

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 23rd
day of December, 1999.

In the Matter of Missouri-American Water)	
Company's Tariff Sheets Designed to Implement)	<u>Case No. WR-2000-281</u>
General Rate Increases for Water and Sewer)	Tariff No. 200000366
Service Provided to Customers in the Missouri)	Tariff No. 200000367
Service Area of the Company.)	

ORDER GRANTING INTERVENTION

On October 15, 1999, Missouri-American Water Company (MAWC) submitted to the Commission proposed tariff sheets intended to implement a general rate increase for water and sewer service provided to customers in the Missouri service area of the Company. The proposed tariffs bear a requested effective date of November 15, 1999. The proposed water service tariffs are designed to produce an annual increase of approximately 53.97 percent (\$16,446,277) in the Company's revenues. The proposed sewer service tariffs are designed to produce an annual increase of approximately 5.0 percent (\$2,363) in the Company's revenues.

On October 28, 1999, the Commission issued its Suspension Order and Notice, suspending the proposed tariffs until September 14, 2000, and consolidating Case No. SR-2000-282 into Case No. WR-2000-281. In that Order, the Commission set certain procedural dates intended to permit resolution of this matter within the interval allowed by law, including a deadline for applications to intervene of November 17, 1999. On

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December 1, 1999, the Commission by Order extended that deadline to December 7, 1999.

On November 17, 1999, the St. Joseph Building and Construction Trades Council (Council) filed its application to intervene. MAWC responded in opposition on November 29, 1999. On November 23, 1999, the City of St. Peters, Missouri (St. Peters) filed its application to intervene. On November 29, 1999, St. Charles County, Missouri (St. Charles) filed an application to intervene. Also on November 29, 1999, the City of St. Joseph, Missouri (St. Joseph) filed an application to participate without intervention. On December 6, 1999, St. Joseph filed an application to intervene. On December 7, 1999, a group of six entities located in Warrensburg, Johnson County, Missouri, filed a joint application to intervene: Hawker Energy Products, Inc., Harmon Industries, Inc., Stahl Specialty Company, Swisher Mower and Machine Company, Inc., and Central Missouri State University (hereinafter collectively "the Johnson County Intervenors"). Finally, also on December 7, 1999, three entities in St. Louis County filed a joint application to intervene under the name Missouri Industrial Energy Consumers (MIEC): The Boeing Company, Ford Motor Company and Hussmann Refrigeration. MAWC responded to MIEC's application on December 14, 1999.

Unopposed Intervenors:

The applications to intervene filed by St. Peters, St. Charles, St. Joseph, the Johnson County Intervenors, and MIEC are all unopposed.

St. Peters, St. Charles and St. Joseph each states that it is a municipality or other political subdivision; St. Peters and St. Charles

also state that their interests are different from those of the general public and that they oppose Single Tariff Pricing. St. Joseph, on the other hand, supports Single Tariff Pricing.

The Johnson County Intervenor's assert that each of them is a customer of MAWC located in the vicinity of Warrensburg, Missouri. Their interest herein, they state, is different from that of the general public. Each of them opposes Single Tariff Pricing. MIEC states that each of its members is a customer of MAWC in St. Louis County, that their interest herein differs from that of the general public, that the public interest favors their intervention, and that they oppose Single Tariff Pricing. MAWC, while not opposing MIEC's application, comments that its members are not customers of MAWC, but of an affiliate, St. Louis County Water Company (STLCWC), and that MIEC's concerns that the rates set in this case might affect its members in the future are groundless.

Commission Rule 4 CSR 240-2.075 governs intervention. Rule 4 CSR 240-2.075(2) requires the intervention applicant to state its interest in the proceeding, its reason for intervening, and whether or not the applicant supports the relief sought. Rule 4 CSR 240-2.075(4) lists grounds upon which intervention will be granted: (A) that the intervention applicant has an interest different from that of the general public; (B) that the intervention applicant is a municipality or political subdivision; or (C) that granting intervention would serve the public interest.

The Commission has considered the unopposed applications to intervene of St. Peters, St. Charles, St. Joseph, the Johnson County

Intervenors, and MIEC, and finds that each of them meets the minimum requirements of Commission Rule 4 CSR 240-2.075 and should be granted. St. Joseph's earlier application to participate without intervention is now moot.

Opposed Intervenor:

MAWC opposes the Council's application to intervene. The Council is an unincorporated association of trade unions, including Iron Workers Local Union No. 10, Operating Engineers Local 101, International Brotherhood of Electrical Workers Local Union No. 545, Laborers Local Union No. 579, Sheet Metal Workers Local No. 2, Carpenters District Council of Kansas City and Vicinity, Plumbers and Steamfitters Local No. 45, Roofers Local Union No. 20, Plasterers and Cement Masons Local Union No. 518, Teamsters Local No. 460, Asbestos Workers Local Union No. 27, Painters District Council No. 3, Boilermakers Local Union No. 83, Carpenters Local No. 110, and Elevator Constructors Local No. 12, whose members live and work in the vicinity of St. Joseph, Missouri. Many of these persons are customers of MAWC. The Council asserts that MAWC uses nonunion contractors on its construction and maintenance projects in order to reduce costs. The Council opposes MAWC's rate increase because its members will thereby be required to pay "unreasonable and excessive rates for water service." The Council also asserts that MAWC's current revenues are sufficient and are subsidized by nonunion workers who accept substandard wages from MAWC and its contractors. The Council states that its interests herein are different from those of the general public and that the public interest supports its intervention.

MAWC, in opposition, argues that the Council has no right to intervene herein and that its application should be rejected because its interest is no different from that of the general public. Furthermore, some of the Council's interests and assertions are "irrelevant to a ratemaking proceeding" and "are more appropriately raised elsewhere."

Intervention is the process whereby a stranger becomes a full participant in a legal action. Ballmer v. Ballmer, 923 S.W.2d 365, 368 (Mo. App., W.D. 1996). The Commission's rules, like the civil rules, distinguish between those with a right to intervene and those with a mere desire to intervene. Due process requires that any person with a liberty or property interest that will be affected by the outcome of a legal matter be permitted to intervene upon timely application. See U.S. Constitution, Amendment XIV; Missouri Constitution, Article I, Section 10 (1945). Such persons have a right to intervene. *Supra*, 923 S.W.2d at 368.

In Ballmer, *supra*, an insurance company sought to intervene in a "friendly" lawsuit wherein a father sued his son for the wrongful death of another son in an automobile accident. The insurance company sought to intervene to prevent its insured from confessing judgment. Intervention was denied because the insurer lacked an interest in the case: "As to whether State Farm has an 'interest' in the underlying action, this court has stated that 'the liability of an insurer as a potential indemnitor of the judgment debtor does not constitute a direct interest in such a judgment as to implicate intervention as a matter of right.'" *Id.* (citations omitted). MAWC is correct that the Council does not have a right to intervene in this matter.

However, the Council contends that permitting its intervention would serve the public interest. This contention is similar to permissive intervention under the civil rules. An economic interest, such as the Council claims, will support permissive intervention. See Meyer v. Meyer, 842 S.W.2d 184, 188 (Mo. App., E.D. 1992). Permissive intervention is, by its nature, discretionary. *Id.* The Council filed a timely application to intervene and has met the minimum standards set by the Commission's rule. Permitting the Council's intervention will not delay resolution of this matter. Upon consideration of all of the circumstances and the arguments of the parties, the Commission will grant the Council's application to intervene.

Filing Date:

The various entities granted intervention in this Order shall file their pleadings, if any, respecting the Test Year, True-Up, and Accounting Authority Order on or before January 7, 2000.

IT IS THEREFORE ORDERED:

1. That the St. Joseph Building and Construction Trades Council, including Iron Workers Local Union No. 10, Operating Engineers Local 101, International Brotherhood of Electrical Workers Local Union No. 545, Laborers Local Union No. 579, Sheet Metal Workers Local No. 2, Carpenters District Council of Kansas City and Vicinity, Plumbers and Steamfitters Local No. 45, Roofers Local Union No. 20, Plasterers and Cement Masons Local Union No. 518, Teamsters Local No. 460, Asbestos Workers Local Union No. 27, Painters District Council No. 3, Boilermakers Local Union No. 83, Carpenters Local No. 110, and Elevator Constructors Local No. 12, is

granted intervention in this case in accordance with 4 CSR 240-2.075. The Commission's Records Department shall add its counsel to the service list in this case: Joseph W. Moreland, Esq., Martin Walter, Esq., Blake & Uhlig, P.A., 2500 Holmes Road, Kansas City, Missouri 64108.

2. That the City of St. Peters, Missouri, is granted intervention in this case in accordance with 4 CSR 240-2.075. The Commission's Records Department shall add its counsel to the service list in this case: Leland B. Curtis, Esq., Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105.

3. That the County of St. Charles, Missouri, is granted intervention in this case in accordance with 4 CSR 240-2.075. The Commission's Records Department shall add its counsel to the service list in this case: Leland B. Curtis, Esq., Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105.

4. That Hawker Energy Products, Inc., Harmon Industries, Inc., Stahl Specialty Company, Swisher Mower and Machine Company, Inc., and Central Missouri State University, collectively referred to herein as "the Johnson County Intervenors," are granted intervention in this case in accordance with 4 CSR 240-2.075. The Commission's Records Department shall add their counsel to the service list in this case: Leland B. Curtis, Esq., Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105.

5. That the Missouri Industrial Energy Consumers, consisting of The Boeing Company, Ford Motor Company and Hussmann Refrigeration, are granted intervention in this case in accordance with 4 CSR 240-2.075. The

Commission's Records Department shall add their counsel to the service list in this case: Diana L. Vuylsteke, Esq., Bryan Cave, L.L.P., One Metropolitan Square, Suite 3600, 211 North Broadway, St. Louis, Missouri, 63102-2750.

6. That the various entities granted intervention in this Order shall file their pleadings, if any, respecting the Test Year, True-Up, and Accounting Authority Order on or before January 7, 2000.

7. That this order shall become effective on January 4, 2000.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray and Schemenauer, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge