

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3<sup>rd</sup> day of August, 2011.

|  |   |                                     |
|--|---|-------------------------------------|
| In the Matter of Missouri-American Water Company's | ) |                                     |
| Request for Authority to Implement A General Rate  | ) | <b><u>File No. WR-2011-0337</u></b> |
| Increase for Water and Sewer Service Provided in   | ) | <b><u>File No. SR-2011-0338</u></b> |
| Missouri Service Areas                             | ) |                                     |

**NOTICE OF NONCOMPLIANCE AND ORDER TO SHOW CAUSE**

Issue Date: August 3, 2011

Effective Date: August 3, 2011

On July 5, 2011, the Commission issued an order which, *inter alia*, set a prehearing conference to be held on July 28, 2011. Prior to the conference, three of the intervening parties contacted the Regulatory Law Judge ("RLJ") and obtained a call-in number to attend by phone. Also prior to the conference one party, the City of Jefferson, Missouri, contacted the RLJ and was excused from the conference due to a conflict in scheduling.

When the conference convened entries of appearance were taken on the record. Four of the intervening parties failed to appear at the conference. Those parties were:

- 1.) The City of Joplin, Missouri ("Joplin");
- 2.) The Empire District Electric Company ("Empire");
- 3.) The City of Riverside, Missouri ("Riverside"); and,
- 4.) The Missouri Industrial Energy Consumers ("MIEC").

Joplin, Empire, Riverside and MIEC did not contact the RLJ to request to be excused, nor did these parties request a continuance of the conference.

Commission Rule 4 CSR 240-2.090(5) states:

Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

Commission Rule 4 CSR 240-2.116(3) states:

A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

Additionally, the Commission's penalty statute, Section 386.570.1, RSMo 2000, provides:

Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

Joplin, Empire, Riverside and MIEC did not comply with the Commission's order setting the prehearing conference or the rule regarding attendance at the prehearing conference.

On August 2, 2011, Riverside filed a motion to excuse its absence from the prehearing conference out of time. Riverside maintains that its absence was caused by internal calendaring issues that have since been corrected. Riverside states that precautions have been put into place to ensure that its representatives will be present for all future hearings and conferences, or it will secure a continuance prior to such events if its representatives are unable to attend.

On August 3, 2011, MIEC filed a motion to excuse its absence from the prehearing conference out of time. MIEC states that an administrative error resulted in its non-attendance, and further states its intentions to fully participate in this matter.

Based upon Riverside's and MIEC's motions, the Commission will excuse their absence from the prehearing conference. However, Joplin and Empire will be directed to show cause why the Commission should not dismiss them as parties to this action or impose some other sanction or penalty.

**THE COMMISSION ORDERS THAT:**

1. The City of Riverside, Missouri's motion to excuse its absence from the July 28, 2011 prehearing conference is granted.
2. The Missouri Industrial Energy Consumers' motion to excuse its absence from the July 28, 2011 prehearing conference is granted.
3. No later than August 15, 2011, the City of Joplin, Missouri and The Empire District Electric Company shall show cause why they should not be dismissed as parties to these actions or why the Commission should not impose sanctions for failure to comply with a Commission order and the Commission's rules.
4. This order shall be effective immediately upon issuance.

**BY THE COMMISSION**

( S E A L )



Steven C. Reed  
Secretary

Gunn, Chm., Davis, Jarrett,  
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge