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August 25, 2000

FILED²

AUG 25 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**RE: Missouri-American Water Company - Consolidated Case Nos. WR-2000-281
and SR-2000-282**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of MAWC's Response to Objection to Certain Late-Filed Exhibits by St. Joseph Industrial, and City of Joplin. Please stamp the enclosed extra copy "filed" and return same to me.

Thank you very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean Cooper
Dean L. Cooper

DLC/rhg
Enclosures

cc: Office of the Public Counsel
Mr. Keith Krueger
Ms. Shannon Cook
Ms. Diana M. Vuylsteke
Mr. Karl Zobrist
Mr. Leland Curtis
Mr. Brent Stewart
Mr. James Duetsch

Mr. Joseph Moreland
Mr. Stu Conrad
Mr. Louis Leonatti
Mr. Jim Fischer
Mr. Jeremiah Finnegan

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

FILED³
AUG 25 2000

Missouri Public
Service Commission

In the Matter of Missouri-American)	
Water Company's Tariff Sheets Designed)	
to Implement General Rate Increases for)	Case No. WR-2000-281
Water and Sewer Service provided to)	Case No. SR-2000-282
Customers in the Missouri Service Area)	
of the Company.)	

**MAWC'S RESPONSE TO
OBJECTION TO CERTAIN LATE-FILED EXHIBITS
BY ST. JOSEPH INDUSTRIAL, AND CITY OF JOPLIN**

COMES NOW Missouri-American Water Company ("MAWC") and, in response to the Objection to Certain Late-Filed Exhibits by St. Joseph Industrial Intervenors, and City of Joplin, states the following to the Missouri Public Service Commission ("Commission"):

1. On August 17, 2000, an Objection to Certain Late-Filed Exhibits by St. Joseph Industrial Intervenors ("St. Joseph Industrials"), and City of Joplin ("Joplin") (the "Objection") was filed by the St. Joseph Industrials, Joplin and the City of Riverside ("Riverside") (although Riverside is not mentioned in the title). This Objection, while dated August 17, 2000, was not received by MAWC counsel until August 22, 2000. MAWC responds as expeditiously as possible considering this late delivery.

2. The Objection alleges that the Commission should deny the admission of the late-filed exhibits provided by MAWC and the Commission Staff ("Staff"). These exhibits were filed in response to the Commission's Order Directing Filing dated August 8, 2000, and Commission Rule 4 CSR 240-2.130(17).

3. The Objection cites two bases which are common to the MAWC and Staff late-filed

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exhibits¹:

- a) "The exhibit constitutes incompetent evidence. It has not been properly authenticated by its preparer or preparers, nor have such preparers even been identified, and the foundation therefore is legally insufficient;" and,
- b) "The exhibit has not been subjected to cross-examination, which these parties do not waive, and therefore cannot form the lawful basis of any Commission order or decision in this proceeding."

NOT NEW EVIDENCE, MERELY SUMMARY

4. First, the contents of MAWC's exhibit are not new.² The contents are based upon testimony that is in the record and that has been subject to cross-examination. Merely compiling this information in a new form to assist the Commission is not objectionable. It is similar in nature to the filing of a brief. No party has the right to cross-examine the other participants on the contents of their brief. The accuracy and persuasiveness of the brief is determined by the Commission.

5. Similarly, the Commission has directed all parties to file a numerical summary of their positions in its Order Directing Filing. Because this document is a compilation of evidence in the record, like a brief, there is no need for authentication, foundation or cross-examination³ as alleged by the Objection.

¹ In addition, the Objection alleges that Staff's exhibit was not timely received.

² The Objection acknowledges this to some extent by stating that "... certain aspects of these exhibits may not represent positions different that the tendering party's previous positions on selected issues"

³ While the Commission has called these documents "late-filed exhibits," perhaps treating them instead as mere pleadings, rather than admitting them into the record, would satisfy the Objection.

6. It is also appropriate, as the Commission has done, to provide the opportunity to respond and/or object to the specific contents of the summaries. The St. Joseph Intervenors, Joplin and Riverside, however, have chosen not to avail themselves of this opportunity. Their Objection does not respond to or disagree with any of the contents of MAWC's filing. The Objection addresses the process, not the substantive merits of the summaries which have been filed.

7. The lack of an objection to the contents can be attributed to the fact that the St. Joseph Intervenors' and Joplin's expert participated in the process by which these exhibits were developed. Not surprisingly, the Exhibit Summarizing the Revenue Requirement and Rate Design Impacts filed by Joplin's counsel on behalf of Joplin, the St. Joseph Industrials, Riverside and the Municipal and Industrial Intervenors⁴ shows that these parties have utilized the same Staff numbers as a starting point and have used the same numbers as other parties for the capacity, AFUDC, early retirement and return on equity issues.

**ST. JOSEPH INDUSTRIALS, JOPLIN, RIVERSIDE AND MUNICIPAL
AND INDUSTRIAL INTERVENORS' EXHIBIT
SUFFERS FROM THE SAME CHARACTERISTICS**

8. In fact, the exhibit filed by the St. Joseph Industrial, Joplin, Riverside and Municipal and Industrial Intervenors suffers from the same following characteristics of which the Objection complains:

a) The exhibit was not filed within the period identified by the Commission's Order Directing Filing (the St. Joseph Industrial, Joplin, Riverside and Municipal and Industrial Intervenors' exhibit having been deemed by the Commission to have been filed on August 16, 2000);

⁴ While the exhibit is signed by counsel for Joplin (Deutsch), counsel for Joplin (Deutsch) represented in a telephone conference on August 16, 2000 that he filed the exhibit on behalf of counsel Conrad, Finnegan and Curtis' clients.

b) The exhibit was not served on the other parties in the case by 4:00 p.m. on August 15, 2000, as specified by the Order Directing Filing (it was instead served on other parties the following day (August 16, 2000) and only after it was specifically requested by MAWC counsel);

c) The exhibit has not been “authenticated by its preparer or preparers, nor have such preparers even been identified;” and,

d) “The exhibit has not been subjected to cross-examination.”

9. Therefore, to the extent the Commission is persuaded by the St. Joseph Industrial, Joplin and Riverside Objection and decides to deny the admission of MAWC’s Annotated Late-Filed Exhibit, MAWC hereby objects on the same bases to the St. Joseph Industrials, Joplin and Riverside exhibit as it suffers from the same, as well as the above additional, deficiencies.⁵

CURATIVE ADMISSIBILITY

10. If, on the other hand, the St. Joseph Industrials, Joplin, Riverside and Municipal and Industrial Intervenors’ exhibit is admitted by the Commission, then their Objection should be denied based upon the doctrine of curative admissibility.

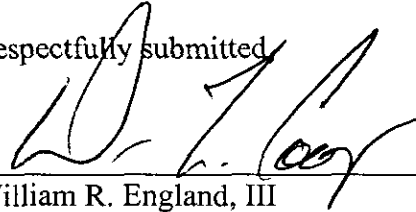
11. “The doctrine of curative admissibility permits a party to reply to inadmissible evidence introduced by an opposing party with similar evidence where its introduction would cure any unfair prejudice created by the admission of the inadmissible evidence.” *Cook v. Coldwell Banker*, 891 S.W.2d 822, 830 (Mo.App. 1998).

⁵ While such objection might be argued to not be within the period established by the Commission’s Order Directing Filing, the St. Joseph Industrial, Joplin, Riverside and Municipal and Industrial Intervenors’ exhibit did not comply with the initial filing requirements contained in that order and should, therefore, not receive its benefits. MAWC’s objection is within the time constraints otherwise applicable as established by Commission Rule 4 CSR 240-2.130(17).

12. Thus, because the St. Joseph Industrials, Joplin, Riverside and Municipal and Industrial Intervenors' exhibit would be inadmissible under the St. Joseph Industrials, Joplin and Riverside's theories, MAWC's Annotated Late-Filed Exhibit must be admitted to cure unfair prejudice created by the admission of this exhibit.

WHEREFORE, MAWC prays the Commission over rule Objection filed by the St. Joseph Intervenors, Joplin and Riverside; or, only in the alternative, deny the admission of the St. Joseph Industrials, Joplin, Riverside and Municipal and Industrial Intervenors' exhibit; and, issue such further orders as are consistent with this pleading.

Respectfully submitted



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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 24 day of August, 2000, to the following:

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