

STATE OF MISSOURI  
MISSOURI PUBLIC SERVICE COMMISSION

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Missouri Public  
Service Commission

In the Matter of Missouri-American Water )  
Company's Tariff Sheets Designed to ) Case Nos.: WR-2000-281  
Implement General Rate Increases for Water ) SR-2000-282  
and Sewer Service provided to Customers ) (Consolidated)  
in the Missouri Service Area of the Company )

**REPLY BRIEF OF THE CITIES OF  
JOPLIN, WARRENSBURG, ST. PETERS, O'FALLON, WELDON SPRING  
AND ST. CHARLES COUNTY AND WARRERNSBURG  
INDUSTRIAL INTERVENORS**

1. Single tariff pricing is an unlawful and unreasonable rate design scheme for MAWC's system.

MAWC and the St. Joseph Water argue that single tariff pricing (STP) is a lawful rate design and the Commission should not be precluded from using it in this case. (MAWC's Initial Brief pp. 57-61, Water District Initial Brief pp. 22-24). Staff, while advocating that STP should be rejected in favor of district specific pricing (DSP) in this case, nonetheless argues that STP is not unlawful per se (Staff Initial Brief, pp. 47-49). The Municipal Intervenor have not advocated that STP is an unlawful rate design per se, however, STP for a water company with separate operating districts such as MAWC's, presents a case that is untested by the Missouri courts. The Municipal Intervenor also noted in their Initial Brief that while some state have expressly granted their public utility commissions the authority to establish uniform rates for non-interconnected water systems (Illinois and Florida), the Missouri General Assembly has not done so. (Municipal Intervenor's Initial Brief, pp. 10-12).

The Municipal Intervenor cheerfully concede that a system of uniform rates may be proper

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and lawful for many regulated public utilities. But most other public utilities typically have contiguous geographic territories, share common generating plant, and have inter-connected distributions or telecommunication lines. MAWC's non-interconnected, geographically discrete operating districts present a configuration that is very different from most other public utilities. Even so, this is not to suggest that STP can never be a lawful and reasonable rate design schedule for MAWC. But in the instant case, given the magnitude of costs in the St. Joseph district vis à vis the other districts, STP simply produces unconscionable and unreasonable rate increases in the other districts, increases which cannot be rebalanced or offset in either the near or distant future (Harwig, Exhibit 57, Schedule 2 and 3 RD).

In their Initial Briefs MAWC and the St. Joseph Water Districts both cite State ex rel. City of West Plains, 310 S.W.2d 925 (Mo. Banc 1958) for the proposition that the Commission has the broad discretion to establish rates either on a "system wide basis" or on a "district specific basis". But in West Plains, the utility in question was an integrated telephone company that provided telephone service in 36 exchanges. Ironically, the issue in that case was whether the Commission acted reasonably in separately charging (district specific pricing) customers in the 25 exchanges whose cities levied license or occupation taxes, instead of collecting the taxes uniformly from all 36 exchanges as had been done in the past. The Court held that it was reasonable for the Commission to change past practice and allow the company to surcharge customers in the exchanges that levied the taxes ("the cost causer should be the cost payer"). There is nothing exceptional about this result nor are there any factual precepts particularly applicable to the instant case.

The lawfulness and reasonableness of STP in the instant case must be examined in the stark context of the widely varying district specific cost of service studies. In past cases, the cost of service differentials between the districts for MAWC and Missouri Cities Water Company (later acquired by MAWC) have not been significantly at variance, and thus the uniform rates established, while

perhaps technically discriminatory under ' 393.130.3 RSMo. were not egregiously or unreasonably so. cf. In the Matter of Missouri Cities Water Company, Case No. WR-90-236, 30 Mo. P.S.C. (NS) 363 (October 12, 1990). In the Matter of Missouri Cities Water Company, Case No. WR-91-172, 1MoPSC 3d 119 (September 20, 1991). In the Matter of Missouri Cities Water Company, Case No. WR-92-207, 2Mo. P.S.C. 3d 60 (1993). In none of the previous rate cases cited above, did any party seek judicial review on the grounds that the partial uniform rates established were unlawful under ' 393.130.3 RSMo. Thus, the issue of whether it is lawful and reasonable for the Commission to establish uniform rates for a public utility with separate operating districts such as MAWC has simply not been addressed by any Missouri court of record. In the instant case, however, the cost differentials between the districts are significant and STP has metastasized into the monster that Warrensburg and many of the other parties in previous cases have been warning against.

MAWC also cited the Commission to State ex rel. Cape Girardeau v. Public Service Commission, 567 S.W.2d 450 (Mo.App. B.D. 1978) as authority to support the Commission's establishment of uniform rates. This case involved an electric utility rate case where the City of Cape Girardeau attempted to justify lower rates for the customers within the city due to alleged lower cost to serve the city. The City challenged the Commission's Order and the Commission was affirmed. MAWC's discussion of this case, however, overlooks the court's significant language at the end of its decision:

"As noted, the city throughout the proceedings only attempted to prove discrimination to its area; it made no attempt to explain why the approach taken by the commission was less reasonable than that which it advocated.

Although the savings attributable to Marquette do not account for the entire difference in the cost of service as between the city area and the rest of the division, the city failed to show the true cost of service to customers within its area. Failing that, the city did not establish that it is unreasonable to group the city area customers with other customers within the division who pay the R1 and C1 rates." (ID. at 454).

In Cape Girardeau, it is apparent that the City's complaint against uniform rates fell short

because the City's failed to show the true cost of service to customers within its area. In the instant case, however, there is ample evidence of the "true cost to serve customers" within each district. The district specific cost of service studies show very clearly what the cost to serve each district and the customers within those districts. (See Exhibit 9, Table 1-A - Stout's District Specific Cost of Service results; Exhibit 57, Schedule 3-RD - Harwig's District Specific Cost of Service results; similarly, see Exhibit 27, Schedule JAB-3 - Busch; and Exhibit 41 - Hubbs).

In the summary, the following precepts can be gleaned from the various Missouri cases regarding discriminatory rates:

1. If there is competent evidence to reasonably justify different rates for the same or substantially similar service, such rate differentials will be upheld. State ex rel. City of West Plains, 310 S.W.2d 925 (Mo. Banc 1958).
2. If there is no evidence to reasonably support different rates for the same or substantially similar service, such rate differentials will be struck down or remanded to the Commission. State ex rel. DePaul Hospital v. Public Service Commission, 464 S.W.2d 737 (Mo. App. 1970), State ex rel. Laundry, Inc. v. Public Service Commission, 34 S.W.2d 37 (Mo. 1931), City of Grain Valley v. Public Service Commission, 778 S.W.2d 287 (Mo. App. 1989).
3. If there is no evidence to support a claim that uniform rates for the same or substantially similar service are discriminatory as to both locality and person, then the Commission's judgment in setting uniform rates will not be disturbed. State ex rel. City of Cape Girardeau v. P.S.C., 567 S.W.2d 450 (Mo. App. 1978).

Based on the foregoing analysis of existing Missouri case law, the Municipal Intervenors believe that the Missouri courts will not uphold a Commission order establishing uniform rates for the same or substantially similar service in the face of the competent and substantial evidence of widely differing costs to provide that service to different customers in different localities.

2. Single tariff pricing is inappropriate for the MAWC system; district specific pricing should be adopted.

MAWC and the St. Joseph Public Water Supply Districts (Water Districts) cite to the same historical analysis of past PSC cases allegedly moving toward adoption of STP as support for the assertion that the Commission should adopt STP in this case. What is demonstrated by the historical case record(MAWC Brief, pp. 44-49; Water Districts' Brief, pp. 4-7) is that the Commission has not adopted single tariff pricing as the appropriate rate design for MAWC. The case chronology demonstrates that the Commission, PSC Staff and OPC, based upon the same promises of benefits from STP as alleged in this case, began moving to more uniform rates as an experiment without determining the appropriateness of STP for the MAWC system. The Company can claim no right of reliance upon the alleged trend toward more uniform rates heretofore authorized by the Commission. It is absurd to suggest that movement in a direction which has proven to be a failure cannot and should not be reversed by a regulatory agency. The Company's and Water District's historical information is helpful only in understanding how the system has gotten into the difficulty in this case; it provides no support for the contention that STP is a superior (or even acceptable) form of rate design, as MAWC claims it is.

The Commission should particularly reject the suggestion of the Water Districts (Water District Brief, p. 4) that the "evolution" of the issue since 1989 requires continuation of STP's failed policy. The Water Districts' description of this "evolution" provides no support for their assertion that the Commission has adopted STP as policy for MAWC. Further, the assertion that STP use in this system enjoys "a long regulatory history" is grossly overstated. Less than ten years of steps toward uniform rates is hardly a "long history." The admonition to "stay the course" because STP is "not here today and gone tomorrow" but requires a long time to work, is simply bad advice. Like the Company, which they support on the STP issue, the concept of "long term" may require subsidies

to the Water Districts forever, which does not displease the Water Districts at all. Ten years of “evolution,” without adoption and final approval, constitutes no regulatory history which should compel this Commission to “stay the course,” because there has been no course yet chosen. Instead, the time has come for abandoning unwise rate design experiments, such as STP, for MAWC’s system. Water Districts are obviously not interested in the mitigation of rate shock for the “long term” but only for the present case. Their support for STP is not sincere.

Moreover, this Commission’s report and Order in Case No. WO-98-204 (Water Districts’ Brief, pp. 15-16), clearly shows that the approach of the Commission has been one of caution rather than embrace of STP:

The Commission generally agrees with the staff’s observation that the cost of service information in this proceeding might serve as a useful benchmark for evaluating STP or DSP in MAWC’s next rate case. For example, the data discussed above concerning the St. Joseph area could be relevant if the Commission is requested to revert to DSP when the St. Joseph Plant comes on line.

The present case is MAWC’s next rate case. The request has been made to revert to DSP. The Commission at all times in the past has reserved for this very proceeding the issue of the appropriateness of STP for this multi-district, non-contiguous, non-interconnected water system consisting of widely varying district sizes, customer bases, infrastructure requirements, ages of plant, water sources and treatment requirements. Previous cases approving incremental steps towards single tariff pricing show that in all instances STP was authorized only to the extent that existing district specific advantages were preserved and that STP appeared to do no harm. That was then. This is now. STP in this case stands on its merits, at this time and in this system, without any presumption of any previous “endorsement” by this Commission.

The Company next reiterates its rationale for single tariff pricing. (MAWC Brief, pp. 49-52.) The Company’s analysis is, unsurprisingly, focused totally on benefits of STP to the Company.

MAWC reiterates at page 43 of its Brief its reasons for using STP in its "multi-district operation:" long term rate stability, similar operating characteristics of the districts, the equivalent services offered, both the allocated cost of service and the cost of service on a stand alone basis, and the principle of gradualism. (Stout, Exhibit 9, p. 14.) Alternatively, the Company proposes a "capital addition surcharge" to mitigate impact of the SJTP on rates in other districts "while preserving many of the benefits of STP." (MAWC Brief, p. 43.)

Once again we are told of the "long term rate stability" arising from STP. But the facts of this case demonstrate that STP has failed to provide any rate stability for this diverse district. Rate increases of the size requested here are not "stable" rates under any definition of the term. The Water Districts' Brief illustrates that "rate stability" is a highly relative concept and, in this system, a matter of degree only. The Water District (Brief, pp. 9, 11 and 12) posits that under STP everyone in the system gets a 50% plus increase, but that without STP some districts would have a higher increase if they had to pay their own costs of water service. They emphasize the percentage increase differences and particularly the notion that four out of MAWC's seven districts would be "substantially worse off under DSP than under STP." Left unmentioned by the Water Districts and the Company is that the four districts that are "worse off" under DSP contain far fewer customers than the districts supporting DSP, and that a greater number of people within the system are actually "better off" under DSP than under STP. One of those four "worse off" districts is the largest (St. Joseph) but it is also the one with a new plant that none of the other districts have. Whether this district is worse off or not is debatable. However, the argument over the number of rate shocked customers and the degree of the rate shock is beside the point. No one, not even the Company, can suggest that STP is benefitting the system with "stable rates." The Commission should, therefore, disregard the Company and Water Districts' manipulation of "statistics." The fact that some customers are rendered worse off in the view of the Company and Water Districts is not the fault of

the districts supporting DSP, as they seem to allege, but is a product of the failure of STP. The customers in Joplin, St. Charles and Warrensburg have not in any way contributed to the problems now identified for the remaining districts.

At page 8 of Water Districts' Brief, the claim is made that Municipal Intervenor's proposal would result in a 122% increase in rates for the St. Joseph District to reflect the additional revenue requirement impact of the new treatment plant. This claim is simply false, and it is clearly made to unfairly disparage DSP as the cause of "rate shock." The referenced Exhibit 57, Schedule 3-RD, p. 1, simply shows the effect of unjustifiable subsidies among the various districts that it would create. The Exhibit does not represent any rate design proposal put forth by either the Municipal Intervenor or the City of Joplin under DSP.

Indeed, the proposal that is actually made by these parties is that rates be phased in over a three-year period, with no annual increase exceeding 35%, for all districts *except* St. Joseph (see Exhibit 57, Schedule 5-RD). These Intervenor's have made no recommendation as to the appropriate increase for St. Joseph, other than to endorse the position taken by the St. Joseph Industrial Intervenor and OPC that a significant portion of the investment in the new treatment plant is imprudent (Municipal Intervenor's Initial Brief, p. 25), and that the Commission adopt the plant-related, staged increase approach proposed by Witness Harwig in his Exhibit 64, p. 3 (*Id.* at page 23). Thus, Water Districts' characterization of Municipal Intervenor's proposal is both unfounded and unwarranted.

The Company's analysis with regard to long term rate stability is also flawed. The Company states that "utility customer rates are dependent on the total expenses and rate base of the utility and the amount of the commodity which the utility sells." (MAWC Brief, p. 49.) Such an assertion misses the point of the rate design issue. While the recovery of the Company's costs and earnings through rates, from the Company's point of view, are always dependent on its total expenses, rate

base and sales, the inquiry here is who pays those rates? Payment of costs incurred in providing service to St. Joseph and charged to Joplin or Warrensburg or St. Charles is the issue. Paying more for less in these districts may be the Company's definition of rate stability but it is not the definition understood by customers who expect to pay just and reasonable rates for their service. The Company disregards the local nature of water service and the customer entirely.

At page 9 of their Initial Brief, Water Districts see fit to admonish that the perceived benefits of DSP for Joplin, St. Charles and Warrensburg may be illusory over time. These districts are not requesting any undue benefits or special treatment in this case. They are fully prepared to pay for the cost of capital improvements in their respective districts at such time as the investments are actually made by MAWC. What is "illusory" is the Company's suggestion that "what goes around, comes around" and all will be benefitted in the end by STP.

Further, the Company continues to substitute potentialities and possibilities for evidence in its support of STP. (MAWC Brief, pp. 49-52.) We are told that rate stability resulting from STP is needed because of increases in rate base which "may" result from future Safe Drinking Water Act changes, and that there is a "potential" for adverse impact on small or medium size utilities if this occurs. Further, it is proposed that if Joplin were required to replace its treatment plant the cost "could be" significant and Joplin might then someday benefit by saddling others with the cost. But if the record in this case demonstrates anything it is that this Company has no plans whatsoever for significant investment of capital in Joplin and that the Safe Drinking Water Act and its potential adverse impact amounts to pure guess work and speculation on the part of the Company. Not a shred of evidence supports the hypothetical horrors presented by the Company. It should be especially noted that in reiterating its belief that all costs should be shared by all customers rather than on a district basis because the Company predicts "regular" rate increases, the Company demonstrates that everyone will get their chance to pay more under its plan. Thus, any local opposition to Company

expenditures will be minimized and customers in districts like Joplin will be encouraged to spend more in their district to "get even." As a money-making business plan this makes good sense for the Company. As a regulatory rate design approach for customers it is a disaster.

The remaining rationale for single tariff pricing in MAWC's Brief is substantially responded to in Municipal Intervenors' Initial Brief. However, we re-emphasize that the operating characteristics of the several districts and the equivalence of service are badly mischaracterized by the Company. Rather than similarity of operating characteristics, the districts have widely varying operations. Rather than equivalent services, the Company provides customers widely varying quality throughout the districts and there is no equivalence even between customer classes in the seven districts. The Company tests the bounds of credulity in its redefinition of the terms "similar" and "equivalent." These factors constitute no support or basis for the Company's preference for STP rates. Similarly, reliance upon an analogy to the uniform rates in the electric industry is unavailing to the Company because of the obvious differences between electric utilities and water utilities. Additionally, the centralization and consolidation of operations and costs, to the extent possible in such a diverse set of water districts is no factor whatsoever. Diversity of these districts limits scale economies, and uniform rates will not change that. Moreover, the economies of scale to be achieved by centralizing those functions which can be applied regardless of whether STP or DSP is utilized. The Company fails entirely to explain why these currently centralized functions support use of single tariff pricing as a rate design instead of DSP.

Finally, although the Company dismisses in two sentences the dramatic cost differences related to the factors of average age of plant and level of treatment required (MAWC Brief, pp. 51-52), these are substantial cost differences which vary from district to district and argue strongly against any single or uniform tariff. MAWC's reference to size of the district, while confusing as a factor in support of STP, becomes simply irrelevant in explaining the alleged benefits to small

districts. The proposed STP rates result in subsidies to the largest district, and do so intentionally. Benefits to smaller districts, like detriments to those districts, are relative, as they will experience rate shock under either STP or DSP in this case; again, STP fails to deliver on the promise stated at page 52 of MAWC's Brief of stabilizing rates and preventing rate shock.

In summary, the rationale for single tariff pricing (MAWC's Brief, pp. 49-52) not only demonstrates the inappropriateness of STP but strongly suggests that even the Company recognizes STP's shortcomings in this system. A comparison of the reality of ten years of single tariff pricing with the alleged hypothetical and theoretical possibility of advantage at some time in the far distant future merely demonstrates that there is no rationale established by evidence for use of STP in this system.

Even less convincing than its proposed rationale for use of STP is the Company's response to criticisms of STP. (MAWC's Brief, p. 52-57.) Initially, it would be incorrect, on the basis of the evidence and testimony offered by DSP proponents, to conclude that the Municipal Intervenor's criticisms of STP are only three in number, as stated by the Company. (MAWC Brief, pp. 52-53.) However, Municipal Intervenor will reply to the three areas stated in the Company's Brief as representing those issues the Company believes it can at least respond to. The Company first addresses what it contends is the criticism of STP as not being "cost based." The Company notes that both STP and DSP are "cost based" in the sense that the Company's revenues to be recovered through rates are based on its cost to provide service. However, the Company states that neither DSP nor STP attempt to place the burden of payment for costs upon the cost causer. This is flatly incorrect and contrary to the evidence of record. (See Municipal Intervenor's Brief, p. 17.) The evidence is clear that DSP is far superior to STP in placing the burden of payment on the cost causer. Further, the complaint by the Company that the effort to determine the cost of serving "individual customers" would be enormous is skillfully disingenuous: no proponent of DSP (or anyone else)

suggests a requirement of individual rate payer rates. Instead, as witnesses Hubbs, Harwig and Busch have all confirmed, recovery of costs by class under a DSP rate design more closely and effectively places the burden of costs on the cost causer. (Exhibit 27, pp. 5, 12-13; Exhibit 42, pp. 4, 6; Exhibit 57, p. 15; Exhibit 62, pp. 10-11.) Therefore, the Company's diversion into the difficulties of determining costs per individual customer (MAWC Brief, p. 53) should be disregarded as irrelevant. This strawman argument, that DSP will require the Company to engage in assessing individual customer costs to set rates, reveals that the Company has no real response to the criticism of STP that it is anti-thetical to setting of cost based rates.

Similarly, the Company argues that the STP opponents' contention that there is less chance for undue subsidization on a district specific basis is untrue. The explanation of this (MAWC's Brief, p. 54), however, then makes no attempt to rebut the contention or prove the untruth of the allegation, but instead simply contends that "numerous subsidies" will remain even under DSP. The point, however, is the one intentionally overlooked by the Company: There is less chance for undue subsidization with rates set on a district specific basis. Proponents of DSP well recognize that it will not totally eliminate subsidization among members of a customer class. However, DSP provides the desirable opportunity to more closely make the cost causer the cost payer, and more appropriately eliminate undue and unnecessary subsidization. The difference is that STP makes no attempt to eliminate subsidization and in fact encourages and perpetuates it. DSP, while not a perfect system to match rates to customer costs, is far superior to achievement of the rate making goal of cost based rates.

At page 54 of its Initial Brief, MAWC also attempts to dispute the fact that STP creates greater subsidies among customer classes than does DSP. It dwells upon an extreme, and unlikely, example to illustrate its point. The Commission should not be misled by this deceptive argument. STP clearly adds another layer of distortion on top of any interclass subsidies that may be created

by DSP. If anything, STP can only serve to *exacerbate* interclass subsidies such as those illustrated in MAWC's Brief. MAWC would hold out STP as somehow being a cure for the interclass subsidies created by traditional DSP cost studies. Nothing could be farther from the truth. MAWC's attempt to support STP on the basis that other approaches are not perfect should be rejected as meaningless.

Finally, the Company charges that advocates of DSP elevate cost considerations above and to the exclusion of other factors that are appropriate in designing rates. (MAWC Brief, p. 54-57.) MAWC then cites Staff's rates as an example. However, Staff's studies are based on full revenue requirements, and not on its five-year phase-in proposal. Moreover, other parties, particularly Municipal Intervenors, have made other rate design proposals that do indeed embrace the principle of gradualism. Thus, MAWC's criticism is unfounded.

Moreover, while it might equally be said that the Company elevates other considerations (gradualism, value of service, understandability and ease of application, social and community concerns) to the exclusion of cost, the Company also does not explain why these other factors require STP. The Company simply takes the approach of the Water Districts, emphasizing only alleged extremes of increases under DSP without explaining for the Commission what the actual costs might be or how they might be handled. For instance, they note large increases under the Staff's proposed DSP rate design for the resale customers of the Brunswick district without acknowledging that there are only a few resale customers in the Brunswick district. Similarly, while noting selectively the spread between the highest increases and lowest decreases at the extremes of the customer classifications, the Company is careful not to concentrate on the beneficial effect of the Staff's rate design for the vast majority of customers within the system. The result for that majority is quite acceptable; and the adverse affects to the minority appear to be no worse than tolerable. However, one cannot make this determination on the evidence and argument of the Company because of its

attempt to articulate extremes in order to obfuscate any true comparison of STP to DSP rates. The result of the obfuscation is that it allows the Company to conclude (MAWC Brief, p. 55) that the DSP rates are “beyond the bounds of gradualism and do not recognize the value of service principle.” Gradualism is apparently in the eye of the beholder, and it is left as an undefined term on the evidence in this case. (Municipal Intervenor’s Brief, p. 33; Exhibit 28, p. 2; Exhibit 43, pp. 3-4; Exhibit 64, pp. 3-4; Exhibit 62, p. 2.) As also noted in Municipal Intervenor’s Initial Brief, no recognition should be given to the value of service principle, as it is completely alien to the concept of rates for a regulated utility. (Exhibit 62, p. 4.) Contentions that DSP is confusing because of separate and multiple rates is not only untrue (Exhibit 43, pp. 5-6) but, to the contrary, such rates will prevent the Company from “hiding the ball” in STP rates by advising rate payers of what their actual cost of service is likely to be. That is clearly not the case now under the Company’s proposed STP rates.

The Company appears genuinely offended by the criticism of DSP proponents that STP does not create sufficient accountability or incentives for efficiency, results in investments in extravagant, unnecessary facilities and does not permit customers to have a say in investments that are made in their respective districts. (MAWC Brief, p. 55.) Again, the present case contains ample evidence supporting the criticism. All of these criticisms have been lodged by rate payers at public hearings in this case. The Company simply asks the Commission to take its word for it that the appearance that MAWC is not accountable, has overbuilt and overspent in St. Joseph, and that it does not allow customers to have input is unimportant to rate design decisions. Under the evidence of record to the contrary, the Company’s word is not good enough. The Company also denies that the Company controls rate volatility, even though it alone determines its expenditures in the districts. The Company reiterates its argument that “the regulations and agencies make us do it” and that nature and customer demands, not corporate desire for expansion of rate base, drive capital improvements.

Simply repeating these arguments, however, does not make them credible. Logic and common sense, and the history of the St. Joseph Plant, leads one avoidably to the conclusion that criticisms in this regard are accurate. More importantly, however, if "customer demand" drives costs as the Company states, "customer knowledge" that those costs will be paid by him rather than someone else is an obvious advantage of DSP over what STP has caused in this case. Because it is left to the Company's judgment what state and federal agencies are requiring, there in fact is a substantial danger than extravagant and unnecessary facilities might be built without at least some counteracting pressure of public scrutiny by local rate payers. The testimony of James Landen, City Manager for Warrensburg, constitutes substantial credible evidence that permitting customers (and local governments) input in the investments that are to be made in their districts is not only cost beneficial to the Company and rate payers but is simply good public policy. While the Company may be correct that MAWC "alone" does not control rate volatility, the impression sought to be left by the Company that it is not the major player in controlling rate volatility by its decisions on when, where and how much is to be spent in varying districts is misleading. Additionally, the fact that "the Missouri River finds its way out of its banks on occasion" and that maintaining reliable quality service is "not inexpensive" are generalizations substituting for rationale, and are merely tangential to the rate design issue of who should pay and how much. There is no evidence that nature, customer demands or government regulation will disappear as considerations under STP anymore than they would under DSP. Again, only if one first uncritically accepts the Company's assumption that all costs must be spread across the entire system as a whole, without reference to significant cost differences between districts, can one recognize any role or give any credence whatsoever to the effects of regulation, nature and customer demand. The Company has it backwards: The appropriateness of STP must be determined suitable or not on the facts of the system, rather than reordering, recharacterizing or hypothecating new facts to suit the use of STP. Contrary to the

Company's assertions, the criticisms of STP for not creating sufficient accountability or incentives, raising the potential for investments in extravagant, unnecessary facilities and not permitting customer input in investments made in their respective districts are patently valid. The Company admits as much by asserting that "the suggestion that these requirements and constraints will miraculously disappear with the introduction of DSP is unrealistic." (MAWC Brief, p. 55.) Of course they will not disappear. No proponent of DSP has suggested they will. This begs the question, however, as to whether STP in any way serves the interests of accountability, efficiency, prudence and customer choice. The evidence shows STP does not serve these interests and DSP does.

Finally, the Company asserts that the values promoted by DSP of accountability, efficiency, prudence and customer choice "are not practical." (MAWC Brief, p. 56.) Municipal Intervenors disagree. Municipal Intervenors offer the evidence of Warrensburg City Manager Landen. (Exhibit 63.) This undisputed evidence establishes clearly that customers are willing to pay for adequate service to their district; that they do respond to price signals; and that they do wish to have input on choices which the Company makes for them. Rather than taking the word of the Company that it simply cannot respond to customer choice and provide a low cost product, the Commission should look to the evidence in this case concerning the City of Warrensburg and its water quality problem which shows MAWC can respond, can solve problems, and can save the rate payers money while doing so. The Company's overstatement of the burdens imposed upon it by these accountability, efficiency and prudence elements of a DSP pricing regime are simply the unsupportable whining of a monopoly used to doing things its own way.

The Company reiterates its assertion of superiority of STP in promoting rate stability, seeking to deflect criticism of STP in this case for not achieving that stated goal because of the proposed minimum increase in rates of over 50%. (MAWC Brief, p. 56.) Of course, rather than explain how

a 50% plus rate increase for every rate payer in their system constitutes "rate stability," the Company resorts to its traditional approach of criticizing any alternatives as imperfect. The Company apparently agrees with Municipal Intervenors that the choice in this case is between uniform rate shock and non-uniform rate shock, and is in no way a choice between rate stability and rate instability. DSP is, at bare minimum, the better "imperfect" choice of rate design; it serves the interests of cost based rates and minimizes subsidization.

Finally, the Company now guarantees more rate activity by the Company if DSP is utilized. (MAWC Brief, p. 57.) It is hard to view this as much of a threat in light of the regularity, size and frequency of rate cases filed by this Company over the last ten years that it has been operating under STP. While guaranteeing more rate activity under DSP, the Company is careful not to promise any reduction in activity under STP. The Commission should decline this pig-in-a-poke offer and choose the certainty, accountability, efficiency and cost-based rate design available under DSP.

### **THE CAPITAL ADDITION SURCHARGE**

MAWC proposes, as an alternative to adoption of its proposed STP rates, institution of a St. Joseph treatment plant rate surcharge. This is not actually an alternative: it is a method for the Company to divide and conquer the near unanimous opposition to STP of the districts (other than St. Joseph) and to preserve STP as the rate design for future expansion. Municipal Intervenors, as they have made clear, are not impressed with the Company's new plan to punish St. Joseph for imprudent expenditures in that district and will not drop their opposition to STP. Municipal Intervenors are opposed to the setting of rates under any variation of single tariff pricing. It is noteworthy that even the St. Joseph Water Supply Districts, which so vigorously support the Company's failed STP rate proposal, adamantly oppose the surcharge proposal as the "worst of all possible worlds." (St. Joseph Public Water Supply District Initial Brief, p. 13.) Municipal Intervenors reiterate that the surcharge is unnecessary and that a similar result can be achieved by

use of a DSP rate design with a phase-in, as proposed by several of the parties including Municipal Intervenor.

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BLITZ, BARDGETT & DEUTSCH, L.C.

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**CERTIFICATE OF SERVICE**

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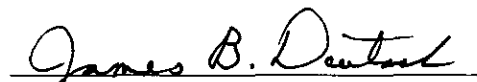
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