

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-3847
E-MAIL: DCOOPER@BRYDONLAW.COM

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
BRIAN K. BOGARD
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONI

April 5, 2002

FILED

APR 05 2002

Missouri Public
Service Commission

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

RE: Missouri-American Water Company - Case No. WR-2000-281

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of MAWC's Reply to Suggestions in Response to Order Directing Filing. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions concerning this matter, then please do not hesitate to contact me.
Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper *uy Rq*

DLC/rhg
Enclosures

cc: Mr. Keith Krueger
Ms. Ruth O'Neill
Mr. Brent Stewart
Mr. Jim Fischer
Ms. Diana Vuylsteke
Mr. Karl Zobrist

Mr. Joseph W. Moreland
Mr. Louis Leonatti
Mr. Stu Conrad
Mr. Jim Deutsch
Mr. Leland Curtis
Mr. Jeremiah Finnegan

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

FILED
APR 05 2002

Missouri Public
Service Commission

In the Matter of Missouri-American)
Water Company's Tariff Sheets Designed)
to Implement General Rate Increases for)
Water and Sewer Service provided to)
Customers in the Missouri Service Area)
of the Company.)

Case No. WR-2000-281

**MAWC'S REPLY TO SUGGESTIONS IN RESPONSE
TO ORDER DIRECTING FILING**

COMES NOW Missouri-American Water Company ("MAWC") and, in reply to the suggestions filed by certain parties in response to the Missouri Public Service Commission's ("Commission") Order Setting Prehearing Conference and Directing Filing, states as follows to the Commission:

I. BACKGROUND

1. On March 7, 2002, the Commission issued its Order Setting Prehearing Conference and Directing Filing (the "Order") which, among other things, directed that each party prepare and file "a pleading setting out its suggestions as to the course of action that the Commission should follow with respect to the remanded issues."

2. Suggestions in response to the Order were filed by several parties on or about March, 26, 2002, and a prehearing conference was held on March 28, 2002, to discuss these pleadings.

II. SUMMARY

3. MAWC will respond to the Office of the Public Counsel's ("Public Counsel") arguments concerning the merits of the premature retirement issue, the St. Joseph Area Public Water Supply Districts' suggestion that granted the relief sought by

MAWC in regard to premature retirement would require that additional evidence be taken concerning rate design and, finally, the more general subject of whether the Commission need address the premature retirement issue at this point in time.

III. MERITS OF THE PREMATURE RETIREMENT ISSUE

4. A portion of Public Counsel's response essentially argues the merits of the Circuit Court's decision as to the premature retirement issue. Such an argument is misplaced at this juncture. MAWC has argued for, and received, a circuit court decision finding that "[i]f no consideration is made for the net depreciation related to the old St. Joseph treatment plant, MAWC will suffer a taking or confiscation of its property" and that the "record does not support the Commission's finding/ conclusion that the old St. Joseph treatment plant was the victim of extraordinary supersession." This issue was, therefore, "remanded to the Public Service Commission for further proceedings consistent with [the court's opinion]."

5. This decision is the governing 'law of the case' at this point in time. While the issue may again arise for further argument in some other venue in the future, that venue is not the Commission. The Circuit Court's decision reversing and remanding the Commission's decision on this point is not before the Commission for review. It is before the commission with instructions as to how to proceed (or, perhaps more accurately, how not to proceed).

6. Having said this, MAWC welcomes the opportunity to respond to the Public Counsel's arguments.

7. Foremost, the Public Counsel argues against the Circuit Court's order by suggesting that inclusion of the net depreciation amounts will violate "used and useful"

principles. This is not the case.

8. This argument ignores the fact that there are generally two types of recovery associated with a public utility's rates. A public utility receives both a "return on" its reasonable investments, as well as a "return of" its reasonable expenses (to include depreciation). Setting aside whether a *water corporation* can recover a return on plant which is no longer in service,¹ there remains a question of why MAWC should not receive a "return of" its unrecovered investment.

9. The Missouri Supreme Court has stated that "[a] public utility is entitled to earn a reasonable sum for depreciation of its property, including necessary retirements, ordinary obsolescence and diminishing usefulness which cannot be arrested by repairs" *State ex rel. City of St. Louis v. Public Service Commission*, 47 S.W.2d 102, 111 (Mo banc. 1931).

10. MAWC is not requesting rate base treatment of the premature retirement amount (or, "return on"). MAWC is requesting (as it did in its direct testimony) that the net depreciation be returned through a twenty year amortization, with no rate basing of the unamortized portion (or, a "return of").² This "return of" the monies is required by

¹ Public Counsel originally cited the case of *Union Electric Co. v. Public Service Commission*, 765 S.W.2d 618 (Mo.App. 1989) for this proposition. However, the *Union Electric* case related to the electric industry. In Missouri, electric corporations are prohibited from recovering amounts related to property that is not used and useful by Section 393.135, RSMo. No similar statute exists for the water industry and water plant.

² In response to MAWC's direct testimony, the Staff had proposed that the amounts be left in rate base until the next rate case when they could be addressed within the context of a depreciation study. MAWC supported that Staff proposal during part of the case. However, it no longer does so because of the objection to MAWC any return on the subject monies.

law.

11. Amortizing the depreciation reserve deficiency over a number of years, as requested by MAWC, is also consistent with the Commission's past approach when confronted with this situation. Conveniently, an example of providing for a return of depreciation reserve deficiency amounts can be found in the very case the Public Counsel cites in support of its "used and useful" argument – *In the matter of United Telephone of Missouri*, 2 Mo. P.S.C. 3d 403, Case No. TR-93-181 (1993). In the portion of the *United Telephone* case quoted by the Public Counsel, the Commission determined that the net original cost associated with certain abandoned equipment (or depreciation reserve deficiency) should not be placed in rate base. In other words, the Commission ruled that the subject public utility should not receive a "return on" the remaining depreciation reserve deficiency.

12. However, it is important to understand the remainder of the *United Telephone* case. In that same case, the public utility involved requested both rate base treatment of the depreciation reserve (return on) and a three year amortization of the net original cost at issue (or return of). (*Id.* at 407). While it is true the Commission did not include the proposed amount in rate base, it did find that it was "appropriate" to amortize the amount over a three year period. (*Id.* at 408). Thus, the Commission granted a "return of" the amounts associated with the depreciation reserve deficiency. A similar result was reached by the Commission in *In the matter of GTE North Incorporated*, 30 Mo. P.S.C. (N.S.) 88 (1990).³

³ The Commission later issued a decision on remand from the Court of Appeals which is recorded at 3 Mo.P.S.C.3d 144. However, the decision on remand

13. A focus on whether the old plant is used and useful or whether depreciation reserve deficiency should remain in rate base does not address the constitutional issue concerning return of the subject investment.

IV. IF REVENUE REQUIREMENT IS INCREASED, MUST MORE EVIDENCE BE TAKEN?

14. The St. Joseph Area Water Districts indicate their belief that if the Commission were to order the revenue requirement increase associated with the premature retirement issue, it would be necessary for the Commission to take evidence in order to establish the rate design for such an increase.

15. The Commission would not need additional evidence to order that the amounts be spread in the same way as the earlier revenue requirement increase associated with this rate case, or in one of the other ways proposed by the parties and supported by evidence in the existing record. In fact, utilizing the same rate design from the Report and Order would be reasonable as the amounts associated with premature retirement should have been included with the original rate increase.

16. A Commission order stating as follows would be sufficient for the purpose of implementing the proposed revenue requirement adjustment:

MAWC shall file proposed tariff sheets to implement a revenue requirement increase of \$166,645. The rate design utilized for such increase shall be consistent with that ordered by the Commission in its Report and Order issued in this case on August 31, 2000, as later

did not address the issue for which the case is cited in this brief.

clarified.

V. SHOULD PREMATURE RETIREMENT BE ADDRESSED?

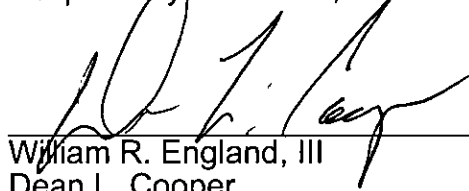
17. There has been some suggestion that because the case has returned to the Commission primarily as the result of the three issues which were deemed to lack sufficient findings of fact and conclusions of law, that the Commission need not address the premature retirement issue at this time.

18. There is nothing about the Circuit Court's order in this case that supports such a result. The premature retirement issue was "reversed" and "remanded" in the same fashion and with the same operative language as those issues lacking sufficient findings and conclusions. The Commission is faced with a valid order from the Circuit Court carrying specific instructions. The plain meaning of this order carries no basis for ignoring its terms. Similarly, there is no other authority suggesting that the Commission may ignore the Circuit Court's order. Therefore, the Commission must address the premature retirement issue, in addition to the three issues which were deemed to lack sufficient findings of fact and conclusions of law.

WHEREFORE, MAWC prays the Commission consider this reply and MAWC's earlier suggestions in proceeding with this case and issue such orders as are

reasonable in the circumstances and consistent therewith.

Respectfully submitted,



William R. England, III MBE#23975
Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
573/635-7166 (phone)
573/635-0427 (facsimile)
dcooper@brydonlaw.com (e-mail)
ATTORNEYS FOR MISSOURI-AMERICAN
WATER COMPANY

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 5th day of April, 2002, to the following:

Mr. Keith Krueger
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Ms. Ruth O'Neill
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Mr. Joseph W. Moreland
Blake & Uhlig, P.A.
2500 Holmes Road
Kansas City, Missouri 64108

Mr. Louis J. Leonatti
Leonatti & Baker, P.C.
P.O. Box 758
Mexico, Missouri 65265

Mr. Charles Brent Stewart
Stewart & Keevil, L.L.C.
1001 Cherry Street, Suite 302
Columbia, Missouri 65201

Mr. Stuart W. Conrad
Finnegan, Conrad & Peterson
1209 Penntower Office Center
3100 Broadway
Kansas City, Missouri 64111

Mr. James M. Fischer
Attorney at Law
101 Madison Street, Suite 400
Jefferson City, Missouri 65101

Mr. James B. Deutsch
Blitz, Bargette & Deutsch
308 E. High, Suite 301
Jefferson City, MO 65101

Ms. Diana M. Vuylsteke
Bryan Cave LLP
One Metropolitan Sqr., Suite 3600
211 N/ Broadway
St. Louis, MO 63102-2750

Mr. Leland B. Curtis
Curtis, Oetting, et al.
130 S. Bemiston, Suite 200
Clayton, Missouri 63105

Mr. Karl Zobrist
Blackwell Sanders, et al.
P. O. Box 419777
Kansas City, MO 64141-9777

Mr. Jeremiah D. Finnegan
Finnegan, Conrad & Peterson
1209 Penntower Office Center
3100 Broadway
Kansas City, Missouri 64111

