

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri-American	)	
Water Company's Request for Authority	)	
to Implement a General Rate Increase	)	Case No. WR-2007-0216 and
for Water Service Provided in Missouri	)	SR-2007-0217
Service Areas	)	

In the Matter of Missouri-American	)	
Water Company's Filing of Revised Sewer	)	
Tariff Sheets to Implement a Capacity	)	Case No. ST-2007-0443
Charge for Missouri-American's Warren	)	
County and Jefferson County Sewer	)	

JOINT REPLY BRIEF

COMES NOW the Office of the Public Counsel (Public Counsel), on behalf of Missouri-American Water Company (MAWC), the Staff of the Missouri Public Service Commission (Staff), the City of Warrensburg (Warrensburg), Missouri Industrial Energy Consumers (MIEC), the City of Parkville (Parkville), AG Processing Inc. (AGP), and itself and respectfully submits the following to the Missouri Public Service Commission (Commission) as their Joint Reply Brief:

I. Introduction

This brief is filed in response to the City of Joplin (Joplin) Post-Hearing Brief which was filed on September 7, 2007.

The Commission may resolve all or part of a contested case on the basis of a stipulation and agreement.¹ A nonunanimous stipulation and agreement to which a timely objection has been filed is considered to be merely a position of the signatory parties to the stipulated position and all issues will remain for determination after hearing.² A party may indicate that it does not

¹ 4 CSR 240-2.115(1)(B)

² 4 CSR 240-2.115(2)(D)

oppose all or part of a nonunanimous stipulation and agreement.³ The minimal requirements for Commission hearings guarantee that parties to a Commission proceeding have the right to be heard and to introduce evidence.⁴ Due process requires hearings before the Commission must be fair and the parties must be afforded a full and fair hearing at a meaningful time and in a meaningful manner.⁵

Joplin objected to the Nonunanimous Stipulation and Agreement (Nonunanimous Stipulation) only in part. In its August 30, 2007 Order Granting Motion to Modify Order and Amend Issues List, the Commission stated:

The parties affirmatively state: “None of the other issues addressed by the Nonunanimous Stipulation and Agreement [filed on August 9, 2007] have been objected to or are in dispute.” No other party, other than Joplin, disputes any of the issues previously identified in this case, or the issues presently identified by Joplin. Nor have any other issues been identified by any of the parties that require a Commission decision.

Joplin acknowledged that only two issues remain, and affirmatively stated in its Post-Hearing Brief that “[a]ll other issues addressed in the Non-Unanimous Stipulation and Agreement, except the two remaining issues are unobjected to by Joplin and thus unopposed.”⁶ Therefore, the Nonunanimous Stipulation has become a unanimous Stipulation and Agreement on all issues except those that Joplin specifically disputes.

Joplin was given the opportunity to have a fair and meaningful hearing on its issues. Only payroll tax annualization and allocation of corporate administrative and general expenses and corporate depreciation were at issue in the August 14, 2007 evidentiary hearing. Even so, Joplin attempts to expand arguments beyond those that were heard at the evidentiary hearing to include payroll annualization and allocation of corporate customer accounts and other general

³ 4 CSR 240-2.115(2)(E)

⁴ *State ex rel. Fischer v. PSC*, 645 S.W.2d 39, 41 (Mo. App. W.D. 1982)

⁵ *Id.* at 43

⁶ Joplin Post-Hearing Brief, p. 3, fn. 1

taxes. Joplin's result-oriented arguments provide no evidence that the payroll annualization and allocation of corporate expenses in the Nonunanimous Stipulation is unreasonable. Also, Joplin completely fails to discuss the issue of payroll tax annualization indicating that this is no longer an unresolved issue.

II. Only Allocation Of Corporate Administrative And General Expenses And Corporate Depreciation Were At Issue In The Evidentiary Hearing

According to the Commission's August 30th Order Granting Motion to Modify Order and Amend Issues List, one of the two issues in this case is the proper basis for allocating MAWC's corporate expenses to the various districts, to include administrative and general expenses, customer accounts, depreciation, and other general taxes. However, Joplin's List of Disputed Issues which was filed on August 10, 2007 pursuant to a Commission Order only lists corporate administrative and general expenses and corporate depreciation as disputed issues to be taken up at the August 14, 2007 evidentiary hearing. Joplin's August 10th filing goes on to say that Joplin does not oppose the resolution of any additional issues encompassed in the Nonunanimous Stipulation that it has not already identified in its pre-hearing filings or in this Statement. Therefore, the evidentiary hearing was based only on those disputed issues Joplin listed in its August 10th filing. The parties were not notified prior to the evidentiary hearing that customer accounts, general taxes or any other corporate expenses were disputed by Joplin and customer accounts and other general taxes were not taken up at the evidentiary hearing.

While Joplin states in footnote #5 of its brief that it is not challenging every corporate cost allocation, it also states that it is challenging those which do not rationally relate to their allocation basis. Joplin does not specify exactly which corporate expenses it believes do not rationally relate to their allocation basis. Therefore, Joplin seems to be leaving the door open to

include corporate expenses beyond those it gave notice of dispute for the evidentiary hearing. On the contrary, any arguments made beyond the disputed issues tried at the evidentiary hearing should not be allowed nor considered by the Commission.

III. Joplin Fails To Provide Evidence That Allocations Of Corporate Expenses In The Nonunanimous Stipulation Are Unreasonable

In its Suggestions in Opposition to the Stipulation and Agreement Filed On August 9, 2007, Joplin urged the Commission to reject the proposed Nonunanimous Stipulation and “...allocate MAWC corporate expenses in a rational manner...” Therefore, the question before the Commission is whether the allocation of corporate expenses reflected in the Nonunanimous Stipulation is reasonable and if not, what allocation would be reasonable.

Joplin’s brief states that the allocation factors proposed by its witness, Leslie Jones, in her testimony should be adopted by the Commission as being the appropriate allocation factors for the various costs referenced. However, Joplin fails to state which testimony of Ms. Jones it is referring to: the prepared rebuttal testimony filed under oath stating that all allocations should be based on length of mains or the live testimony stating that allocations should be based on a variety of allocators. Neither set of allocation factors proposed by Ms. Jones have solid backing in the evidence. Instead, Ms. Jones’ sudden change of heart between the filed testimony and the live testimony is indicative of a result-oriented witness rather than an expert who bases their testimony on reason, facts and calculations.

The evidence shows that Joplin’s arguments are result-oriented with the result being a lower revenue requirement for the Joplin District. Joplin’s counsel objected to Staff’s efforts to provide the Commission with accurate information by correcting a mathematical error in an allocation rate. The objection was premised on the change representing a 70,000 percent change

in the allocation rate and thus “changes every fact that the entire case has been prepared on.” (Tr. 267) The issue before the Commission (at least prior to Joplin witness Jones’ subsequent change of position once on the witness stand) of whether or not length of mains was a proper allocation basis did not change and the Commission correctly overruled Joplin’s attempt to keep an accurate quantification of the length of mains’ allocation factor out of the record. Joplin witness Jones subsequently testified that the Staff correction to the length of mains allocation rate had “some effect” on her change in recommendation for the proper allocation rate. (Tr. 374)

Further, in Joplin’s brief, Ms. Jones’ non-regulatory experience is cited as adding to her credibility as an expert in allocations. However, a review of either of her testimonies contradicts this assertion. In her initial testimony she attempts to leave little doubt regarding how her experience as a Joplin City official led her to confidently select length of mains as the proper allocation factor for corporate expenses. She emphatically states that “There are several factors that would be more appropriate than the current factors, the most appropriate factor being ‘Length of the Mains’.” (Joplin Ex. 1, p. 2) As to the question why, Ms. Jones states “Because the amount of usage of corporate services is directly tied to the actual infrastructure on the ground in an utilities environment. Other allocation factors do not accurately reflect the needs and uses of corporate resources to the extent infrastructure bases would. As the Finance Director for the city of Joplin, we also have allocated certain city overhead, and have found the best method is that of infrastructure measurement.” (Joplin Ex. 1, p. 2) However, as was heard in her subsequent oral testimony, her experience driven convictions were easily swept aside when the “length of the mains” allocation factor did not produce the desired results.

The only expense that Joplin maintains should be allocated based on the “length of the mains” allocation factor is depreciation expense. Joplin argues that Ms. Jones’ proposal of using

length of mains as the appropriate allocation factor for depreciation expense should be implemented because length of mains is rationally related to the depreciation expense. However, it should also be recognized that Ms. Jones' length of mains allocator completely ignores other infrastructure investments that are necessary to provide service such as water treatment facilities, wells, storage tanks (both elevated and ground) and pumping stations to name a few.

In Ms. Jones "expert" opinion in her oral testimony, she supported the payroll allocation factor for distributing employee related corporate expenses like pensions and benefits. (Tr. 342) However, she did not include supervisory corporate salaries in this list. The one item that makes the most sense to allocate to the districts based on payroll, is surprisingly allocated based on customers. (Tr. 342) Evidently, the allocation of payroll related expenses do not follow the allocation of the payroll upon which these expenses are based.

In its brief, Joplin states that "other taxes" should be allocated based on the number of customers rather than by the current allocation method of net plant. Joplin fails to mention that "other taxes" primarily includes property tax. Property tax assessments are based on net plant. Therefore, it is an absurd argument to state that "other taxes" should be allocated based on number of customers rather than net plant.

Joplin now asserts that "[w]itness Jones is the only witness who testified to having experience in allocating costs in her normal course of work, outside of rate cases,"⁷ apparently referring to Ms. Jones' testimony that she "allocated" costs among Joplin city budgets based on "infrastructure". Joplin's brief fails to mention that allocation of expenses *within* a city may well differ from the mechanisms appropriately employed to allocate expenses *among and between* separate non-connected public utility service territories. Allocating expenses among and between separate non-connected public utility service territories is precisely what Staff witness,

⁷ *Id.*, p. 4

Rackers, does and has done for many years. (Staff Ex. 5) Joplin's attempt to minimize Mr. Rackers' experience by asserting that he hasn't taken "continuing education" courses on corporate cost allocation⁸ suggests that Joplin believes such allocations should change over time rather than remaining constant from one case to the next.

Moreover, Joplin asserts that "...St. Louis and St. Charles ratepayers see only a fraction of the rate increase of Joplin ratepayers. Much, if not most, of that disparity is a result of such corporate allocations."⁹ Unfortunately for Joplin, its own somewhat result-oriented attempt at allocating these expenses in a manner it apparently believes is "rational," reveals a differential of only \$85,000.¹⁰

Joplin has failed to show that its proposed resolution of the issue of allocation of corporate expenses is just and reasonable, and supported by competent and substantial evidence in the record. Overall, Joplin has no solid evidence in the record to support its arguments. Joplin's argument that allocation of corporate expenses should be based on Ms. Jones' result-oriented allocation factors is not reasonable. "Expert" testimony such as this should not be relied on by the Commission to determine a rational allocation of corporate expenses.

Joplin's issue that the corporate expenses be allocated in a rational manner is appropriately and reasonably resolved by the Nonunanimous Stipulation. The use of payroll as a primary allocator is appropriate and consistent with previous MAWC rate cases as well as other utility rate cases and is also consistent with previous Commission's decisions. Therefore the evidence shows that that the corporate expenses have been allocated in a rational manner within the Nonunanimous Stipulation and the Nonunanimous Stipulation reflects the desire for reasonable allocations sought by all the Parties including Joplin.

⁸ *Id.*, p. 4, fn. 4

⁹ *Id.*, p. 4, fn. 3

¹⁰ Staff Final Reconciliation, September 17, 2007

IV. Payroll Annualization Not An Issue In This Case

According to the Commission's Order Granting Motion to Modify Order and Amend Issues List, payroll annualization is not one of the two issues in this case. Also, payroll annualization was not included as an issue in the August 14, 2007 evidentiary hearing. However, in its brief, Joplin attempts to include payroll annualization as an issue beyond those approved by the Commission. Any arguments made beyond the issues list should not be allowed nor considered by the Commission.

Even if payroll annualization was an issue in this case, Joplin gave no credible argument as to why the Nonunanimous Stipulation does not reflect proper allocation of payroll annualization. Joplin focused its meager argument regarding payroll annualization simply on a statement that the annualization of payroll attributed to Joplin has no merit or substance. No calculations were provided to the Commission which would substantiate Joplin's claim. Joplin provided no backing from the transcript of the evidentiary hearing to prove its statements. Joplin also provides no arguments that the payroll attributed to other districts has no merit or substance. In fact, in its Statement of Filing of Calculations (filed August 22, 2007), Joplin states that "there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones' testimony on August 14, 2007." Accordingly, it is not clear what, if any, objection Joplin has with the payroll annualization amounts.

Looking beyond the fact that payroll annualization was not at issue in this case, it is clear from Staff's testimony that payroll has been accurately calculated and appropriately annualized. (Staff Ex. 3 & 4; Tr. 239-261) Joplin did not and cannot provide a better alternative. Ms. Jones provided no testimony on this topic other than to merely insert the word "payroll" in her rebuttal testimony as one of her "corrections". The argument in Joplin's brief is purely a statement that

Joplin does not like the annualized payroll attributed to the Joplin District. Joplin's request is that the Commission strip the payroll annualization in its entirety from the Joplin District's rate base. Presumably, what is being referred to in this request is not the Joplin District's "rate base" but rather its "expense". Joplin's assertion that customers should bear zero responsibility for MAWC employees that facilitate the service provided to them is patently absurd but consistent with Joplin's result-oriented attempt to lower its district specific revenue requirement.

Joplin has failed to show that its proposed resolution of the issue of payroll annualization is just and reasonable, and supported by competent and substantial evidence in the record. Without evidentiary backing to support Joplin's argument that payroll annualization is an issue in this case or that the recovery from customers is inappropriate, the Commission should deny Joplin's request that the Commission strip payroll annualization in its entirety from Joplin's rates as reflected in the Nonunanimous Stipulation.

V. Payroll Tax Annualization Not Discussed In Joplin's Brief

Even though Joplin originally focused on payroll tax annualization as an issue in this case, there was no mention of payroll tax annualization and no argument that the payroll tax annualization reflected in the Nonunanimous Stipulation was calculated in error. One must assume that payroll tax annualization is no longer an unresolved issue for Joplin. Even so, it is clear from Staff's testimony that payroll taxes have been accurately calculated and appropriately annualized. As mentioned above, in its Statement of Filing of Calculations (filed August 22, 2007), Joplin states that "there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones' testimony on August 14, 2007." Accordingly, it is not clear what, if any, objection Joplin continues to have with the payroll tax annualization amounts.

Joplin has failed to provide a proposed resolution of the issue of payroll tax annualization which is just and reasonable, and supported by competent and substantial evidence in the record. Therefore, the Nonunanimous Stipulation reflects a fair and reasonable calculation of payroll tax annualization and the Commission should adopt the payroll tax annualization reflected in the Nonunanimous Stipulation.

VI. Joplin's Evidence Is Not Persuasive

Since the Nonunanimous Stipulation was opposed by Joplin, Joplin was given the opportunity to state whether it opposed all or part of the Nonunanimous Stipulation. Joplin clarified in its Revised List of Disputed Issues, the Amended List of Issues and Joplin's Post-Hearing Brief that it objected to the Nonunanimous Stipulation only in part.¹¹ Therefore, the Nonunanimous Stipulation has become a unanimous Stipulation and Agreement on all issues except those that Joplin specifically disputes.

Per Joplin's List of Disputed Issues which was filed on August 10, 2007 pursuant to a Commission Order, only payroll tax annualization and allocation of corporate administrative and general expenses and corporate depreciation were at issue in the August 14, 2007 evidentiary hearing. Throughout subsequent filings, Joplin expanded its arguments beyond those that were heard at the evidentiary hearing to include payroll annualization and allocation of corporate customer accounts and other general taxes.

Joplin was afforded a fair and meaningful hearing on the issues it objected to. The signatories to the Nonunanimous Stipulation hold the position that the Nonunanimous Stipulation is a fair and reasonable resolution of the case. Joplin holds the position that, as to payroll tax annualization for the Joplin District and the proper basis for allocating corporate

¹¹ See Joplin's Post-Hearing Brief, filed September 7, 2007, p. 3, fn. 1 ("All other issues addressed in the Non-Unanimous Stipulation and Agreement, except the two remaining issues, are unobjected to by Joplin and thus unopposed.")

expenses to the various districts,¹² the results contained in the Nonunanimous Stipulation are not fair and reasonable.

Joplin's result-oriented arguments provide no evidence that the payroll annualization and allocation of corporate expenses as reflected in the Nonunanimous Stipulation is unreasonable. Also, Joplin completely fails to discuss the issue of payroll tax annualization indicating that this is no longer an unresolved issue. MAWC witness Grubb and Staff witness Rackers both gave opinions that the Nonunanimous Stipulation represented a fair and reasonable accommodation of all the interests of all the parties. (Tr. 179-180, 319-320)

Joplin may be partly correct in its statement that "[a]s a Joint Recommendation, the positions filed in that Joint Recommendation are given no special benefit and the traditional burdens remain before this Commission,"¹³ but it does not follow that Joplin is excused from providing convincing support for its arguments. While the requirements of due process entitle Joplin to a hearing on the issues it disputes, it does not mean that the other parties are no longer entitled to insist that Joplin prove its contentions that its proposed mechanisms of annualization of payroll and allocation of corporate expenses are more "rational" and to do so with credible evidence. It should not be sufficient to simply argue that the resolution of these issues are not "rational," yet provide neither credible evidence why they are irrational nor credible evidence of some more "rational" resolution method. Therefore, Joplin has failed to show that its proposed resolution of the issues is just and reasonable, and supported by competent and substantial evidence in the record.

¹² To include administrative and general expenses, customer accounts, depreciation, and other general taxes.

¹³ Joplin Post-Hearing Brief, p. 1

VII. Conclusion

Joplin objects to the Nonunanimous Stipulation only in part. Joplin acknowledges that only two issues remain, and states that all other issues addressed in the Non-Unanimous Stipulation and Agreement are unobjected to and thus are unopposed. Therefore, the Nonunanimous Stipulation has become a unanimous Stipulation and Agreement on all issues except those that Joplin specifically disputes.

Throughout this case, Joplin has continually changed its path causing confusion of the issues. Issues for Joplin appear and disappear seemingly at random. Joplin attempts to expand arguments beyond those that were heard at the August 14, 2007 evidentiary hearing. Joplin, through its pleadings, objections and witness, has changed positions throughout this proceeding in a manner that can only be described as result-oriented with the result being a lower revenue requirement for the Joplin District.

Joplin had its “day in court” but failed to provide the Commission with solid evidence as to why the Nonunanimous Stipulation is not a fair and reasonable settlement of the issues in this case. Joplin has failed to show that its proposed resolution of the issues is just and reasonable, and supported by competent and substantial evidence in the record. Accordingly, the Commission should issue an order approving the Nonunanimous Stipulation and rejecting Joplin’s arguments regarding the specific issues it has raised with respect to that Nonunanimous Stipulation.

Respectfully submitted,

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