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December 4, 2003

FILED

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Missouri Public
Service Commission

VIA HAND DELIVERY

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

Re: In the Matter of the Application of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Charge (ISRS) Case No. WO-2004-0116

Dear Mr. Roberts:

On behalf of Missouri Energy Development Association, enclosed herewith please find an original and eight (8) copies of a Petition for Leave to File Amicus Brief and Amicus Brief of Missouri Energy Development Association, for filing with the Commission in the referenced matter. I would appreciate it if you would see that copies are distributed to the appropriate Commission personnel.

I have also enclosed an extra copy which I request that you stamp "Filed" and return to the person delivering them to you.

Thank you for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: [signature]

Janet E. Wheeler

PAB/ccp
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American	)	
Water Company for Approval to Establish an	)	Case No. WO-2004-0116
Infrastructure System Replacement Charge (ISRS)	)	

AMICUS BRIEF OF
<u>MISSOURI ENERGY DEVELOPMENT ASSOCIATION</u>

As stated in its Motion for Leave to File Amicus Brief, the Missouri Energy Development Association ("MEDA") seeks to address only one issue in this case relating to the Commission's implementation of the infrastructure system replacement surcharge (ISRS) authorized by the recently enacted House Bill 208 ("HB 208"). Specifically, MEDA will address the issue of whether Staff's recommendation that the ISRS charge be based on a consideration of *all* of the accumulated depreciation accrued since the utility's last rate case on *all* of the utility's plant can be reconciled with the requirements of the new law. For the reasons set forth below, MEDA respectfully submits that it cannot.

On or about October 31, 2003, the Staff filed its Recommendation and Memorandum in this case. On page 4 of its Memorandum, the Staff asserted that the amount of accumulated depreciation used in calculating the ISRS charge for Missouri-American Water Company ("MAWC") should be based on a ratio derived by comparing all of the accumulated depreciation accrued by MAWC since its last rate case to all of the plant placed in service by the utility over that same time-frame. Although the Staff states in its Memorandum that it "believes" such a ratio produces the amount that should be used in calculating the ISRS, it offers no analysis of the provisions of HB 208 that would support this position.

In fact, there is no basis upon which Staff's approach to this issue could be reconciled with the express statutory language set forth in HB 208. There is nothing amorphous, vague or ambiguous about the provisions of HB 208 that govern how the amount of accumulated depreciation is to be determined when calculating the ISRS charge. To the contrary, Section 393.1000(1)(a) could not be more clear or more precise when it says that ISRS revenues should be calculated based on "the net original cost of ***eligible infrastructure system replacements***, including recognition of ... accumulated depreciation associated with ***eligible infrastructure system replacements*** which are included in a currently effective ISRS." "Eligible infrastructure system replacements" are, in turn, defined as "utility plant projects" that "***[d]o not*** increase revenues by directly connecting the infrastructure replacement to new customers," Section 393.1000(3)(c), and that "were ***not included*** in the water corporation's rate base in its most recent general rate case." Section 393.1000(3)(d) (*emphasis supplied*).

Given this language, it is simply not possible to suggest, as Staff has, that ISRS revenues in general, or "net original cost" in particular, may be determined based upon a consideration of the accumulated depreciation associated with ***all*** utility plant, including utility plant:

(a) that has ***never been included*** in an ISRS;

(b) that will ***never even be eligible*** for such inclusion;

(c) that ***did*** increase revenues by directly connecting the infrastructure replacements to new customers; and

(c) that ***was included*** in the water corporation's rate base in its most recent general rate case proceeding.

Moreover, any such attempt to consider the depreciation accumulated on all utility plant would also run afoul of Section 393.1006.4 which specifically addresses and limits the factors that the Commission may consider when determining appropriate ISRS revenues. By expressly providing that the Commission shall only consider "the current depreciation rates applicable to the ***eligible infrastructure system replacements,***" subsection (6) of this statutory provision necessarily precludes any effort to consider depreciation rates applicable to all utility plant – a consideration that is inherent in Staff's proposed approach for calculating accumulated depreciation.

Finally, Staff's recommendation on this issue also conflicts with the legislative directive set forth in section 393.1006.2(2) of the new law. That provision provides that:

> The staff of the commission may examine information of the water corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1000 to 393.1006, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. *No other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1000 to 393.1006.*
>
> (emphasis supplied)

By expanding the scope of its examination, and its resulting recommendations, beyond the specific parameters spelled out in sections 393.1000 to 393.1006 for determining ISRS charges, the Staff has done what it is specifically prohibited from doing by this statutory language.

Under Missouri law, a statute must be enforced and implemented as written. ***Kearney Special Road District v. County of Clay***, 863 S.W.2d. 841, 842 (Mo. banc 1993); ***State v. Burns***, 978 S.W.2d 759 (Mo. banc 1998). In this case, proper allegiance to this fundamental principle of statutory construction requires that the Commission reject Staff's approach to determining the amount of accumulated depreciation that should be reflected in the calculation of the ISRS charge in this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 4th day of December 2003 to the following:

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