

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

Staff of the Missouri Public Service Commission)	
)	
)	
Complainant,)	
)	
v.)	Case No. WC-2004-0168
)	
Missouri-American Water Company)	
)	
)	
Respondent.)	

**STAFF EXCESSIVE EARNINGS COMPLAINT AGAINST
MISSOURI-AMERICAN WATER COMPANY**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) pursuant to Sections 386.240 and 386.390 RSMo 2000 and 4 CSR 240-2.070, and for its Excessive Earnings Complaint Against Missouri-American Water Company (MAWC or the Company) states as follows:

1. Missouri-American Water Company is a Missouri corporation conducting business in the State of Missouri, with its principal office and place of business located at 535 N. New Ballas Road, St. Louis, Missouri 63141.

2. MAWC is a “water corporation” and a “sewer corporation” as these terms are defined in Section 386.020(58) and (48) RSMo 2000¹ respectively. MAWC is a “public utility” as defined in Section 386.020(42) and provides certificated water service and sewer service to the public in Missouri. Specifically, the Company provides water service in and around the

¹ All statutory references are based upon Missouri Revised Statutes RSMo 2000.

cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville/Platte County, Jefferson City, and parts of St. Louis County and St. Charles County, Missouri. MAWC provides sewer service in Parkville/Platte County, Missouri.

3. Missouri-American Water Company is subject to the jurisdiction, regulation, supervision and control of the Missouri Public Service Commission (Commission) pursuant to Chapters 386 and 393.

4. Section 386.240 provides that “[t]he commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform; provided, that no order, rule, or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission.”

5. 4 CSR 240-2.070(1) provides, among other things, that the commission staff through the general counsel, may file a complaint based upon the violation of any statute, rule, order or decision within the commission’s jurisdiction.

6. Section 386.390.1 provides, in part, that a “[c]omplaint may be made by the commission of its own motion . . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person, or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person, or public utility, in violation, or claimed to be in violation of any provision of law, or of any rule or order or decision of the commission...”

7. Section 386.390.2 provides that “[a]ll matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties”

8. Section 393.130.1 directs that “[a]ll charges made or demanded by any . . . water or sewer corporation . . . for water, sewer or any service rendered . . . shall be just and reasonable and not more than allowed by law or by order or decision of the commission Every unjust or unreasonable charge made or demanded for . . . water, sewer . . . or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”

9. Section 393.140(5) confers upon the Commission the power to determine “after a hearing had upon its own motion or upon complaint, that the rates or charges . . . of any corporations [under its supervision] are unjust, unreasonable, unjustly discriminatory or unduly preferential . . .” and further provides that “the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute”

10. Section 393.270.2 provides that “[a]fter a hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of . . . water or sewer service . . . not exceeding that fixed by statute to be charged by such corporation . . . for the service to be furnished . . .”

11. Section 393.270.4 provides that “[i]n determining the price to be charged for . . . water . . . the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.”

12. Section 393.270.5 provides that “[i]n determining the price to be charged for. . . sewer service the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservations out of income for surplus and contingencies.

13. Procedurally, on May 19, 2003, MAWC filed proposed tariff sheets to implement a general rate increase for water and sewer service seeking to increase gross annual water revenues by approximately \$20,000,000, on a total company basis, exclusive of gross receipts and sales taxes. This filing was assigned Case No. WR-2003-0500. Thereafter, on May 29, 2003, the Commission issued an order that suspended the Company’s proposed water and sewer tariffs. In addition, page five of this suspension order allowed the Staff to file a complaint seeking a reduction in the Company’s revenues if Staff’s audit reflected that the Company’s earnings were excessive. The Commission established a procedural schedule for the general rate case and on October 1, 2003, the Staff filed a Notice of Excessive Earnings Complaint (Notice) that advised the parties that the Staff would be filing an excessive earnings complaint in connection with MAWC. The Notice filing was numbered as WC-2004-0168. On October 2, 2003, the Commission issued an order consolidating the Staff’s complaint case with the Company’s general rate case. The Commission indicated in its consolidation order that Staff should file its over-earnings complaint within the general rate case, and that all proceedings on that complaint would occur within the context of the general rate case (WR-2003-0500).

14. After an audit of the Company's books and records the Staff concluded and asserts that MAWC's current rates and charges for water service, on a total company basis, are unjust and unreasonable in violation of Section 393.130.1. The direct testimony of Staff witness Stephen M. Rackers submitted in Case Nos. WR-2003-0500 and WC-2004-0168 reflects that MAWC's water revenues are excessive in the range of \$19 to \$21 million, on a total company basis, and these estimates include a \$3.8 million allowance for the expected results of a true-up audit. However, Staff notes that approximately \$18 million of the asserted excessive earnings are based upon revenues obtained from MAWC's St. Louis County service district. Attached hereto, labeled Appendix A, and incorporated by reference herein, is a list of the impacts of Staff's cost of service analysis for all the districts served by MAWC.

15. The Staff directly contacted Mr. Ed Grubb, an officer of MAWC, and advised him of the nature of Staff's complaint after its audit was completed.

16. The principal issues or components that comprise the Staff's negative revenue requirement/excessive earnings case against MAWC consist of depreciation, including the Staff's treatment of the current cost of removal and salvage as an expense, elimination of the reserve deficiency amortizations and determination of new depreciation rates; cost of capital, including return on equity, and the appropriate capital structure; and various other accounting issues.

17. The Staff has addressed in its direct testimony and schedules submitted on October 3, 2003, in Case Nos. WR-2003-0500 and WC-2004-0168, topics relating to both the complaint, and the rate case, and these topic areas with the associated Staff witness are listed as follows:

WITNESS

ISSUES

Dennis L. Patterson

Weather Normalization

David Murray

Cost of Capital

James A. Merciel

New St. Joseph Treatment Plant Disallowances
Quality of Service
New Construction / Plant In Service

Gregory E. Macias

Depreciation Rates
Reserve Deficiency Amortization

Deborah Ann Bernsen

Customer Service

Wendell R. Hubbs

Rate Design (to be filed October 10, 2003)

John P. Cassidy

Affiliated Company Costs
Water Line Protection Program
Cost Allocation Manual

Doyle L. Gibbs

Pensions
Other Post Retirement Benefits
Allocations
Income Taxes

Jeremy K. Hagemeyer

Payroll and Related Expenses
Lobbying
Outside Services
MPSC Assessment
Rate Case Expense
Leases and Licenses

Lisa K. Hanneken

Rate Base and Related Expenses
AFUDC
Dues and Donations
Waste Disposal Expense
Storage Tank Lease Expense
Deferred Maintenance Expense
Transportation Expense
Insurance Other Than Group
Cost of Depreciation Study Expense

Roberta A. McKiddy	Cash Working Capital Maintenance Expense Advertising Facility Locates
Edward F. Began	Revenues and Related Expenses Cost of Removal and Salvage Uncollectible Expense
Stephen M. Rackers	Accounting Authority Orders Acquisition Adjustments Acquisition Costs Depreciation St. Joseph Treatment Plant

18. In terms of relief, the Staff seeks a determination from the Missouri Public Service Commission that the rates charged by MAWC are excessive, and the Staff requests that the Commission determine and set just and reasonable rates applicable to the Company as is provided by Sections 393.130.1, 393.140.5 and 393.270.2 on a going forward basis. In addition, the Staff requests that this complaint proceed on the same procedural schedule that has been ordered by the Commission in the Company's rate case, WR-2003-0500.

WHEREFORE, the Staff submits that its audit of Missouri-American Water Company indicates that MAWC's current rates for water and sewer service, on a total Company basis, are excessive, not just and reasonable, and therefore, the Staff prays that the Commission determine, adjust, and/or set just and reasonable rates for water and sewer service provided by MAWC to Missouri ratepayers.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Cliff Snodgrass

Cliff Snodgrass
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of October, 2003.

/s/ Cliff Snodgrass
