

State of Missouri     )  
                                  ) ss  
County of St. Louis    )

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

Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
vs.	)	Case No. WC-2002-146
	)	
St. Louis County Water Company,	)	
d/b/a Missouri-American Water Company,	)	
	)	
Respondent.	)	

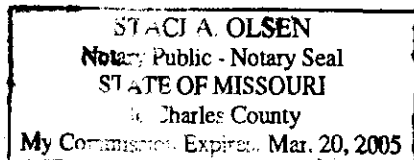
**AFFIDAVIT OF JAMES M. JENKINS**

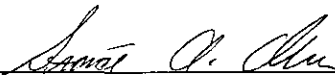
James M. Jenkins, being duly sworn upon his oath and being to me personally known, did state that his answers provided on the Rebuttal Testimony attached hereto and submitted in the above described case consisting of 15 pages plus an appendix are true to the best of his knowledge, information and belief.



James M. Jenkins

Subscribed and sworn to before me on this 17<sup>th</sup> day of January, 2002.



  
Notary

1 **Q. WILL YOU STATE YOUR NAME PLEASE?**

2 **A.** My name is James M. Jenkins. My business address is 535 N. New Ballas Rd.,  
3 St. Louis, MO 63141.

4 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

5 **A.** I am Vice President and Treasurer for Missouri-American Water Company. St.  
6 Louis County Water Company and Jefferson City Water Works Company, Inc.,  
7 were merged into Missouri-American effective December 31, 2001. My  
8 credentials are attached hereto as an appendix.

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 **A.** I am responding to the Staff's allegations in the Complaint Case No. WC-2002-  
11 146, and in particular the allegations in the Direct Testimony of Wendell R.  
12 Hubbs.

13 **Q. HOW HAVE YOU STRUCTURED YOUR TESTIMONY?**

14 **A.** I have divided my testimony into the following sections and subsections for easier  
15 reference and understanding:

16 I. Introduction

17 A. Incidents with Staff preceding the Complaint

18 B. The need for a tariff

19 II. The Issue

20 A. Fair and Reasonable

21 B. Statutory Interpretation Limitations on the Commission

22 III. The Critical Allegation, Customers v. Owners

23 A. Trying to bill Only Real Estate Owners is not Feasible

24 B. It is More Equitable to Bill all Who Use Service Lines

25 IV. The Tariff is Fair and Reasonable

26 V. Responses to Staff Allegations.

1 **I. Introduction**

2

3 **Q. WHAT INCIDENTS WITH STAFF LED TO THIS FORMAL**

4 **COMPLAINT?**

5 **A.** The conversations referenced by Mr. Hubbs did take place during hearings on the

6 Company's rate case. At that time the Company had filed two different tariffs. I

7 agreed to withdraw the one tariff, and did so. I did not agree to withdraw the

8 service line tariff.

9 **Q. IS MR. HUBBS TELLING THE TRUTH ABOUT HIS CONVICTION**

10 **THAT YOU AGREED TO WITHDRAW THE TARIFF PRIOR TO ITS**

11 **EFFECTIVE DATE?**

12 **A.** I think so. Mr. Hubbs is a well respected member of the Staff and he would

13 certainly tell the truth as he believes it. Besides, he has absolutely no motive to do

14 otherwise. But my recollection of our conversations is different than his. And like

15 Mr. Hubbs, I have no motive to testify falsely when I state unequivocally that I

16 did not tell him that the Company would withdraw this tariff. In looking at this

17 aspect of our disagreement, I think two things are important to observe:

18 First, this is a pass-through tariff, and the Company would have had

19 nothing to lose by withdrawing the tariff if there had been some resolvable

20 disagreement about its text. We would have just delayed the imposition of the fee

21 until the matter was resolved. But Mr. Hubbs was arguing that no tariff at all was

22 necessary, and never once raised objections to its text. The disagreement, as I

23 recall it, was whether the Company could have the protection of a tariff on which

24 it was insisting, or whether the Company was to impose the charge without a

25 tariff as Mr. Hubbs was insisting should be done.

26 Second, both my reputation and that of the Company depends on mutual

27 respect between us and the Staff. It would have been incredibly shortsighted of

28 me to lie to Mr. Hubbs to finesse activation of a tariff, especially one that had

29 nothing to do with the well being of the Company.

1           This is obviously a misunderstanding, and we are both telling the truth, as  
2 we each believe it.

3 **Q.   WHY NOT WITHDRAW THE TARIFF AFTER THE**  
4 **MISUNDERSTANDING BECAME EVIDENT, OR EVEN NOW?**

5 **A.**   After the tariff became effective by operation-of-law, the charge was instituted  
6 and fees were collected and remitted to the County. Now, it cannot be  
7 withdrawn, because that would retroactively invalidate the prior collections. We  
8 can deal with the issues in this Complaint prospectively, but the existence of the  
9 tariff protects the Company from refund allegations like those raised in this very  
10 Complaint. Given the allegations about improper collecting, it is fortunate that  
11 the tariff was not withdrawn.

12 **Q.   WHY WAS THE COMPANY ADAMANT THAT A TARIFF WAS**  
13 **NECESSARY, AND WHY WAS THE STAFF TAKING THE POSITION**  
14 **THAT A TARIFF WAS UNNECESSARY?**

15 **A.**   I never understood the Staff's argument about why a tariff was not necessary.  
16 They were telling me that at the very worst, it would be redundant. I am even  
17 more perplexed now that they have raised all these objections to the imposition  
18 methodology. Imagine where the Company would be now if we did not have the  
19 benefit of an approved tariff.

20 The reasons the Company insisted on a tariff for the imposition of the fee are:

- 21 1. The principle of retroactive ratemaking effectively prohibits claims for  
22     refunds of any charges made pursuant to an approved tariff.
- 23 2. The charge becomes a "condition of service" thus eliminating uncertainty  
24     regarding collection. In other words, service may be discontinued for  
25     nonpayment and Chapter 13 of 4 CSR 240 applies.
- 26 3. Jurisdiction of all challenges against the Company for the fee would be before  
27     the Commission rather than the Courts under the principle of "primary and  
28     exclusive jurisdiction."
- 29 4. The Company has used tariffs for similar fees. This is done to make certain  
30     that any allegations of "cost allocations" would have to be addressed by over-

1 all cost-of-service contentions in a rate case where all tariffs are adjusted at  
2 the same time.

3  
4 **II The Issue**

5  
6 **Q. WHAT DOES THE COMPANY BELIEVE TO BE THE ISSUE IN THIS**  
7 **CASE?**

8 **A.** I'm not a lawyer, but I understand that the only issue properly before this  
9 Commission, at least as referenced in the paragraph 3 of the Complaint itself, is  
10 whether the fee being collected by the Company is "...in violation, or claimed to  
11 be in violation, of any provision of law, or of any rule or order or decision of the  
12 commission." Since the tariff has the purpose and effect of law (because it has  
13 become effective), the fee is not in violation of any rule, order or decision of the  
14 Commission. So we are left to the issue of whether the fee, as with any other rate,  
15 is unfair, unreasonable or unlawful, and should be changed prospectively, just like  
16 any other rate or charge. All the other allegations about preferable wording, titles  
17 and purported promises have no relevance to this issue.

18 Certainly the argument about the statutory language that contends that "a  
19 fee upon water service lines" does not authorize a fee from users of service lines,  
20 but rather only owners of the lines, is integral to that question, but I question  
21 whether the Commission has the authority to make a statutory interpretation like  
22 that. I will leave that to the lawyers, and I am addressing the legitimacy of the  
23 position that the fee should be imposed on service line users as well as on owners,  
24 and it is up to the Commission to determine if this is fair and reasonable. The  
25 ultimate question is whether the tariff will be left as is, or is ordered to be  
26 changed prospectively.

27 **III. The Critical Allegation**

28  
29 **Q. IS THERE ANY ASPECT OF THIS COMPLAINT THAT IS CRITICAL**  
30 **TO THE VIABILITY OF THE SERVICE LINE PROGRAM?**

1    **A.**     Yes. All the allegations made by the Staff can be dealt with by prospective change  
2           to the tariff except one: the theory that the statute only allows the fee to be  
3           collected from real estate owners.

4    **Q.     WHY DO YOU CHARACTERIZE THIS AS "CRITICAL?"**

5    **A.**     This interpretation would effectively kill the program. Besides, it is not only  
6           inconsistent with the legislative intent as described by Senator Goode in this case,  
7           but it is inequitable.

8    **Q.     WHY WOULD IT EFFECTIVELY KILL THE PROGRAM?**

9    **A.**     It is not possible to police the difference between customers who own the real  
10          estate at the service address and those who don't. If you picked a specific point in  
11          time, you might be able to research title records and determine ownership which  
12          could then be matched against customer names at that instant; but this  
13          information would be inaccurate almost immediately because it changes  
14          continually. Also, customers can be changed by a phone call under both Chapter  
15          12 of CSR and the Company's rules, and the change to a different family member  
16          or a name spelling could and would cause faulty conclusions. Then, in the case  
17          where you have a renter, how would you collect from a property owner who was a  
18          non-resident since the only collection device available to the Company other than  
19          law suits is service termination to the customer?

20                It would not be possible, at any cost, to do what the Staff suggests.

21   **Q.     WHY WASN'T THIS DEALT WITH AS A PROPERTY TAX?**

22   **A.**     Senator Goode speaks to this question. One problem is that there are many  
23          residences in St. Louis County that use well water and do not have service lines in  
24          rights-of-way or do not have any contractual relationship with a water utility.  
25          Also, the utility can distinguish between commercial and residential customers,  
26          while a property tax would not. Besides the separate fund type fee works fine with  
27          sewer lateral charges and in the City of St. Louis water department, and the idea  
28          was to mimic these programs rather than create a property tax mechanism.  
29          Simply put, this is not a property tax on the ownership of real estate, and simply  
30          labeling it as one causes huge problems and solves nothing.

1 **Q. WHY WOULD IT BE MORE EQUITABLE TO CHARGE SERVICE LINE**  
2 **USERS COMPARED TO ONLY REAL ESTATE OWNERS?**

3 **A.** I will address this later in this testimony in greater detail, but generally all  
4 occupants benefit from continuing safe and adequate water service to any  
5 premises whether or not they are property owners, and everyone benefits from  
6 prompt leak repair that avoids problems with ice and flooding. This is perhaps  
7 true to a greater extent with a tenant who cannot control the actions of a landlord.  
8 It is more equitable in my opinion to impose this fee on those who use the service  
9 lines and depend on them for potable water, than it is to impose them on property  
10 owners as if it was the price of ownership rather than the cost of a continuing  
11 supply of safe and adequate water to occupants.  
12

13 **IV. Reasons the Tariff is Fair and Reasonable**  
14

15 **Q. DOES THE COMPANY BELIEVE THAT THE PRESENT MECHANISM**  
16 **OF BILLING RESIDENTIAL CUSTOMERS REGARDLESS OF**  
17 **OWNERSHIP IS FAIR AND REASONABLE?**

18 **A.** Yes, for at least the following reasons:

- 19 1. This is what the Staff has been insisting upon with this Company for many  
20 years.
- 21 2. This is what the Staff has recently insisted upon, and obtained, in both the  
22 Jefferson City and St. Joseph water utilities.
- 23 3. It codifies the status quo with respect to repair responsibility. Company rules  
24 do not impose repair responsibility on owners; service line repair is simply a  
25 condition of service and therefore up to the "customer" to address .
- 26 4. It is directly related to water use; it eliminates the health and safety concerns  
27 of water service discontinuance due to leaks, the benefit of which is to the  
28 customer in the first instance; and it helps the traveling public, municipal  
29 governments with road work and vacant house problems, and the public in  
30 general as opposed to only real estate owners.

1 5. Disproportionate benefit is inherent in any repair program, due to different  
2 ages and property values among the more than ninety municipalities in St.  
3 Louis County, and the differing sizes and lengths of various service lines.

4 **Q. (1) HOW HAS THE STAFF BEEN INSISTING ON A SERVICE LINE**  
5 **REPAIR PROGRAM IN THE PAST WITH THIS COMPANY, AND WAS**  
6 **IT LIMITED TO BEING PAID FOR BY REAL ESTATE OWNERS?**

7 **A.** Dating back over forty years, the Staff has filed multiple formal cases attempting  
8 to require the Company to repair privately-owned service lines. Counsel informs  
9 me that they were always dismissed on jurisdictional questions because of the fact  
10 that the Commission believed it could not order a utility to fix private property. In  
11 1979, the Commission joined in a court case that went to the Court of Appeals  
12 attempting to enforce a phrase in Chapter 319 RSMo that the Commission argued  
13 required the provider of service to maintain service lines in public right-of-way.  
14 The Commission did not prevail because of defects in the legislation, but the  
15 court also said that they "did not consider to be without merit" the "challenge that  
16 the amendment constitutes and unconstitutional taking of property without due  
17 process of law." The case was **St. Louis County Water Company v. Public**  
18 **Service Commission**, 579 S.W.2d 633 (Ct. App. E.D. 1979).

19 I do not purport to understand the legal aspects of these cases, and I only  
20 recite what the records tell me; but I do understand the regulatory ramifications of  
21 all of these attempts to require the Company to repair and replace service lines.  
22 All of them would have put the Company's costs into general rates, and the  
23 Company has never had the ability to distinguish between property owners and  
24 other customers with any of its rates. The Staff has been insisting upon exactly  
25 that which they claim is inequitable now. Had the Staff ever prevailed on any of  
26 these attempts, all customers would pay for service line repair costs in the  
27 fundamentally same way that the present program works.

28 **Q. (2) HAS THE STAFF BEEN CONSISTENT IN THIS REGARD, AND IS**  
29 **THERE ANY RECENT EVIDENCE OF THIS?**



1 A. Yes. Most recently, the Staff insisted upon, and the Missouri-American Water  
2 Company acquiesced in, the implementation of requirements in both Jefferson  
3 City and St. Joseph, the Company must repair service lines and the costs are  
4 rolled into cost-of-service for all customers.

5 **Q. WHAT WAS THE STAFF'S POSITION IN THOSE CASES, AND WHAT**  
6 **SPECIFICALLY WAS THEIR TESTIMONY TO THE COMMISSION?**

7 A. The two cases are WR-95-205 and WR-99-326. Staff's testimony in both of  
8 those cases regarding this service line issue are attached hereto as Schedule A and  
9 Schedule B. Not only does Staff describe in detail how service line repair costs  
10 are to be absorbed into general rates to be paid by all customers, but nowhere in  
11 these remarks will you find any mention of the concept that only owners should  
12 pay. To the contrary, Staff's description of how their recommended program  
13 would work even explains the remaining parts of the service line that will  
14 continue to be the "customers'" responsibility:

15 It is my opinion the Company should change its rules and  
16 regulations for service provided in the St. Joseph District so that  
17 the Company will be required to maintain the portion of each  
18 service pipe located between the water main and the customer's  
19 property line. Each customer would still be required to maintain  
20 the portion of the service pipe from the property line to the  
21 building." ... "In my opinion it is reasonable, and easier for  
22 customers, if the company provides service at the property line,  
23 and maintains the facilities necessary to do so, with associated  
24 costs to be recovered from all customers. (Schedule A, page 4-5,  
25 emphasis added).

26  
27 **Q. DID STAFF INDICATE KNOWLEDGE OF THE DEVELOPMENT OF**  
28 **THE PROGRAM THAT IS AT ISSUE IN THIS CASE ?**

29 A. Yes. Staff describes HB 450 that would "authorize this type of fund [a fund like  
30 the City of St. Louis'] to its voters." (Schedule B page 12). Even more interesting  
31 is Chairman Mueller's description of the problem and the then-developing  
32 concept of the insurance fund that we now have. It was attached by Staff to  
33 Schedule B and is also included herewith.

1           The Staff provides an excellent description of the legal problems  
2 associated with this issue, as well as the advisability of a "fund" such as that  
3 which we have here to deal with those problems. This appears at pages 7 through  
4 13 of Schedule B.

5 **Q.   AN OBVIOUS QUESTION IS WHY DIDN'T ST. LOUIS COUNTY**  
6 **WATER COPANY SIMPLY DO WHAT MISSOURI-AMERICAN**  
7 **AGREED TO DO IN JEFFERSON CITY AND ST. JOSEPH?**

8 **A.**   St. Louis County is unique in the respect that it is comprised of over ninety  
9 municipalities, of differing ages and real estate values. For example, Ladue is one  
10 of the oldest municipalities in the County which increases the likelihood of  
11 service line problems, but it is also one of the most affluent. Conversely, most of  
12 recent development is in areas where lines are of new copper and road repair is  
13 unlikely, thus leading to probable subsidization by these folks of Ladue. The  
14 Company did not believe it was appropriate for it to undertake a subsidization  
15 program without approval of all the municipalities. One valuable aspect of this  
16 statute is that it required a vote of the people, so that this concern was addressed.

17 **Q.   (3) WHAT DO YOU MEAN BY YOUR REMARK THAT CHARGING ALL**  
18 **CUSTOMERS INSTEAD OF ONLY REAL ESTATE OWNERS MERELY**  
19 **CODIFIES THE STATUS QUO REGARDING RESPONSIBILITY?**

20 **A.**   Contrary to Staff's allegation, the Company has never required that real estate  
21 owners had to be the ones to repair service lines. The Company's rule regarding  
22 service line maintenance dates back many years and specifically imposes repair  
23 responsibilities on the "owner or customer." Rule R19.1, which is P.S.C.MO.No.  
24 6 First Revised SHEET No. R19.1, states as follows:

25           All Water Service Line installations...are not the property of the Company  
26 and must be kept operational, maintained and repaired by the owner or  
27 customer as a condition of service...

28  
29           ...When a leak occurs on any portion of a Water Service Line between the  
30 Company's main and the premises being served, the Company, when  
31 made aware of the water leak, will notify the owner, customer or tenant of  
32 such leak. As part of the notification, the Company will inform the

owner, customer or tenant that needed repairs must be made at owner's, customer's, or tenant's expense....

...If such repairs are not made within the 30 days specified, the Company will discontinue service and issue a bill to the owner, customer, or tenant, covering any appropriate combination of service charges and/or actual costs for Discontinuance of Service) leak or service line) as provided under Company's tariff for Miscellaneous Charges. These costs must be paid before service can be restored to the premises being served.

**Q. (4) ARE THERE OTHER REASONS THAT CUSTOMERS OR OTHER NON-OWNERS BENEFIT FROM THIS PROGRAM IN EXCHANGE FOR BEING CHARGED THIS FEE?**

**A.** Yes. The availability of a properly installed and maintained service line is directly related to water use. In fact, more so than to the value of the real estate. Since lines will now be repaired without waiting for someone to respond to threats of service discontinuance, this will eliminate the health and safety concerns of water service discontinuance to residents of the premises, whether they be owners or tenants. It also solves many problems of government, including concerns of traveling public over ice and road damage. When roads are repaired by cities, this will pay the cost of re-installing the service lines so that there are no periods of time without service to occupants due to inability to pay for the line replacement. It also addresses the leak concerns of vacant or abandoned houses, where there is no owner or other party on whom to impose the repair responsibility. All of these benefits are shared by owners and non-owners.

**Q. (5) ARE YOU TROUBLED AT ALL BY THE CONCEPT OF DISPROPORTIONATE BENEFIT, IN THAT THE PROPERTY OWNER RECEIVES AN IMPROVEMENT TO SOMETHING HE OR SHE OWNS AT THE EXPENSE OF NON-OWNERS?**

**A.** No, there is always disproportionate benefit in any program. First, service lines are of differing ages, sizes and lengths. Each repair will be at a different cost relative to the condition of the facility, and owners of newer service lines will be subsidizing owners of older service lines. More importantly, this subsidy concept

1 is inherent in presently successful programs like the sewer lateral plan of various  
2 municipalities and the water service line repair program of the City of St. Louis  
3 after which this plan is modeled. Note also, that cities with which I am familiar  
4 bill this sewer lateral charge with trash removal bills. The bills go to residents,  
5 and it is up to owners and tenants to reconcile responsibility for payment so that  
6 trash removal is not jeopardized.

7  
8 **V. Responses to Staff Allegations**  
9

10 **Q. HAVE YOU YET ADDRESSED ALL OF STAFF'S ALLEGATIONS?**

11 **A.** No, the Staff has raised multiple allegations. I counted fifteen in Mr. Hubbs'  
12 testimony, although some of them are somewhat repetitive. I am not attempting  
13 to recharacterize those allegations because they speak for themselves, but so that  
14 I can respond to them, I am viewing them as follows in their order of appearance  
15 in Mr. Hubbs' testimony, along with my response:

16  
17 1. *That I promised to withdraw the tariff.*

18 This is incorrect and the result of an unfortunate misunderstanding; but also it  
19 not relevant to the issue before the Commission at this time. Staff admits the  
20 tariff has become effective by operation-of-law and that is the position from  
21 which we begin.

22  
23 2. *That "the statute [states] that the ordinance fee is to be imposed on the water*  
24 *service lines (the property), and that the owners of the property, upon which the*  
25 *water service lines are located, are the ones upon whom the tax should be*  
26 *imposed."*

27 I completely disagree with this conclusion. This "leap" is neither required by  
28 the statute, nor was it intended as has been explained by Senator Goode. This  
29 statute does not prohibit the Commission from approving a tariff that allows the  
30 Company to collect this fee from all of its customers regardless of ownership.

1           There is no reason to conclude other than that a fee upon service lines should be  
2           on the use of those lines rather than the ownership of them.

- 3  
4       3. *The County ordinances do not "require" the Company to charge residential*  
5       *customers.*

6           The ordinances authorized the County to enter into a Contract with the  
7           Company for a fee on water service lines. It does not state whether this is only  
8           on ownership, or whether it is a permissive tax on the beneficiary of the use of  
9           the service line. That Contract states "the Company shall add to the bill of each  
10          residential customer..." the fee, and any other interpretation would be  
11          impossible to implement.

- 12  
13       4. *The tariff is inconsistent with the Statute and Ordinance.*

14          This is not true. The language is not identical, but the purport is consistent.  
15          That is why the County entered into the Contract.

- 16  
17       5. *The title of the tariff has improper implications that the Commission approves*  
18       *the "program."*

19          The implication that the Commission is approving the Company's participation  
20          in the program, to the extent that the Commission has jurisdiction over that  
21          participation, is intended and is accurate.

- 22  
23       6. *The term "availability" is misleading and should be changed.*

24          This is a point of no significance to the Company. The word "availability" can  
25          be changed, but it does not render the tariff unfair, unreasonable or unlawful.

- 26  
27       7. *The fee should not be called a "rate."*

28          The fee is indeed a "rate," because it is charged to customers as a condition of  
29          service.

1       8. *The tariff allows a reduction but not an increase of the rate. An increase would*  
2       *require another tariff filing and a decrease would render the tariff misleading.*

3       This is true, but of little concern. The reduction without a new tariff was  
4       intended to allow customers to benefit from any reduction immediately without  
5       having to wait for PSC action. Another tariff could be thereafter filed. An  
6       increase is not possible, as the amount has a maximum limit under the statute.

7  
8       9. *The Commission should not approve the contract.*

9       The Commission must approve the contract to the extent that it affects rates  
10      being charged because it is referenced in the tariff. The contract is specifically  
11      subject to the Commission's actions, and anything the Commission finds  
12      objectionable with the contract, at any time, will result in a change in the  
13      contract. Whether or not there is a formal "approval" of the contract in those  
14      terms is of little consequence to the Company. An approval of the tariff that  
15      references the contract constitutes an approval. In the case of wholesale water  
16      supply contracts and tariffs that are handled the same way, the Commission  
17      typically approves the tariff and issues a "Water Authority Order"  
18      acknowledging the filing of the referenced contract. This issue is being  
19      presented by the Staff from the wrong perspective. The concern of the  
20      Company is not that the Contract is officially approved, but rather that the fee  
21      and tariff are lawful, and that if or when the Commission might ever take a  
22      position that any aspect of the contract is not acceptable to it in any respect, this  
23      would constitute a "disapproval" and would permit the Company to modify the  
24      contract rather than be subject to sanctions associated with a binding  
25      commitment that might not otherwise be changeable.

26  
27      10. *The Company never requested approval of the contract.*

28      The approval issue was presented to the Commission by the "filing" of the tariff  
29      and contract together. The contract is a referenced and integral part of the tariff  
30      and one cannot be viewed without the other. The point about whether or not the

1 word "approval" appears in the transmittal letter doesn't make sense, because  
2 the language for submission of a tariff for approval is specified in 4 CSR 240-  
3 50.010 and the word "approval" is not in the specified text and one could argue  
4 that it is therefore not permitted let-alone required.

- 5  
6 11. *The Commission should state that the Contract has not been approved, and that*  
7 *instead it should be reviewed for prudence and ratemaking in future rate*  
8 *proceedings.*

9 This is a specious argument. The contract specifically is subject to the  
10 Commission's jurisdiction and, by its terms, would prohibit the Company from  
11 arguing that the Commission is foreclosed from a future prudence or other  
12 ratemaking analysis of the contract. The opposite effect is intended: Namely,  
13 that if the Commission makes a negative determination about the contract, the  
14 contract will be changed. Paragraph 7 states as follows: **"The parties hereto**  
15 **understand and agree that this Contract does not seek to invade, bypass or**  
16 **supersede the jurisdiction of the Missouri Public Service Commission, and**  
17 **accordingly, this contract shall be submitted to the Missouri Public Service**  
18 **Commission for its information, and if deemed necessary by such**  
19 **Commission, for its approval. This Contract shall at all times be subject to**  
20 **the actions of such Commission."**

- 21  
22 12. *A new tariff should contain language that "results in the tax being collected*  
23 *from the owners of the property upon which affected service lines are located."*

24 I completely disagree with this unsubstantiated conclusion. It also makes the  
25 program completely unworkable.

- 26  
27 13. *Since tracking the owners will be "extremely costly" the contract should*  
28 *provide recovery of such costs.*

29 Tracking the owner is out of the question. The Company cannot and will not  
30 attempt to do this. Not only would it be cost-prohibitive, but it would be

1 effectively impossible to do correctly. If this would be deemed necessary, it will  
2 kill the program.

3  
4 14. *There should be a tariff to provide for collection of the tax from non-customer*  
5 *property owners.*

6 The Company has no jurisdiction over non-customers, and no ability to either  
7 bill or collect from non-customers. This would kill the program.

8  
9 15. *The staff has previously promoted service line replacement programs because*  
10 *they are "a very beneficial program for property owners."*

11 The reasons Staff has promoted these programs is known only to them. But they  
12 have required that the costs of these programs be spread to non-owners in direct  
13 contravention of their arguments in this case.

14  
15 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A.** Yes, except that this program was modeled after the success of a similar program  
17 in the City of St. Louis, and by all reports it is a huge success. This twisted  
18 interpretation about ownership is neither necessary nor in the best interest of  
19 anyone.



1                                   **DIRECT TESTIMONY**

2                                   **OF**

3                                   **JAMES A. MERCIEL, JR.**

4                                   **MISSOURI-AMERICAN WATER COMPANY**

5                                   **CASE NOS. WR-95-205 and SR-95-206**

6  
7                                   Q.     Please state your name and address.

8                                   A.     James A. Merciel, Jr., P. O. Box 360, Jefferson City, Missouri,  
9     65102.

10                                  Q.     By whom are you employed and in what capacity?

11                                  A.     I am employed at the Missouri Public Service Commission  
12     (Commission) as Assistant Manager-Engineering, in the Water and Sewer Department.

13                                  Q.     Please describe your education and experience.

14                                  A.     I graduated from the University of Missouri at Rolla in 1976  
15     with a Bachelor of Science degree in Civil Engineering. I am a Registered  
16     Professional Engineer in the State of Missouri. I worked for a construction company  
17     in 1976 as an engineer and surveyor, and have worked at the Commission in this  
18     Department since 1977.

19                                  Q.     What is the purpose of your testimony?

20                                  A.     To present testimony regarding quality of service, operations, and  
21     to express my opinion regarding maintenance responsibility of water service pipes in  
22     the St. Joseph Division.

23                                  Q.     Are you familiar with the operation of the water systems and the

Direct Testimony of  
James A. Merciel, Jr.

1 sewer system operated by the Company?

2 A. Yes. Inspections are periodically conducted by me or someone  
3 in the Water and Sewer Department under my supervision.

4 Q. Would you please state what is reviewed during inspections?

5 A. Yes. The inspections at each district include a review of  
6 programs and records pertaining to fire hydrant maintenance/flow testing, valve  
7 location/exercise, meter testing/location, backflow prevention device requirements and  
8 testing, booster/pump station maintenance and run time, storage tank water level,  
9 system pressure charts, and customer complaints/inquiries. The Staff also reviews at  
10 each district the materials and supplies inventory, and chemical inventory if applicable.  
11 Finally, the Staff visually inspects the water treatment facilities, and observes the  
12 Company's day-to-day operations. In general, by conducting the inspections we are  
13 able to observe whether or not the Company is providing good service to its  
14 customers.

15 Q. What is your opinion regarding quality of service?

16 A. It is my opinion that the Company is providing good service to  
17 its customers. I have reviewed our complaint files, and have found no unresolved or  
18 recurring complaints about quality of service. In my opinion, the programs and  
19 procedures utilized by the Company, and its operational records, are reasonable and  
20 enable the Company to provide good water service. Furthermore, in my opinion, it  
21 appears that a reasonable amount of inventory is kept on hand, and that the facilities  
22 are in good condition.

23 Q. Do you have comments pertaining to maintenance of "service

Direct Testimony of  
James A. Merciel, Jr.

1 pipes" in St. Joseph?

2 A. Yes.

3 Q. Please briefly explain what service pipes are, and how they are  
4 located in relation to water mains and customers' premises.

5 A. The "service pipe," as defined in the tariff of the Company's St.  
6 Joseph District, is a pipeline connected to the Company owned water main, and the  
7 customer's building. Generally there is one service pipe for each customer, and often  
8 the water meter is located on the service pipe at the property line or street curb.

9 Q. Does the Company have tariffs applicable to districts other than  
10 St. Joseph?

11 A. Yes. The Company currently has three (3) separate water tariffs.  
12 One is applicable to the St. Joseph District, and another to the Joplin District. The  
13 third is a tariff that was approved for Missouri Cities Water Company, and adopted by  
14 the Company per the Commission's order in Case No. WM-95-150, authorizing a  
15 merger of Missouri Cities Water Company and Missouri American Water Company.  
16 This third tariff, referred to herein as the Missouri Cities tariff, is applicable for service  
17 provided in St. Charles County, Mexico, Brunswick, Warrensburg, and Platte County.

18 Q. Are the definition and rules regarding service pipes in the St.  
19 Joseph tariff different from those in the Company's tariffs applicable to other districts?

20 A. Yes. Whereas the rules in the St. Joseph tariff define the service  
21 pipe as the pipeline between the water main and the building as discussed above, the  
22 rules in the Company's Missouri Cities and Joplin tariffs break the above described  
23 pipeline into two separately defined portions as follows: 1) a "customer's service pipe"

Direct Testimony of  
James A. Merciel, Jr.

1 or "service connection" (in the Joplin and Missouri Cities tariffs respectively), which  
2 is connected to the water main and extends to the curb or property line, and is  
3 installed, owned and maintained by the Company; and 2) the "service pipe" or  
4 "customer's water service," (in the Joplin and Missouri Cities tariffs respectively)  
5 which is located on the customer's property between the curb or property line and the  
6 customer's building, and is constructed, owned and maintained by the customer. There  
7 is a difference in terminology, but what is more important, there is a difference in  
8 customer maintenance responsibility.

9 Q. What is your opinion about service pipe maintenance rules?

10 A. It is my opinion the Company should change its rules and  
11 regulations for service provided in the St. Joseph District so that the Company will be  
12 required to maintain the portion of each service pipe located between the water main  
13 and the customer's property line. Each customer would still be required to maintain  
14 the portion of the service pipe from the property line to the building. 14

15 Q. Why do you believe the rules about service pipe maintenance in 14  
16 the St. Joseph tariff should be changed?

17 A. There are two reasons why I believe these rules for the St.  
18 Joseph tariff should be changed.

19 One is the difficulty and expense for individual customers to deal with  
20 repair work located off their property, which in many cases is also under a city street.  
21 Water mains are usually located to serve customers on both sides of a street. Some  
22 customers have service pipes in the street and some do not, depending on the location  
23 of the main. In my opinion it is reasonable, and easier for customers, if the company

Direct Testimony of  
James A. Merciel, Jr.

1 provides service at the property line, and maintains the facilities necessary to do so,  
2 with associated costs to be recovered from all customers.

3 The other reason, which is the primary reason why I believe the rules  
4 for St. Joseph should be changed, is to be consistent with the Company's other  
5 districts. Of the seven (7) separate areas served by the Company, only in the St.  
6 Joseph District do customers maintain the portion of the service pipe outside their  
7 property. Since previous rate cases affecting this Company's service areas have  
8 established a move toward consolidating rates, and since I also believe the Company's  
9 three (3) water tariffs could and should be consolidated into one (1) tariff for all of its  
10 Missouri service areas, I think it would be reasonable if the Company were consistent  
11 with rules pertaining to maintenance of service pipes within all of its districts.

12 Q. If the Company were to change its rules as you describe, would  
13 there be an impact on rates?

14 A. Yes, there would. It is difficult to quantify the exact cost  
15 attributable to the St. Joseph District since there is no way to tally a history of service  
16 pipe repair and maintenance costs incurred by individual customers in St. Joseph.  
17 However, in my opinion, records of such repairs in the Company's other districts may  
18 be used to estimate the cost. I have shown my estimated annual maintenance cost on  
19 Schedule 1.

20 Q. Would you please explain Schedule 1?

21 A. Yes. Expenses, as audited by the Staff, for maintenance of  
22 services are shown for Accounts 675.1 and 675.2, along with a total for Account 675.  
23 This is a Company total, but inherently excludes the St. Joseph District since none of

Direct Testimony of  
James A. Merciel, Jr.

1 this maintenance is currently performed by the Company in that district. This total is  
2 then divided by the number of customers excluding St. Joseph, shown as Account 675  
3 Customers, to get an annual maintenance cost per customer. Finally, the cost per  
4 customer is multiplied by the number of customers in the St. Joseph Division to get  
5 the estimated additional annual expense of \$39,576. The Staff has included this  
6 amount in its Accounting Schedules as Adjustment S-15.3. Capital costs for  
7 equipment necessary to perform service pipe maintenance is allocated to account 675,  
8 and thus is also included in this amount. Future capital investment for replacement of  
9 service lines would be included in future rate cases.

10 Q. Since customers in St. Joseph now own and maintain the service  
11 pipes, how do you propose the Company transition to Company owned and maintained  
12 services?

13 A. I recommend the Company revise its tariffs, or at least the St.  
14 Joseph tariff, to update definitions and service pipe maintenance rules. I recommend  
15 the Company simply repair or replace service pipes as needed, and properly record  
16 repair expenses and capital expenditure for any new plant installed. Missouri Cities  
17 Water Company, now merged into the Company, conducted such a service pipe  
18 conversion program some twenty (20) or more years ago, and a similar program could  
19 be initiated for St. Joseph. Regarding future new connections, since customers are now  
20 required to pay the cost of installing service pipes, I recommend the Commission  
21 approve a connection charge to offset the cost the Company would incur to install a  
22 service connection. A connection charge of \$425 for a 3/4" residential service  
23 connection is presently in effect in the Company's Missouri Cities tariff. In my

Direct Testimony of  
James A. Merciel, Jr.

1 opinion, this charge may be approved for all of the Company's districts.

2 Q. Would you please summarize your testimony?

3 A. Yes. With respect to quality of service, the Company is  
4 providing good service to its customers, utilizes good operating procedures and  
5 recordkeeping, and has a reasonable inventory of materials, supplies, and chemicals.

6 I am of the opinion the Company should consolidate its three (3) tariffs pertaining to  
7 water service into one (1), and standardize definitions and rules, especially with regard  
8 to service pipe maintenance. Standardization of service pipe maintenance rules means  
9 an additional estimated expense of \$39,576 should be included in account 675.

10 Q. Does this conclude your testimony?

11 A. Yes.

**Case Nos. WR-95-205 and SR-95-206**  
**SERVICE PIPE MAINTENANCE EXPENSE FOR ST. JOSEPH**  
Missouri American Water Company  
Account 675 -- Services  
**STAFF FIGURES**

<b>EXPENSE--TOTAL COMPANY</b> (none allocated to St. Joseph)	
Account 675.1	\$25,444
Account 675.2	\$49,330
<b>Total Account 675</b>	<b>\$74,774</b>
<hr/>	
Customers - total	87,025
Less St Joseph Customers	<del>30,119</del>
<b>Account 675 customers</b>	<b>56,906</b>
<hr/>	
<b>Annual cost per customer</b>	<b>\$1.31</b>
<b>Estimated Additional Expense</b>	<b>\$39,576 *</b>
30,119 times \$1.31	

\* The estimated additional expense to be added  
if St. Joseph Division maintains service pipes.



**CASE NO. WR-99-326**

Jan-14-02 12:57pm From-Rates and Revenue

3149962250

T-373 P.011/027 F-815

Direct Testimony  
James A. Merciel, Jr.

1 Q. Are you familiar with the water system operated by the  
2 Company?

3 A. Yes, I am. I toured the plant facilities most recently on  
4 June 2, 1999, and have also reviewed the Company's records related to  
5 its system operations and its customer complaint files.

6 Q. What is your opinion regarding quality of service?

7 A. It is my opinion that the Company is providing good  
8 service to its customers. I have reviewed the Commission's complaint  
9 files, and the Water and Sewer Department's file. There are no  
10 unresolved or recurring complaints about quality of service,  
11 notwithstanding an increasing number of comments pertaining to  
12 service line maintenance responsibility. In my opinion, the programs  
13 and procedures utilized by the Company, and its operational records  
14 are reasonable and enable the Company to provide good water service.

15 Q. What projects have been undertaken and completed by the  
16 Company?

17 A. The Company has completed Phase I of its treatment plant  
18 improvement project, which is a new chemical building. This facility  
19 feeds sodium hypochlorite, which is a liquid chlorine solution for  
20 disinfection, and which replaces the gas chlorine system that was  
21 formerly used. It also feeds liquid ferric chloride, which is used in  
22 the treatment plant settling basins, and which replaces the dry  
23 ferric sulfate feeder that was located in the upstairs of the plant  
24 building. Finally, powdered activated carbon, used when necessary for

Jan-14-02 12:58pm From-Rates and Revenue

3149962250

T-373 P.012/027 F-815

Direct Testimony  
James A. Merciel, Jr.

1 taste and odor control, is stored as a slurry and fed at the new  
2 building. This replaces the dry feeder that was located in the  
3 upstairs of the plant building. The new chemical building improves  
4 the receiving, storage and feeding operations of these chemicals.  
5 The Company has also upgraded its computer system for plant  
6 operations. Pumps and the chemical feed system can now be operated  
7 from the control room at the water treatment plant. All functions  
8 including plant performance, basic water quality indicators, tank  
9 levels and system pressure can also now be monitored electronically  
10 from the control room, with computerized records automatically kept.  
11 Such records are periodically permanently stored on optical disks,  
12 and the data from the disks can be retrieved electronically in  
13 commonly used spreadsheet formats. The computer control/monitor  
14 system appears to be a good tool to allow the operators to do their  
15 jobs more efficiently.

16 Q. Does the Company presently require customers to maintain  
17 the portion of the service line between the water main and the meter?

18 A. Yes. Rules 5 through 12 on Sheet Nos. 7 and 8 of the  
19 Company's current tariff require the customer to install, own and  
20 maintain the service line from the main to the customer's building;  
21 except that the Company makes the tap at the customer's expense, and  
22 furnishes and installs the water meter. The customer's service line  
23 includes the corporation cock attached to the main, all piping  
24 between the main and the customer's premises, a curb stop valve, a

Jan-14-02 12:58pm From-Rates and Revenue

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T-373 P.013/027 F-815

## Direct Testimony

James A. Merciel, Jr.

1 meter box, and all fittings and appurtenances except the meter.  
2 Sheet Nos. 7 and 8 of the Company's tariff are attached to this  
3 testimony as Schedule 1.

4 Q. Is the requirement for customers to own and maintain the  
5 entire service line, including what is located outside the customer's  
6 property, common practice among water utilities?

7 A. No, it is not particularly common. Most utilities do not  
8 require customers to maintain entire service lines.

9 Q. Can you briefly describe what you would consider a more  
10 common service line responsibility practice?

11 A. Yes. The more common way service line rules are set up,  
12 and the rules advocated by the Staff for water utilities, is that the  
13 water utility maintains the portion of the service line between the  
14 main and the meter setting located at the property line or street  
15 curb. This section of pipeline, which includes the physical  
16 connection to the main, is often defined in tariffs as the "Service  
17 Connection." The "Meter Setting," which is the vault and lid in  
18 which the meter is located, is also usually owned and maintained by  
19 the water utility. The outlet of the Meter Setting is then the point  
20 of delivery. The customers are responsible for maintenance of what is  
21 often defined as the "Service Line," which is the portion of pipeline  
22 between the Meter Setting and the customer's premises. I prefer to  
23 refer to these three service line components, the Service Connection,  
24 Meter Setting, and Service Line, as defined in this manner, and will

Jan-14-02 12:58pm From-Rates and Revenue

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T-373 P.014/027 F-815

## Direct Testimony

James A. Merciel, Jr.

1 do so in this testimony. Not all water utilities define these  
2 components like this.

3 Q. Does the Staff advocate rules similar to that just  
4 described?

5 A. Yes.

6 Q. Why?

7 A. There are basically two reasons. The first is that it is  
8 more difficult and expensive for individual customers to maintain  
9 Service Connections that could be under a public right-of-way, such  
10 as a paved street. The other reason is that customers have a good  
11 incentive to repair leakage that is registered by the meter; whereas  
12 customers have little incentive to repair leakage on the portion of  
13 the pipeline that is ahead of the meter. In such cases the utility  
14 often must work with the customer, and sometimes threaten  
15 disconnection of service for non-compliance with the rules. Another  
16 benefit, of which a few companies take advantage, is that the water  
17 utility could utilize one Service Connection for two customers, then  
18 set two meters in one Meter Setting, saving some construction and  
19 maintenance cost. This would not be practical if the utility did not  
20 maintain the Service Connection because of the unreliability of two  
21 customers being able to work together to maintain common property.

22 Q. Do service line rules such as this fit all situations?

23 A. No. I don't think it is possible to write a rule on  
24 service lines that would fit every situation. For one thing, not all

Jan-14-02 12:59pm From-Rates and Revenue

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T-373 P.015/027 F-815

Direct Testimony  
James A. Merciel, Jr.

1 customers have outdoor Meter Settings located at the curb or property  
2 line. Some customers have indoor meters, or in some cases the meter  
3 must be located well inside the customer's yard because of  
4 obstructions. In addition, property lines are often in the middle of  
5 private streets, and sometimes there is no street curb to provide a  
6 definitive location of the point of delivery. If there is no valve  
7 at some reasonable point of delivery, it may even be necessary to  
8 begin a repair and excavate in order to determine whether the utility  
9 or the customer should be responsible for repair.

10 Q. Why don't all water utilities utilize the more common type  
11 of service line rules?

12 A. The utilities that require customers to own and maintain  
13 Service Connections and Meter Settings, or have had such requirements  
14 in the past, are ones that operate systems dating to the turn of the  
15 century. Apparently, this practice was not uncommon years ago, and  
16 the concept of these old rules is still in practice. In St. Louis  
17 County a licensing and union issue also exists. St. Louis County  
18 Water Company's employees belong to the Utility Workers Union,  
19 however, only licensed plumbers, who generally are members of the  
20 Plumbers Union, may work on house plumbing, which includes what I  
21 have defined as the Service Connection.

22 Q. Have any water utilities ever changed their service line  
23 rules?

Jan-14-02 12:59pm From-Rates and Revenue

3149962250

T-373 P.016/027 F-015

Direct Testimony  
James A. Merciel, Jr.

1           A. Yes. There has been a trend, though very slow, of  
2 utilities converting rules and relieving customers of some of the  
3 maintenance responsibility. As examples, Missouri Cities Water  
4 Company, which provided water service in St. Charles County, Mexico,  
5 Brunswick, Warrensburg, and Platte County, assumed ownership and  
6 maintenance of Service Connections and Meter Settings in the early-  
7 or mid-1970's. Missouri-American Water Company, which acquired the  
8 assets of Missouri Cities in 1993 and added those service areas to  
9 its own St. Joseph and Joplin service areas, converted St. Joseph  
10 because that was the only one of all of its service areas that  
11 required customers to maintain Service Connections. Also, Raytown  
12 Water Company recently decided to begin maintenance of Service  
13 Connections and Meter Settings. Prior to 1982, Raytown Water Company  
14 was unique among water utilities in that customers also owned and  
15 maintained the water meters.

16           Q. In your opinion, would it be in the public interest if the  
17 Company changed its service line rules to something similar to what  
18 you described above?

19           A. Yes, I think it would be in the public interest if the  
20 Company assumed maintenance and replacement responsibility of Service  
21 Connections and Meter Settings. There would, however, obviously be  
22 some cost associated with this additional function.

23           Q. Are you recommending that the Commission order the Company  
24 to change its service line rules?

Jan-14-02 12:59pm From-Rates and Revenue

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T-373 P.017/027 F-815

Direct Testimony  
James A. Merciel, Jr.

1 A. No.

2 Q. Why not?

3 A. There are two reasons. The first reason is that there is  
4 legal precedent against forcing water utilities to assume maintenance  
5 responsibility of the Service Connection and Meter Setting. For this  
6 reason, the Staff and the Commission, for many years, have refrained  
7 from taking any action on this issue, even though complaints  
8 occasionally come to the Staff on this issue and the issue has arisen  
9 in cases before the Commission. In the last rate case filed by the  
10 Company's predecessor, Capital City Water Company, Allan Mueller,  
11 then Chairman of the Public Service Commission, answered a customer's  
12 question at a local public hearing about maintaining a lead Service  
13 Connection, explaining that the Commission could not order any change  
14 in the service line rules. Pages from the transcript of that hearing  
15 are attached hereto as Schedule 2.

16 The second reason is that there is really no way to accurately  
17 determine the level of additional expense the Company would incur in  
18 maintaining the Service Connections and Meter Settings. As a result,  
19 it would be necessary to estimate or assume what those expenses would  
20 be. I believe it would be appropriate for the Company, the Staff,  
21 the Public Counsel and other interested parties to establish some  
22 dialogue to first determine whether or not the rules should be  
23 changed, and if so, to then agree on an estimated expense to be  
24 included in the Company's rates. This could be done either in the



Jan-14-02 12:59pm From-Rates and Revenue

3149962250

T-373 P.018/027 F-815

## Direct Testimony

James A. Merciel, Jr.

1 context of this case, if the parties are willing, or done informally,  
2 with the expense to be included in a future rate case.

3 Q. If the Company did assume ownership of Service Connections  
4 and Meter Settings, could you provide at least a rough idea of what  
5 expense level could be expected?

6 A. Yes, by reviewing some available information for other  
7 utilities. When the rules were changed for the Missouri-American  
8 Water Company St. Joseph Division, during its last rate case, an  
9 amount that was equivalent to approximately \$1.62 per customer per  
10 year was included as an annual repair expense. This amount was based  
11 on Missouri-American's annual repair expenses in its Joplin Division.  
12 It was intended that replacements, as opposed to repairs, would be  
13 capitalized, meaning return on the investment and depreciation would  
14 be included in future rate cases. For Raytown Water Company, an  
15 assumption was made that repairs would only be done to Meter  
16 Settings, and that Service Connections would be replaced and  
17 capitalized. The estimated annual repair expense for Meter Settings  
18 included in rates was an amount equal to approximately \$0.56 per  
19 customer per year. In both of those situations, the utilities have  
20 not filed rate cases since the estimated expenses were included, and  
21 the Staff has thus not studied the actual expenses.

22 In an annual report submitted to the Commission by one  
23 regulated water utility, the account for maintenance of services  
24 shows an expense exceeding \$5.00 per customer per year. However,

Jan-14-02 01:00pm From-Rates and Revenue

3149962250

T-373 P.019/027 F-815

Direct Testimony  
James A. Merciel, Jr.

1 that utility does not show any additions to its plant account, which  
2 indicates that the utility does not capitalize any of the money it  
3 spends on Service Connections.

4 In a discussion I had with the Company about this matter, it  
5 was indicated to me that one issue to resolve would be whether or not  
6 another employee would need to be hired to do this work, or if  
7 contractors could be used. This could make a difference on what  
8 expense should be included.

9 My answer to the question is that the expense could be in the  
10 range of less than \$2.00 per customer per year, to perhaps \$4.00 per  
11 customer per year or more.

12 Q. If the type of service line rules as you describe are  
13 common, why would there not be sufficient information from a number  
14 of water utilities to make a reliable estimate?

15 A. There are not many regulated water utilities that can be  
16 used as a comparison with the Company in my opinion. Most of the  
17 regulated water utilities are small companies serving rural  
18 subdivisions, often with unpaved streets, that were developed within  
19 the past few decades. The Company needs to be compared to utilities  
20 serving in municipalities, with areas of town that are over 100 years  
21 old, since service line age and property restoration costs are major  
22 factors in the maintenance costs the Company would incur.

23 Q. What legal precedent exists that indicates the Commission  
24 should not order the Company to change its service line rules?

Jan-14-02 01:00pm From-Rates and Revenue

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T-373 P.020/027 F-815

Direct Testimony  
James A. Merciel, Jr.

1           A. There was a decision by the Kansas City Court of Appeals,  
2     *Fisher v. St. Joseph Water Co.*, 151 Mo. App. 530, 132 S.W. 288  
3     (1914), that in essence determined that a utility cannot be ordered  
4     to maintain property that it does not own. In 1962, a General Order  
5     (rulemaking that preceded the present Code of State Regulations) was  
6     proposed by the Public Service Commission in Case No. 15,102. This  
7     General Order would have required water utilities to provide or  
8     acquire, and maintain, Service Connections. Information was  
9     collected for several years, along with investigations and some  
10    hearings, but in 1971 the Commission determined the proposed General  
11    Order should be withdrawn, and dismissed the case. Also, legislation  
12    enacted as Senate Bill 583 in 1976 and codified as §319.015(3), RSMo  
13    included a provision that: "All underground facilities within any  
14    public street, alley, right-of-way or easement shall be fully  
15    maintained by the public utility, municipal corporation or other  
16    person providing said service." That statute was challenged in court  
17    and was struck down in *St. Louis County Water Company v. Public*  
18    *Service Commission*, 579 S.W. 2d 633 (Mo. App 1979). The court said  
19    the legislation ran afoul of a constitutional requirement that "no  
20    bill shall contain more than one subject which shall be clearly  
21    expressed in its title." The court added that the words of the title  
22    of the bill could not possibly be construed to refer to the  
23    imposition of a duty on a public utility to "fully" maintain property  
24    of which it was not the owner.

Jan-14-02 01:00pm From-Rates and Revenue

3149962250

T-373 P.021/027 F-915

Direct Testimony  
James A. Merciel, Jr.

1 Q. Do any alternatives exist that would relieve the  
2 customers' present obligations with regard to service lines without  
3 changing the Company's rules or impacting expenses to be included in  
4 rates?

5 A. Yes. Some communities have established a fund that may be  
6 used for repair, replacement or relocation of customer-owned Service  
7 Connections and Meter Settings. These funds have usually been  
8 established and administered by a governmental body, even where  
9 privately owned water utility provides the service. However, it may  
10 be possible for a private company to establish and handle the fund.  
11 In some cases, the issue leading to establishment of a fund such as  
12 this is relocation of Service Connections due to street or highway  
13 reconstruction. The City of St. Louis, which owns its municipal  
14 water system, established a fund of this type a number of years ago.  
15 There is also pending state legislation (HB450), which has not yet  
16 been signed by the Governor, that would authorize the St. Louis  
17 County government to propose the establishment of this type of fund  
18 to its voters. A similar alternative for UWM's situation could be  
19 for the City of Jefferson City to establish and administer such a  
20 fund, with the fund financed by a special charge to be included on  
21 the Company's water bills. In any event, it would be necessary for  
22 all UWM customers to be required to contribute to such a fund.

23 Q. Would you please summarize your testimony?

Jan-14-02 01:00pm From-Rates and Revenue

3149962250

T-373 P.022/027 F-015

Direct Testimony  
James A. Merciel, Jr.

1           A. Yes. It is my opinion that the Company is providing good  
2 service to its customers, and that it is adequately maintaining its  
3 plant facilities. The new plant chemical building, and improved  
4 computer operations, are worthwhile improvements. I recommend no  
5 Commission order that would change service line rules. However, it  
6 would be in the public interest to establish a dialogue between the  
7 Company and all other interested parties to discuss possible changes  
8 to the Company's service line rules, and to determine an estimate of  
9 the associated costs to be included in rates.

10           Q. Does this conclude your prepared direct testimony?

11           A. Yes.

Jan-14-02 01:01pm From-Rates and Revenue

3149982250

T-373 P.024/027 F-815

FORM NO. 13

P.S.C.MO. No. 3

Original

SHEET No. 1

Revised

Original

SHEET No. 7

Revised

Cancelling P.S.C.MO. No. 3

CAPITAL CITY WATER COMPANY

For JEFFERSON CITY, MISSOURI

Name of Issuing Corporation

Community-Town of City  
SERVICE AREA

RECEIVED

**RULES AND REGULATIONS  
GOVERNING THE RENDERING OF SERVICE**

SEP 10 1981

**APPLICATION FOR SERVICE**

MISSOURI

Public Service Commission

1. Service connection will be made, and water will be upon written application by the prospective customer (or his properly authorized agent), on a form prepared by the company for this purpose, and after approval of such application by the company. The application for service shall state clearly the class, scope, and type of use to be made of the service as well as the purpose for which it will be used. Service connections will not be approved unless a main is directly adjacent to the property to be served by a line perpendicular from the point on the main to a point on the building.
2. The application and these rules and regulations constitute the contract between the customer and the company; and each customer by accepting of water, agrees to be bound thereby.
3. A new application must be made to, and approved by, the company upon any change in the identity of the contracting customer at a property or in the service as described in the application, and the company may, upon five days' notice, discontinue the water supply until such new application has been made and approved.
4. Each application for service shall be made on the basis of rates applicable to customers under the tariff provisions.

**SERVICE CONNECTION**

5. Each customer shall be supplied through a separate service line.
6. The company will make all service taps to its mains at the expense of the customer and will furnish, install, and maintain the meter only. Service lines from the main to and including the curb stop and box, or meter pit, shall be placed inside the curb line or company right of way, all of which service line shall be the property of the customer and shall be accessible to the company at all times.
- + 7. All 3/4 inch and 1 inch service lines from the main to the meter shall be Type "K" copper. 2 inch or over may be ductile iron cement lined and shall be approved by company as to size and installation. All service lines shall be installed and kept in good repair by the customer at his expense. All such service lines shall be placed at least 30 inches below the surface of the ground.

\*Indicates new rate or text

+Indicates change

OCT 10 1981

Public Service Commission

DATE OF ISSUE September 10, 1981

DATE EFFECTIVE October 10, 1981

ISSUED BY

John A. Phillips  
name of officerVice President  
title

Attachment 1 - 1

Jan-14-02 01:01pm From-Rates and Revenue

3149962250

T-373 P.025/027 F-815

Cancelling P.S.C.MO. No. 3 - 1st

{ Revised }

{ Original }

{ Revised }

SHEET No. 8

CAPITAL CITY WATER COMPANY  
Name of Issuing CorporationFor JEFFERSON CITY, MISSOURI  
Community, Town or City

SERVICE AREA

RECEIVED

MAR - 1 1985

MISSOURI  
Public Service Commission

## RULES AND REGULATIONS

## GOVERNING THE RENDERING OF SERVICE - Continued

8. No service lines shall be laid in the same trench with the sewer pipe.
9. When a meter is located within the customer's building, a waste valve, easily accessible to the occupants, shall be placed in the service line within the building supplied with water. Such valve shall be located so that it will be possible to drain the meter and all pipes in the building. When the meter is located outside the customer's building, a positive shut off valve shall be located immediately inside the customer's building.
10. All leaks in service lines from the main to and in and upon, the premises supplied shall be promptly repaired by customer.
- All galvanized and lead services found to be leaking shall be replaced from the main to the meter with Type "K" copper and must meet requirements of Rule No. 7.
- On failure to make such repairs and/or replacements with reasonable dispatch, the company may turn off the water at the water main and it will not be again turned on until the repairs are completed and the company has been reimbursed, in full, for all proper and necessary expenses incurred in shutting off and turning on the water.
11. The company shall in no event be responsible for maintenance of, or for damage caused by water escaping from, the service line or any other pipe or fixture owned by the customer and the customer at all times shall comply with state and municipal regulations in reference thereto.
12. The use of water service by a customer shall be in accordance with the class, scope and type of use, and for the purpose stated in his application and service contract. A customer shall not use, or allow use of water service through his service facilities, for others or for purposes other than those covered by his application. To make service available for other purposes or character of use, a new application and contract is required.

## \*12.1 I. GENERAL RULE - CROSS CONNECTION CONTROL &amp; BACKFLOW PREVENTION

- A. The purpose of this policy is to establish an enforceable cross-connection control and backflow prevention program to preserve safe potable water and to prevent contamination

\*Indicates new rate or text

+Indicates change

APR - 5 1985

Public Service Commission

DATE OF ISSUE March 5, 1985  
month day yearDATE EFFECTIVE April 5, 1985  
month day yearISSUED BY Joe A. Dysard II  
name of officerMANAGER Jeff  
title

Attachment 1 - 2

Jan-14-02 01:02pm From-Rates and Revenue

3149962250

T-973 P.026/027 F-815

1 expenditures, it seems to me like I would, you know, I  
2 be much better off doing that, because I have the size c  
3 yard I could do that.

4 And even talking to the City Inspector,  
5 even commented that he thought it was ridiculous that th  
6 customer should have to do that. And I just -- I really  
7 question how that that arrangement came to pass, I guess  
8 a monopolized situation like this. So, thanks.

9 BY CHAIRMAN MUELLER:

10 Q. I know more about this issue than you ev  
11 want to hear. But the situation actually got so bad tha  
12 the legislature passed a law that required not only the  
13 water companies but I think the municipal water systems  
14 provide that service to the water main in the street bec  
15 it was so expensive to do replacement for a line, water  
16 lines, a customer service line. And there was some cour  
17 litigation on it that said that was not -- that the law  
18 not -- was faulty and it was not possible to do that, an  
19 they would have to reenact a different statute, and they  
20 never got around to doing it.

21 There's been some lobbying on the part c  
22 the municipals in the state because they don't want that  
23 expense. Some of the municipalities have gone to an  
24 insurance program where you contribute 50 cents, a quart  
25 or something like that -- this happens in the City of



Jan-14-02 01:02pm From-Rates and Revenue

3149962250

T-373 P.027/027 F-815

1 st. Louis -- and if you're part of that insurance pool, t  
2 when you have that problem, then you're covered for major  
3 expenditures for sewer and water.

4 But, you know, that all -- that's all a  
5 municipal, more or less a municipal problem more than it  
6 a company problem unless we would start to charge a rate  
7 which would reflect that. But then again, like I said, I  
8 don't want to get into the legal, but there's legal probl  
9 about letting me dig up your lawn, letting the water comp  
10 dig up your lawn. Technically, it's not their water line  
11 in some cases, coming into your house. When the person  
12 built the house and why you have lead lines is the plumber  
13 put a lead line in out to the street and the water compan  
14 made the connection at that point. So it was actually th  
15 home builder's responsibility when they built the home.

16 A. But see, that wasn't the case in mine  
17 because at the curb stop there's copper that runs all the  
18 way from the curb stop to my house, and there was an eigh  
19 foot section that came from the main to that curb stop th  
20 was lead. So, in fact, the homeowner had put copper all  
21 way, for some reason, to that point.

22 Q. From the meter or from the stop?

23 A. From the curb stop.

24 Q. Where's your meter?

25 A. My meter is in the middle of my yard.

Reel 996

**Background and Qualifications  
Of James M. Jenkins**

My name is James M. Jenkins. I am Vice President and Treasurer for Missouri-American Water Company.

I graduated from the University of Illinois at Urbana/Champaign in 1983 with a Bachelor of Science Degree in Accounting, and in 1992 received an M.B.A. Degree, with highest honors, from the University of Illinois at Springfield. I have been a Certified Public Accountant since 1985, and currently hold a license to practice in the States of Illinois and Missouri.

Between 1983 and 1984, I was employed by McGladrey and Pullen as a staff accountant, participating in financial audits and completing tax returns for firm clients.

Between 1984 and 1993, I was employed by the Illinois Commerce Commission and worked on a wide range of regulatory issues in the electric, gas, telephone, and water industries. I joined the Illinois Commerce Commission's Accounting Department as a staff accountant in November 1984. In April 1987, I was promoted to the position of Auditing Section Chief, responsible for directing the Auditing Staff's review of rate case filings, fuel reconciliation clauses, and miscellaneous regulatory accounting issues. In November 1989, I was promoted to Director of Accounting, responsible for all administrative, policy, and supervisory functions within the Accounting Department. I held the position of Director of Accounting until joining St. Louis County Water Company in June 1993.

I began my career with St. Louis County Water Company in June 1993 as Assistant Manager in the Corporate Accounting Department. In December 1994, I was promoted to Manager of Rates within the Rates and Operations Analysis Department. At St. Louis County Water Company, I was responsible for the numerous accounting and financial areas contained within Company rate case filings, performing both technical and supervisory functions.

In June 1999, American Water Works acquired St. Louis County Water Company as part of the National Enterprise Inc. (NEI) stock acquisition. I was elected Vice President and Treasurer for Missouri-American Water Company and St. Louis County Water Company in June 1999. I was elected Vice President and Treasurer for Jefferson City Water Works Company, Inc., in May 2000. As of 12/31/01, St. Louis County Water Company and Jefferson City Water Works Company, Inc., were merged with and into Missouri-American Water Company, the surviving corporation. As the Vice President and Treasurer of Missouri-American Water Company, I am responsible for directing the finance, treasury, business development, and rate administration functions.

I am a member of the American Institute of Certified Public Accountants, and a past member of the NARUC Staff Subcommittee on Accounts. Also, I am currently the Chairperson of the Rates and Revenue Committee of the National Association of Water Companies.