APPENDIX A

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel. MISSOURI-AMERICAN WATER COMPANY, Relator, v. PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.	)	Case No. 00CV325014
STATE OF MISSOURI ex rel. PUBLIC WATER SUPPLY DISTRICT NO. 1 OF ANDREW COUNTY, PUBLIC WATER SUPPLY DISTRICT NO. 2 OF ANDREW COUNTY, PUBLIC WATER SUPPLY DISTRICT NO. 1 OF BUCHANAN COUNTY, AND PUBLIC WATER SUPPLY DISTRICT NO. 1 OF DEKALB COUNTY, Relators, v. PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.	)	Case No. 00CV325196
STATE OF MISSOURI, ex rel. CITY OF ST. JOSEPH, Relator, v. PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.	)	Case No. 00CV325206

STATE OF MISSOURI, ex rel.
PUBLIC COUNSEL Martha Hogerty,

Relator,

v.

PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI,

Respondent.

Case No. 00CV325218

ORDER AND JUDGMENT

These matters come before the Court as requests for review of the lawfulness and reasonableness of certain portions of the Report and Order issued by the Respondent, Missouri Public Service Commission ("Commission"), on August 31, 2000 in Commission Case No. WR-2000-281. The Court, having reviewed the record and the briefs presented and having heard the arguments of counsel, makes the following Findings of Fact, Conclusions of Law and Judgment:

I. FINDINGS OF FACT

1. Respondent Commission is a state administrative agency created and established by the Missouri General Assembly to regulate water, sewer, gas, electric, telephone and steam heating utilities operating within the State of Missouri, pursuant to Chapters 386, 392 and 393 RSMo (2000). The Commission's principal office is located at 200 Madison Street, Jefferson City, Cole County, Missouri 65101.

2. Relator Missouri-American Water Company ("MAWC") is a Missouri corporation duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at 535 N. New Ballas Road, St. Louis, Missouri 63141. MAWC provides water service to the public and, accordingly, is a "water corporation" and

"public utility" as those terms are defined in section 386.020 (58) and (42), RSMo (2000).

3. Relators Public Water Supply Districts Nos. 1 and 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County ("St. Joseph Area Water Districts") are each political subdivisions of the State of Missouri. They are customers of MAWC and purchase water from MAWC for distribution and resale to their own customers.

4. Relator City of St. Joseph, Missouri ("St. Joseph") is a political subdivision located in Buchanan County, Missouri and receives water service from MAWC.

5. Relator Public Counsel Martha Hogerty ("Public Counsel") is designated by statute "to represent and protect the interests of the public in any proceeding before or appeal from the public service commission." Section 386.710.2, RSMo (2000).

6. In addition to MAWC, the St. Joseph Area Water Districts, St. Joseph and the Public Counsel, the Court granted status as Intervenors to the City of Joplin, Missouri ("Joplin"); AG Processing Inc. a Cooperative, Wire Rope Corporation of America, Inc., Friskies Petcare Division of Nestle Inc., and the City of Riverside ("St. Joseph Industrial Intervenors"); and the Cities of Warrensburg, St. Peters, O'Fallon, and Weldon Spring, Central Missouri State University, Hawker Energy Products, Harmon Industries, Inc., Stahl Specialty Company and Swisher Mower and Machine Company;.

7. The subject matters were initiated by the filing of the following:

	Date	Case No.
MAWC Petition for Writ of Review -	9/19/2000	00CV325014
St. Joseph Area Water Districts Petition for Writ of Review -	10/11/2000	00CV325196

City of St. Joseph Petition for Writ of Review -	10/13/2000	00CV325206
Public Counsel Petition for Writ of Review -	10/18/2000	00CV325218

8. On January 2, 2001, these matters were consolidated, for purposes of briefing and oral argument, with Case No. 00CV325014 designated as the lead case.

9. Two of the subjects for which review is specifically sought concern the construction of a new St. Joseph water treatment plant and related facilities (i.e. well field and pipeline) near St. Joseph, Missouri. The new plant and facilities were constructed at a total project cost of approximately $70 million.

10. MAWC's old treatment plant was located in the flood plain, four miles north of the city, adjacent to the river. Some parts of the structure were over 100 years old, construction having begun on the old plant in 1881. The old plant was modified and renovated numerous times after 1881. It drew its water supply from the river and was, consequently, subject to interference by both high water and low water conditions, which conditions had caused the plant to cease operations for multiple day intervals twice since 1989.

11. The new treatment plant is located above the flood plain and draws its water from wells, rather than directly from the Missouri River. The wells, while close enough to the Missouri River that they are recharged by it, are free from certain public health dangers posed by river water. The new plant is also largely automated and designed to operate with a minimum level of employees present.

12. John Young, P.E., the Vice-President of Engineering for the American Water Works Service Company, testified in support of the Company's claim that the construction of the new treatment plant and related facilities was reasonable and necessary, and that the costs

associated with the construction were prudently incurred.

13 Jim Merciel, P.E., an engineer employed by the Staff of the Commission, testified that it would have been imprudent for the Company to renovate the old plant, and also testified that the costs associated with the new treatment plant and related facilities were prudently incurred.

14. The Office of the Public Counsel presented the testimony of Ted Biddy and the St. Joseph Industrial Intervenors presented the testimony of Dr. Charles D. Morris. Mr. Biddy and Dr. Morris both testified that it was not necessary to construct a new treatment plant, and that the old plant could have been prudently renovated. Mr. Biddy testified that this could be accomplished at a cost of $36.3 million. Dr. Morris testified that this could be accomplished at a cost of $40.3 million.

15. When the new plant came on line, the old plant was retired and taken out of service. However, despite its age, the old plant was not fully depreciated. On the day the old St. Joseph treatment plant was retired its book value (investment minus depreciation) was $2,832,906. It was additionally estimated that it would cost approximately $500,000 to remove the old St. Joseph plant from service.

16. The new water treatment plant, which the Company installed in the St. Joseph District after the last previous rate case, cost about $70 million. Other improvements that the Company installed in the other operating districts of the Company after the last previous rate case cost about $25 million. Thus, the new water treatment plant in the St. Joseph District constituted the vast majority of the new plant that the Company installed after its last rate case.

II. CONCLUSIONS OF LAW

17. This Court has jurisdiction and proper venue to determine whether the

Commission's Report and Order in Commission Case No. WR-2000-281 is both lawful and reasonable as required by Section 386.510 RSMo (2000). "An order's lawfulness turns on whether the PSC had the statutory authority to act as it did," and "when determining whether the PSC's order is lawful, the appellate courts exercise unrestricted, independent judgment and must correct erroneous interpretations of the law." *State ex rel. Mobile Home Estates, Inc. v. Public Service Comm'n*, 921 S.W.2d 5, 9 (Mo. App. W.D. 1996). "The reasonableness of the PSC's order depends on whether it was supported by competent and substantial evidence upon the whole record; whether it was arbitrary, capricious, or unreasonable; or whether the PSC abused its discretion." *State ex rel. Inter-City Beverage Co., Inc. v. Public Serv. Comm'n*, 972 S.W.2d 397, 401 (Mo. App. W.D. 1998).

A. Decision to Construct the St. Joseph Treatment Plant and Related Facilities

18. The Commission found that MAWC's decision to construct the new plant and facilities was prudent. It stated that the "management of MAWC did use due diligence to address all relevant factors and information known or available to it when it assessed the situation and reached the decision to build a new treatment plant and develop a new ground water source of supply in St. Joseph. Consequently, the Commission must conclude that the decision to build the new plant and related facilities was not imprudent." (Report and Order, p. 45-46).

19. The Public Counsel attacks the lawfulness and reasonableness of the Report and Order of the Commission as it relates to the question of whether MAWC's construction of a new treatment plant and related facilities in the St. Joseph area was prudent.

20. No party challenged the Company's construction methods, or the procurement methods it used in constructing the new water treatment plant, or the reasonableness of the amounts that it actually expended in building the new treatment plant at St. Joseph. That is, no

party claimed that the Company actually carried out the construction in an imprudent manner; it was only claimed that the decision to construct a new water treatment plant, instead of renovating the old plant, was imprudent.

21. The credibility of a witness's testimony is for the fact finder to determine. *Clark v. Reeves*, 854 S.W.2d 28, 30 (Mo. App. W.D. 1993). The assessment of witnesses' credibility is implicit in the fact-finding process. *Old Fortress v. Myers*, 453 S.W.2d 692, 695 (Mo. App. W.D. 1970). In this case, the fact-finder is the Commission. The evaluation of expert testimony is left to the Commission, which "may adopt or reject any or all of any witnesses' testimony." *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880 (Mo. App. W.D. 1985).

22. Commissioners can make findings on the credibility of a witness, even if they were not personally present when the witness testified. *Ferrario v. Baer*, 745 S.W.2d 193, 198 (Mo. App. W.D. 1987). Commissioners are required, by § 536.080.2 of the Administrative Procedure and Review Act to either hear the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. *Kraus v. Director of Revenue*, 935 S.W.2d 71, 73 (1993). A commissioner who decides a case after reading the full record but without hearing the evidence does not violate due process. *Bean v. Missouri Commission on Human Rights*, 913 S.W.2d 419, 423 (Mo. App. 1996).

23. When a utility seeks a rate increase, the burden of proving that costs and expenses were prudently incurred is upon the Company. Section 393.150.2, RSMo 2000.

24. There is an initial presumption, though, that monies expended for investment in utility property were prudently incurred. *Southwestern Bell Telephone Co. v. Missouri Public Service Commission*, 262 U.S. 276, 289; 43 S.Ct. 544 (1923). *West Ohio Gas Co. v. Public*

Utilities Commission of Ohio, 294 U.S. 63, 72; 55 S.Ct. 316, 321 (1935).

25. However, when some participant other than the utility creates a "serious doubt" as to the prudence of an expenditure, the utility has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent. *Anaheim, Riverside, et al. v. Federal Energy Regulatory Commission,* 669 F.2d 799, 809 (D.C. Cir. 1981). When substantial evidence is introduced by the party against whom a presumption operates controverting the presumed fact, then its existence or nonexistence is to be determined from the evidence, exactly as if no presumption had ever been operative in the case. *Michler v. Krey Packing Co.,* 253 S.W.2d 136, 140 (Mo. Banc 1952).

26. The Commission addressed the St. Joseph Industrial Intervenors' and Public Counsel's evidence concerning relative costs in its conclusions. The St. Joseph Industrial Intervenors' witness on this issue was Charles D. Morris, Ph.D. The Public Counsel produced Mr. Ted Biddy on this issue. The Commission found "the cost estimates of Mr. Biddy and Dr. Morris to not be credible" and further found that testimony of Biddy and Morris to "lack credibility and to be unpersuasive." Report and Order, p. 44.

27. The Commission clearly stated its reasons for this conclusion as follows:

> the Commission notes that Mr. Biddy was shown on cross -examination to be inexperienced in the design of surface water treatment plants. Both Mr. Biddy and Dr. Morris were shown on cross -examination to have misunderstood planning and financial documents obtained from the Company through discovery. Both Mr. Biddy and Dr. Morris relied on very rough and preliminary cost figures which they used as a basis to criticize the far more detailed estimates developed by MAWC.

Report and Order, p. 44.

28. The Commission further noted these items from the cross-examination of Mr. Biddy and Dr. Morris:

> On cross-examination, Mr. Biddy admitted that he had never designed a water treatment plant supplying public drinking water from a surface water source. He had participated in the 1960s, as one of six design engineers, in the design and construction of a large surface water plant that produced non-potable water for industrial cooling. In 37 years of practice, this was the extent of his experience with surface water treatment. He had not studied the soil conditions at the old plant site to determine whether or not a levee could be undermined.
>
> On cross-examination, Dr. Morris admitted that his figures represented preliminary cost estimates, based on experience rather than on detailed design and engineering analysis. He admitted that any levee or flood-proofing work at the old plant site would require detailed soil analyses, in apparent contradiction to Mr. Biddy's position.

Report and Order, pp. 42-43.

29. The Commission acted within its discretion in finding that the testimony of Mr. Biddy and Dr. Morris was not credible, and that the testimony of Mr. Young and Mr. Merciel was credible. *See State ex rel. Associated Natural Gas v. Public Service Commission*, 37 S.W.3d 287, 294 (Mo.App. 2000) ("Since the testimony of both experts was properly presented to the Commission, it was up to the Commission to choose between the conflicting evidence presented as to the propriety of including the cost of the storage gas in the new rate calculations. We will not second-guess that determination." (Citations omitted)).

30. The Commission determined that the parties who challenged the Company's decision to construct the new water treatment plant failed to create a serious doubt as to whether that decision was prudent. The Commission's decision was supported by competent and substantial evidence on the record as a whole.

31. Nonetheless, the Commission examined the Company's decision under the reasonable-care-requiring-due-diligence standard, based on the circumstances that existed at the time the challenged item occurred, including what the Company's management knew or should have known, and determined that the Company had affirmatively shown that the Company's decision to construct the new water treatment plant was prudent.

32. The Commission reasonably determined, based upon competent and substantial evidence on the whole record that the Company's decision to construct the new water treatment plant at St. Joseph was prudent. The Commission's ruling on this issue was lawful and reasonable.

B. Premature Retirement

33. MAWC alleges that the Commission erred when it denied MAWC's recovery of depreciation amounts associated with the retirement of the old St. Joseph treatment plant because such denial was unlawful and unreasonable in that it operates as a confiscation of private property and the Commission's theory of "extraordinary supersession" is not supported by substantial and competent evidence on the record.

34. Depreciation rates for ratemaking purposes are set by the Commission, not the utility, in an attempt to match capital recovery with capital consumption. *See Re: Depreciation*, 25 Mo.P.S.C. (N.S.) 331, 334, (1982). In this case, the past analysis has proved incorrect and the depreciation rates have failed to match capital recovery with capital consumption. The

"premature retirement" issue in the Commission's Report and Order concerned how to address the undepreciated investment for ratemaking purposes in light of the construction of the new treatment plant and related facilities.

35. The Report and Order stated that the Commission denied MAWC recovery of these amounts because "MAWC is permitted a reasonable return only on the value of its assets actually devoted to public service" (i.e. because the old plant is no longer used and useful) and because it deemed the retirement of the old plant to be an "extraordinary supersession" based upon *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 329 Mo. 918, 941, 47 S.W.2d 102, 111 (1931). (Report and Order, p. 52).

36. A public utility has been found by the United States Supreme Court to have a right to the recovery of depreciation expense:

> Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. Annual depreciation is the loss which takes place in a year. In determining reasonable rates for supplying public service, it is proper to include in the operating expenses, that is, in the cost of producing the service, an allowance for consumption of capital in order to maintain the integrity of the investment in the service rendered.

Lindheimer v. Illinois Bell Telephone Co., 292 U.S. 151, 167 (1934).

37. The Missouri Supreme Court has confirmed this as follows: "A public utility is entitled to earn a reasonable sum for depreciation of its property, including necessary retirements, ordinary obsolescence and diminishing usefulness which cannot be arrested by repairs . . . ."

City of St. Louis, 47 S.W.2d at 111.

1. Used and Useful

38. A public utility receives both a "return on" its reasonable investments, as well as a "return of" its reasonable expenses. The Commission's use of the used and useful basis for its decision does not address the "return of" this unrecovered investment.

39. As stated previously, any depreciation reserve deficiency remaining at the end of the life of plant only remains because the Commission's own depreciation rates have not accurately tracked the life of the plant. Allowing the Commission to then require that such amounts which have been used in the service of the public to be "written off" and not recovered is unlawful.

2. Extraordinary Supersession

40. The Report and Order cites *State ex rel. City of St. Louis v. Public Service Commission*, 47 S.W.2d 102, 111 (Mo banc. 1931) for the proposition that the "abandonment of property which is never replaced, but is superseded by another instrumentality, as gas lamps by electric lights, or by another agency or company, is an extraordinary supersession." The Commission goes on to quote the Missouri Supreme Court as explaining that in these situations the utilities' "loss is 'one of the hazards of the game' . . . ."

41. The Commission's use of the "extraordinary supersession" exception[1] to this right of recovery identified in *City of St. Louis* is inapplicable to the case at hand.

42. The Report and Order does not differentiate between extraordinary supersession, and "ordinary obsolescence," the latter being accepted as a recoverable and necessary and proper

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[1] Or, as it is sometimes described, the "extraordinary obsolescence" exception.

part of the life of public utility assets. Only limited situations constitute extraordinary supersession and justify a denial of recovery. In this case, the decision to remove the old St. Joseph treatment plant from service was a natural extension of the Company's decision to construct the new St. Joseph treatment plant and related facilities – a decision the Commission found to be prudent.

43. Further, the old St. Joseph treatment plant was not "obsolete by reason of scientific discoveries and inventions." Water was not replaced by some other substance, agency or company, and the decision to use well water rather than river water as a source of supply is not an example of technological innovation. The Commission's finding that the Company's decision to replace the old plant with a new plant was prudent is inconsistent with the Commission's requirement that the Company forfeit its unrecovered investment in the old plant.

44. If no consideration is made for the net depreciation related to the old St. Joseph treatment plant, MAWC will suffer a taking or confiscation of its property in violation of the Fifth Amendment of the United States Constitution, applicable to the States under the Fourteenth Amendment, and Art. I, Sec. 26 of the Missouri Constitution. The record does not support the Commission's finding/conclusion that the old St. Joseph treatment plant was the victim of extraordinary supersession.

C. Single Tariff Pricing ("STP") v. District Specific Pricing ("DSP")

45. The Company provides water service to seven separate districts, which are St. Joseph, Parkville, Joplin, Warrensburg, Mexico, St. Charles, and Brunswick. None of these seven districts is interconnected with any other district. That is, each district has its own water supply and distribution system, and no water is transmitted from one district to another.

46. Single Tariff Pricing ("STP") is a rate design method under which the customers

in any one district of a system with multiple service areas, whether interconnected or not, pay for their water use according to the same rate schedule as the customers in any other district of such a system, regardless of whether or not there may be differences in the actual calculated cost of providing the service to the various districts.

47. District Specific Pricing ("DSP"), on the other hand, is a rate design method under which different rate schedules are applied to the customers in each of the various districts of the system based upon the separately determined cost of providing service in each district.

48. DSP and STP are different pricing policies used by regulators to deal with rising costs. The principal theory that supports the use of DSP is that the costs that the utility incurs in providing service to its customers should be borne, as nearly as possible, by the customers who cause the costs to be incurred. The principal theory of STP is that the actual costs of service to various customers will, in fact, be homogenized as different systems and components are upgraded or replaced over time, and that in the meantime it is socially preferable and equitable to mitigate price fluctuations among all customers.

49. Application of the STP method in this case would result in the customers in the St. Joseph District being a beneficiary of this social polity of cost mitigation. It would cause a substantially large proportion of the Company's costs that were expended to build the St. Joseph treatment plant to be spread to customers who receive no benefit from this plant.

50. Under DSP, the costs that are incurred specifically by one of the Company's districts are assigned to that district. In addition, the common costs that the Company incurs, which are not specifically incurred by any one district, must be allocated among the operating districts.

51. The Commission determined that it would "move away from STP and toward

DSP." Report and Order, p. 58. The Commission further clarified its decision in its Order of Clarification issued September 12, 2000, as follows:

> MAWC must calculate its revenue requirement separately for each of its seven districts, as though each were a stand-alone water company, applying the Commission's Report and Order as appropriate. The Commission stated in its Report and Order that it "will move away from STP and toward DSP" because it is clear, on the extensive record developed in this case, that the Joplin district will produce surplus revenue. Staff is correct in its suggestion that this surplus will be used to ameliorate the rate increase impact on the other six districts. A portion of the surplus, approximately $225,000, will be allocated as Staff suggests to the Brunswick district so that rates there will not exceed the highest rates established in any other of the company's districts. The remaining $655,000, will be allocated among the other five water districts, St. Joseph, Warrensburg, Parkville, Mexico, and St. Charles, to ameliorate the increased revenue requirement in each of these districts. The allocation to each of these districts will be in proportion to the increase of the revenue requirement for each district over the amount of revenue previously generated by that district.

52. The Commission has broad discretion to set just and reasonable rates. *State ex rel. Utility Consumers Council v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979); *State ex rel. Capital City Water Co. v. Missouri Public Service Commission*, 850 S.W.2d 903, 911 (Mo. App., W.D. 1993).

53. A "just and reasonable" rate is one that covers the cost of service and a reasonable return on assets dedicated to public use, and no more. *State ex rel. Washington University v.*

Public Service Commission, 308 Mo. 328, 344-345, 272 S.W. 971, 973 (Mo. Banc 1925).

54. It is not methodology or theory, but the impact of the rate order that counts in determining whether rates are just, reasonable, lawful, and nondiscriminating. *State ex rel. Associated Natural Gas Co. v. Public Service Commission of Missouri*, 706 S.W.2d 870, 879 (Mo. App., W.D. 1985).

55. The Commission is not required in this case or in any given case to adopt either a systemwide rate structure, such as STP, or a local unit rate structure, such as DSP. Nor must an expense item under a systemwide rate structure necessarily be spread over the entire system, regardless of the nature of the item involved. The Commission is also free to adopt a "hybrid system," or a "modified system," under which certain expense items are passed on to customers on a systemwide base, and other expense items are passed on to customers on a local unit basis. The Commission may allocate and treat costs in the way in which, in the Commission's judgment, the most just and sound result is reached. *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 933 (Mo. Banc 1958).

56. The Commission's decision to "move away from STP and toward DSP" was reasonably calculated to allocate the Company's cost of providing a service to the customer who caused the service, and was supported by competent and substantial evidence based on the whole record. This resulted in just and reasonable rates for each of the Company's operating districts.

57. Additionally, as to this issue, the Commission has based its findings of fact on the competent evidence put before it at the hearing, and made conclusions of law based on those findings.

58. The Commission's decision to move away from STP and toward DSP was lawful and reasonable.

D. Class Rate Design Issue

59. The Staff advocated the use of the "Base-Extra Capacity" method of allocating the Company's cost of service among the various classes of customers that the Company serves, such as residential, commercial and industrial customers. The Staff of the Commission provided an expert witness who applied the Base-Extra Capacity method on a district specific basis.

60. The principal purpose of the Base-Extra Capacity (or "BXC") method is to allocate the Company's costs so that the costs are borne, as nearly as possible, by the customers who cause the costs to be incurred. The Commission concluded "that Staff's class cost of service study, developed using the BXC method, is the appropriate method by which to allocate costs among customer classes in each district to design rates by which to recover appropriate revenues within each district." Report and Order, p. 61.

61. The Commission's decision to adopt the Staff's cost-of-service study, which was developed using the Base-Extra Capacity method was reasonably calculated to allocate the Company's cost of providing a service to the customer who caused the cost, and was supported by competent and substantial evidence based on the whole record. Also, as to this issue, the Commission's findings of fact set out the basic facts from which it reached its ultimate conclusion.

62. The Commission's decision to allocate costs based upon the Base-Extra Capacity method, which resulted in fair and reasonable interclass rate shifts, was lawful and reasonable.

E. Phase-In

63. The Commission decision in its Report and Order in Case No. WR-2000-281 concerning the issue of whether or not to "phase in" the authorized rate increase is not supported by adequate findings of fact and conclusions of law and, therefore, does not comply with the

requirements of Sections 386.420 and 536.090 RSMo (2000). *State ex rel. Noranda Aluminum, Inc. v. Public Service Commission*, 24 S.W.3d 243 (Mo.App. W.D. 2000).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that this matter be:

a) affirmed as to: the ruling that the decision to construct the St. Joseph treatment plant and related facilities was prudent; the ruling on the issue of single tariff pricing v. district specific pricing; and, the ruling on the class rate design issue;

b) reversed as to the "premature retirement" issue and remanded to the Public Service Commission for further proceedings consistent with this opinion; and,

c) reversed as to the "phase-in" issue and remanded to the Public Service Commission with instructions that the Commission make findings of fact and conclusions of law sufficient to support a resolution of the phase-in issue in Case No. WR-2000-281 and to permit the Court to determine whether such resolution is based upon and supported by the competent and substantial evidence on the whole record in that case and is otherwise reasonable and lawful.

IT IS SO ORDERED:

Date 5/25/01

THOMAS J. BROWN III, Circuit Judge