

FILED<sup>3</sup>

SEP 13 2000

STATE OF MISSOURI  
MISSOURI PUBLIC SERVICE COMMISSION

Missouri Public  
Service Commission

In the Matter of Missouri-American )  
Water Company's Tariff Sheets De- )  
signed to Implement General Rate )  
Increases for Water and Sewer Ser- )  
vice provided to Customers in the )  
Missouri Service Area of the Compa- )  
ny )

WR-2000-281  
SR-2000-282  
(Consolidated)

APPLICATION FOR REHEARING OF  
GILSTER MARY-LEE CORPORATION

COMES NOW GILSTER MARY-LEE CORPORATION ("Gilster") and pursuant to Section 386.500.1 RSMo. 1994 applies for rehearing of the Commission's August 31, 2000 Report and Order, the September 1, 2000 Notice of Correction of said Order, and the September 12, 2000 Order of Clarification all concerning Missouri-American Water Company (hereinafter "MAWC"). Gilster is an interested person or corporation, operating a large commercial facility in Joplin, Missouri and receives service from MAWC. As a result of the Commission's decision herein, Gilster and other similarly situated Joplin district ratepayers will receive a substantial increase to its costs of water service despite the purported decision that there will be no increase to the Joplin district and despite Commission-issued publicity to that effect. Accordingly, until entry of a certain Order of Clarification, Gilster had no rational reason to believe that it and other similarly situated ratepayers in the Joplin district would receive substantial increases.

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In addition, for the reasons stated hereinafter, Gilster requests that pending the decision on such application and the decision on rehearing, if such application is granted, that any rate increases contained in MAWC tariff sheets purportedly authorized by this filing with respect to its service class in Joplin, Missouri be stayed or in the alternative that any such increases be ordered approved on an interim basis subject to refund until the Commission renders a decision on rehearing; and that the Commission give expedited consideration to this motion.

I.

The Order is unlawful, unjust and unreasonable in that the Commission has failed to provide adequate findings of fact related to the record as required by law thereby making it impossible for Gilster to specify with particularity the factual errors that are contained in such Order. Accordingly, the Order violates Gilster's rights to due process as guaranteed by the United State and Missouri Constitutions by attempting to deny it access to the courts and should be set aside as unlawful and unconstitutional forthwith.

II.

Without prejudice to the foregoing specification of error, the aforesaid Order is arbitrary, capricious, unlawful, unjust, unreasonable and unconstitutional on the following grounds:

1. The Order is unjust, unreasonable, unlawful and arbitrary and capricious in that despite undisputed and irrefut-

able evidence of record that the proper cost of service for the Joplin district was below the current rate levels by as much as \$800,000 annually, the Commission nevertheless unlawfully failed and refused to reduce the Joplin district's rates to proper rate levels. As a result, the Order is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is of record and is further based on inadequate findings of fact and conclusions of law and is otherwise unlawful and the resulting rates are unjust, unreasonable and unlawful.

2. The Order is unjust, unlawful, unreasonable and unconstitutional in that the Commission purported to rely upon a "principle" that no district's rates should be reduced when any district's rates are increased. No authority was cited for such "principle" and as a result the Commission openly and unlawfully failed and refused to reduce the Joplin district rates despite clear and undisputed evidence that such rates are in excess of proper district costs by as much as \$800,000. As a result, the Commission's Order is not supported by competent and substantial evidence on the whole record, is contrary to the competent and substantial evidence that is of record, and is otherwise unlawful.

3. By perpetuating the cost spreading methodology identified as Single Tariff Pricing (hereinafter referred to as "STP") with respect to the Joplin district the Commission has acted unlawfully in that such methodology charges costs that are

exclusively incurred to provide service to customers in other MAWC service districts to customers in the Joplin district who neither cause such costs nor receive benefit from their expenditure.

4. By perpetuating the cost spreading methodology identified as STP, and failing and refusing to fully direct termination of same with respect to the Joplin district, the Commission has acted unlawfully in that such methodology charges the costs that are associated with utility property that is exclusively devoted to the provision of service to customers in other physically distinct and separate MAWC service districts to customers in the Joplin district who neither receive service from such property nor cause costs associated with such property to be incurred.

5. By perpetuating the cost spreading methodology identified as STP, the Commission has acted unlawfully, unreasonably and in contravention of the undisputed evidence of record in this proceeding that the Joplin district was being charged roughly \$800,000 in excess of district costs under current rates. Having undisputed evidence of such overcharges, the Commission is obligated under Section 393.130 RSMo. 1994 to act to rectify such unjust and unreasonable overcharges and subsidies in that such overcharges subjects such locality and customers therein to unreasonable and undue prejudice and disadvantage and charges rates in excess of just and reasonable rates for the water service rendered.

6. The Order is unjust, unlawful, unreasonable and unconstitutional in that the Commission failed to find that the proper rate of return for the applicant utility's common equity was 9.30 percent which figure was fully supported by competent and substantial evidence on the whole record. Accordingly, the Order is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is of record.

7. The Commission failed to make findings of fact or conclusions of law regarding the proper method to use to allocate costs to customers and classes of customers using mains that are smaller than 10" and those that utilize mains that are 12" and larger. This issue was clearly tried and argued before the Commission, yet the Commission wholly failed to rule on this issue and on the implications thereof. The parties to a proceeding before the Commission are entitled to a Commission decision on matters that are presented to the Commission for decision. In the Commission's Brief in *Midwest Gas Users' Association v. Public Service Commission*, Cole County Circuit Court Case No. CV197-504CC, the Commission acknowledged that its failure to decide a contested issue in the Missouri Gas Energy GR-96-285 proceeding "likely" constituted error. (Commission Brief, p. 3). In that case, the Circuit of Cole County determined that the Report and Order in GR-96-285 was also unlawful and unreasonable in violation of Missouri law **insofar as the Commission failed to rule on such legitimate and identified issue.** (Findings of Fact,

Conclusions of Law and Judgment, pp.6-7). In this proceeding, the Commission cannot lawfully ignore issues that the parties have fully tried and must give decisions thereon, fully substantiated by appropriate findings of fact and conclusions of law that are supported by such findings. In failing to do so, the Commission has acted arbitrarily and unlawfully with respect to this issue.

8. The Order is unlawful, unjust and unreasonable in that it failed to recognize that Staff's rate design employed identical peak day and peak load data for each district when, in fact, such parameters vary from district to district. The Order fails to address this issue at all despite it having been raised by the parties as an issue. As a result, and for the same reasons as stated infra, the Order is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is of record and is further based on inadequate findings of fact and conclusions of law.

9. The Order is unjust, unlawful, unreasonable and unconstitutional in that the actions employed and taken by the Commission and by individual Commissioners during the post-submittal public deliberation of this case denied Gilster due process of law and failed to constitute a fair or impartial procedure in that

a. Despite purporting to reject **ex parte** filings by their Staff and by other parties, the interlocutory interim

orders issued by the Commission during the conduct of the post-briefing processes nevertheless revealed that the Commission reviewed said filings and in fact considered them in their deliberations. Evidence of such consideration is found in the interim orders themselves as well as at page 13 of the Order.

b. During agenda sessions and public discussions of this case individual Commissioners produced and relied upon extra-record material such as newspaper articles and potentially other materials that were never produced in the hearing room, were, in fact, produced after the hearing was concluded, were never provided to other parties, and those parties were never provided an opportunity to object to their use or consideration by the Commissioners. Such actions contaminate the decision herein, and make it unlawful, unjust, unreasonable and unconstitutional.

c. That the Commission even sought to obtain post-submittal materials from selected parties to the proceedings in the form of "late filed exhibits" and "scenarios" which as a result of the timing of such requests could not have been provided to the parties and could not be the subject of proper cross-examination demonstrated that rather than considering the evidence that was of record and that constituted the record, the Commission was concerned with assessing supposed "impacts" and other extra-record matters in reaching their decision and in so doing the Commission denied Gilster due process of law and equal protection of the laws, acted arbitrarily, capriciously, injudi-

ciously, and results in an Order that is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is of record, is unlawful, unjust, unreasonable and unconstitutional.

WHEREFORE for the foregoing reasons, Gilster seeks and requests rehearing of the Order as aforesaid.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.




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ATTORNEYS FOR GILSTER MARY-LEE  
CORPORATION

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to the parties of record or their representatives as disclosed by the Commission's records in this proceeding.

Dated: September 13, 2000



Stuart W. Conrad