BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increases for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company.	))))))	Case No. WR-2000-281, et al.

CITY OF JOPLIN'S APPLICATION FOR REHEARING OR RECONSIDERATION OF REPORT AND ORDER ON REMAND, ISSUED DECEMBER 4, 2007

COMES NOW Intervenor, City of Joplin, pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160, and respectfully seeks rehearing or reconsideration of the December 4, 2007, Report and Order on Remand[1] issued in this case on the following grounds:

The Commission's December 4, 2007 Report and Order on Remand at page 6 asserts that district specific pricing, in its pure form, is "not in the public interest because it would cause serious rate shock among the consumers in some districts." This statement is directly contradictory to the provisions of Section 393.130(3), RSMo. This provision prohibits discrimination against any locality, such as Joplin, to the benefit of any other locality.

> No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (Emphasis added.)

Id. The position taken by the Commission results in ratepayers in Joplin paying higher rates to the sole benefit of other localities. This conflict cannot be reconciled with unsupported statements of

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[1] A copy of the Report and Order on Remand is attached hereto as Exhibit A.

the "public interest" as the Commission has attempted to do in its Report and Order.

In a short two paragraphs, the Commission has entered into a compact with the ratepayers in Brunswick, Mexico and Parkville, to the detriment of the Joplin ratepayers. This is exactly the discriminatory treatment that is PROHIBITED by Section 393.130(3). While the Commission may have great discretion, it cannot act in direct contravention to the statutes it operates beneath.

The Report and Order then tries to assert that the discrimination against the Joplin ratepayers is consistent by asserting that all "over-recovering" districts are treated similarly. The plain language of Section 393.130(3) bars discrimination against ANY locality to the benefit of another. Only through pure district specific pricing (DSP) can the Commission insure that NO discrimination occurs. Under pure DSP the costs of service in a locality are borne by that locality. Under the modified method adopted in the original Report and Order of August, 2000, and readopted in the Report and Order on Remand of December 4, 2007, one district (or perhaps as many as three districts) is forced to bear the burden of costs from other districts. Why? In order to "protect" the ratepayers in one locality from paying their fair share. (Report and Order, page 13).

The Report and Order seems to meander between single tariff pricing and DSP. The Report and Order states that single tariff pricing is non-discriminatory. (Id.) Joplin disagrees with that statement of the Report and Order. However, the Report and Order does NOT adopt single tariff pricing. Instead the final rates as approved by the Commission impose DSP on most districts, with subsidies for a few districts paid by discriminatory surpluses taken from ratepayers in Joplin.

The Commission and the Joplin both agree that DSP is the proper and appropriate method for rate setting. (Report and Order, page 16). It is the only method that is always non-discriminatory to any locality since each locality pays its costs and no one else's. However, that was not the

ultimate result of the Report and Order. That result was for the ratepayers of Joplin to suffer under unduly high rates in order for other ratepayers in other localities to enjoy subsidies for their services. Without any doubt this discriminatory treatment violates Section 393.130(3), RSMo.

Furthermore, throughout the Report and Order on Remand fails to address, discuss, rebut or refute the testimony about the DSP pricing method and the need to adopt that method. In contrast to other districts, Joplin has maintained a lower cost of service. (See Appendix Exhibit 57, Direct Examination of E. Harwig, p. 6.) However, the benefit of this low cost of service under this Commission decision inures not to the benefit of the rate payer of Joplin, but to other district's rate payers. (*Id.* and Exhibit 57, Direct Examination of E. Harwig, p. 7.) Thus, the rate payers in Joplin pay not only the costs of their own efficiently operated plant, but pay extra for the more expensive operations of other far off districts such as for the cost of a new water plant in St. Joseph.

The evidence filed in this case strongly supports a move to a DSP rate design, which necessarily includes a rate decrease for the Joplin district in order to make Joplin district rates reflect Joplin district costs of service. (See Appendix, Exhibits 40, 41, 42, 57 and 61, attached hereto.) Mr. Harwig proposed a rate decrease for Joplin to achieve rates based on its DSP cost of service. The PSC Staff, until very late in the proceeding, agreed entirely (see testimony of Hubbs in Appendix Exhibits 40, 41 and 42). It is blatant, unadorned discrimination to single out Joplin for special financial and economic burdens. It is a pure and outright grant of preference and advantage to other districts and their rate payers to direct that excessive rate revenues from Joplin overpayments be used to defray the costs of those other rate payers in other districts. This Commission should reject as unlawful and in violation of Section 393.130, RSMo, the Report and Order on Remand's refusal to treat Joplin equitably and fairly; and this Commission should adopt the position supported by the

evidence of Joplin, other Municipal Intervenors, and PSC Staff. (Exhibits 40, 41 and 42; Exhibit 61, pp. 13-14; Exhibit 62, p. 17.)

Unbelievably, there is no reference whatsoever in the Report and Order on Remand to the overwhelming evidence presented by Mr. Harwig and the by the Staff that true DSP was the only fair and non-discriminatory method of pricing.[2] This omission mandates Rehearing on this case.

Ultimately, the Report and Order on Remand is not support by facts and is in direct contravention to law. The Commission should either amend its Report and Order and reduce the rates to the Joplin ratepayers and construct a method to return to those ratepayers the unlawful rates collected from them or grant Rehearing in this case.

WHEREFORE, Intervenor City of Joplin requests rehearing or reconsideration of the Commission's December 4, 2007, Report and Order on Remand in this case.

Respectfully submitted,

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[2] In fact, the only reference to Mr. Harwig's testimony in the Report and Order on Remand is to the FACT that "the Joplin district produces substantially in excess of its cost of service..." Report and Order, page 8.

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing City of Joplin's Application for Rehearing or Reconsideration of Report and Order on Remand, Issued December 4, 2007, were sent to each of the following persons by electronic mail this 13th day of December, 2007:

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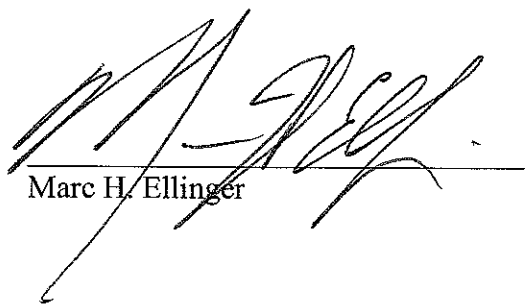

Marc H. Ellinger

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of December, 2007.

In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company.	)))))	**Case No. WR-2000-281** Tariff Nos. 200000366 200000367

REPORT AND ORDER ON SECOND REMAND

Issue Date: December 4, 2007 Effective Date: December 14, 2007

Procedural History

Following decisions by the Circuit Court of Cole County and the Missouri Court of Appeals, this matter again comes before the Commission on remand.[1]

On October 15, 1999, Missouri-American Water Company (MAWC or Company) submitted to the Commission its proposed tariff sheets intended to implement a general rate increase for water and sewer service provided to customers in the Missouri service areas of the Company.[2] The proposed tariffs bore a requested effective date of November 15, 1999. The proposed water service tariffs were designed to produce an annual increase of approximately 53.97 percent ($16,446,277) in the Company's revenues. The City of Joplin, on behalf of its ratepayers, timely filed for and was granted intervention.

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[1] *St. ex rel. AG Processing, Inc., et al., v. Kevin A. Thompson,* 100 S.W.3d 915 (Mo. App., W.D. 2003).

[2] St. Joseph, Joplin, St. Charles, Warrensburg, Mexico, Parkville, and Brunswick; not including Jefferson City or St. Louis County.

EXHIBIT
A

The Missouri Public Service Commission issued its Report and Order in this general rate case on August 31, 2000. After the Commission denied various requests for rehearing, certain parties filed ten petitions for writ of review in three different counties.[3] Eventually, the Missouri Supreme Court issued its writ of prohibition, allowing only the seven petitions filed in Cole County to proceed.[4]

The Circuit Court of Cole County took the seven petitions up in two groups, one of four petitions and the other of three.[5] The Circuit Court entered judgment on the group of four consolidated petitions on May 25, 2001.[6] It entered judgment on the remaining group of three petitions on September 19, 2001, and amended that judgment on October 3, 2001.[7] In each judgment, the Circuit Court disposed of some issues on the merits and remanded others to the Commission to provide more extensive findings of fact.

Appeals followed. The Western District of the Missouri Court of Appeals dismissed the appeals on December 13, 2001, holding that the circuit court judgments were not final and thus not subject to appeal. Mandate issued on February 28, 2002.

Thereafter, on May 19, 2003, Missouri-American Water Company filed proposed tariff sheets and initiated a new general rate case, Case No. WR-2003-0500.

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[3] These counties were Cole, Buchanan and Jasper.

[4] *St. ex rel. Public Service Commission v. Dally,* 50 S.W.3d 774 (Mo. banc 2001); *St. ex rel. Public Service Commission v. Jackson,* 50 S.W.3d 250 (Mo. banc 2001). The Cole County petitions were filed first.

[5] Originally, the circuit court did consolidate all seven petitions, but later severed the three filed by the parties that had also filed in Buchanan and Jasper Counties. The group of four petitions included those filed by Missouri-American Water Company, the City of St. Joseph, the Public Counsel, and a group of four public water supply districts: PWSD No. 1 of Andrew County, PWSD No. 2 of Andrew County, PWSD No. 1 of Buchanan County, and PWSD No. 1 of DeKalb County. The group of three petitions included those filed by the City of Joplin, Gilster Mary-Lee Corporation, and a group of three industrial water customers located in St. Joseph, Missouri: AG Processing, Inc., Wire Rope Corporation of America, Inc., and Friskies Petcare, a Division of Nestle USA. The latter three parties shall be referred to herein as the St. Joseph Industrial Intervenors.

[6] Case Nos. 00CV325014, 00CV325196, 00CV325206, and 00CV325218.

[7] Case Nos. 00CV325217, 00CV325220, and 00CV325222.

That case was eventually settled through a series of three unanimous Stipulations and Agreements, which the Commission approved on April 6, 2004. The associated tariffs became effective on April 21, 2004, superseding the tariffs approved in September of 2000. No party filed a timely Application for Rehearing in Case No. WR-2003-0500.

On May 27, 2004, the Commission issued its Report and Order on [First] Remand. It noted that only three issues were remanded for additional findings of fact and conclusions of law:

> 1. Whether or not the increased rates should be phased-in to minimize "rate shock";
> 2. Whether the level of rates for the Joplin District should be increased, decreased, or remain the same;
> 3. Whether or not larger and smaller distribution mains should be distinguished in the rate design for the St. Joseph District.[8]

The Commission proceeded with an analysis of whether the issues before it were moot, noting:

> A case is moot when a tribunal's decision would not have any practical effect upon any live controversy.[9] Where an event occurs that makes granting effectual relief impossible, the case is moot and generally should be dismissed.[10] This rule applies to contested cases before administrative agencies just as it applies to courts. With respect to utility matters, the general rule is that "issues under old, superseded tariffs are moot and therefore not subject to consideration."[11]
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> The tariffs in question became effective on September 20, 2000, and remained in effect until April 21, 2004, when they were superseded by new tariffs. The Commission is a creature of statute and possesses only such authority as has been affirmatively granted to it by statute. The Commission's ratemaking authority is prospective in nature and the Commission has no power to retroactively phase-in rates. Furthermore, the tariffs in question are no longer in effect. There is no practical action that can be taken by way of correction.

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[8] Report and Order on Remand, issued May 27, 2004; effective June 6, 2004, 12 Mo. P.S.C. 3d 442, 445.

[9] *State ex rel. Reed v. Reardon,* 41 S.W.3d 470, 473 (Mo. banc 2001).

[10] *Id.; and see Armstrong v. Elmore,* 990 S.W.2d 62, 64 (Mo. App., W.D. 1999).

[11] *St. ex rel. Missouri Public Service Co. v. Fraas,* 627 S.W.2d 882, 885 (Mo. App., W.D. 1981).

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As noted, new tariffs became effective on April 21, 2004. Those tariffs provided for a rate decrease in the Joplin District, thus affording prospective relief to Joplin and its citizens. However, there is no lawful possibility of any refund with respect to the monies paid under the tariffs in effect between September 20, 2000, and April 21, 2004.

* * *

The Commission has the authority to determine the rate *to be charged,* § 393.270. In so determining it may consider past excess recovery insofar as this is relevant to its determination of what rate is necessary to provide a just and reasonable return in the future, and so avoid further excess recovery[.] It may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process.

* * *

In the present case, the excess revenue produced by the Joplin District was paid directly to Missouri-American, unconditionally, pursuant to tariffs approved by the Commission. This revenue became the property of Missouri-American and no part of it can lawfully be refunded or returned to the ratepayers. Neither the Commission nor any court can retroactively determine what a just and reasonable rate for Joplin should have been. Therefore, the Commission determines that the Joplin issue is moot. [internal footnotes omitted] *Report and Order on Remand*, *supra* note 8, at 447,448.

Subsequently, the City of Joplin appealed to the Cole County Circuit Court, which affirmed the Commission's decision, and, on December 29, 2004, to the Western District Court of Appeals. On December 6, 2005, the Court reversed the Circuit Court's decision and remanded to the Commission for additional findings of fact and conclusions of law on the single issue of whether the Joplin rates were discriminatory or granted an undue preference. The Court of Appeals found that the matter fell within an exception from the mootness doctrine in that "an issue was presented of a recurring nature, is of the general public interest and importance, and will evade appellate review. Fraas, 627 S.W.2d at 885."[12]

[12] *State ex rel. City of Joplin v. PSC of Missouri*, 186 S.W.3d 290, 295 (Mo. App., W.D. 2005).

Findings of Fact

1. Single-tariff pricing or uniform pricing is a rate design in which all costumers within a particular customer class are charged the same rate, regardless of the cost of serving the district in which they reside.[13]

2. The primary goal of a rate design structure is to balance economic efficiency with equity and affordability considerations.[14] The primary goal of a "class" rate design structure is to recover costs from those who cause the costs to be incurred.[15]

3. One benefit of single-tariff rate design is protection from price volatility; another is that improvements are more feasible in small districts because their costs are spread over the entire system.[16] However, single-tariff pricing results in rates that do not reflect the actual cost of serving particular customers.[17] Missouri-American's various districts differ significantly in such cost drivers as water supply source, water treatment process, proximity of the supply source, aggregate demand, and customer density.[18] In district-specific pricing, by contrast, customers pay rates based solely on the actual cost of serving their community.[19]

4. By moving toward cost-based rates, the Commission would increase economic efficiency.[20]

5. The implementation of single-tariff pricing allows subsidization of districts that are too small to ever be truly self-sustaining, and evens out the pricing peaks that would

[13] Busch Direct, at 4.
[14] Busch Rebuttal, at 3.
[15] Hubbs Surrebuttal, at 11-12.
[16] Busch Direct, at 4, 13.
[17] Busch Direct, at 5.
[18] Busch Direct, at 5.
[19] Busch Direct, at 5.
[20] Busch Rebuttal, at 3.

otherwise occur when new facilities are placed in a given district. [21]

6. Maintaining a single tariffed rate allows for the acquisition of troubled water systems in order to improve service to customers.[22] Treatment requirements by various level of government are increasing, are almost certain to continue to increase, and bear a cost burden to the water provider.[23]

7. The term "rate shock" is used to describe the effect of an extremely large increase in revenue requirement.[24]

8. District-specific pricing may be in the public interest, but a pure system of district-specific pricing is not in the public interest because it would cause serious rate shock among the consumers in some districts.[25]

9. A pure district-specific pricing approach in the present case would result in a decrease of 9% in Joplin and increases of 262% in Brunswick, 81% in Mexico, and 68% in Parkville.[26] Other districts, specifically St. Charles and Warrensburg, supported the transition to district-specific pricing, as those districts also would have seen a decrease in a pure district-specific pricing approach. [27]

10. A phase-in plan is any regulatory method that defers the rates intended to recover allowable costs of a newly completed plant beyond the period in which those costs would be charged to expense under generally accepted accounting principles

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[21] Stout Rebuttal, at 15-17. "Although it may sound corny, helping the little guy is as American as apple pie and is still good public policy. STP promotes such policy. DSP does not."
[22] Stout Rebuttal, at 14.
[23] Stout Rebuttal, at 13.
[24] Rackers Direct, at 11.
[25] Busch Direct, at 7.
[26] Busch Surrebuttal, at 3-4
[27] However, the reduction of rates to those other districts is not at issue here in that only the question of rates predjucial to Joplin has been remanded. See the Initial *Report and Order* in this matter, issued August 31, 2000, at 24.

applicable to enterprises in general.[28] A phase-in would have the effect of delaying full capital recognition,[29] and would necessarily negatively affect the Company's financial statements[30] and require that the Company recognize a loss in any period full recovery is not provided.[31]

A phase-in of higher rates to districts with higher costs would result in an even greater rate increase because of the associated carrying charges.[32] Such a phase-in of rate increases would take "an extremely long time and force citizens in the smaller districts to pay a lot more in rates due to the added carrying costs that [the] Company would be allowed to collect."[33]

A phase-in of rates, increasing overall costs and having a negative effect on the Company's financial statements is not in the public interest.

11. Single tariff pricing may be in the public interest, but a pure system of single tariff pricing is not in the public interest because it would unreasonably burden consumers in some districts with costs of facilities in districts that provide no benefit to them.[34]

12. In the present case, such a burden would occur because of the installation of costly facilities in St. Joseph. It is reasonable to retain single tariff pricing, with a system-wide increase in rates solely as the result of the St. Joseph plant limited to 15 or 20%, with the remainder to be added to the total bill of St. Joseph customers in the form of a

[28] Hamilton Surrebuttal, at 8.
[29] Hamilton Surrebuttal, at 3.
[30] Hamilton Surrebuttal, at 3, 6. Rackers Surrebuttal, at 4.
[31] Hamilton Surrebuttal, at 4, 9.
[32] Tr. 795-796.
[33] Busch Surrebuttal, at 5.
[34] Stout Rebuttal, at 18..

surcharge of fixed duration.[35]

13. Use of the single tariff pricing with surcharge model would reduce the proposed rate increase from 48% to 28% for the other (non-St. Joseph) districts, using a 15% limitation. The St. Joseph surcharge would be 48.3%, resulting in an overall increase in St. Joseph revenues of 89.63%. The same model would reduce the proposed rate increase from 48% to 33% for the other districts, using a 20% limitation. The St. Joseph surcharge would be 34.8%, resulting in an overall increase in St. Joseph revenues of 79.35%.[36]

14. The cost of service is simply a guide used to set rates.[37] A just and reasonable rate, under the circumstances of this case, is one that moves away from single-tariff pricing, but tries to mitigate the resulting rate shock.[38] One way to accomplish such a result is for "no district [to] receive a decrease in rates when another district is receiving an increase. Any extra revenues collected from districts paying more than their cost of service [should] be allocated to the smaller districts in a way that balances the rate increases among those [under-recovering] districts."[39]

15. The Joplin district produces revenue substantially in excess of its cost of service, and has done so since Missouri-American's last rate case.[40]

16. Holding the Joplin district at current rates is reasonable to help offset the increases to the citizens of Brunswick, Mexico and Parkville.[41]

17. Irrespective of the revenue generated by the Joplin district, a just and

[35] Stout Rebuttal, at 19.
[36] Stout Rebuttal, at 19.
[37] Busch Direct, at 7.
[38] Busch Direct, at 7.
[39] Busch Direct, at 8.
[40] Harwig Direct (Ex. 57), at 11.
[41] Busch Surrebuttal, at 7.

reasonable rate, under the circumstances of this case, is one that retains single-tariff pricing, but tries to mitigate the resulting rate impact to districts not directly causing increases in cost, by means of a surcharge. [42]

18. Increasing the Joplin District's rates by 28% to 33% would be reasonable.[43]

Conclusions of Law

1. Section 393.130.1. RSMo 2000 provides that every water corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such water corporation for water or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for ... such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.

2. Section 393.130.2. provides that no water corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for water or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous

[42] Stout Surrebuttal, at 6-7.
[43] Stout Rebuttal, at 16.

service with respect thereto under the same or substantially similar circumstances or conditions.

3. Section 393.130.3. provides that no water corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or **locality**, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [emphasis added]

4. Prior to the Commission's Report and Order in this case, the rates and charges applied to Missouri-American's Joplin customers were the same rates charged to other Missouri-American ratepayers of the same class (e.g., residential, commercial) regardless of the location of the customer of the district in which they were served. This "single tariff pricing" model was lawfully in effect and is presumed to be just and reasonable.[44] Under single tariff pricing no customer in a given class is charged more or less than any other customer in that class, excepting for varying levels of consumption. The Commission concludes that the rates existing at the time this case was filed were both just and reasonable, and complied with §393.130.

5. Section 393.150.1. provides that whenever a water corporation files any schedule stating a new rate or charge, or any new practice relating to any rate, charge or service, the commission has authority to suspend the operation of such schedule and

[44] See *State ex rel. Sprint Spectrum L.P. v. Missouri Public Service Com'n*, 112 S.W.3d 20 (Mo.App. W.D.,2003). "The ... rates had been approved by the Commission in prior proceedings and were, therefore, presumed lawful and reasonable." See also §386.270 RSMo 2000.

defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice until it can conduct a hearing concerning the propriety thereof. After hearing, the commission may make such order in reference to such rate, charge or practice as would be proper.

6. Missouri American filed for an increase in rates, resulting in the Company's demonstration, at a full hearing on the merits, that the Company was entitled to an overall revenue increase. The Commission concludes that the overall revenue increase was reasonable and complied with §393.150.

7. Section 393.140(11) provides that the commission shall have power to require every...water corporation... to [make public] all rates and charges made... by such ... water corporation [...]. Unless the commission otherwise orders, no change shall be made in any...rate, charge or service [...]. No corporation shall charge...a greater or less or different compensation for any service...than the rates and charges...specified in its schedule filed and in effect at the time; nor shall any corporation...extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances [...].

8. In the course of the hearing, parties successfully demonstrated that moving from statewide average pricing to district-specific pricing would increase the correlation of rates and costs, increase economic efficiencies, and send more appropriate pricing signals to customers. In addition, it would not be discriminatory under §393.130.3, though that section precludes charging customers in different localities different rates,

because it falls within the exception set forth in §393.140(11), which allows different classes of customers to be charged different rates as long as the rates are consistent among "like," or similarly situated, customers. Increasing the relationship between costs and rates is a rational and fair component in rate setting and, in this case, the Commission concludes that its approval of district-specific pricing comports with §393.140(11).[45]

9. In moving to a pricing system in which cost causers are cost payers, a perfect correlation will never be achieved. Any time a ratepayer pays an average rate, the correlation between cost and rates will be imperfect, because no two ratepayers are exactly similarly situated. The Commission attempts to remedy this disparity by grouping customers into classes that have similar costs because they have similar usage patterns. It is an imperfect solution, as the Western District Court of Appeals notes:

> As we stated in *Associated Natural Gas*, "the Commission [can] select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances." 706 SW2d at 879-80. See also *Missourians for Tax Justice Educ. Project v. Holden*, 959 SW2d 100, 104-05 (Mo. Banc 1997), cert.denied, 524 US 916, 118 S.Ct.2298, 141 L.Ed.2d 158 (1998) ("[T]he existence of another, even more mathematically precise method of achieving the constitution's purposes does not render the chosen method irrational for equal protection purposes. '[R]ational distinctions may be made with substantially less than mathematical exactitude.' *New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976)").

[45] Classification of users or consumers of water by the Public Service Commission, to be valid, must comport with the rule or principle of sound legislative classification. *State ex.rel. Laundry, Inc. v. PSC*, 34 SW 2d (1931). Increasing the correlation between cost causing and cost-paying is a rational, valid basis for classification.

In this case, having determined that it was reasonably necessary to keep the existing rates in districts in which rates exceeded costs in order to prevent rate shock in the under-recovering districts, the Commission did not treat Joplin any differently than the other over-recovering districts. To do so would indeed have been discriminatory, in that similarly situated districts would be inconsistently treated. The Commission concludes that keeping the pre-existing rates for those districts, including Joplin, but apportioning all of the total company revenue increase to the under-recovering districts is fair in both calculation[46] and result[47] and constitutes just such a "pragmatic adjustment" as the Western District Court envisioned. As the Missouri Supreme Court noted, "[I]t is not methodology or theory but the impact of the rate order which counts in determining whether rates are just, reasonable, lawful, and non-discriminating."[48]

10. In the course of the hearing, parties also successfully demonstrated that retaining statewide average pricing, with the addition of surcharges as described, would increase the willingness of large companies to take over troubled systems to increase the quality of service to that system's customers, would protect customers from unreasonable rates in districts too small to be self-sustaining in the long run, and would protect customers from undue price volatility in districts in which new facilities are placed. Single-tariff pricing is not discriminatory under §393.130.3. Although that section precludes charging customers in different localities different rates, the proposed surcharge for St. Joseph ratepayers falls within the exception set forth in §393.140(11),

[46] It is within the province of the Commission to determine the methodology used for ratemaking. *Missouri Gas Energy v. Mo PSC*, 978 SW2d 434,440 (MoApp, WD 1998); *State ex.rel. Associated Natural Gas v. Mo. PSC*, 706 SW2d 870, 880-82 (MoApp, WD 1985).

[47] The Commission has broad discretion... (p58 orig order)

[48] Note 37, Infra at 879.

which allows different classes of customers to be charged different rates as long as the rates are consistent among "like," or similarly situated, customers. Increasing the relationship between costs and rates is a rational and fair component in rate setting and, in this case, the Commission concludes that it could have approved single-tariff pricing with additional surcharges in the St. Joseph District and still complied with §393.140(11).

11. The Commission concludes that the rates paid by Joplin ratepayers prior to the Report and Order in this case were lawful and not discriminatory.[49] They did not become discriminatory because they were not reduced, while rates in other districts increased. They did not become discriminatory even though it was demonstrated in the case that Joplin (along with some other districts) contributes more in revenue to the state-wide system than it costs to provide service, as that was true of the rates prior to this case. Joplin was not singled out to receive no reduction – no district received a reduction. Therefore, the Commission concludes that the rates charged to Joplin ratepayers in this matter are fair and reasonable and do not discriminate against Joplin ratepayers.

Discussion

The Commission is charged with enforcement of §393.130 RSMo 2000, which in the first subsection requires that companies that provide utility service, including water service, provide safe and adequate service at just and reasonable rates. The section goes on to give the Commission the authority to determine what that reasonable rate

[49] Rates approved by the Commission acquire the force of law. *State ex.rel. St. Louis County Gas Co. v. Mo. PSC*, 286 SW 84 (1926); *id* at note 37.

should be and prohibits a utility from charging any rate in excess of the Commission-determined rate. The second subsection prohibits the utility company from charging any customer a different amount for receipt of the service than any other customer, except as provided elsewhere in the chapter.

Section 393.140(11), refines that requirement by stating that companies must charge the same rate to all customers who are "under like circumstances." For purposes of this discussion then, we must begin the analysis of whether the Joplin ratepayers are discriminated against because they are **not** charged a uniform, company-wide rate, but are properly charged a different rate because they are not "under like circumstances."

Immediately prior to this case, each class of Missouri-American's ratepayers was charged a single, average, state-wide rate.[50] However, it does not cost the same amount to provide service to customers across the state. In fact, the evidence in the case showed that there is a great disparity in the costs of providing service among the various districts Missouri-American served. The Commission decided that in order for rates to be just, there should be a relationship between rates and costs, and that moving to district-specific pricing was necessary to achieve that goal.

The Commission is charged not only with setting just rates, but reasonable rates. The rates must not only comport with the dictates of fundamental fairness, but also should be as reasonably priced as possible (while allowing cost recovery and a reasonable return) so as to keep safe and adequate service within the reach of as many ratepayers as possible. In this matter, the evidence showed that moving to unmitigated district-specific pricing would result in unreasonable rates in some districts. The

[50] Prior to this case, the company's rates had been moving toward a single tariffed rate, achieved only recently before this case was filed.

evidence showed that the ratepayers in Joplin were paying rates higher than the cost of supplying service to them. They asserted that their rates should be reduced. The evidence showed that a rate reduction to Joplin ratepayers would result in unreasonable rates in other districts and the evidence did not show that the rates in Joplin prior to the case (and continued unchanged) were unreasonable. For that reason, the Commission did not reduce the rates for Joplin, but did not apportion to Joplin any of the overall rate increase granted to Missouri-American.

The Commission acted lawfully in determining that district-specific pricing was appropriate, and acted lawfully in apportioning the rate increase as it did. The Commission did not unlawfully discriminate against Joplin or the other "over-earning" districts by apportioning no rate increase to those districts, but not granting them a rate decrease.

Although the Commission acted lawfully, it is this Commission's opinion that the decision to move from single tariff pricing to district-specific pricing may be revisited in future cases as a matter of regulatory policy. Although assigning costs to the cost causer is generally a sound tenet, there are times when it cannot be reasonably applied. In instances in which the capital expenditures are necessarily huge and the customer base from whom the utility must recover its cost is tiny, enlarging the contributing customer base may be the only reasonable approach. This Commission does not believe that cost causation and cost recovery should be entirely unrelated in rates, but that they cannot always be directly related, if fair and reasonable rates are to be achieved. Moreover, as the evidence in this case showed, increasing environmental regulation of water and sewer companies and rising water quality standards are

intensifying the difficulty for small systems to function independently. As those small systems fail, the Commission looks to larger systems to take over the troubled ones. The use of district-specific pricing serves as a significant impediment to incorporating troubled systems into well-operated systems.

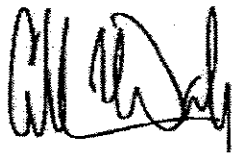
In this matter, Missouri-American proposed that the single tariffed rate be retained, but a surcharge be added to the St. Joseph District's rates to ameliorate the effect of the large capital expenditures in the St. Joseph District on the other districts. This approach is much more conducive to the long-term operability of the water system, providing the most consistently high quality water service at reasonable, and reasonably stable, rates. Nevertheless, the Commission's decision to move toward district-specific pricing and to apportion the rate increase as it did was a lawful exercise of the Commission's authority to make decisions based upon record evidence that comport with public policy goals perceived by the Commission to be just and reasonable at the time.

IT IS ORDERED THAT:

1. This Order shall be effective on December 14, 2007.

2. This case may be closed on December 15, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., concur;
and certify compliance with the
provisions of Section 556.080, RSMo 2000.

Dale, Chief Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 4th of December, 2007.

Colleen M. Dale
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 04, 2007

Case No. WR2000281xxx

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Karl Zobrist
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Kansas City, MO 64108

Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,

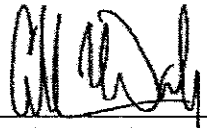
Colleen M. Dale
Secretary

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 4th of December, 2007.



Colleen M. Dale
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 04, 2007

Case No. WR2000281xxx

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