

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of October, 2008.

In the Matter of Missouri-American Water)
Company's Request for Authority to Implement)
a General Rate Increase for Water and Sewer)
Service Provided in Missouri Service Areas)

Case No. WR-2008-0311

**ORDER DENYING MOTION
FOR LEAVE TO FILE REBUTTAL TESTIMONY**

Issue Date October 30, 2008

Effective Date: October 30, 2008

On October 20, 2008, City of Riverside and Missouri Gaming Company filed a motion requesting leave to file out of time the rebuttal testimony of Michael Duffy, the Director of Community Development for the City of Riverside. Movants opine that its filing will prejudice no party because all parties will have an opportunity to cross-examine the witness and that it will suffer significant prejudice if the testimony is not permitted. Thereafter, Missouri-American Water Company filed a response opposing the motion.

Missouri-American argues that it will in fact be prejudiced because it will not have the opportunity to conduct discovery concerning the witness' allegations or the opportunity to file responsive surrebuttal. Missouri-American points out that the request was filed 10 days prior to the start of the hearing and that it is too late in the process for the Commission to grant Movants' request.

In its reply, Movants defend the request by emphasizing the importance of the issues addressed in the offered rebuttal testimony. They then argue that Missouri-American will

not be prejudiced because the relevant issues were raised at the local public hearing held in Parkville on September 9; furthermore, that they and Missouri-American have been informally discussing these issues over the course of the proceedings. Based on this, Movant concludes that Missouri-American has had time to conduct discovery. Movants finally point out that the transcript from the local public hearing was not available until October 2, which was after the deadline for filing rebuttal.

Discussion

Commission rule 4 CSR 240-2.130 (7) states that “direct testimony shall include all testimony and exhibits asserting and explaining the party’s entire case-in-chief.” Direct testimony was due no later than September 3. In all likelihood, the evidence that Movants offer existed prior to September 3 and should have been a part of their case-in-chief. If, however, the evidence is arguably in response to direct testimony filed by Missouri-American, rebuttal testimony was due September 30.

Even if the Commission gives any weight to the fact that the transcript of the local public hearing at which these issues were discussed was not available until October 2, Movants did not file this motion until October 20.

Not only is it questionable that this evidence should have been offered as part of their case-in-chief, Movants offer no reason for making its untimely request. The Commission will therefore deny the requested relief. The Commission notes, however, that local public hearings are part of the record and the testimony and evidence admitted at those hearings are considered by the Commission when making its final determination.

THE COMMISSION ORDERS THAT:

1. The motion for leave to file rebuttal testimony of Michael Duffy requested by City of Riverside and Missouri Gaming Company is denied.
2. This order shall become effective upon issuance.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Jarrett, CC., concur.
Clayton and Gunn, CC., dissent.

Jones, Senior Regulatory Law Judge