

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

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

**RESPONSE OF CITY OF ST. JOSEPH TO ORDER
SETTING PRETRIAL CONFERENCE AND DIRECTING FILING**

In response to the Commission's Order of January 22, 2004, requesting guidance from the parties with regard to the three issues remanded to the Commission by the Missouri Court of Appeals, Intervenor City of St. Joseph states as follows:

1. The City of St. Joseph participated actively in the rate design portion of the hearing in this proceeding, as well as the initial appeal to the Circuit Court of Cole County. The City did not participate actively in the appellate proceedings or any of the subsequent remanded proceedings.

2. The City of St. Joseph is a member of the St. Joseph Water Rate Coalition in Missouri- American Water Company's pending general rate case, No. WR-2003-0500.

3. Under the Commission's January 22 Order in this case, the three issues that would be affected by any subsequent proceedings are: (1) the inter-district subsidy drawn from the Joplin District, (2) the requested phase-in of rates, and (3) the allocation of distribution costs to industrial customers in the St. Joseph District.

4. The doctrine of mootness in ratemaking orders is based upon the prohibition of retroactive ratemaking which denies courts any ability to afford relief with regard to a superseded order. State ex rel. Intercon Gas, Inc. v. Public Service Comm'n, 848 S.W.2d 593,

596 (Mo. App. 1993). Cases interpreting this principle generally hold that if an appeal or a remand “presents only factual issues with no issue of public importance which requires determination,” the cases have been held to be moot. State ex rel. Mo. Public Service Co. v. Fraas, 615 S.W.2d 587, 589 (Mo. App. 1981). In that case, because Missouri Public Service Co. had been granted two rate increases since the report and order in question, the case was held to be moot and the appeal dismissed. Id.

5. Therefore, it appears that the third issue noted above, concerning the allocation of distribution costs, probably falls within the category of factual issues which do not create an exception to the mootness doctrine. See State ex rel. Kansas City Power & Light Co. v. Public Service Comm’n, 615 S.W.2d 596, 597-98 (Mo. App. 1981) (issues concerning attrition allowance for operating costs, advertising costs, and value of coal inventory involved factual issues and were moot). See also State ex rel. Southwestern Bell Tel. Co. v. Public Service Comm’n, 645 S.W.2d 44, 52, 56 (Mo. App. 1982)(rate of return, depreciation, flow-through treatment of tax timing differences, and uncollectibles were moot)

6. However, it is possible that the issues of inter-district subsidies and the phase-in of rates could be considered significant public policy questions and, thereby, would be an exception to the mootness doctrine. See State ex rel. Laclede Gas Co. v. Public Service Commission, 600 S.W.2d 222, 226 (Mo. App. 1980) (denial of advertising costs and of charitable contributions “present matters of general public interest” and are not moot); State ex rel. Laclede Gas Co. v. Public Service Commission, 535 S.W.2d 561, 565 (Mo. App. 1976) (issues surrounding interim rate requests raise “important legal propositions” and jurisdiction “must be exercised despite the technical point of mootness”). See also State ex rel. Southwestern Bell Tel. Co. v. Public Service Comm’n, 645 S.W.2d 44, 53, 55 (Mo. App. 1982)(CWIP and

license contract expenses are exceptions to mootness doctrine). It seems likely that questions concerning phase-in of rates, inter-district subsidies and the shift from single-tariff pricing to district-specific pricing should be dealt with in any future Commission order.

7. Given the recent rate design settlement and the current efforts to resolve all other cases in 2003 rate case, it would seem logical that if a settlement of the remaining issues does occur, the lingering issues from the 2000 case be dealt with explicitly by the parties. Therefore, the City of St. Joseph recommends that if a settlement of all issues occurs in Case No. WR-2003-0500, the parties expressly agree that the settlement resolves all remaining issues in this case, which would no longer be the proper subject of any further action by either this Commission or the appellate courts. The parties should be able to preserve their positions, however, in any other future proceeding. If such language is incorporated in any stipulation and agreement in the 2003 case, it will remove the subject proceeding and its issues from any further review. Such a statement would preclude any finding that the parties' settlement in the 2003 case was not intended to affect the 2000 case. See State ex rel. Monsanto Co. v. Public Service Comm'n, 716 S.W.2d 791, 793 (Mo. 1986); State ex rel. Laclede Gas Co. v. Public Service Comm'n, 535 S.W.2d 561, 572-73 (Mo. App. 1976).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 4th day of February, 2004, to:

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