

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

FILED²
MAR 26 2002

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 No. WR-2000-281

Missouri Public
Service Commission

**THE CITY OF JOPLIN'S RESPONSIVE PLEADING SETTING OUT
THE COURSE OF ACTION THAT THE COMMISSION SHOULD FOLLOW
WITH RESPECT TO REMANDED ISSUES**

COMES NOW the City of Joplin, by and through counsel, and makes the following response in accordance with the Order Directing Filing of March 8 and 25, 2002:

The Public Service Commission (hereinafter "PSC" or "Commission") has requested that each party to this proceeding file a pleading setting out suggestions as to the course of action that the Commission should follow with respect to the issues in this case remanded by the Cole County Circuit Court. The City of Joplin ("Joplin") herein provides its suggestions concerning the procedure the Commission should follow on the sole issue of reduction of Joplin district rates to district specific pricing (DSP) levels as a result of adoption of DSP rates for the water system's rate design. (See Circuit Court Opinion, pp. 14-17).

**ISSUE: APPLICATION OF DISTRICT SPECIFIC PRICING
TO THE JOPLIN DISTRICT**

The Circuit Court reviewed and upheld the decision of the Commission to abandon single tariff pricing ("STP") and to move toward district specific pricing ("DSP") as the rate design for this seven district water system. Under the DSP rate design, each district's rate is determined in accordance with the specific cost of providing water service in that district, without the inter-district

subsidies found to be objectionable under STP. (Report and Order, p. 58; Circuit Court Opinion, p. 15.) However, the Court reversed and remanded to this Commission the PSC's further one-sentence decision not to reduce the rates of only the Joplin district customers of Missouri American Water Company ("MAWC") to the DSP levels applicable to all other districts - - a PSC decision requiring those Joplin district customers to pay excess charges in the amount of approximately \$880,000.00 to subsidize other MAWC districts.

In its original Report and Order, the Commission found STP to be an inappropriate rate design and DSP to be the proper rate design for the non-contiguous, non-interconnected MAWC water system:

The Commission will move away from STP and toward DSP. One factor for consideration in determining just and reasonable rates is public perception. The testimony adduced at the Local Public Hearings held in this matter was strongly in favor of DSP. MAWC [Missouri American Water Company], therefore, must set its rates separately for each service area in order to recover the appropriate revenue requirement for each service area. As the Company requested, no phase-in of rate increase shall be permitted. In moving toward DSP, however, the Commission will adhere to the principle that no district will receive a rate decrease. (Emphasis added.)

Report and Order, p. 58. The Circuit Court found no Findings of Fact, Conclusions of Law or reasoning in the PSC Report and Order to support the last sentence quoted above. (Circuit Court Opinion, p. 15.) Later, on September 12, 2000, the Commission issued an Order of Clarification that explained its position regarding the use of the "surplus revenue" from the higher-than-DSP Joplin district rates, but provided no facts or analysis of why the Joplin district customers were to be treated differently in rates than the customers of all other districts. (Circuit Court Opinion, p. 15.)

In remanding this issue to the Commission, the Circuit Court of Cole County found that

neither the original Report and Order nor the Order of Clarification set forth any findings of fact or conclusions of law which would justify or support the decision not to reduce the Joplin district's water rates in accordance with the DSP rate design adopted for all other districts in the MAWC system. (Circuit Court Opinion, p. 15). Further, the Circuit Court found no support whatsoever for the Commission's "principle" that it would not reduce Joplin's rates to the DSP levels of the rest of the districts, even though the application of the new rate design required such a reduction. (See Circuit Court Opinion, pp. 15-16).¹

On remand, the Commission must make Findings of Fact and Conclusions of Law on this issue that are consistent with the Circuit Court's opinion. (Circuit Court Opinion, p. 20.) The facts necessary to comply with the Court's judgment are to be found in the record of evidence which presently exists, without reopening the record and without resorting to additional or further evidence. The Commission must make Findings of Fact and Conclusions of Law from the record on this issue as it exists in order for the Circuit Court to make a determination whether the decision on the issue is supported by substantial and competent evidence on the record. *Noranda Aluminum v. Public Service Com'n*, 24 S.W.3d 243, 247 (Mo. App. W.D. 2000). Further, the Circuit Court has not ordered further evidence or evidentiary proceedings. Under Section 386.510, RSMo., the Court does have the discretion to order the Commission to receive further evidence. The Court, in its opinion, did not request that any further evidence in the present case be taken. The Circuit Court therefore

¹ The Staff attempted to salvage the conclusion of the Commission concerning its refusal to grant the same DSP rates to Joplin by arguing that the failure to reduce Joplin's water rate was a "modified" DSP rate design. The Circuit Court firmly rejected that suggestion. (See Opinion, pp. 16-17.) Even under some "modified" version of the discredited STP rate design method, the singling out of Joplin district for special financial burdens would still require some factual and legal justification. *Id.*

finds, consistent with general principles of judicial review under Section 536.140, RSMo, that the evidentiary record before the Commission is closed. As an administrative body, the Commission has the obligation to review the record in the present case as it now exists and without further proceedings. There is no need to take any further evidence, and the evidentiary record is and must remain closed.

The remand directs the Commission to take further action consistent with the Court's opinion and judgment. (Circuit Court Opinion, p. 20.) The Court specifically found in this regard that the Commission's refusal to permit use by the Joplin district of the same DSP cost allocation method granted to all other districts in the MAWC system facially violated Section 393.130.3, RSMo. (Circuit Court Opinion, p. 15-16.) Because the customers in the Joplin district pay more than actual DSP cost of service, and because all other districts pay only their actual DSP cost of service, Joplin district rate payers subsidize the other water districts, granting undue and unreasonable preference and advantage to those districts, and, therefore, Joplin rate payers suffer undue and unreasonable prejudice and disadvantage. (See Circuit Court Opinion, p. 16). The Circuit Court required as a matter of law that the Commission support its decision to impose such disadvantage on the Joplin district while granting preference to all other districts with factual justification found in the record, and to set it forth in written Findings of Fact. The court concluded that if there is any factual basis for the Commission's refusal to treat Joplin the same as all other districts in the MAWC system, it should be set forth in the decision to enable judicial review. (See Circuit Court Opinion, p. 15). The Court found that the Commission's conclusion of "no DSP rates for Joplin," in spite of adoption of the DSP method for all others, was not justified because no Findings of Fact or Conclusions of Law supported that conclusion. The Circuit Court further determined, under Section 393.130.3, RSMo,

that any analysis of this issue requires setting forth facts showing that the discriminatory treatment of the Joplin district is based upon articulated factual differences between Joplin and the rest of the system in order to justify such different treatment on water rates. (Circuit Court Opinion, p. 16, citing Section 393.130.3, RSMo and *State ex rel. City of Grain Valley v. Public Service Commission*, 778 S.W.2d 287 (Mo. App. W.D. 1989).

The Court also could find no evidence of the existence of any “principle” of no rate reduction under adoption of a DSP rate design. (Circuit Court Opinion, pp. 15-16.) Joplin respectfully submits to this Commission that there is no such “principle” in law, nor is there any “evidence” in the record establishing such a “principle.” Under the Court’s remand, any further reference to such a “principle” should be either supported by facts and authority or abandoned.

SUGGESTED COURSE OF ACTION

Based on the foregoing, Joplin respectfully suggests that: this Commission review the record in this case, pursuant to the requirements of Section 536.080.2, RSMo; make Findings of Fact and/or Conclusions of Law upon the record as it currently exists without further evidence or proceedings; upon review of the entire record, that this Commission find that there is no “principle” established in the facts or the law prohibiting reduction in rates in Joplin upon adoption of a system-wide DSP rate design for the MAWC water system; upon review of the entire record, that this Commission determine that no facts support the single-sentence holding denying DSP rates in Joplin contained in the original Report and Order; upon review of the entire record, that this Commission find that refusing DSP rate design to Joplin on an equal basis to that permitted in other districts would constitute unjustified, undue and unreasonable prejudice and disadvantage to the Joplin district and its rate payers, and would make or grant unjustified, undue and unreasonable preference and

advantage to all other MAWC system districts and their rate payers; and that the Commission issue its decision on remand removing the unsupported sentence and conclusion from the original Report and Order, page 58, denying rate reduction to the Joplin district, and thereby grant use of the DSP rate design adopted by this Commission for the MAWC system.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing document were sent U.S. Mail, postage prepaid, to the following parties of record on this 26th day of March, 2002:

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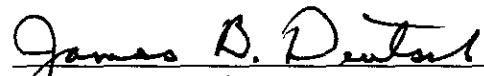
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