service Commission Act relating to water companies. As we have earlier noted, these statutes are written in the disjunctive so that not only is it unlawful to subject a locality to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever"; it is equally unlawful to grant a locality "any undue or unreasonable preference or advantage... in any respect whatsoever." See *Alexander v. Chicago, M. & St. P. R. Co.*, 147 S.W. 217 (Mo. 1912),

interpreting what is now Section 387.110, and providing virtually identical language pertaining to common carriers.

In the case of single tariff pricing for non-interconnected districts with substantially different district specific costs of service, both prohibitions in the law are broken. Not only does STP appear to be in violation of the law by creating an undue or unreasonable preference or advantage to those districts whose resulting rates are lower than the cost of rendering such districts with water service, but STP also subjects other districts to undue or unreasonable prejudice or disadvantage by requiring them to pay higher rates than justified by the cost of rendering those districts with water service. Under STP, it is only by chance that the rates in any one district accurately recover the costs of service within and properly allocated to that district.

There is no Missouri statute which authorizes the Commission to approve uniform tariffs or single-tariff pricing. The Missouri Courts have recognized that the purpose of the Public Service Commission is "to secure equality service in rates for all who need or desire these services and who are similarly situated." *Reinhold vs. Fee Fee Trunk Sewer*, 664 S.W.2d 599, 604 (Mo.App. 1984). See also *May Department Stores Co. v. Union Electric*, 107 S.W.2d 41, 49 (Mo. 1937). MAWC's water customers in one district are not "similarly situated" to those in any of the other districts in any meaningful way; indeed, the districts are most dissimilar. To equalize or make uniform water rates between such completely separate and different water districts is arbitrary, unreasonable, inequitable, and beyond the Commission's statutory authority.

There are no reported Missouri cases specifically authorizing STP or uniform rates. The Missouri Courts have addressed the issue of discriminatory rates, but these cases involve

discrimination as between classifications of customers. c.f. *State ex rel. Laundry, Inc., v. PSC*, 34 S.W.2d 37 (Mo. 1931) and *State ex rel. Marco Sales, Inc. v. PSC*, 685 S.W.2d 216 (Mo.App. 1984). While the Missouri Courts have been willing to strike down rates which unreasonably discriminate between classifications of customers, whether the Commission has authority to set uniform rates for a non-interconnected water system such as MAWC's is yet untested.

But instruction can be taken from examining existing Missouri cases that have dealt with the issue of discriminatory pricing. In *City of Grain Valley v. Public Service Commission*, 778 S.W.2d 287 (Mo.App. 1989), the Commission dismissed a discrimination complaint filed by the City of Grain Valley against Southwestern Bell Telephone Company. On appeal, the Court of Appeals reversed and remanded the Commission's dismissal because, although the Commission found that the Grain Valley customers received the same telephone service as customers in Blue Springs, the Commission failed to properly find that the service was not provided under the same circumstances. The Court's discussion on this point, although somewhat lengthy, is very relevant and helpful in understanding how a court would view the instant case:

> "The Commission failed to address the full scope of the complaint brought by Grain Valley. Grain Valley customers contended that they were receiving the same service as Blue Springs under the same circumstances or conditions but were being charged a higher fee. The Commission addressed the first part of the complaint when it found that Grain Valley received the same service as Blue Springs but it lapsed into a discussion of the WASP plan rather than deciding whether or not Grain Valley customers were receiving telephone service under the same conditions as Blue Springs customers.
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> The criteria utilized in assigning various areas to particular tiers under the WASP plan does not address the same question as whether or not Grain Valley is receiving telephone service under the same conditions as Blue Springs customers. The undisputed evidence shows that Grain Valley and Blue Springs customers are receiving the same services and the Commission reached the only

conclusion on that question which it could. However, the factors to be considered in deciding whether or not the same service was under the same condition calls for a determination of whether or not there are factors present relevant to telephone service which would make the condition of service different in Blue Springs from that in Grain Valley.

In *State ex rel City of St. Louis v. Public Service Commission of Missouri*, 327 Mo. 318, 36 S.W.2d 947, 950[2] (1931), the court stated that a difference in rates must "be based upon a reasonable and fair difference in conditions which equitably and logically justify a different rate..." The Commission found a difference in the population of Blue Springs and Grain Valley, a difference in growth rate, and the Grain Valley was separated from Blue Springs by a rural area. The commission failed to explain how any of the factors mentioned by it would constitute an equitable and logical justification for a different rate in Grain Valley.

Usually different conditions are found to exist when there is a difference in the cost of furnishing the service. *Ford v. Rio Grande Valley Gas Co.*, 141 Tex. 525, 174 S.W.2d 479, 480[2-4] (1943). In *State ex rel. Utilities Com'n v. Bird Oil Comp.*, 302 N.C. 14, 273 S.E.2d 232, 238[7] (1981), the court listed several factors which would constitute substantial differences in conditions of service such as '(1) quantity of use, (2) time of use, (3) manner of service, and (4) costs of rendering the two services.' In *Kliks v. Dalles City*, 216 Or. 160, 335 P.2d 366, 378[8] (1959), the court recognized the same factors stated in *Bird* and added "or any other factor relating to the cost of furnishing the service." In *Kliks*, the court considered water rates which drew a distinction between apartment houses and hotels. The court noted that there are distinctions between the two buildings such as nature of occupancy, character of service offered and manner in which the facilities are used. The court held that although such distinctions might be the basis for differences in taxation, when it came to imposing charges for water the distinctions were not important. *Id.* 335 P.2d at 378[9]. By the same token the difference relied upon by the Commission in this case is not important in considering the question of the same conditions. In *State ex rel. DePaul Hosp. v. Public Service Commission*, 464 S.W.2d 737, 740[3] (Mo.App. 1970), this court found that telephone service to a school of nursing was service given under the same condition as telephone service to a hotel.

The differences pointed out by the Commission between Blue Springs and Grain Valley do exist, but there is no relation between those differences and the conditions under which telephone service is furnished to the two areas. The telephone customers in Grain Valley received their dial tone from the Blue Springs office, received the same telephone service, were billed monthly just as the Blue Springs customers and were entitled to the same service from Bell as the Blue Springs customers. Bell did nothing differently in furnishing telephone service for the Grain Valley customers than it did for the Blue Springs

> customers. Both customers had their call routed through the Blue Springs office with no difference in cost to Bell. In the face of this undisputed evidence there was no substantial and competent evidence upon which the Commission could base a finding that the telephone service to Grain Valley customers was not given under the same conditions as service to the Blue Springs customers. The differences pointed out by the Commission do not address the question of whether the telephone service was furnished under the same condition. There was no evidence of any difference in conditions under which service was given to the two areas which would equitably and logically justify a different rate." City of Grain Valley v. Public Service Commission. 778 S.W.2d 287, 290-1 (Mo.App. 1989).

The Court in Grain Valley focuses on the key question: Whether or not the service to the two localities was being provided under the same conditions. This necessarily calls for a determination of the factors that would make serving one city different (more expensive) than serving another city so as to justify different rates. In dismissing Grain Valley's complaint, the Commission justified Southwestern Bell's higher rate by noting that Grain Valley was a more rural area, it was further from the center zone and it had a slower growth rate than Blue Springs. The Court, while acknowledging that these differences existed, reversed the Commission because the Commission had failed to explain how these noted factors were relevant in justifying different rates. While Grain Valley presents something of the reverse side of the coin from the instant case, it does not take much imagination to predict what Court's decision would have been if district specific cost of service studies had been in evidence showing explicitly different costs to serve each city. In the instant case, however, district specific cost of service studies for the seven districts are in the record and they show widely disparate costs to serve each district. Given the Court's discussion on Grain Valley, supra, it is difficult to conceive how uniform rates could be justified in the face of district specific cost of service studies. Any significant deviations from such studies must be carefully and cogently justified.

Other states have dealt with the issue of uniform rates for non-interconnected water systems. The Illinois Commerce Commission issued an order October 21, 1994 involving uniform rates for MAWC's sister company, Illinois-American Water Company ("IAWC"), Case 92-0116. In this case, the Illinois Commission approved IAWC's request for STP or uniform rates for three of five non-interconnected water district in Southern Illinois. But in doing so, the Illinois Commission relied on its express statutory authority to approve uniform rates, viz:

> "Illinois-American also argues that Section 9-241 expressly authorizes the Commission to approve uniform rates for geographically separate service areas. (Id.) Section 9-241 states, in part, as follows:
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> > "The Commission, in order to expedite the determination of rate questions, or to avoid unnecessary and unreasonable expense, or to avoid unjust or unreasonable discrimination between classes of customer, or, whenever in the judgment of the Commission public interest so requires, may, for rate making and accounting purposes, or either of them, consider one or more municipalities either with or without the adjacent or intervening rural territory as a regional unit where the same public utility serves such region under substantially similar conditions, and may within such region prescribe uniform rates for consumers or patrons of the same class." [Emphases supplied]. Ill. Rev. Stat. ch. 111-2/3, §9-241 (1991).

No such statutory authority to prescribe uniform rates exists under the Missouri PSC Statutes. But even if the Missouri Commission were empowered with an Illinois-type statute, it is highly questionable that MAWC would be able to prove that it serves its seven Missouri districts "under substantially similar conditions." Examine what Illinois-American Water, MAWC's sister company, represented to the Illinois Commission regarding the "substantially similar conditions" standard for its five Illinois districts:

> "The Company argues that the evidence presented by the Company and Staff demonstrates that a uniform tariff for the Southern Divisions is appropriate for a number of reasons. First the Company alleges, the operations and facilities of

> all three Southern Division operating districts are similar. (IAWC Exs. 1.0, pp. 31-133; 6.0, pp. 7-8) All three districts obtain their water from a surface source of supply. (IAWC Exs. 1.0, p. 31; 2.0, p. 28; 6.0, p. 8) The Pekin District, on the other hand, obtains its water from wells while the Peoria District obtains its water both from wells and surface supply. (Id.) For this reason, the Company proposes to continue separate tariffs for the Peoria and Pekin Districts at this time." P. 71, Order, Illinois-American #92-0116.

In MAWC's system, Brunswick, Mexico, Platte County and Warrensburg source their water from old wells. St. Charles purchases 100% of its water from the City of St. Louis. St. Joseph obtains its water from new wells and an expensive new treatment plant. Joplin obtains its water from wells and surface sources. All districts have different unit costs, some significantly different. (See (Exhibit 57, Schedule 2-RD, page 1). Thus, even if the Missouri Commission were empowered with Illinois statutory authority to set uniform rates for districts providing water under "substantially similar conditions", MAWC's system would not qualify.

The Florida Courts recently addressed the question of whether the Florida Commission has statutory authority to establish uniform rates for water utilities with non-interconnected water districts. In *Citrus County v. Southern States Utilities, Inc.*, 656 So. 2d 1307 (Fla.App. 1995) the Florida Court of Appeals struck down the Florida PSC's order setting uniform rates for non-interconnected water systems because the Florida Commission lacked statutory authority to set uniform rates. In that case, the Court stated:

> "We conclude that Chapter 376 does not give the PSC authority to set uniform statewide rates that cover a number of utility systems related only in their fiscal functions by reason of common ownership. Florida law instead allows uniform rates only for a utility system that is composed of facilities and land functionally related in the providing of water and wastewater utility service to the public. Id, at 1310.

Subsequent to the 1995 Citrus County case, the Florida Courts have also struck down two other Florida PSC decisions which set uniform rates for non-interconnected water companies. c.*f. Hernando County v. Florida PSC*, 685 So.2d 48 (Fla.App. 1996) and

Sugarmill Woods Civic Association v. Southern States Utilities, 687 S.W.2d 1346 (Fla.App. 1997). These cases involved a Florida statute which empowered the Florida Commission to set uniform rates for water companies when the non-interconnected water districts were "operationally integrated to the extent they formed a single system", Hernando County, op.cit., p. 51. The Court in Hernando County stated:

> "The PSC erred in finding that SSU's existing facilities form a system, as that term was defined in *Beard* and refined in *Citrus County*, without making any findings that specific facilities are operationally integrated with one another in utility service delivery. Indeed, this order does not even contain any finding of how many facilities SSU currently owns forming the purported "system". Many of the examples of central organization, such as computer links, regionally organized training sessions, as well as centralized purchasing, planning, human resources, accounting, budgeting, legal services, employee relations, customer relations, billing, information services, financing and tax administration, are examples of a fiscal relationship rather than operations or functional relatedness." Id, at 52.

These cases from Illinois and Florida are cited not as controlling authority in Missouri, but to show that states that have approved uniform rates have done so under express legislative authority. There is no express Missouri statutory authority granting the PSC authority to set uniform rates for non-interconnected water companies. On the contrary, §393.130.3 would appear to prohibit that practice of granting and imposing subsidies to different localities for the purpose of making rates uniform throughout the system..

It is well established that the Commission is a creature of statute and can only exercise such powers as are expressly conferred on it. *State ex rel Kansas City v. PSC*, 237 S.W.2d 462 (Mo. 1924). Accordingly, the Commission should reject MAWC's request for STP or uniform rates until express legislative authority is granted. This interpretation is also consistent with good public policy. Selection of terms such as "undue preference" and "unreasonable discrimination" as limitations on the Commission's authority were intentional.

They appear to be declarative of the common law rule, founded on public policy, that requires one engaged in a public calling to charge a reasonable rate without discrimination. *State ex rel. Laundry, Inc. v. Public Service Commission*, 34 S.W.2d 37 (Mo. 1931). By employing these terms, the General Assembly set clear limits on its authorization to the Commission. The terms "discrimination" and "preference," qualified with the additional terms "undue" and "unreasonable" have been construed by Missouri courts to foreclose severance of the close relationship between cost-causers and cost-payers. See *State ex rel. City of Cape Girardeau v. Public Service Commission*, 567 S.W.2d 450, 454 (Mo.App. 1978), where the court confirmed rejection of a rate proposal that would have "pass[ed] on to all residential customers within the city the benefits derived from the consumption of one user; it would [have] established[ed] residential rates which would not reflect the true cost to those individual customers. To the same effect, see *State ex rel. City of West Plains v. Public Service Commission,* 310 S.W.2d 925 (Mo. en banc 1958) where our Supreme Court noted that a telephone utility's prior tariffs that passed through several individual municipal franchise taxes to ratepayers in other communities that did not impose such taxes was an "unjust discrimination" and upheld tariffs that limited charges for municipal taxes only to the utility customers living within those municipalities.

STP is arguably a reasonable rate design for districts that are similar in size and have similar costs of service. But similarity in size is not the case with MAWC's system where the St. Charles, Joplin and St. Joseph districts are much larger than the other four, have very different sources of water and have significantly different costs to serve each district. The comparative cost of service between districts is clearly the fulcrum upon which a commission must focus if it intends to approve STP for a multi-system water utility. For instance, examine

what was stated in *City of Pittsburgh v. Pennsylvania Public Service Commission*, 526 A2d 1243 (Pa.Commw.Ct. 1987).

> "Finally, we must note that the water company did not propose SINGLE-TARIFF PRICING throughout its entire service territory in this rate proceeding. Moreover, even though the Butler, Clarion, Punxsutawney, Connellsville and Indiana-Kane districts were consolidated with the Western Region for ratemaking purposes in this rate proceeding, those districts will remain as separate "rate zones". Consequently, the rates of those zones are not uniform with those of the remainder of the Western Region, but instead continue to reflect substantial cost-of-service differences. As noted in the water company's brief, the Butler and the Clarion-Punxsutawney rate zones have the highest rates in the Western Region, thus reflecting recognition of cost-of-service differences among the districts and rate zones. Accordingly, we find that substantial evidence supports the reasonableness of the allocation of revenue requirement among operating districts and that those rates do not permit improper subsidization." [Emphasis supplied]. Id. at 1247.

The touchstone of public utility rate regulation is the rule that one group or class of consumers shall not be burdened with costs created by another group or class. *Coffelt v. Ark. Power & Lights Co.*, 248 Ark. 313, 451 S.W.2d 881 (1970); *Utilities Comm. v. Consumers Council*, 18 N.C. App. 717, 198 S.E.2d 98 (1973); *Jones v. Kansas Gas & Elect. Co.*, 222 Kan. 390, 401, 565 P.2d 597, 606 (1977). This Commission has also recognized this principle in *In re Gas Service Company*, 21 Mo. P.S.C. (N.S.) 262 (1976), where this Commission ruled:

> Above all, in the opinion of the Commission, the touchstone of rate design is that the rates must and should reflect the cost to serve that particular customer or group of customers. To depart from this basic principle will place the regulator in a never-never land wherein he can design rates to suit his own particular whim or caprice, or satisfy his own preconceived ideas of how society should be charged for service. [Emphasis added].

Identification of an unreasonable preference or undue discrimination often arises in ratemaking. Under Section 393.130.3, an undue or unreasonable preference is granted by

shifting a significant portion of the costs caused by one district to customers in another locality or district, solely for the purpose of making rates uniform.

The only statutory justification that this Commission could possibly claim for establishing uniform rates is §393.130.2 RSMo., which provides:

> "No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions." [Emphasis supplied].

There are no Missouri Court decisions construing the particular words of this statute, but proper interpretation of the phrase "under the same or substantially similar circumstances" should be governed by the recognized rules for interpreting statutory language. The courts of this State repeatedly have emphasized the necessity to use proper statutory construction.

The primary rule for determining the intent of the legislature is to interpret the statutory words "in their ordinary and usual sense". *Abrams v. Ohio Pacific Express*, 819 S.W.2d, 340 (Mo. en banc 1991); *Indian Lake Property Owners Association, Inc. v. Director of Revenue*, 813 S.W.2d 305, 308 (Mo., en banc 1991); *Missouri Division of Employment Security v. Labor and Industrial Relations Commission*, 637 S.W.2d 315, 318 (Mo. Ct.App. 1982); *United States v. Kelly*, 519 F2d 251, 256 (8th Cir. 1975).

The Missouri Supreme Court often has held that a word's meaning should be derived from the dictionary. Abrams, 819 S.W.2d, 338, 340 (Mo. en banc 1991); Indian Lake Property, 813 S.W.2d 305 (Mo. en banc 1991); *Boone County Court vs. State of Missouri*, 631 S.W.2d 321, 324 (Mo. en banc 1982). Further, the Court notes that "there is no room for

construction where words are plain and admit to but one meaning." Abrams, 819 S.W.2d at 340.

Similarly, the Western District Court of Appeals has stated the rules of construction as follows:

> "The legislature is presumed to have intended exactly what it states and if the language used in the statute is clear and unambiguous, there is no room for construction. Effect must be given to the legislative intent from what the legislature said and not from what the legislature may have intended to say or inadvertently failed to say. Once a law has been adopted in express and unambiguous language, the Court is not at liberty to give effect by construction to contentions of supporters or opponents but must enforce the law according to its terms." *Missouri Division of Employment Security v. Labor and Industrial Relations Commission of Missouri*, 637 S.W.2d 315, 318 (Mo. Ct. App. 1982).

See also *Community Blood Bank v. Federal Trade Commission*, 405 F.2d 1011, 1015 (8th Cir. 1969) "The plain, obvious and rational meaning of a statute is to be preferred to "any curious, narrow, hidden sense that nothing by the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

Webster's Third New International Dictionary ("Webster's") defines the word "same" as "1(a) resembling in every way; not different in relevant essentials at one time; (b) conforming in every respect; 2(a) of like nature or identity; identical, self same." Webster's also defines the word "similar" as: "1(a) resembling in every way; not different in relevant essentials at one time; (b) conforming in every respect; 2(a) of like nature or identity; identical, self same", Webster's also defines the word "similar" as: "(1) having characteristics common; very much alike; or (2) alike in substantial matters or essentials".

Providing water to one district from an expensive new treatment plant or from purchased water via transmission lines is not "the same or substantially similar" to providing water in another district from wells and an older treatment plant. Ultimately, though, when

the unit price of water varies substantially from district to district, as do MAWC's districts, the districts must, be deemed not to be providing water under the same or substantially similar conditions. The plain meaning of the words the legislature used cannot be altered or twisted in the face of clear economic facts.

This Commission lacks the statutory authority to prescribe an STP rate design for MAWC's water system. Under the existing statute the Commission must recognize and respect the cost differences to produce water that exist between the districts and allow MAWC to charge its customers only for the costs properly assignable to that district on a district specific cost basis.

II. Single tariff pricing is inappropriate for use by MAWC in setting water rates; district specific pricing is the only appropriate method for setting rates within a system such as that served by MAWC.

A. Use of STP violates basic principles and goals of utility rate making.

The primary goal of a rate design structure is to recover costs from those who cause the costs to be incurred. (Exhibit 42, p. 3; Exhibit 57, p. 15.) Any approach which moves away from this principle promotes intentional discrimination. (Exhibit 43, p. 12.) While current rate making by class always creates some level of subsidization (Exhibit 42, p. 4, 6; Exhibit 62, pp. 10-11), if subsidization can be minimized in rate determinations, to make the cost-causer the cost-payer, this should be pursued as preferable policy. (Id.) Where recovery of cost by class is required, DSP is simply more equitably suited to accomplishing the goal of minimizing subsidization and having the cost-causer be the cost-payer. (Exhibit 42, p. 4; Exhibit 62, pp. 10-11; Exhibit 27, pp. 5, 12-13.)

Moreover, it is a sensible and fundamental principle in the adoption of any policy that the majority of people would be better off as a result of the policy as opposed to being worse off as a result of the policy's adoption. (Exhibit 61, pp. 15-16). STP, under the evidence, fails to create a net benefit for those citizens to whom it is applied. STP creates subsidization and is designed not to recover costs from those causing the costs to be incurred. DSP should be adopted as policy because it provides greater benefit to the majority of ratepayers in the MAWC system, minimizes subsidization, and makes the cost-causer the cost-payer.

B. Single Tariff Pricing is Inappropriate; District Specific Pricing should be utilized.

The evidence of record is clear and overwhelming in this case that single tariff pricing is not an appropriate rate methodology and that district specific pricing is the only acceptable method for cost recovery through rates in the MAWC system. MAWC attempts to justify use of STP on conclusions reached in a cost of service study performed by their witness Stout, which concludes that variations in key areas of costs between districts are so minor as to "allow" use of STP. It bears note that Stout's testimony assumes that STP is not always appropriate and that if his conclusions are incorrect, and the variations between districts are not minor, that STP would be inappropriate. Based upon the record as a whole, the variations identified by Stout between the districts are not only not minor but are dramatic; and Stout's conclusions offer no support to the Company's argument for use of STP.

Accepting that variations between districts exist and that variations in unit costs must be analyzed, the Company contends that unit costs of providing service in the several districts vary based on three factors: (1) the relative age of the district's plant in service; (2) the level of water treatment required in the district; and (3) the size of the district (i.e., economies of

scale.) (Exhibit 9, p. 3.) Ignoring the fact that rather substantial differences on these factors do exist, the Company posits certain "assumptions" in order to conclude that such differences are not material, or that future events may potentially render such differences less significant, in order to conclude that STP is appropriate for MAWC's system. (Exhibit 9, pp. 3-5.) Under the factual record, however, the Company's rationale lacks any foundation. Indeed, the differences under the factors utilized by Mr. Stout dictate use of DSP for MAWC's system.

In justifying its use of STP, the Company first deals with an analysis of the variations in the relative age of district plant in service. The Company reasons that, all other things being equal, the unit cost of service decreases as the average age of the plant increases. (Exhibit 9, p. 3.) Because an older plant is less expensive to maintain than a new plant on a unit cost basis, a district with an older plant or fewer capital improvements has a lower cost of service. Districts with newer plants or recent significant capital improvements have higher costs of service. In the MAWC system, plant in service varies widely from brand new (St. Joseph) to rather old (Joplin), and with dramatically varying capital improvement cost requirements over any particular period. (See, for example, Exhibit 27, p. 10; Exhibit 6, pp. 5-6.) The Company therefore suggests employment of a hypothetical set of assumptions to vitiate the obvious cost differences. The Company assumes that major plant additions in one district will always increase rate base and revenue requirements, while correspondingly reducing average age of plant; and as plant is subsequently added elsewhere (always at higher cost due to inflation) the cost of the first district decreases relative to the other districts. (Exhibit 9, pp. 4, 9-11.) All districts, it is asserted, will eventually get capital improvements. Therefore, the Company suggests, it is acceptable for the Company to spread all such costs as

they occur because "what goes around, comes around" and all districts will "end up even in the end."

This rationale is simplistic, speculative, unsupported by fact and illogical and unacceptable from the viewpoint of the ratepayer. The notion that with mere passage of time the relative cost impact of repeated major additions in different places lessens rather than increases or simply offsets costs, and that the unit cost of service in the district with the newest plant will therefore eventually decrease to an amount which is less than some as yet unquantified "system-wide average," is unsupportable. First, the Company is careful to suggest the occurrence of these future events hypothetically and without any specific time limit. As repeatedly noted throughout the evidentiary hearing, while the Company may be theoretically correct that "in the end" such a cycle might be completed, it is also clear that "the end" of the cycle the Company envisions is likely actually closer to "the end of time" than to any foreseeable future date of importance to ratepayers. (Exhibit 57, p. 7; Tr. 229-231.) Today's ratepayers are obligated to pay for this water service; the Company wants them to pay for some future opportunity to "get back even." What the Company appears to be selling here is not water but insurance. STP asks current ratepayers to overpay for a hope that one day their children, or perhaps grandchildren, will live long enough to see major improvements to their water plant with someone else paying for it. What accepted principle of rate making such a policy serves is wisely not addressed by the Company, because the only interest served by such a policy is the Company's interest in recovering its current costs with a guarantee that everyone is locked into its future expansion. While no one should be surprised or disappointed that a business like MAWC, operating a monopoly, would have or seek to

forward such anti-consumer interests, they are entirely irrelevant to the obligations and duties of this Commission to set just and reasonable rates.

Additionally, in light of the existing variations in the age of plants in the districts in MAWC's system, imposition of STP creates significant unfairness and outright discrimination which is unlikely to ever be corrected over any length of time. The Joplin district, for instance, has an older plant which has not received, and is not planned to receive, any major capital improvements from the Company.[1] Under STP, the Joplin district rates are proposed by the Company to go up over 50% and, thereafter, will likely rise more as additional plant is added in other districts. As pointed out by witness Harwig for Intervenors, and admitted by the Company, utilizing the Company's "what goes around comes around" theory would require the Company to increase its future rate base in Joplin by 277% and to spend approximately $56 million on capital improvements in order to simply reach parity with the relative level of investment made in St. Joseph and sought to be passed on for payment to Joplin. (Exhibit 57, p. 7; Tr. 228-229.) Such an investment in Joplin is not just unlikely, but impossible under even the most optimistic assumptions of growth of demand in the Joplin area. (Exhibit 57, p. 8; Exhibit 62, p. 6.) Clearly, the Company's "what goes around comes around" theory for this system is not an answer to the capital improvement variations between districts, but a Company tool for creating permanent subsidization. Under the evidence, the observation of OPC witness Busch appears accurate: STP causes a "never ending cycle of constant rate increases without the offsetting benefit of decreases as the plant in a district ages." (Exhibit 28, p. 5.) That such "never ending increases" might be, according to the

[1]Joplin, with an older plant (lower unit costs) also has the fewest capital improvements, making it a low unit cost district and a primary target for past and future subsidies to the Company's system. (Exhibit 6, pp. 5-6; Exhibit 2, p.10; Tr. 257-259.) Joplin is truly the "cash cow" which the Company hopes will finance its future

Company, "smooth and regular" (Exhibit 11, p. 5) is somehow not reassuring. DSP, on the other hand, causes rates in the district to rise only as improvements are made, and to decrease as the district's plant ages. Clearly, DSP is the preferable approach for ratepayers. (Transcript of Joplin Public Hearing, May 18, 2000, p. 5 and Exhibit 1, pp. 11 and 17 and Exhibit 2, pp. 35 and 55 and Exhibit 4, pp. 58-59.)

Finally, the Company's analysis of the variations between districts regarding age of plant demonstrates the unfairness and inequity of the STP approach. The Company, which obviously believes the only good plant is a new plant, sees no problem whatsoever in transferring the benefit of lower costs in Joplin to other districts, particularly St. Joseph. Lower costs of an older plant which receive little in capital improvements is the only benefit Joplin gets. Yet even this is taken away by the Company's STP rates. The Company has made no showing of why Joplin customers should be denied these lower costs or why they should distribute them to other districts.

In summary, the Company's rationale for use of STP, based upon the treatment of the economics of aging plant, simply demonstrates the Company's overall approach to rate making: rates are to be set in a manner which the Company believes is easiest for and of greatest benefit to the Company, regardless of discriminatory effects against ratepayers. Because rates must serve the interest of the Company, STP should be utilized. Such an approach is unworthy of consideration. It reveals that STP is being used simply as a means of forcing the Company's existing ratepayers in low cost districts to finance the acquisition of new territories and the making of significant investments in higher cost districts. (Exhibit 57, pp. 12-14.) Requiring customers in low cost districts to provide inordinately large returns on

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expansion. (See Transcript of Proceedings for Public Hearing, May 18, 2000, Joplin, Mo., pp. 22, 37-39, 65,

the Company's investments in such low cost districts to pay for improvements elsewhere is unacceptable to those ratepayers and violates fundamental rate making principles. Under the Company's rationale, however, fairness to these customers and adherence to principle is not simply secondary, it is entirely irrelevant.

The second variation factor analyzed by the Company is the district's required level of water treatment. (Exhibit 9, pp. 3-4.) Here again, although there are significant variations in water sources (Exhibit 27, p. 2, (supplies derived from wells, surface water and purchased water) and therefore in treatment, the Company blithely dismisses the significance of the varying costs of treatment by speculating that "increasing regulatory requirements will move all districts to significant levels of treatment, mitigating, if not eliminating, any unit cost variance that currently exists due to this cause." (Exhibit 9, p. 4.) This rationale for concluding that no variation in cost of treatment exists among the system districts lacks any merit. The record is replete with evidence of varying qualities of water throughout the district requiring varying treatment costs. Warrensburg, for instance, has undergone significant costs in order to improve water quality to a merely tolerable level. (Exhibit 63, p. 4.) Ironically, the St. Joseph plant appears headed for the same result, because the water quality aesthetics from the new plant is apparently poor when compared to the old plant. Joplin and other districts which do not have such problems, however, are denied the benefits of lower costs of treatment under STP and forced to pay the increased costs for these other districts. The Company does not deny the variations or the effect of STP in this regard. The Company simply sidesteps the issue (as it does with the age of plant issue) by again asserting that "in the

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72.)

end" future treatment requirements will diminish the variations. The assertion lacks any evidentiary support.

The Company does not refer specifically to what these increased regulatory requirements will be, offers no cost estimates as to what their effect might be, and fails to even explain why, given the wide variations in source and quality currently existing, all districts would be required to install identical treatment processes at identical cost to meet any future regulatory requirements. (Exhibit 57, p. 9.) It is respectfully suggested that the current rate case must be decided based upon current regulatory requirements, or at least upon those reasonably foreseeable, and that the Company's rationale for ignoring the inter-district variation in cost of treatment should be rejected as being without basis. The Company relies on unannounced (and perhaps as yet even unenvisioned) potential requirements. Rates must be set in this case on the basis of regulations and associated costs which are in effect now, not on speculation with regard to future requirements. (Exhibit 57, pp. 9-10; Exhibit 28, p. 3.) Despite the Company's criticism of the principle that existing treatment requirements dictate what customers should pay for such treatment (Exhibit 10, p. 13), the Commission cannot rule upon speculation and potentialities.[2]

Further, the Company's claim that STP removes a "disincentive" to meeting regulatory requirements (Exhibit 10, p. 13) is unconvincing; it is absurd to suggest that DSP would allow customers to refuse to meet water quality requirements in the future as they arise. Similarly, the Company's argument that "the legislature makes us raise rates" by setting water quality standards, is ridiculous and should be disregarded. In summary, to the extent there is any

[2]The Company's evidence in this regard gives the only clue as to what it views as "long term" as opposed to "short sighted" (how long until "what goes around comes around") by suggesting that trends starting 30 years ago determine treatment costs for rates set today; presumably today's rates must be set for treatment requirements in effect 30 years from now.

answer required to the suggestion that costs of treatment do not materially vary between districts, OPC witness Busch has provided an accurate one: "If water from all sources is required to achieve the same criteria, it will still be costlier to treat water from certain sources than from other sources. In fact, one could argue that by making all water reach the same quality, the cost associated with treating a certain district's water might actually rise." (Exhibit 28, p. 5.)

The third factor of variance considered important, but not sufficient to make STP inappropriate in the Company' view, is the size of the district: that is, if economies of scale are achieved when separate districts are combined into one large district, such districts should be combined for the purpose of uniform rates. While such assertion again serves the interest of the Company, it ignores the facts and the welfare of the customer. Simply stating the truism that "unit costs of providing service in small districts are usually greater than unit costs of providing service in large districts," (Exhibit 9, p. 5), does not require the conclusion that "bigger is better," and does not adequately address the issue presented in this case. The Company does not bother to address and apparently does not recognize the significant difference between economies of scale achieved by combining "like districts" (where there are not great variations) and economies of scale achieved by combining MAWC's seven separately sourced, non-interconnected, non-contiguous districts, which are all in different parts of the state. There are simply fewer economies of scale possible in the MAWC system that are of any real relevance to preference for a single tariff. The differences from district to district still predominate. Further, even Mr. Stout acknowledges that the unit cost differentials produced by economies of scale are not temporal and will not be significantly lessened or eliminated with increased regulations. (Exhibit 9, p. 5.) This acknowledgment itself argues strongly

against the use of STP as the unit cost differentials among the districts caused by scale economies will persist indefinitely. (Exhibit 57, pp. 10-11.)

Moreover, Mr. Stout interjects into the "size counts" argument the interesting suggestion that use of STP encourages MAWC's acquisition of small districts, which should in turn be encouraged by this Commission. (Exhibit 10, pp. 14-15.) Whether this incentive is necessary (this Commission is presumed to neither encourage or discourage such business acquisitions) or even wise (the Brunswick district has throughout this proceeding been the 500 customer tail that has wagged the 94,000 customer dog) is questionable. However, as justification for STP in this case, the suggestion that it is desirable to encourage MAWC's acquisition of small districts shows the issue stands on its head. Whether or not small districts benefit from such acquisition dodges the question of the injury to other districts through the discriminatory subsidies required by STP. In this case, if "helping the little guy is as American as apple pie and is still good public policy" (Exhibit 10, p. 15), the facts demonstrate an abject failure of such policy. If the idea is that larger districts are to support the smaller districts that is not what is happening in this system under STP. While the medium sized districts of St. Charles, Warrensburg and particularly Joplin are supporting the smaller districts of Brunswick, Mexico and Parkville, they are also supporting the largest district, St. Joseph. Further, if "little guys" are intended by the Company to be helped, placing a burden of subsidy on the customers in Joplin, St. Charles and Warrensburg, which no other water ratepayers in the state have, can hardly be said to be helping the "little guys" in those districts. (Exhibit 62, pp. 8-9.) If the Company is desirous of acquiring small or dilapidated systems, whether for the edification of this Commission or not, it should do so based upon a financial plan that does not require other low cost districts to pay for such acquisitions and investments.

Further, other methods, such as phase-ins, reorganization and specific financial assistance, can accommodate the unusual circumstances of extremely small districts whose cost of service far exceeds affordable rates. (Tr. 255-257.) At minimum, the Company can solve its problem by not acquiring such districts and selling off any that they currently own.

Finally, no one (with the possible exception of Mr. Stout) has argued that common costs which serve the interests of all seven districts cannot or should not be allocated so as to achieve the economies of scale that the Company does offer. (Tr. 233-234.) The issue is the method of recovery of costs for the purely local aspects of water service. The Company's straw man arguments about the inefficiency of "stand alone" districts bear no relevance. (See Exhibit 9, pp. 13-14.) No party has suggested doing away with the economies of scale the Company offers, and it is foolish for the Company to suggest (Tr. 234-235) that if they do not have their way on STP that they will withhold from the districts the benefits of those economies of scale.

In summary, analysis of the three factors of cost variation chosen by the Company as influencing the choice between STP and DSP establishes that STP is inappropriate for the MAWC system. Variations between non-interconnected districts concerning age of plant, level of required treatment and scale economies to be achieved require that DSP, not STP, be adopted.

MAWC next sets forth a variety of reasons which it claims supports STP for its system. The Company claims as reasons for the superiority of single tariff pricing the long term rate stability which results from a single tariff, the similarity of operating characteristics of the districts, the equivalency of the service offered among the districts, certain "other cost of service considerations" and the principle of gradualism. (Exhibit 9, p. 14.) Such reasons are

in all cases debatable and in most cases purely illusory. As demonstrated by the facts of this case, rate stability, certainly in the short term and likely in the long term, does not arise from a single tariff; the operating characteristics of the districts are not similar; the services offered are not equivalent in cost; and the other cost of service considerations are nothing more than the same economies of scale which would pertain whether the rate were structured on STP or DSP. The principle of gradualism, under the facts of this case, is largely irrelevant, as there will be substantial rate increases no matter what pricing philosophy is chosen, to be mitigated by the Commission, if at all, through phase-in and plant disallowance. On the evidence, single tariff pricing is not rational, justified or appropriate for use in the MAWC system under the reasoning the Company itself suggests.

Company witness Stout asserts that "rate stability" is a major advantage of STP. In light of the proposed 50%-plus across the board rate increase in this case such suggestion seems ludicrous. (Exhibit 27, p. 6.) Additionally, as the evidence in this case demonstrates, the appearance of stability (i.e., the rate increases are large but evenly distributed) simply conceals shifts in the burdens among classes of customers in districts and distortion of cost of service differences among classes within individual districts. (Exhibit 61, p. 8.) STP dictates the charging of rates that can be very high relative to the cost in some districts, while selling product at rates below cost in others. It is this distortion of the correlation of costs incurred to revenues recovered that is the hallmark of STP. Ever increasing rates, which would not be tolerated and which even the Company would not have the nerve to propose, become "stable rates" in the Company's lexicon. Such a pricing system violates the most fundamental principles of utility regulation. (Exhibit 61, p. 15.)

Moreover, because the rates proposed in this case would cause "rate shock" under any proposed pricing methodology, the alleged STP advantage of "rate stability" becomes irrelevant in the formula. Because the Company has dropped the St. Joseph Treatment Plant bowling ball into seven different district punch bowls, the question here is basically between uniform rate shock or non-uniform rate shock. (Exhibit 10, p. 11.) STP assures that several districts will have rates well above DSP and will keep them for many years to come. STP guarantees that those district's aging plants will not offset these permanent increases. Hence, STP creates rate shock and does not diminish it, and STP perpetuates the initial shock for an indeterminate length of time. (Exhibit 62, pp. 7-8.) Municipal Intervenors respectfully suggest that it is a fool's errand to select a pricing philosophy based upon criteria like achievement of "rate stability" or avoidance of "rate shock" in a factual scenario where rate shock and instability would be the case for ratepayers regardless of the choice. Because of the distortions which have been allowed to creep into the system under the STP rates of the Company since 1995, this Commission faces no options which avoid rate shock and allows stable rates to arise from this case. The Company's attempt to make permanent this use of objectionable pricing methodology through the false promise of rate stability should be rejected.

Company witness Stout next supports his use of STP by asserting that it compliments the similarity of operating characteristics of the districts and the equivalence of the services offered within the district by the Company. (Exhibit 9, pp. 14-16.) With regard to operating characteristics, Stout simply notes the fact that all districts have their own plants and distribution systems, from which he concludes that they all operate similarly. Stout has obviously never visited any of the plants. They do not operate similarly. The size of the plant

operation, the size of the distribution system, the water sources and required treatment, and the required maintenance (a function of age and size), all vary from district to district. St. Charles purchases its water and therefore has substantially different operating characteristics from districts that produce their own water at their own plant. Although the Company emphasizes the similarities (mostly by citing the same centralized headquarters operations which are allocated to the districts in any event), there is no substance whatsoever to the suggestion that operating similarities of the districts militate in favor of uniform rates. Indeed, even Company witness Stout agrees that there are significant differences in operating characteristics concerning sources of supply and required treatment processes from district to district. (Exhibit 9, p. 15; Tr. 236-239.) Stout's assertions that these significant differences will be eliminated "over the long term" by regulatory pressures and customer demands are, as previously noted, speculative and unsupported by any evidence.

Similarly, the Company's assertions of equivalence of services offered as a reason to adopt uniform rates is based upon a syllogism: all residential customers are the same; all residential customers use water service; therefore, all water service to residential customers is the same. Like most specious forms of reasoning, the conclusion reached is wrong. Mr. Stout obviously did not attend the local public hearings in this case. Water service and water quality varies district to district, sometimes quite radically. (Exhibit 63, pp. 4-5.) The product offered in varying districts is different even if used for the same purpose, and can be described as "similar" only to the extent that it is always wet. In light of the testimony given at the public hearings in this case concerning customers' expense of eliminating odor and taste deficiencies, necessity of individuals purchasing water softening equipment and the purchasing of bottled water to avoid the poor quality of service provided by the Company, it is clear both

the major and minor premise of the Company's reasoning is simply wrong. (Exhibit 27, p. 6; Exhibit 28, p. 6; Tr. 236-239.) When combined with the Company's own agreement that there is no equivalency of service between different customer classifications (Exhibit 9, p. 16) the Company's assertion of service equivalence between districts, like its assertion of operating similarities, is rather laughable.

In further support of its premise that commonalities between districts outweigh differences, thus making uniform rates appropriate, the Company also relies upon analogy to pricing policies for other regulated utilities (primary electricity but also telephone and gas), and also suggests that simply the "value of service" provided throughout the system creates commonality. (Exhibit 9, p. 16; Exhibit 10, p. 8.) The evidence is absolutely clear that other regulated utility pricing structures are not appropriate for wholesale transplant to regulated water utilities. (Exhibit 42, p. 7; Exhibit 62, p. 11.) Gas, electric and telephone utilities do not employ STP in the same sense or manner as used in this case. These other utilities are regional and sometimes transcend state boundaries. They are always inter-connected. Electric utility companies provide energy from a number of power plants sent over a variety of transmission routes. Electricity can originate from a generating station outside the host utility service territory. It is because of these facts that regional pricing is acceptable for gas, telephone and electricity. However, water utilities are local in their sphere of operations and water service is usually provided from a relatively nearby source with operations confined to a local area. Analogy to electric, gas and telephone utilities is an apples to oranges comparison for the use of STP; moreover, the STP methodology employed by the Commission for electric, gas and telephone utilities is certainly not the pure STP approach suggested by the Company in this case, making the analogy more like apples to elephants. (Exhibit 62, p. 12.)

Similarly, the Company's interjection of "value of service considerations" in its search for commonalities among districts is both irrelevant and disturbing. It says more about the Company's overall objectives and philosophy than perhaps should be said. The purpose of utility regulation is the setting of rates primarily based upon cost of service, rather than value of service. The Company operates a monopoly and competition for their customers is prohibited. Regulation is designed and intended to prevent the abuse of this monopoly position which would arise if the supplier were to charge a price based on "what the traffic will bear," or, as the Company puts it, the "value of service." (Exhibit 62, p. 4.) "Value of service" is an alien and irrelevant concept in this case. The Company here, however, is forthright in asserting that the customers are fortunate to have them providing even basic services, ignoring the fact that providing services in a monopoly setting is a privilege granted to the Company, and not a right to be flaunted by them. This illustrates the Company's thinking with regard to this entire case: customers have no right to insist on any quality of service beyond what is provided; they do not know what is best for them and should accept whatever pricing philosophy the Company decides; and that concepts applicable to the free market should be applicable to the Company's business. What the Company demonstrates is that this Commission should look with skepticism upon MAWC's assertions in this case in support of their goal of establishing permanent STP pricing methodology.

Next the Company supports use of STP by citing to "other cost of service considerations," which are essentially a rehash of the Company's arguments concerning availability of economies of scale. (Exhibit 9, p. 17.) It is undisputed that the Company has centralized certain functions (and their costs) for the seven districts and that economies of scale have been achieved by such centralization. However, the Company appears to assert that only

under single tariff pricing can such economies of scale be brought to bear for the benefit of ratepayers. This is far from the truth: such economies of scale are available under DSP as well (Tr. 233-234), and this is no reason to adopt STP at all. (Exhibit 27, page 6.) Municipal Intervenors trust that this Commission would never allow these centralized economies of scale to be denied to the ratepayers in the seven district MAWC system, and that such costs as associated with these centralized functions will be allocated to the districts on a rational allocation basis. District specific pricing would not require any different result. At best, issues related to economies of scale to be achieved by centralized functions are a non-criteria in this case.

Finally, witness Stout complains vaguely that STP serves the interests of "gradualism," suggesting that DSP does not. Again, Mr. Stout raises an issue that provides no guidance for decision and no criteria for determination. It is difficult to determine how the Company defines gradualism. The 50%-plus across the board rate increase proposed by the Company in this case hardly meets the dictionary definition of the term. All other parties except the Company have proposed phase-ins of various types to mitigate rate shock and serve what seems to be the interests of gradualism. (Exhibit 28, p. 2; Exhibit 43, pp. 3-4; Exhibit 64, pp. 3-4; Exhibit 62, p. 2.) This Company should not be heard to complain of a failure to serve an interest which the Company has entirely itself ignored and disregarded. The proper place for considerations of gradualism is after the pricing methodology is selected, not before. (Exhibit 43, p. 3.) Gradualism should be then considered in selecting a phase-in method where needed, in conjunction with an appropriate plant disallowance.

The Company also criticizes the endorsement of DSP by the other parties as ignoring alleged STP benefits of being understandable and easy to apply (fewer rate schedules under

STP), lowering administrative costs and costs to the Commission ("rate activity") and certain unexplained social and community concerns. (Exhibit 10, p. 8.) All of these factors were in fact considered by the parties who oppose single tariff pricing in this case. (Exhibit 43, pp. 2-6; Exhibit 29, pp. 2-3; Exhibit 61, pp. 13-15.) Company contentions of superior STP understandability and ease of application are disposed of by Staff witness Hubbs, who demonstrates that the public will not be confused by DSP rate schedules (Exhibit 43, pp. 5-6), and there is not even a suggestion in the evidence that the Company will have any difficulty administering district specific pricing. The Company's habit of regularly asking for rate increases ("rate activity") and the commensurate costs of this activity to the Commission is likely to continue under either approach. We note, however, that MAWC currently files for increases under STP approximately every two years. DSP could certainly not do worse. As far as social and community concerns, these are not explained in the evidence of the Company; and Municipal Intervenors respectfully suggest that the record of this Commission's local public hearings and the near unanimous preference of parties intervenors in this case for district specific pricing adequately expresses community sentiment. Communities want to pay their own costs and not pay for plants or improvements which do not benefit them. The St. Joseph Public Water District, like the City of St. Joseph, opposes DSP and supports STP only because of the economic consequences to them of district specific rates in the present case. Otherwise, only the Company appears to endorse single tariff pricing; the "small" systems alleged to most benefit from (and therefore presumed to endorse) STP have neither appeared nor indicated such preference. The City of St. Joseph should not have relied upon the Company's representations of having others pay for their new plant. An erroneous belief in a free lunch creates no obligation on other districts to pay the bill. Clearly, community and

social considerations of record militate strongly in favor of adoption of DSP and abandonment of STP, with adverse economic consequences for individual communities managed by means of a phase-in.

C. Phase-In.

Concerning the question of phase-in, Municipal Intervenors strongly urge adoption by the Commission of the plan proposed by witness Harwig. (Exhibits 57, 61, 62 and 64.) Mr. Harwig has proposed a cost of service methodology and revenue requirement, in connection with a reasonable plant phase-in approach based on the expert testimony of Dr. Charles Morris and Mr. Ted Biddy, which would fairly and adequately protect St. Joseph customers from the worst consequences of the imprudent decision making of the Company concerning the new St. Joseph treatment plant. Mr. Harwig's proposed rate design is superior to that offered by the Office of Public Counsel because it achieves the objectives of adherence to fundamental rate making principles more quickly and benefits the greater number of customers within MAWC's system concerning fair, equitable, just and reasonable rates. OPC's phase-in is not so much a compromise between DSP and STP as it is a methodology of "STP with compassion." While we all appreciate OPC's sympathy for short term effects of just and reasonable rates (also known to OPC as "rate shock"), the defining feature of the OPC position to be noted by the Commission is that it too recognizes the inappropriateness of STP and the propriety of DSP. Unfortunately, its approach will never achieve the expressly desired result: OPC creates permanent subsidies for communities such as Brunswick at the expense of communities like Joplin, denying the benefits of DSP, as well as even the theoretical advantages of STP, and pleasing no one. "STP with compassion" is an unworkable plan which should be avoided.

Any DSP plan with a reasonable phase-in (such as Harwig's "Plant Phase-In") will be far superior to such halfway measures.

D. Surcharge.

MAWC's proposal for a St. Joseph surcharge is a diversionary tactic. It is simply a method to maintain and preserve the Company's inappropriate single tariff pricing approach - - now by sacrificing the St. Joseph customers they sold on the idea of a new plant for no cost. (Exhibit 10, p. 18.) Under this proposal, all of the distortions caused by the current single tariff pricing system would be perpetuated and all purported "advantages" of STP would remain as they have been - - purely hypothetical. The only real advantages go to the Company, not to any customers. MAWC's surcharge proposal is "STP lite" - - merely a compromise in an attempt to avoid the result of their inability to establish the appropriateness of STP for this water system by any evidence. (Exhibit 62, p. 10.) However, no amount of "adjustment" can make STP appropriate in this system. Any such "fix" which authorizes use of an STP pricing regime is unacceptable and should be rejected. The surcharge approach is also unnecessary. Under DSP, the surcharge is already built into the system by allowing customers to pay the cost of service in their own district.

E. Joplin should receive a rate decrease.

All the evidence filed in this case supports a rate decrease for the Joplin district. Mr. Harwig proposes a rate decrease for Joplin to its DSP cost of service. PSC Staff, until very recently, agreed entirely. OPC agrees in logic (they urge use of DSP in rates) but suggest continued subsidies to be paid by Joplin out of a misplaced and irrational sense of compassion. This Commission should seize this opportunity to firmly state that just and reasonable rates for Joplin and any similarly overcharged district cannot be achieved without a return to DSP rates and a rate reduction.

Because the Company proposes substantial increases for Joplin, on top of its current overpaid rate status, the Company's proposal for Joplin should be rejected as discriminatory, unfair, inequitable and not supported by the evidence of record. (Exhibit 57, pp. 8, 11.) Because Office of Public Counsel proposes an arbitrary continuation of a permanent subsidy to be stacked on to Joplin ratepayers in addition to their own cost of service, OPC's proposal for Joplin should be rejected as lacking any basis in law, unsupported by any evidence in the record, and as contrary to regulatory principles of just and reasonable rates. (Exhibit 62, p. 17.) Finally, Staff's arbitrary and belated (i.e., not even proposed until after the Joplin public hearings and in Surrebuttal to avoid response) allocation only to Joplin of a proposed new permanent subsidy for Brunswick should be rejected as arbitrary, capricious, irrational, discriminatory, and entirely unexplained in the evidentiary record. It is outright discrimination-singling out Joplin, as in the past, for special and singular burdens. The Commission should instead adopt the position proposed by Municipal Intervenors and Mr. Harwig, and supported by PSC staff in its Direct, Supplemental Direct and Rebuttal Testimony (Exhibits 40, 41 and 42), of decreasing rates in Joplin to their cost of service as determined under DSP. (Exhibit 61, pp. 13-14; Exhibit 62, p. 17.)

F. St. Joseph Treatment Plant.

The Municipal Intervenors did not present a witness explicitly addressing the issue of MAWC's prudency in constructing the new St. Joseph treatment plant. However, the Municipal Intervenors fully support the contentious of the Office of Public Counsel and the St. Joseph Industrial Intervenors, that the decision to construct a new facility for $70 million rather than renovate the existing facility for $38 million was seriously flawed. If it is true that MAWC made representations and suggestions to the St. Joseph rate payers that the new

Respectfully submitted,

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