

**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 for) Case No. WR-2015-0301
Water and Sewer Service Provided in)
Missouri Service Areas.)

PUBLIC COUNSEL’S MOTION FOR RECONSIDERATION

COMES NOW the Office of the Public Counsel (“Public Counsel”) and pursuant to 4 CSR 240-2.160(2) moves the Public Service Commission (“Commission”) reconsider its May 11, 2016 *Order Directing Staff to File Scenarios*, as follows:

Motion for Reconsideration

1. Motions for reconsideration “shall set forth the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.” 4 CSR 240-2.160(2). The Commission’s Order is unreasonable because it directs Staff to create new evidence for the Commission’s consideration after the record is closed. The Order is unreasonable and unjust because it provides the parties in this case only one day to respond to new evidence filed by the Staff; a timeframe insufficient to review, conduct discovery, analyze, or otherwise vet the scenarios to prepare a rebuttal.

Evidentiary Record is Closed

2. Reply briefs were submitted in this case on April 22, 2016. As such, the evidentiary record of this case closed on April 22, 2016 at midnight. *See* Commission Rule 4 CSR 240-2.150(1)(“The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.”); *Alba v. Laclede Gas Company*, Case No. GC-2007-0445, Order Denying Motion to

Produce and Order Directing Filing, 2008 Mo. P.S.C. LEXIS 391, *3 (Mo. P.S.C. 2008) Under that case, “(m)idnight of the day the final brief would have been due is the day the record was submitted to the Commission.”

3. The record in this case cannot be reopened at this late stage. Commission rules provide “a party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, *but before* briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or oral argument.” 4 CSR 240-2.110(8)(emphasis added).¹ In this case, briefs were filed after the hearing. Furthermore, even if the Commission’s rules provided the record may be reopened after briefs have been filed, no “justification for taking additional evidence including material changes of fact or of law alleged to have occurred since the conclusion of the hearing” has been offered. *Id*; *See* Doc. No. 406.

The Commission Cannot Rely on Staff’s Scenarios in its Decision

4. In its Order requesting Staff to prepare and file scenarios, the Commission reveals its apparent intent to rely on the additional evidence stating: “[d]uring its deliberations, the Commission has questioned the impact on customer rates that will result from its decisions. To answer those questions, the Commission will direct its Staff to respond to the scenarios described in this order.” (Doc. No. 406). Public Counsel does not question the Commission’s ability to direct its Staff to prepare scenarios. However, the Commission may not rely on those scenarios in making its decision. Mo. Rev. Stat. § 536.070(5) reads, “[r]ecords and documents of the agency which are to be considered in the case shall be offered in evidence so as to become a part

¹ Neither the Commission nor the presiding officer(s) are parties to this case.

of the record, the same as any other evidence[.]” As explained above, whatever scenarios the Commission’s Staff are able to prepare are not evidence in the record.

5. Even if the Commission does not ultimately base its decision on the new evidence of Staff’s forthcoming scenarios, it should reconsider its order. The Supreme Court has expressed disapproval of the Commission examining studies performed by its staff after the close of evidence. *See State ex rel. Hotel Continental v. Burton*, 334 S.W.2d 75, 88 (Mo. 1960)(stating “...the practice disclosed is not recommended or approved[.]” Although the Court determined the Commission did not base its report and order on studies made by staff after close of evidence, the practice was not approved and the Commission should endeavor to avoid a similar situation.

No Adequate Time for Response

6. The Order is unreasonable and unjust because it provides the parties insufficient time to respond to the new evidence to be filed by the Staff. Creating the scenarios requested by the Commission in the timeframe provided will be impossible to respond properly. One day is not sufficient to review, conduct discovery, analyze, or otherwise vet scenarios to prepare a rebuttal. Because the Commission cannot rely on the scenarios, it should not require its Staff or the parties to prepare and respond to new evidence at this late stage in the case let alone to only give other parties one day to respond. The Commission must base its decision upon the evidence presented by the parties before the close of evidence.

WHEREFORE, Public Counsel respectfully requests the Commission reconsider its *Order Directing Staff to File Scenarios*.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 16th day of May 2016:

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