

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day
of May, 2009.

In the Matter of the Missouri-American Water)
Company Contract with Premium Pork, L.L.C.)
(now known as Triumph Foods, L.L.C.), for the)
Retail Sale and Delivery of Potable Water)

File No. WO-2009-0303

**ORDER DENYING PUBLIC COUNSEL'S REQUEST FOR A REVIEW OF
A CONTRACT FOR RETAIL SALE OF WATER**

Issue Date: May 21, 2009

Effective Date: May 21, 2009

On February 20, 2009, the Office of the Public Counsel ("Public Counsel") filed a request for the Commission to "review" a Contract for Retail Sale and Delivery of Potable Water between Missouri-American Water Company and Premium Pork, L.L.C. allegedly authorized in File No. WT-2004-0192. The Commission set a deadline for responses and Missouri-American Water Company ("MAWC"), Triumph Foods, L.L.C. ("Triumph") and the Commission's Staff all replied.

Background

On October 17, 2003, Missouri-American Water Company ("MAWC") filed an application with the Commission seeking authorization to perform according to an agreement negotiated between MAWC and Premium Pork, L.L.C. (Premium Pork is currently known as Triumph Foods, L.L.C.) for the retail sale and delivery of water. The application was designated as Commission File No. WT-2004-0192. A highly confidential Contract for Retail Sale and Delivery of Potable Water ("Contract") between MAWC and

Premium was filed and the Commission authorized MAWC to perform according to the Contract. Since the Contract is for a period of ten or more years, MAWC's Economic Development Rider tariff, on file with the Commission, requires:

"...that: (1) the Commission's Staff and the Office of Public Counsel have the right to request a Commission review of the continued appropriateness of the alternative rate set forth in the contract after the initial five years of the contract, with the purpose of such review being to determine whether the alternative rate continues to be in the best interest of all customers in the Company's service territory; (2) the Commission, acting on its own volition, may also open an inquiry in this regard; (3) if, upon such review(s), the Commission finds that the contract, as implemented, no longer serves the public interest, it may allow the Company to continue providing service under the contract after adjusting rate conditions to restore the interests of the Company's other customers in the service territory, or it may direct the Company to terminate the contract; and (4) the results of any review(s) conducted under these provisions shall be implemented in a general rate proceeding."¹

Public Counsel's Request

Five years have now passed since the Commission authorized MAWC to perform under the Contract, and Public Counsel requests a review of the Contract to determine the continued appropriateness of the alternative rate set forth in the Contract. Public Counsel states that a review is appropriate because the variable cost identified in the original application has increased significantly, resulting in diminished benefit to other ratepayers.

Staff's Response

Staff supports the review.

¹ MAWC's P.S.C. MO. No. 1, Revised Tariff Sheet No. 49 & 54 for the City of St. Joseph, MO and Vicinity.

MAWC's Response

MAWC states that if the Commission determines that a review of the Contract is appropriate, it will not object and will participate in the review.

Triumph Foods' (formerly Premium Pork) Response

Triumph described the relevant background to the Commission's approval of the Contract as follows:

- a) The St. Joseph Stockyards was only one site the Company considered for its pork-processing facility and the most important factor in the selection of its plant location decision was the level of utility rates. The Company, in Case No. WT-2004-0192, made clear that would not locate in St. Joseph without the contracted water rates.
- b) In WT-2004-0192, the Commission found that the Company was eligible for a discounted rate under the Economic Development Rider Tariff because the Company was a new industrial customer from outside Missouri, its annual customer load factor equaled or exceeded 55%, the projected Average Annual Billing Demand was at least 0.5% of the total consumption of the St. Joseph District of MAWC, and the new facility would create at least 50 new permanent jobs in the district. The Commission noted that the general incentives were not sufficient because Triumph had a viable competitive alternative in another area and the availability of a competitive water rate was critical to the Company's decision to locate in St. Joseph. Finally, the Commission found that the Contract provided for a reasonable contribution to "all other costs associated with the provision of service" and that this contribution provided a benefit to other customers because it served to reduce the revenue requirement of the St. Joseph district as a whole.
- c) The new facility was forecasted to cost Triumph approximately \$130 million, and was estimated to lead to the creation of 1,000 jobs, including 800 processing jobs and 200 jobs in the associated corporate headquarters. Each of these persons was projected to earn over \$10.00 per hour in pay and benefits, making an annual impact on the St. Joseph economy of at least \$21 million. Further, it was estimated that over 300 persons would be employed in the construction of the plant, earning over \$7 million in wages; that the facility would pay about \$1.2 million annually in local taxes; and that another 218 jobs, with an annual payroll of about \$25 million, will be created by 2005. By 2017, the Company projected that it will be paying annual salaries and wages of over \$66 million.
- d) Triumph Foods now employs 2,700 people with 2,300 of those in production-related positions and 400 holding management and clerical positions. Total payroll for 2008

was \$83.6 million, with an hourly average wage of \$14.00. The Company has far exceeded its estimates of jobs created and annual payroll noted in its original application to the Commission, filed on November 25, 2003. Although it estimated that payroll would not exceed \$66 million until 2017, it surpassed that level in 2008. In addition to the impact of jobs and payroll, Triumph Foods maintains its corporate headquarters in St. Joseph, and purchases goods and services locally and pays local taxes and donates to local community organizations. The Company estimates its annual positive revenue impact to the St. Joseph community for 2008 was over \$125 million.

Triumph objects to the review for multiple reasons:

- a) Because any change to the Contract must be implemented in a general rate case, and since no such case is pending, Triumph believes that any contract review is premature.
- b) The Contract allowed MAWC to provide Triumph with water service at a competitive rate for a period in excess of ten years.
- c) While the Commission authorized MAWC to perform according to the Contract on November 25, 2003, the Company began its operations on January 2, 2006. **Therefore, it has not purchased water under the rates provided for in the Contract for the five years noted in the Commission's order.** Thus, the Company suggests that any review of the Contract should be delayed until the Company has purchased water under the Contract for five years.
- d) In the current economic climate, where the severe recession affecting the United States and Missouri has led to new levels of high unemployment and an unprecedented crisis in the financial markets, the Commission should allow the Company to receive the full benefits of the Contract for at least a full five years of its operations before initiating any review of the agreement.
- e) Any cancellation or modification of the terms of the Contract would cause the Company to seriously consider alternatives to its current supply of water from Missouri-American. These alternatives would include a comprehensive investigation of providing its water needs through a well system or other form of self-supply.

Decision

The Commission finds that Triumph has not yet received the five-year benefit contemplated by the contract and that Public Counsel's request is premature. Moreover,

the earliest the Commission could take any action with regard to this contract would be when MAWC's files its next general rate increase request. The Commission shall deny Public Counsel's request. Public Counsel is free to renew its request at an appropriate time.

IT IS ORDERED THAT:

1. The "Office of the Public Counsel's Request for Review" is denied.
2. This order shall become effective immediately upon issue.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of May, 2009.