

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

In the Matter of the Application of Middle)	
Fork Water Company for an Order)	
Initiating an Investigation to Ascertain)	<u>Case No. WO-2007-0266</u>
the Value of the Company's Property)	
Devoted to the Public Service.)	

**OFFICE OF THE PUBLIC COUNSEL'S REQUEST
FOR AN EVIDENTIARY HEARING**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Request for an Evidentiary Hearing states the following:

1. This case was initiated by Middle Fork Water Company (Middle Fork) on January 12, 2007, requesting three types of relief. The only issue that remains for Missouri Public Service Commission (Commission) resolution is the determination of the value of Middle Fork's current investment in plant devoted to the public service.
2. The Commission has the power to ascertain every fact which may or does have any bearing on its ability to determine the rate base value of the property of Middle Fork.¹ The Commission may hold a hearing in order to gather the facts necessary to make this determination.² As an administrative agency, decisions of the Commission must be supported by competent and substantial evidence on the record as a whole.³
3. An evidentiary hearing will allow the parties to make an adequate record, including submitting sworn expert testimony and other competent and substantial evidence on the central issue of what is the proper rate base value of the property of Middle Fork. Without an

¹ Section 393.230. 1. RSMo. (2000).

² Section 393.230. 2. RSMo. (2000).

³ *Missouri Church of Scientology v. State Tax Commission.*, 560 S.W.2d 837, 839 (Mo. banc 1977).

evidentiary hearing, the Commission's record is inadequate to make a factual and legal conclusion based upon the law and the findings of fact.

4. At present, the record consists of only the meager pleadings in the case file as well as the counsels' oral arguments. These are not probative evidence upon which the Commission can lawfully and reasonably base a rate base decision in this contested case. The record lacks sworn expert testimony, properly qualified and admitted exhibits and other competent and probative evidence or stipulated facts that establish the proper record based on competent and substantial evidence.⁴ Without a proper evidentiary record of competent and substantial evidence, the Commission's decision would not be reasonable, that is, be based on competent and substantial evidence. Therefore, an evidentiary hearing to establish the record is appropriate and required.

5. Public Counsel suggests that a procedure and process that leads to a decision on this rate base value issue based only on case file pleadings and argument of counsel is contrary to due process and fundamental fairness.⁵ Due process requires that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner.⁶ This case has been limited to legal argument when factual issues must still be established. To decide this case without a proper factual record will deprive Public Counsel of its discovery rights, the right to submit evidence and testimony and to respond to other parties' evidence and witness testimony, its right to cross examination, and to file briefs on the ultimate issue. While there are certainly legal issues within this determination, the essential factors are matters of fact and expert regulatory and accounting opinion/testimony based on these facts. An evidentiary hearing would allow proper discovery as well as expert testimony and briefing by the parties.

⁴ Section 386.510, RSMo. (2000).

⁵ *Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25, 33 (Mo. App. 1980).

⁶ *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39, 44 (Mo. App. 1982).

6. In light of the potential of great harm to the customers of Middle Fork as well as all public utility rate payers in Missouri, the Commission should make a full and complete evidentiary record to give this investigation and its report and order a lawful and reasonable basis. Therefore, Public Counsel requests an evidentiary hearing to make a proper and adequate record on this issue.

WHEREFORE, Public Counsel respectfully requests that the Commission grant its request for an evidentiary hearing in this matter.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____
Christina L. Baker (#58303)
Senior Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 26th day of March 2008:

Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Keith Krueger
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Keith.Krueger@psc.mo.gov

Russell L Mitten
Middlefork Water Company
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

W R England
Middlefork Water Company
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
trip@brydonlaw.com

/s/ Christina L. Baker
