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August 2, 2000

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

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

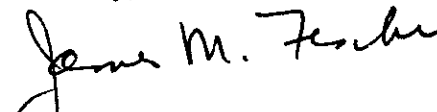
**FILED<sup>2</sup>**  
AUG 02 2000  
Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of the Reply Brief of St. Joseph Area Public Water Supply Districts. A copy of the foregoing Reply Brief has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,

  
James M. Fischer

/jr  
Enclosures

cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED<sup>2</sup>**

AUG 02 2000

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

**REPLY BRIEF**

**OF**

**ST. JOSEPH AREA PUBLIC WATER SUPPLY DISTRICTS**

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2/8

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AUG 02 2000

Missouri Public  
Service Commission

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REPLY BRIEF  
OF  
ST. JOSEPH AREA PUBLIC WATER SUPPLY DISTRICTS

INTRODUCTION

Intervenors Public Water Supply District No. 1 of Andrew County, Public Water Supply District No. 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County (collectively referred to herein as "St. Joseph Area Public Water Supply Districts" or "Water Districts") respectfully submit this Reply Brief in response to the Initial Briefs submitted by the other parties in this proceeding. Although most of the opposing arguments were anticipated and adequately addressed in the Water Districts' Initial Brief, this Reply Brief will respond to a few significant points raised by those parties. Failure to respond to all opposing arguments set forth in those briefs should not be deemed acquiescence or acceptance by the Water Districts of the positions advanced in such arguments.

RATE DESIGN

As set forth in their Initial Brief, from the perspective of the St. Joseph Area Public Water Supply Districts, rate shock is the primary public policy issue that needs to be addressed in this

proceeding. A review of the Initial Briefs submitted by the other parties reveals that this concern is legitimate and well placed.

It should be noted that with the Company's originally proposed revenue deficiency of \$16.85 million dollars, its proposal to maintain single tariff pricing results in an average increase in revenues of approximately 54%. (Watkins Dir., Ex. 15, Sch. JMW-1, P. 1 of 6). It is only as a result of the other parties' proposals to move to (or toward) district specific pricing and implement changes due to class cost of service studies, that the percentage increases in customer classes become **outrageously high** (Tr. 2092-2093). For example, under the Staff proposal to move to district specific pricing coupled with changes in customer class responsibility pursuant to class cost of service study, certain customer classes will receive increases as follows: [Company's chart depicts the St. Joseph Sale for Resale customer increase of 268.61% as 2<sup>nd</sup> highest in ranking, following only the Brunswick Sale for Resale customer increase of 478.39%.] (emphasis added). . . . If by way of comparison, Staff were to propose an across the board increase in rates (i.e. single tariff pricing) based on its revenue deficiency of approximately \$10,700,000.00, it would result in an increase in rates for all customer classes of approximately 33%. . . . As can be seen from this comparison, a lot of the "rate shock" cited by Staff and Public Counsel is of their own creation based on the rate design proposals that they have put forward.

Company Brief, pp. 72-73.

The term "rate shock" has been used to characterize the extremely significant increase that would result from reflecting the entire first-year revenue requirement associated with the SJTP in rates, for example. (Rackers Direct, Ex. 52, p. 11, lines 15-21). Other extremely significant rate increases will be felt from revenue shifts and the elimination of single tariff pricing.

Staff Brief, p. 68.

However, the Commission should temper the more dramatic rate shifts by reflecting the consideration of all relevant factors in this case, including equity and the mitigation of rate shock.

OPC Brief, p. 3.

Indeed, witnesses who endorsed the abandonment of Single Tariff Pricing all admitted that a greater degree of rate shock would result from such a change, rather than simply staying the course with STP.

City of St. Joseph Brief, p. 1.

Moreover, because the rates proposed in this case would cause “rate shock” under any proposed pricing methodology, the alleged STP advantage of “rate stability” becomes irrelevant in the formula. . . . the question here is basically between uniform rate shock or non-uniform rate shock.

Municipal Intervenors Brief, p. 20.

Thus, the Commission should announce that it is ending the STP experiment now and commence phasing out the STP rates over a period of years in districts that would receive a rate shock from an immediate return to DSP.

St. Joseph Industrials/Riverside Brief, p. 48.

Certainly, the Water Districts take issue with the above statements of the Municipal Intervenors and St. Joseph Industrials/Riverside regarding criticisms leveled at Single Tariff Pricing (STP) when, as many of the parties acknowledge, it is the proposed movement to District Specific Pricing (DSP) that drives the significant rate shock to the majority of the company’s districts. As counsel for the Water Districts noted in Opening Statements: “Frankly, there is enough rate shock here for everyone.” (Tr. 83). The Commission should “stay the course” with STP as a legitimate public policy and ratemaking tool, and seize the opportunity to mitigate the rate shock inflicted on the company’s customers, not exacerbate it.

#### **A. SINGLE TARIFF PRICING**

The Water Districts discussed the history, benefits and legality of Single Tariff Pricing in their Initial Brief. With due respect to the creative legal analysis of those who would argue against its legality, not only is it legal, but it is a pricing policy that has been widely used in other regulated

public utility industries to promote important public policy goals. The Water Districts respectfully would refer the Commission to the legal analysis contained in their brief, and the briefs of both the Company and Staff on this important legal issue. As Staff points out: “There is no statute in Missouri that expressly prohibits STP, and case law supports the use of STP in Missouri. Single tariff pricing is lawful in Missouri, and could be utilized in this case if the Commission determines that it is the most suitable rate design for the Company.” (Staff Brief, p. 47). While acknowledging that STP had been authorized and rates are now set on such a basis (Industrials Brief, p. 48), the DSP advocates offer the Commission a one-way ticket down a slippery slope in attempting to justify their position. “Providing water to one district from an expensive new treatment plant or from purchased water via transmission lines is not ‘the same or substantially similar’ to providing water in another district from wells and an older treatment plant.” “Moreover, it is a sensible and fundamental principle in the adoption of any policy that the majority of people would be better off as a result of the policy as opposed to being worse off as a result of the policy’s adoption.” (Municipal Intervenor Brief, pp. 12-13). In the telephone industry alone, those who would abandon rate averaging because of the age or technical capabilities of different switches, or because the opportunity to “divide” the majority (urban) from the minority (rural) is presented, would find encouragement in such pronouncements.

With incredible self-righteousness, the Municipal Intervenor alleges: “The St. Joseph Public Water District, like the City of St. Joseph, opposes DSP and supports STP only because of the economic consequences to them of district specific rates in the present case.” (Municipal Intervenor Brief, p. 24). The Water Districts would point out that they have been involved in these proceedings for the last several years, when STP has been the rate design policy of this Commission for the Company and its predecessor! As noted by counsel in Opening Statements:

In the last Missouri-American rate case, a witness for Warrensburg, Mr. Garth Ashpaugh, testified that it would be the worst of all possible worlds for the St. Joseph customer if the Commission utilized single-tariff pricing for the investments in other communities and then placed a surcharge on the St. Joe customers when the new proposed treatment plant was completed.

He said it this way: "You would have a double whammy for the St. Joe customer because he would be paying for this increased investment in St. Charles and Joplin and then be allocated an additional cost because of the new plant coming out."

Unfortunately, Mr. Ashpaugh has not been sponsored as a witness when the double whammy for St. Joseph is being proposed by other cities that have already had their turn in the construction cycle.

(Tr. 79).

The Company accurately summarized the utilization of STP at page 49 of its Initial Brief, as follows:

This history of the issue clearly reveals that 1) the debate over STP and DSP has continued for well over a decade; 2) some parties have taken different "sides" on the issue in different cases; 3) "pure" district specific pricing has not existed in five of the seven districts for over ten years; 4) the Commission has, over the past ten years, clearly indicated a policy of "moving toward" STP; and 5) despite its unwillingness to announce a firm policy in support of STP, the Commission, in MAWC's last case, nevertheless authorized the Company to take the final step and implement uniform rates for all of its districts.

## **B. THE CAPITAL ADDITION SURCHARGE**

As set forth in the Water Districts' Initial Brief at pages 13-15, the Company's alternative proposal of a Capital Addition Surcharge would be the worst of all possible worlds for the St. Joseph District. Existing subsidies reflected in St. Joseph's existing rates would still be incorporated into the St. Joseph District rates. The \$31 million of additional capital investments in other Districts in this case would also be included in St. Joseph's rates. In the future, St. Joseph's rate would also

increase to reflect new capital investments in other districts, unless the investments were large enough to trigger the adoption of a new Capital Addition Surcharge for those districts. While obviously disagreeing with their views on STP, the Municipal Intervenors appear to capture the “sacrificial” nature of the Company’s proposal. “MAWC’s proposal for a St. Joseph surcharge is a diversionary tactic. It is simply a method to maintain and preserve the Company’s inappropriate single tariff pricing approach – now by sacrificing the St. Joseph customers they sold on the idea of a new plant for no cost.” (Municipal Intervenors Brief, p. 26). In their effort to pay the “political piper,” the company offers that “[T]he advantage of the surcharge proposed is that it addresses the concerns of those who believe that the impact of the St. Joseph Treatment Plant on the total company revenues is inordinate and not likely to occur in other districts.” (Company Brief, p. 62). To avoid anticipated discrimination arguments, the Company, with a “wink and a nod,” creates their 15 -20 per cent limitation, so “. . . then those districts would also be susceptible to a capital addition surcharge. (emphasis added.) Thus, the surcharge can be objectively and uniformly applied and there is no discrimination.” (Company Brief, pp. 62-63). In Opening Statements, Company Counsel revealed the true intent of the surcharge “bogey”: “What it does is it biases the – the surcharge in favor of smaller districts, because as they might have, relatively speaking, relative to their size a large capital addition, a million dollars in the Brunswick exchange where there are five – or the Brunswick District where there are 500 customers, that may be significant for Brunswick but on the total Company rate base may not have the kind of impact that a \$70 million plant in St. Joseph would have on 30,000 customers and on the total Company basis.” (Tr. pp. 62-63). Clearly, under MAWC’s Capital Addition Surcharge approach, St. Joseph would continue to help support future investments in other districts unless the threshold trigger for a Capital Addition Surcharge was met.



### **C. INTER-CLASS REVENUE SHIFTS**

Any rate increase authorized for any District in this case should be spread on an across-the-board basis throughout the Company's existing rate schedule. (Ex. No. 58, p. 8). No inter-class shifts of revenue should be made in this case. Otherwise, the rate shock on some classes of customers will be substantially exacerbated. As the St. Joseph Industrial/Riverside Intervenors note: "At the final analysis, Mr. Harwig suggested that class rates in this case be adjusted based on an equal percentage or 'across the board' approach, simply because of the significant impact that the proposed increase would have even with the large disallowance St. Joseph Industrials and Riverside have proposed." (Brief, p. 53).

### **PHASE-IN PROPOSALS**

While willing to support mechanisms that will lessen the significant rate shock that will result to the Water Districts and their customers in this case, the Water Districts have expressed concern that the rate phase-in proposals may add significant carrying costs to the final rate increase approved over time. As set forth at pages 25-26 of the Water Districts' Initial Brief, if the Commission phased in inter-class shifts proposed by the Staff, the Sale for Resale customers in St. Joseph would see total rate increases in excess of 268% plus carrying costs. Such a rate increase, phased-in or not, would have a devastating impact upon the rural customers served by the St. Joseph Area Water Districts. Acknowledging that "the specific reason for the phase-in is to prevent the extreme rate increases from being implemented at one time," the Staff "recommends that the Commission approve all four of the subsequent rate increases as part of its order in this case. Each of these rate increases will take effect automatically on the annual anniversary of the effective date of the rates from this case." (Staff Initial Brief, pp. 68-69).

[Dority]: Q. Well, this Commission has shown sensitivity to public notice and making sure that ratepayers are informed of both anticipated and actual Commission decisions in this regard.

So I'm assuming that, for instance, the sale for resale customer class in St. Joseph, if they were, again hypothetically, getting a 50 percent plus or 55 percent plus increase for five successive years, the Staff would recommend that the Commission notify customers on an annual basis that, This is a reminder, your 50 percent increase is coming up effective next date?

[Rackers]: A. Yes, I would suspect that Staff would insist on some notification to the customer of pending future increases.

(Tr. 2014-2015).

Regarding the St. Joseph Industrials/Riverside's "hopes" about the Commissioners walking the streets of St. Joseph, following such a reminder the Commission may, indeed, wish to "avert their face and cross to the other side of the street!" (St. Joseph Industrials/Riverside Brief, p. 60).

Although Public Counsel had proposed to cap the overall revenue requirement at 50% at the end of the phase-ins, they recognized that in "cases of phase-in, due to carrying cost, a district's total revenue increase may exceed 50% in the final year that rates are increased." (Public Counsel Brief, p. 59, Footnote 1). The Public Counsel offers for the Commission's consideration the "simple words of a consumer who spent her evening waiting to comment at the Commission's local public hearing in St. Joseph on May 31, 2000:

Whenever I go shopping anywhere for any product, no matter whether it's in St. Joe or elsewhere, if there is an increase of 50 percent or more in cost and a decrease in performance or quality, I will shop elsewhere.

Unfortunately in this case I don't have that choice. So I turn to you to help us find some way to make this a fairer situation for the citizens of St. Joseph. Thank you. (Tr. Vol. 8, p. 25)

(Public Counsel Initial Brief, pp. 69-70).

However, the Office of the Public Counsel now turns its back on that very customer and modifies its proposal with the statement: “In the event that the revenue requirement proposals of Staff or Company are adopted, Public Counsel cannot support implementing a 50% cap for the St. Joseph revenue increase as would be applied to Brunswick, Mexico and Parkville.” (Public Counsel Initial Brief, p. 59). It’s unfortunate that Public Counsel could not have shared this information with the consumers in St. Joseph that night, let alone the magnitude of revenue increases resulting from their “hybrid” DSP and class cost of service approaches!

### **EQUITY AND FAIRNESS**

At the very beginning of the hearings in this matter, Counsel for the Company ends his Opening Statement as follows: “I would just like to make one last comment in closing, and that’s the comment regarding fairness. As you decide this case, I want you to ask yourself, what more could this company have done?” (Tr. 73). Perhaps a response can be found in the brief of the Municipal Intervenors. While they appear to admonish the ratepayers in the St. Joseph District for relying on representations and precedent (“The City of St. Joseph should not have relied upon the Company’s representations of having others pay for their new plant.” Brief, p. 24), they also recognize the gravity of the impact now being foisted upon the St. Joseph customer base. “If it is true that MAWC made representations and suggestions to the St. Joseph rate payers that the new treatment plant would be recovered from the other districts under the single tariff pricing, such constitutes serious misrepresentation and bad faith on the part of MAWC. Such conduct should not be left unnoted nor unrewarded by the Commission.” (Municipal Intervenors Brief, p. 27).

However, it may be the Company itself that turns out to be prophetic in determining a possible resolution to the current dilemma. As noted, *supra*, “if, by way of comparison, Staff were to propose an across the board increase in rates (i.e. single tariff pricing) based on its revenue

deficiency of approximately \$10,700,000.00, it would result in an increase in rates for all customer classes of approximately 33%. (Tr. 1980).” (Company Initial Brief, p. 73). And why shouldn’t the Water Districts and other parties be entitled to rely on the history and past actions of the Commission or its Staff regarding the single tariff pricing issue? The Commission has adopted, and its Staff has supported, STP in previous proceedings. (Tr. 988). Indeed, the Staff (in reassuring the Company to trust its phase-in plan) clearly makes the point in its Initial Brief: **“Utilizing the old adage that past actions are the best predictor of future behavior,** there is no credible reason to believe that the Commission or its Staff would not propose to reflect amounts previously deferred, under an ordered phase-in plan for MAWC, in the cost of service.” (emphasis added) (Staff Brief, p. 70).

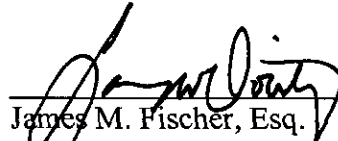
As set forth at page 3 of the Water Districts Initial Brief, if, notwithstanding the strong public policy arguments that support continuation of STP, the Commission determines that a public policy change is appropriate, it would be more equitable to continue STP in this proceeding and announce that future capital investments (or the results of future mergers or acquisitions, *e.g.*, St. Louis County Water) will be reflected in rates using a DSP or a Capital Addition Surcharge approach. The St. Joseph Area Water Districts must emphasize, however, that they are not recommending that the Commission depart from STP in the future. However, if the Commission chooses to modify its existing rate design policy on this issue, then it should be done on a prospective basis only. Any other approach will appear to the St. Joseph area to be an *ex post facto* change of rate design policy that will adversely impact the St. Joseph customers and the area’s economy.

### CONCLUSION

In conclusion, the St. Joseph Area Public Water Supply Districts respectfully request the Commission to continue following its Single Tariff Pricing in this proceeding. The Commission has

previously recognized the public benefits of Single Tariff Pricing, and it should act consistently with its past decisions to ensure that the public interest is promoted in the future.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Initial Brief of St. Joseph Area Public Water Supply Districts has been hand-delivered or mailed, First Class mail, postage prepaid, this 2nd day of August 2000, to:

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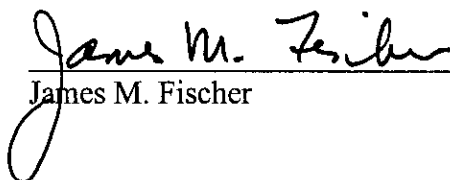
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