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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of Missouri-American)
Water Company 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 et al.

INITIAL POST-HEARING BRIEF
OF
AG PROCESSING INC. A COOPERATIVE,
FRISKIES PETCARE, A DIVISION OF NESTLE USA
and WIRE ROPE CORPORATION OF AMERICA, INC.

AND

THE CITY OF RIVERSIDE, MISSOURI

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COME NOW Intervenor Ag Processing Inc. A Cooperative, Wire Rope Corporation of American, Inc., Friskies Petcare Division of Nestle' USA ("St. Joseph Industrials") and the City of Riverside, Missouri, ("Riverside") (collectively referred to as "Indicated Intervenor") and submit their Joint Initial Post-Hearing Brief in this matter.

I. INTRODUCTION.

These parties are jointly interested in several important issues in this proceeding. This Joint Brief will address (1) the prudence of Missouri-American in selecting a new site and constructing a new water treatment plant for St. Joseph, (2) whether district specific pricing should be adopted, and (3)

certain issues of rate design particularly pertinent to larger water customers. We expect that other parties will also brief several of these issues, specifically the issue concerning district specific pricing, and thus that portion of this brief will be more general in nature and will address what we believe to be the significant legal issues surrounding that controversy.

II. PRUDENCE IN SELECTION OF ALTERNATIVES [Issue 4: St. Joseph Treatment Plant and Related Facilities Valuation].^{1/}

A. Introductory Comments.

As a point of beginning, it is useful to identify several points related to this issue that are not disputed.

- The old plant in St. Joseph provided safe and adequate water service for over 100 years.
- There was a 500-year flood on the Missouri River in August of 1993.
- At the time of the flood, the old plant was providing safe and adequate service to the public in St. Joseph.
- At the peak of the flood, water did not overtop the existing levee at the old plant; rather it seeped through the railroad roadbed at the rear of the old plant and entered the plant from the rear where there was no flood protection.
- As a result, the old plant was off-line for four (4) days, obviously presenting a significant inconvenience to ratepayers served by that plant.
- Prior to the 1993 flood, MAWC had obtained corporate and Missouri DNR approvals for and was implementing a plan to refurbish the existing St. Joseph water plant. The cost proposed for that

^{1/}Reference is to the issues designated in the May 25, 2000 Proposed List of Issues.

project, as submitted to the Missouri DNR, was \$26.6 million.

- That plan included reinforcement and enhancement of existing flood protection, and construction or renovation of several treatment and processing facilities at the old plant.
- The refurbishment plan was intended to be effected over a period of several years.
- At the time of the 1993 flood, MAWC was in the process of implementing that refurbishment plan.
- Following the 1993 flood, continued implementation of MAWC's refurbishment plan was displaced by the immediate need to restore service, get the plant fully back on line and to recover from the immediate damage caused by the flood.
- Following the restoration of service, the old plant resumed providing safe and adequate service to the public in St. Joseph.
- Thereafter, and until it was taken off-line in approximately April or May of 2000 and a process of dismantling begun, the old plant provided safe and adequate service to the public in St. Joseph.

From that point on, the views of the parties significantly diverge. Indicated Intervenor believe that, following MAWC's recovery from the flood in last half of 1993 and early 1994, an internal corporate management decision was made that the 1993 flood presented an opportunity for the company to enhance its rate base and its revenue by constructing a completely new treatment facility out of the flood plain of the Missouri River. This decision was accompanied by a decision to construct a new alluvial well field upstream of the existing plant and the construction of redundant raw and finished water lines to connect the new treatment facility to the new well field and pipe fin-

ished water back to connect with the existing distribution system immediately adjacent to the old plant.

We believe that this decision was driven not by need for the new facility, nor certainly by consideration for the impact on the ratepayers, but rather by the function of the regulatory environment which creates an incentive for a public utility to invest in utility plant to counter the effects of depreciation on its rate base previously installed. This segment of this Initial Brief will address the various arguments and the testimony submitted to the Commission on this multi-faceted issue.

We further believe that this decision was further encouraged by this Commission's seeming warmth toward the perverse concept of Single Tariff Pricing ("STP") in which capital costs that are incurred solely to provide service to one geographically separate and unconnected service area are shifted to other customers in other service areas of the company. The controversy regarding Single Tariff Pricing and District Specific Pricing will be addressed in Section III of this Brief.

Moreover, we believe that the company's decision to abandon the old functional treatment plant, along with the value that it represented, was in complete derogation of the impact that decision would have on the ratepayers of the seven districts presently serviced by this company. The decision was in derogation of the effect it would have on ratepayers in St. Joseph if what we believe to be the unlawful process of STP was ended.

St. Joseph Industrials and Riverside contend that the prudent decision by MAWC would have been to continue with the approved and partly implemented plan to refurbish the old water plant, but enhance the flood protection around the plant, including specifically its east (rear) side adjacent to the railroad right of way. Not only would this plan have been effected for less than \$40.3 million, it would by its nature necessarily result in a "staging" which would have resulted in spreading the rate impact of the renovations over several years.

B. Prudence -- The Evidence.

1. Dr. Morris' Background.

St. Joseph Industrials offered the testimony of Dr. Charles D. Morris going directly to the imprudence of MAWC's decision to construct, instead, a new \$70+ million "water palace," a new alluvial well field and redundant raw and finished water supply lines. The imprudence is obviously MAWC's failure to select the completely adequate but dramatically less costly option to renovate the existing plant, a plan that had, in fact, already received both corporate and DNR approval prior to the flood.

Dr. Morris is a Ph.D. professor of engineering at Missouri's preeminent engineering school, the University of Missouri-Rolla. Dr. Morris currently teaches courses in hydrology, hydraulics and water resources, including the design of water and wastewater treatment plants. Dr. Morris has even been

engaged by this Commission to provide expert testimony. Dr. Morris has designed numerous water treatment plants and associated facilities (including some on the Missouri River), consulted on many projects in numerous states, and is well qualified to render an opinion on MAWC's prudence and judgment in their selection of treatment plant alternatives and expenditures for the new treatment plant and its appurtenances in the St. Joseph service territory.

2. Dr. Morris' Opinion - MAWC's Decision to Build a New Treatment Plant Overrode Engineering and Economic Judgment for MAWC.

Dr. Morris testified that, in his professional opinion:

the construction of a new water source and treatment facility by MAWC to replace the existing surface water supply and treatment facility was not prudent. Rather than being based on sound economics, that choice in my opinion was incorrectly based on a decision to abandon an existing and operational water treatment plant in reaction to the 1993 flood. Once that decision to abandon had been made, however, I believe that MAWC's subsequent estimates of the costs of renovating the existing surface water supply and treatment facilities were inflated in order to justify this decision.

Morris, Direct Testimony, Exhibit 65, p. 9.

Dr. Morris noted that, as early as 1991, a renovation plan for the old plant had received corporate approval and was moving forward to implementation. However, this plan appeared to have been derailed by the 1993 flood in which Missouri River water, without overtopping or undercutting the existing flood protection for the plant, had infiltrated the plant from the rear

along a railroad right-of-way and roadbed. Dr. Morris further testified that

In reviewing this situation, it has appeared to me that in reaction to this flood MAWC made a corporate decision to construct a new water plant outside the flood plain and abandon the old facility even though the risk of future flooding at the existing plant could have been fully addressed along with other phased renovations.

.

Had this comparison been made properly, renovation and additional flood protection at the existing facility is clearly the most economical alternative [A] more realistic cost estimate of \$40.3 million represents the **high end** of a range of cost estimates for existing plant flood protection and renovation that could have proved to be even lower.

Morris, Direct, Ex. 65, p. 10-12 (emphasis in original). He therefore recommended that the additional costs in excess of that estimate be disallowed as imprudent.

3. Dr. Morris Allowed MAWC a High-End \$40.3 Million.

Dr. Morris was not stingy with what he recommended be allowed MAWC. He first took MAWC's own 1991 estimate (\$26.6 million) of the costs MAWC had itself considered necessary to reinvigorate the existing plant. Using the Engineering News Record,^{2/} Dr. Morris then factored those costs upward to ac-

^{2/}Even Mr. Young, MAWC's witness on this issue, recognized the accuracy of this source, particularly since it reflects "after the fact" knowledge of inflation rates. Tr. 1216-17.

count for inflation, to a 1996 base of \$30.1 million.^{3/} Morris, Direct, Ex. 65, p. 15. He then increased this estimate by \$2.7 for land acquisition,^{4/} an additional \$3 million for a new main river intake structure, and the associated pumps and piping (Morris, Direct, Ex. 65, p. 15). He further added to his estimate \$2.5 million for grading work on the existing access road and flood proofing for the plant, a residual clarifier and associated pipelines. Finally, Dr. Morris also included a contingency allowance of \$2 million bringing his **high end** estimate to \$40.3 million for the renovation and floodproofing enhancement project. Morris, Direct, Ex. 65, p. 16.

Dr. Morris characterized his estimate as "high end" because he included several "worst case" cost assumptions and also included the \$2 million contingency allowance. "Because of these factors," he testified:

I believe that this \$40.3 million figure is on the high end of a reasonable range of costs that would actually be incurred if this work was to be done. As a result of this evaluation, the cost of the work in floodproofing and renovation/replacement that would have been called for, if properly planned and supervised, could be accomplished for no more than that figure and probably less.

^{3/}1996 was chosen as the target of the inflation adjustments because it appeared that was the time frame at which the purportedly "final" comparisons were made by MAWC.

^{4/} Additional land may be needed for the renovation process, for storage of construction materials, and for expansion of units and the possibility of some future alluvial wells.

Morris, Direct, Ex. 65, p. 15.

Morris, Direct, Ex. 65, p. 16.

**4. MAWC's Decision-Making Process Was
Neither Supportable Nor Documented.**

Dr. Morris evaluated MAWC's decision-making process as neither nor supportable nor documented. He testified:

[i]n my professional opinion, construction of the new groundwater source and treatment facility was neither necessary nor prudent and was most likely based on a decision to abandon the existing water treatment plant site after the 1993 flood **without** detailed studies of the engineering and economic feasibility of making that move to a remote site and using ground water for the source of water. Moreover, once MAWC committed to the remote site, it appears that reasonable engineering and economic reason was abandoned.

Morris, Direct, Ex. 65, p. 16-17 (emphasis in original).

Although data was requested, MAWC provided no detailed engineering or economic justification for the decision to abandon the old functioning plant and construct a new groundwater treatment plant and supply. The materials that were provided in response to Dr. Morris' data requests only made reference to the asserted advantages of some improvement in bacteriological quality, temperature constancy, together with an increase in hardness that would be associated with groundwater. Morris, Direct, Ex. 65, p. 17.

MAWC appeared to place much reliance on the age of the existing facility. However, as Dr. Morris noted, "[t]he fact that a plant is old does not mean that it is worthless." Morris, Direct, Ex. 65, p. 18. In fact,

Continuing maintenance and refurbishment/replacement are needed for particular parts of the plant as is demonstrated by MAWC's apparent plans to carry out such activities **before the 1993 flood occurred.**

Morris, Direct, Ex. 65, p. 18 (emphasis in original).

Dr. Morris also noted that a significant factor in this case was the need to run several miles of redundant raw and finished water lines, all of which would be unnecessary had the old plant been refurbished. Morris, Direct, Ex. 65, p. 19. He also noted that the \$40.3 million cost that he estimated would address all the existing inadequacies of the old plant including enhancing its flood protection. Morris, Direct, Ex. 65, p. 18. Looking just at the cost of the plant refurbishment compared to the cost of the new treatment plant by itself was inappropriate because, as he testified:

The renovation of just the existing treatment plant is estimated to be \$30.1 million and the cost to build just the new treatment plant is estimated to be \$28.8 million as stated in the 1996 Report. But this would result in a new plant that was neither connected to a water source as input nor connected to the distribution system for output. Such a plant would be useless. In this case, looking at the **total** cost of the entire treatment facilities **inclusive** of sourcing costs, supply piping and output piping, the total cost of the treatment facilities is far less if the existing plant were renovated. Here, the total costs (water treatment plant - \$30.1 million; intake, flood proofing, etc. - \$10.2 million) to renovate the existing facilities are estimated to be \$40.3 million compared to the cost of the new facilities with all necessary appurtenances at roughly \$75 million (water treatment plant - \$28.8 million; groundwater wells, supply and finished water pipelines, etc. - \$44.7 million). Thus, in this circumstance, it clearly would

have been less expensive for the utility and, ultimately, for its ratepayers to renovate the existing facilities rather than to build new facilities because the groundwater collection system and the pipeline transportation system are not needed.

Morris, Direct, Ex. 65, p. 19-20.

The proposed renovations also would have provided flood protection for the old plant against the 1993 flood level, which had become the "flood of record" such that remaining risk of flooding was, in Dr. Morris' words, "insignificant." Morris, Direct, Ex. 65, p. 18. Addressing the Missouri Department of Natural Resource regulations that discourage locating a new plant in a flood plain, Dr. Morris noted that the regulations were reasonable as applied to an existing plant. He stated:

The risk of flooding as occurred in 1993 is estimated by the Corps of Engineers in any year to be a probability of less than two tenths of one percent, which is insignificant. Also, by using the existing site a significant cost savings could have been realized. This cost savings is estimated to be approximately \$33.2 million. In my opinion, this cost savings and risk meet the criteria: "to the extent practicable and economical".

Morris, Direct, Ex. 65, p. 22. Confirming Dr. Morris' view, it deserves note that the subject regulation had been issued in 1988, was in place in 1993, and had not frustrated DNR approval of MAWC's plan to refurbish the old plant. Tr. 1206, 1292-93.

C. Phase-In Proposal Results From Staged Construction of Prudent Alternative [Issue 8d].

An issue in this case has involved what is termed the "phase-in" of rates. In our view, a phase-in is an impact mitigation mechanism that is properly used to make a movement to cost of service gradual or mitigate the effects of rate shock. Phase-in is not a device properly used to justify overcharging one group (or in this case, district) costs that they do not cause, but rather a means of softening sharp transitions in rates as a part of an overall movement to cost of service.

Dr. Morris did not offer cost of service nor rate impact testimony and did not offer or propose a "phase-in" in the sense we use that term. Had, however, MAWC made the wise choice to renovate the existing plant, that renovation project would have been done in several construction stages or "phases." Thus, an additional benefit of a prudent choice would have been a mitigation of the rate impact that the inclusion of even the substantially reduced level of renovation costs would otherwise cause for ratemaking purposes.

For example, an additional group of filters or sedimentation basins would be constructed, then brought on line. A properly timed rate case would then have sought and obtained a rate increase reflecting the additional capital investment that had been brought on line. While this would result in a short series of rate cases impacting the St. Joseph district, the same effect as a "phase-in" would result. Moreover, since smaller projects would result in tighter and better defined construction

schedules, better timing for rate cases would result which would also minimize any AFUDC accruals, as confirmed by Mr. Young. Tr. 1319.

1. Mr. Harwig Calculated the Revenue Impact of a Staged Plant Renovation Project as Recommended by Dr. Morris .

Dr. Morris deferred to St. Joseph Industrials' other witness, Mr. Ernest Harwig, to submit appropriate rate calculations consistent with Dr. Morris' recommendations regarding the proper amount. In effect, by modelling the construction schedule of the elements of the prudent refurbishment recommendation, the impact of even the reduced level of increases necessary for St. Joseph would be mitigated.

Following on Dr. Morris' proposal of a staged renovation project, Mr. Harwig proposed that the revenue impacts of the new St. Joseph treatment plant be retained within in the St. Joseph district consistent with District Specific Pricing. However, Mr. Harwig then calculated revenue requirements associated with Dr. Morris' recommendations by determining a fixed charge rate to apply to the cost of the recommended plant improvements. Harwig, Revenue Requirement Direct, Ex. 64, p. 3-4. While labeled by some as a "phase-in," this proposal is not truly a phase-in. Rather, it would follow approximately the timing of the multi-stage renovation project that would have been completed had a prudent decision been made in the first instances by MAWC.

Mr. Harwig's calculations of the revenue requirement effect recommended by Dr. Morris' cost estimates was as follows:

Initial Phase	35% increase
Second Phase	13.6% increase
Final Phase	5.0% increase

Harwig, Revenue Requirement Direct, Ex. 64, p. 3. He tabled these calculations in Schedule 2-RR.^{5/} Further, Mr. Harwig used a return on equity number of 10%, based on the February 23, 2000 Non-Unanimous Stipulation and Agreement by which the agreeing parties indicated acceptance of that as a rate of return.

Harwig, Revenue Requirement Direct, Ex. 64, p. 4.

D. MAWC Response.

As might have been expected, MAWC's response to Dr. Morris' testimony and recommendations boiled down to "you've got it all wrong." MAWC seemed intent on focusing on the **1996** report (which they failed to provide to Dr. Morris despite our requests) as the answer to the problem, when in fact that report is the manifestation **of** the problem. Despite all MAWC's cross-examination of Dr. Morris, nor its testimony through Mr. Young, MAWC **never produced** any detailed cost estimate, any detailed analysis or any other document constituting an engineering study that actually compared the cost of one alternative to the other. Smoke screen, yes; substance, no. In the famous words of John F.

^{5/}Mr. Harwig noted that these calculations reflected only the plant improvements per the recommendations of Dr. Morris. If other cost increases or decreases were found appropriate, they should be included in these calculations. Harwig, Revenue Requirement Direct, Ex. 64, p. 4.

Kennedy, "Where there's smoke, there's bound to be a smoke-making machine."

As is often the case with questions that appear on their face to be complex, the solution is simple. That MAWC put up such a fuss about its numerous estimates **demonstrates that there was no estimate that supported the "Feasibility Study" on which MAWC supposedly pinned its decision.** If such an estimate had existed, the Commission may be assured that, had such a cost estimate existed, MAWC would have grandly trotted it out to silence its critics. However, no detailed cost estimate was forthcoming because no such cost estimates exist.

Comparing MAWC's 1991 renovation estimate and its 1993 Gannett Fleming engineering cost estimate to the 1996 paper shuffle reveals what happened:

First, there remains no definitive estimate, no detailed studies of the engineering and economic feasibility of moving from the old site to the new. No such study was done in 1994, nor in 1996. St. Joseph Industrials' data requests sought all such studies -- none were provided.

Second, juxtaposing the 1991 and 1993 renovation estimates with the purported old plant 1996 (Alternative I-A - Old Plant Renovation - Non-Phased) shows that costs lumped and inflated without explanation, costs were passed through without explanation and a continuing expansion of the scope of the project was effected, again without any explanation or justification. Costs were inflated, well beyond the amount necessary to

reflect simple inflationary escalation. The Regulatory Law Judge will recall how vague and evasive Mr. Young was regarding where these "costs" were broken out or otherwise identified to particular components of the proposed renovation work. Indeed, in the only real attempt to trace these costs out from the 1991 report to the 1996 "feasibility study," Mr. Young was **unable** to clearly identify and break out the various components or distinguish what costs had been inflated and which one had not. "Here is where it gets a little tricky," Mr. Young stated. Tr. 1332, 1. 15.

Prudence, by the way, is MAWC's burden to prove. It is not St. Joseph Industrials' burden to prove that MAWC's choices were imprudent; rather, it is MAWC's burden to prove that they were. And, the whole point -- **where that proof?** Where even is proof that **real** cost estimates reflecting costs of renovation existed or were considered? If they exist, where are they? If they were considered, what has become of them? That is the essence of the proof of prudence in this case, and on this test MAWC falls far short of the mark.

MAWC would point to the 1996 "study," but there is no detail there or anywhere that makes or even attempts a comparison or comparative evaluation of solid costs. Rather than reading as a study, the 1996 "study" reads like a justification and rationalization for an already-made decision. That, of course, is exactly what it is.

Third, additional components were added to the project to change and increase its scope. A simple analogy will make

this point: Suppose that you are in need of an automobile for transportation. You do not wish the most costly car, since you only wish to move from one place to another in reasonable safety and comfort. A Chevrolet will do. However, a car dealer that is intent on selling a Cadillac instead of a Chevrolet could simply continue to add options to the Chevrolet (whether needed or not) until its combined sticker price equalled or exceeded that of the Caddy whose standard equipment included many of those options. Then, the dealer could announce that the Caddy was, indeed, "cheaper" than the Chevrolet. Add to the example that the car dealer is the only one in town, or even in the county for that matter, and you **really** need a car.^{5/}

Playing musical chairs with projects and project scopes does not substantiate the comparison, nor suggest detailed investigation of alternatives. MAWC attempted no refutation of Dr. Morris' estimates, nor his methodology, nor his expertise and experience to do so.

E. The Big MAWC Attack.

Predictably, MAWC sought to deflect criticism not by coming forward with detailed cost estimates that it had evaluated, but rather by seeking to confuse the issue of how Dr. Morris arrived at **his** estimate. Given the low level of detail in most

^{5/}Of course, to make the analogy still more fitted to Missouri-American, the dealer would then grandly announce that you could buy the Caddy for the price of the Chevy, and that other customers throughout the community and other communities where he sold cars would pay the difference.

of the materials supplied by MAWC, Dr. Morris based his estimate on what he was advised were the 1991 plant renovation study numbers but, because of MAWC's failure to provide complete and detailed information, were in fact numbers from a 1993 Gannett Fleming study. Those components summed to \$26.6 million. Dr. Morris then applied an inflation factor obtained from the Engineering News Record to derive an inflation-adjusted estimate of \$30.1 million for the renovation to the old treatment plant. To this number Dr. Morris then added costs which he estimated to perform the additional items such as a renovated river intake structure, certain access road improvements, and additional floodproofing, to bring his total to \$40.3 million contained in his direct testimony. Morris, Surrebuttal, Ex. 66, p. 6.

However, based on MAWC Witness Young's testimony, it then appeared that the document which Dr. Morris had employed was from 1993 rather than 1991, thereby **reducing** the inflation component of Dr. Morris' estimate of the costs to perform the required renovation of the existing treatment plant. Morris, Surrebuttal, Ex. 66, p. 6-7.

Dr. Morris explained this reduction in the following terms:

In using what I had been advised were 1991 cost estimate numbers, I adjusted them upward to account for the effect of inflation. Since I, in fact, used the 1993 numbers, but assumed that they were from the 1991 period, the period, and thus the effect of inflation, would be reduced. In making my original calculations, I used the inflation rate based on data from Engineering News Record and my experience with construction costs for the

period of 1991 to 1996 of 13.2 percent. If the data was in fact 1993 numbers it was, by definition, already reflective of inflation to that point, so my remaining calculation would only reflect a period from 1993 to 1996. This would have reduced the estimated amount of \$30.1 million for renovation of the treatment plant.

Morris, Surrebuttal, Ex. 66, p. 7.

In fact, it reduced Dr. Morris' overall estimate for the work that would have been necessary both to renovate and flood protect the old St. Joseph plant, by \$2.1 million, resulting in a total of \$38.2 million for the entire project.

F. MAWC's "Estimate Roulette".

There was deep confusion when Company Witness Young sought to explain and tie numbers across his various estimates. The only detailed estimate that he would acknowledge was a definitive engineering estimate was the 1993 cost estimate on which MAWC was proceeding to implement at the time of the flood. Despite all the patter put up by MAWC, several things finally become apparent.

First, MAWC was in the process of implementing and had even let design contracts for a renovation of the old plant in St. Joseph at the time of the flood. Tr. 1321.

Second, the engineering estimate of that renovation project was \$26.6 million, in 1993 dollars. Tr. 1314.

Third, that project was sidetracked by the July, 1993 flood that took the plant off line for four days.

Following the flood, the scope of the renovation project then was added to, added to, and added to again with "additional scope items" (Tr. 1236-37) until the total project cost virtually equaled the cost of a new treatment plant, the Cadillac option MAWC was pushing toward.

There are no details in any of the materials provided by the Company that substantiate any of the estimates that it would like to rely upon. Both Dr. Morris and Mr. Biddy commented on the almost complete lack of detail in MAWC's estimating process. Morris, Direct, Ex. 65, pp. 16-17; Tr. 1665.^{2/} Mr. Biddy stated that he had looked "in vain" for a cost estimate of \$63.3 million (which appeared to be MAWC's "most favored" number). Tr. 1696. Both engineers concluded that the most detailed estimate and workup that was provided in response to pervasive discovery was the 1993 Gannett report (TLB-14) which, during cross-examination, Mr. Young admitted totaled to \$26.6 million -- the same number that Dr. Morris had identified in his estimate and independently used to derive his original recommendation for cost allowance. Tr. 1304, 1314.^{8/}

^{2/}Mr. Biddy characterized MAWC's work as "the most incompetent I'd seen in 37 years of engineering practice." Tr. 1665, 11. 21-23.

^{8/}Again, Mr. Biddy, noted that:

My point is, all estimates by Missouri-American except for the 1993 Gannett Fleming estimate are not engineering cost estimates and are incompetent.

Tr. 1700, 11. 3-6.

On one hand, MAWC holds to a \$63.3 million figure as its comparison number, but neither offered, provided or produced anything to document its calculation of that number other than the cash flow charts in the "Feasibility Study." That MAWC compared options using that number is not the point; how that number was derived is. On the other hand, Mr. Young repeatedly sought to maintain that the cash flow documents could not be used to support cost estimates. Tr. 1695. Indeed, MAWC seized on one of Dr. Morris' workpapers reflecting some notes and calculations on one of the cash flow sheets, set up the strawman that the cash flow sheets were the source of Dr. Morris' figures, then loudly sought to demolish its straw construction, apparently without realizing that they were undercutting their own position. Tr. 1853-61.

Obviously, no detailed engineering cost estimate supporting the \$63.3 million number exists. If the \$63.3 million number is the number that MAWC wants to hang its hat on, then it should have been easy to support it with an engineering cost estimate of the depth and detail provided by Gannett Fleming in 1993. Yet no such document was provided, produced or identified.

To reach this number, Mr. Young testified that MAWC had added additional (unspecified) "scope items" (Tr. 1236), unspecified costs for (among other things) community relations and

multiple internal corporate fees,^{2/} and a 26.5 percent compounded contingency fund. Tr. 1312.^{10/}

Many costs which Mr. Young testified were included in the Feasibility Study duplicated other costs he identified as already included. For example, a lump sum of \$1.698 million was included under the revealing label of "water company expenses." Tr. 1240. These were characterized as design, bidding, construction supervision and start-up of the facility, which were costs that Mr. Young claimed were part of "soft" costs and included somewhere else. Tr. 1241. When challenged, these apparent duplications were simply never explained beyond Mr. Young seeking to explain "how the American Water System manages a construction project." Tr. 1234.

It should take more than Mr. Young's explanations "how the whole process worked" (Tr. 1241) to support a \$70+ million capital expenditure and as much as a 268% rate increase on some MAWC customers. Yet, there is no detail for any estimate other than the engineering cost estimate from Gannett Fleming that is in the record as TLB-14.

^{2/}Apparently "how the American Water System manages a design and construction project" (Tr. 1234) is to "manage" to get as many corporate affiliates and subsidiary corporations as possible up to the feeding trough.

^{10/}During the Nixon administration, when price controls were applied, merchants such as restaurants were supposedly prevented from increasing prices. The result was a proliferation of new menus "unbundling" the vegetables that had been part of the "blue plate special," then pricing them separately. Not surprisingly, the cost of dining rose despite price controls.

Mr. Young wanted to assert that his \$63.3 million number from MAWC's "Feasibility Study" was accurate and was the proper number to compare, but **there was no such number anywhere in that Feasibility Study OTHER than on the cash flow sheets --** the same cash flow sheets that Mr. Young sought to discount as unconnected with any particular items of construction. There simply **is no detailed cost estimate which can be examined, whether it be engineering cost, construction cost, total project cost, or estimate by any other name!**

This record virtually abounds with examples of MAWC's driving up costs abound in this record. As one example of how MAWC sought to drive up its estimates from its 1993 engineering cost numbers, consider Mr. Young's testimony regarding the ozonation contract, which he estimated at \$5.3 million. Tr. 1340. Also included was an additional \$8 million for residual handling. Neither of these was needed. Morris, Direct, Ex. 65, p. 11. Moreover, while first noting that the DNR had indicated that the larger clear well was an acceptable substitute for the \$5.3 million of ozonation equipment, the "Feasibility study" solved that problem by including BOTH the costs of the expanded clear well AND the ozonization equipment. Tr. 1265. If you can choose one or the other, why not take both!

Comparing the 1993 Gannett Fleming engineering cost estimate (Ex. TLB-14) to the 1994 \$78 million estimate (Ex. TLB-16) is also instructive as to "how the whole process worked." Tr. 1241. On the 1993 Gannett estimate, renovation of the

pulsators was estimated at \$3,627,000. Just over one year later, in December 1994, the item had been escalated to \$4 million. The new chemical building, estimated by Gannett in May of 1993 at \$4,335,000, ballooned to \$6,250,000 by December, 1994. The renovation to the filter building and new clear well, estimated in 1993 by Gannett Fleming at \$4,493,000, was split into two items by 1994 that totaled \$6.2 million. The transfer and high service pumping renovations had been inflated from \$1,569,000 in May, 1993 to an astounding \$4,800,000 just 18 months later. Exhibits TLB-14, TLB-16.

MAWC found it difficult to shake completely free of the \$26.6 million number from the 1993 engineering cost estimate. Even Mr. Young admitted that Gannett (and Gannett's own transmittal letter revealed) that Gannett had been "conservative" with its estimate. Mr. Young subsequently agreed that "conservative" in this sense meant erring on the high side. Tr. 1311. Gannett then indicated that a large contingency would not be necessary, Ex. TLB-14, to which MAWC responded by adding still another 10% contingency fund.^{11/} Reversing the cost inflation process and tracing back the various components of the various estimates to the 1993 engineering cost estimate, however, produced a total of \$25.335 million -- very close to the \$26.6 million. Tr. 1336.

Dr. Morris had arrived at the same \$26.6 million estimate -- independently -- from the 1991 numbers and factored

^{11/}Mr. Young's language, "We didn't want to lose that," when referring to the double-count on the contingency allowance on the Gannett estimate (Tr. 1277, l. 8), may well have been Freudian.

them up for inflation to his \$30.1 million figure. He then added roughly \$10 million to that total to cover the estimated costs of access road work, additional floodproofing, and renovations at the river intake.

The river intake is an instructive issue. Dr. Morris has designed such intakes, recently he was involved with the redesign of a river intake facility for Boonville, Missouri also involving the Missouri river. Tr. 1862, 1914. He testified on cross-examination that the costs of such structures "can vary tremendously depending on where you're building" the structure. "It's not a function of the volume of water your pumping." Tr. 1862. However, MAWC built its estimate, dated in October, 1994, on another installation in Hershey, then simply ratioed up the cost based on volume of water. With that calculation, MAWC produced an estimate for a new intake structure of \$5,907,000 (which included \$500,000 for pumps). Ex. TLB-14. But that wasn't enough. On the December, 1994 estimate, the cost of the intake structure and pumping has been "pumped up" yet again to \$7,200,000. Ex. TLB-16.

Company Witness Young seemed largely to want to focus on his 1996 "Feasibility Study" which compared the putative costs of the new groundwater facility to the renovation (\$63.3 million). Tr. 1200-01. This is, however, an exercise in question-begging, for it is the very 1996 "Feasibility Study" that demonstrates the inflated estimates, yet itself contains no detailed engineering cost estimates supporting the amounts claimed. No

one could find the detailed estimate that supported this \$63.3 million figure.

It is to be recalled that Mr. Young identified this very document as the "decision making document" for MAWC. Tr. 1253. However, in the very next exchange, Mr. Young admits that the design of the new plant was initiated in December, 1995, almost a **full year** before the "decision making document" was completed. Clearly, MAWC had already made up its mind to proceed with the project and inflated the estimates to attempt to validate its choice.

The key point in all this, as admitted by Mr. Young, in May, 1993, MAWC was going forward with the renovation project, that project had gained Board approval and a design contract had been let. Tr. 1321. Then, in July, 1993, the flood came. Asked to identify what changed other than the flooding, Mr. Young responded: "[t]he cost of the project changed." Tr. 1322, l. 10. Yes, Mr. Young, it certainly did.

At base, MAWC's attempt to blur the record and argue that no one understands their systems is a shell game and should not confuse the Commission. Utilities such as AWWC with a capitalization of "billions and billions of dollars" (Tr. 2204, l. 15) that is seeking to recover the costs of a \$70+ million capital addition should be required to clearly justify their prudence. This is the utility's burden and the utility's burden of proof. The Commission will recall that DNR approval was obtained and a renovation project was going forward at the time

of the flood. Following the immediate recovery from the flood, the only things that **needed** to be changed in that plan were increasing the flood protection at the plant. There is **no question** that MAWC could so increase the scope of the project with either currently unnecessary items or inflated estimates of additional "scope" or both so as to create a new estimate that would justify the decision to build a new plant.

One can almost sense what happened. The flood was, to be sure, an unsettling event. The receding floodwaters, however, revealed a massive construction project. MAWC management saw in it an opportunity. Putting their renovation plan on hold, MAWC saw a chance to move MAWC's facility to a new location and enhance its rate base rather substantially in the process. As Mr. Young testified, if he had an infinite amount of money, "he'd take the whole plant out of the flood plain," which is, of course, exactly what he did. Tr. 1366.

Unfortunately, money, while obviously not a major concern to AWWC with its capitalization of "billions and billions," it is of concern to the thousands of ratepayers who are about to be flooded yet again, but this time with massive rate increases as they are asked to pick up the financial consequences of MAWC's decisions. The original renovation plan was a phased plan that would have mitigated rate shock. Tr. 1216. Removal of the renovation plan eliminated, at least in MAWC's view, the need to phase in the recovery. Tr. 1394.

MAWC also seized on this Commission's decisions in WR-97-237 and WO-98-204 to argue that STP had been finally adopted, thus the ratepayers in St. Joseph were decoyed with promises of 35% increases. Tr. 170, 487, 792, 1928. In particular, in St. Joseph MAWC sought to use a "citizens advisory committee." As one member of that group put it, that group did not discuss anything useful, was nothing more than a public relations ploy for MAWC. He characterized it as a "rubber stamp". St. Joseph Public Hearing, Tr. 58-59. Mr. Barclay, Chairman of Wire Rope Corporation, and long-time St. Joseph resident, commented at the public hearing that the old plant had served well and been improved many times during its life. As a businessman, he saw the cost of the cure as many times worse than the disease. St. Joseph Public Hearing, Tr. 59-60.

The bad actor in this whole sorry mess is MAWC. It should pay the price of its essentially reckless behavior -- not its ratepayers. One business customer, Mr. Bob Knoell of Friskies, testified at the public hearing. His comments are instructive to this issue:

We feel that Missouri-American Water should not be allowed to pass on the total cost of the new plant for some of the reasons I have here. We feel that St. Joe could have been better served by renovating the old plant at approximately half the cost and gradually passing on the costs.

St. Joseph Public Hearing, Tr. 48-49.

This customer's comments were echoed by Terry McLatchey of AGP who, at the same hearing, testified:

Misjudgment by management should affect stockholders, not their customers. The board of directors which is elected by stockholders has the responsibility and the means to deal with poor management decisions. Passing poor judgment on to the [captive] customers should not be an option.

St. Joseph Public Hearing, Tr. 54.

The means to do that are in the hands of this Commission. By denying inclusion in rate base for a substantial portion of this imprudent expenditure, the management of this company will be brought to the bar to justify their actions. Actions have consequences and those consequences should not fall of the ratepayers of this utility.

G. Water Quality Issues.

An issue arose in this case regarding the characterization of the source of supply for the new treatment plant. The issue arose in two contexts. First, the context that there was great value in the "intangibles" of a ground water supply that supposedly would overcome the hurdle of the excessive cost of obtaining such a supply. Tr. 1250. Second, there was much argument from MAWC that the new source was more reliable and less prone to failure than surface water.

Both contentions are bogeys. Exhibits 88 and 89 evidence that there is a special classification in the regulations for Ground Water Under the Direct Influence of Surface Water ("GWI"). In fact, for situations of MAWC seems threatened by the GWI classification, because it is essentially treated in the regulations as though it were surface water. Exhibit 88

leaves the question to the state authority to decide, and Exhibit 89 are the state Guidelines for making those determinations. The classification turns not only on the precise measurement of the distance of the alluvial wells from the river (and, indeed the Rainey (Collector) Well has laterals that extend to 200 feet from the river), but also on the nature of the supply and its interrelationship with the adjacent river.

MAWC's own hydrogeological report on the wells indicated that 80-90 percent recharge was expected to be derived by induced filtration from the river. Tr. 1351. Rapid shifts in water characteristics have been shown to occur. Tr. 1815. Temperature correlation between the new supply and the river have been tracked and noted. Tr. 1815-17.

As regards the reliability issue, it is established in this record that the new wells are, themselves, subject to different risks than the old intake, but risks nevertheless. Mr. Biddy testified to risks from floating debris. Dr. Morris noted that, in sustained low river conditions, the recharge source for the wells will be lost. It is clear that no location is without risk, but again our point is that the new wells have their own, and different, set of risks. This, again, is not justification to abandon a functional treatment plant.

It is, in our view, unnecessary for this Commission to decide for all time whether the new source is GWI, surface water, or ground water. The distance of the wells from the river was not established by MAWC. There was even a minor controversy

regarding whether an operating permit had been issued. It turned out that no such permit has yet been issued; only construction permits and temporary permits.^{12/} Perhaps unintentional, such factual errors should the credibility of MAWC's case.

The point of the whole issue, from our perspective, is that MAWC's puffing as to the superiority of its new source of supply as compared to the old source of supply is just that, puffing. The new source of supply, like the old, is inextricably linked with the Missouri River. Importantly, as Dr. Morris testified, the claimed "advantages" of the ground water source could have been obtained simply by installing similar alluvial wells adjacent to the old plant (Morris, Direct, Ex. 65, p. 15) - **it is not an excuse that justifies the construction of the new treatment facility.**

H. Independence of Biddy and Morris.

One of the strongest points against MAWC was completely overlooked by the company. We trust it will not be lost on the Commission. Completely independent of each other, the Missouri Office of the Public Counsel and the Industrial Intervenors engaged experienced engineers to provide technical support in this matter. Industrial Intervenors engaged Dr. Morris, a

^{12/}While maintaining (almost combatively) that "We have a permit to operate the ground water facility," (Tr. 1353), the claim later became: "We have a **permit to construct** -- yeah, to construct the new plant." Tr. 1423, ll. 7-8. When produced, the "permit to operate the plant" had changed once again and become a "permit to build the well field." Tr. 1846; Ex. 102. On its face, Exhibit JSY-22 is not a permit to operate, rather, it is a permit to construct.

professor at Missouri's premier engineering school.

Independently, each expert requested data from the company regarding the documentation supporting the company's choice of alternatives. Tr. 1915. Independently, these two engineers analyzed the data that the company selectively chose to provide to them. Tr. 1308-09.^{13/}

Independently, and through two completely different paths, the two experienced engineers reached virtually identical conclusions regarding the costs of renovation of the old plant. Dr. Morris concluded that \$40.3 million would adequately address the renovation and floodproofing improvements. Morris, Direct, Ex. 65, p. 16. Mr. Biddy concluded that \$36.3 million would do the job. Biddy, Direct, Ex. 19, p. 21.^{14/} Dr. Morris included a \$2 million contingency fund and characterized his estimate as being on the high end of the range; Mr. Biddy did not include an explicit contingency fund in his calculation. Dr. Morris also included some funds for the purchase of additional land near the site, initially for a staging area and for the possible later addition of some alluvial wells to allow blending and temperature control. Morris, Direct, Ex. 65, p. 15. When these reconciling

^{13/}While these intervenors and Dr. Morris did not know it until Mr. Young's Rebuttal testimony was provided, MAWC failed to provide us with a comprehensive response to Dr. Morris' data requests (quoted in Dr. Morris' Surrebuttal testimony). By then, there was insufficient time to seek compulsory orders.

^{14/}Mr. Biddy reduced this estimate to \$29.2 million through a used and useful percentage pertaining to the overcapacity of the new plant. Dr. Morris was not asked to address issues regarding the size of the new plant.

comparisons between the two engineers' estimates are made, their independent estimates arrive at virtually the same number.

Both engineers concluded that the documentation that the company provided was substandard and fell far below the level of analysis that should have been performed pursuant to good engineering standards. Biddy, Surrebuttal, Ex. 20, p. 13.^{15/} Dr. Morris stated that detailed studies of the engineering and economic feasibility of the move to a different site did not exist and that reasonable engineering and economic reason had been abandoned once the apparent decision had been made to commit to the new site. Morris, Direct, Ex. 65, p. 17-18. Mr. Biddy's criticisms were more sharp. He stated that MAWC's decision was not prudent,

but was based on MAWC's decision to abandon an existing functioning water source and treatment plant without the benefit of detailed studies of the engineering and economic feasibility of expanding and upgrading the existing plant to meet functional requirements at a cost-effective price.

Biddy, Direct, Ex. 19, p. 8 (emphasis in original).

Both engineers concluded that the only estimate worth its "engineering salt" was the 1993 Gannett Fleming engineering cost estimate. Biddy, Surrebuttal, Ex. 20, pp. 8-9; Morris, Surrebuttal, Ex. 66, pp. 2-3. This was the only estimate that provided a detailed analysis and workup of the costs to perform

^{15/}Mr. Biddy characterizes MAWC's work as "sloppy and unprofessional" (Ex. 20, p. 13, ll. 14-15) and as "the most incompetent that I have seen in 37 years of engineering practice." Ex. 20, p. 11, l. 18.

the necessary work. Mr. Biddy had access to this engineering cost estimate at an earlier stage than did Dr. Morris and included the documentation in his own exhibits as TLB-14.

We would encourage the Commission to briefly page through this roughly twenty-page Exhibit TLB-14. Following the summary sheets (which themselves do a far better job of identifying the components of the estimate than anything else MAWC seems to rely on), are multiple pages of unit cost estimations by the engineers, and detailed development of the various components that were incorporated into the estimate. With this level of detail, it is at least possible to review the thought and analytical process that went into the preparation of the estimate. It also reveals professional engineering integrity in that it exposes the costing assumptions of its preparer to scrutiny. The various components, and the method of their derivation, are displayed. This is far from the "here is where it gets a little tricky" (Tr. 1332, 1.15) justification employed by MAWC.

Neither Dr. Morris nor Mr. Biddy consulted with each other at any time during this process. Tr. 1915. Indeed, the first time they met or spoke to one another was at the hearing itself. Given this, it is indeed remarkable that they arrived at virtually the same conclusions with respect to MAWC's work and the quality of its estimates. Their separate estimates, arrived at through completely different approaches, lend confirmation and credibility to the general conclusion that for the **phased** expenditure of \$38-40 million, MAWC could have not only flood protect-

ed the old St. Joseph plant, but could have renovated that plant and preserved the existing value that asset had for the benefit of the ratepayers. Since that project would have been staged, as noted by Dr. Morris, it would have resulted in an effective "phase-in" of the required revenue support, moderated the sharpness of the increases, and would have avoided many of the problems that this case has presented for the Commission.

I. Staff's Position on Overall Prudence.

Mr. Merciel was Staff's witness on the prudence of MAWC's actions. First of all, Staff's position was something of a conundrum, since Staff took the position that the Commission had already determined the prudence of MAWC's decision to build the new plant in the siting case. Inexplicably, Staff came to this conclusion in the face of the Commission's express disclaimer that it was doing so. Ex. 95. It will be recalled that the Staff made no investigation of the prudence of the selection in the siting case, and sought to make none here. That certainly was an easy road.

In any event, Mr. Merciel, seemingly embarrassed by the investigation and analysis that others had performed, waited until his rebuttal testimony to propose a modest disallowance from the new plant on the general basis of overcapacity.

Mr. Merciel's track record on prudence reviews during his career with the Commission was revealed through a series of data requests. Mr. Merciel has been with the Commission virtually his entire career since his graduation from Rolla in May,

1976. But for spending 120 days in outside employment following his graduation (and a two month period of unemployment early in 1977), Mr. Merciel has called the Missouri Public Service Commission home. Ex. 99. During this 23-odd year career with the PSC in its water department, Mr. Merciel has testified in some 48 water cases at the Commission (including two court proceedings) and testified that list was substantially incomplete, that the listing that he had prepared had been prepared from memory, and that a complete list would be somewhat larger. Tr. 1567-68.

During Mr. Merciel's 23-year career spanning nearly 50 Commission water cases (and perhaps many more), **Mr. Merciel has never seen a water company make an imprudent rate base or capital expenditure** and the instances in which he observed even a capital expenditure or rate base addition that he did not like are scarce as hen's teeth. Through his responses to data requests, Mr. Merciel confirmed that he has only recommended disallowance of **any** capital improvement or rate base inclusion proposed by a water company **in two cases** (Ex. 97) and neither of those was on the basis that the expenditure had been imprudent. Ex. 98. Given this record, MAWC seems all the more out of step with Missouri's other water utilities.

Though a latecomer to the view, and a tentative one at best, it is commendable the Mr. Merciel finally was able to find at least **one** Missouri water utility that had overbuilt its construction project so that his record will not be lacking in that regard.

III. SINGLE TARIFF PRICING (STP) IS BOTH UNLAWFUL AND UNREASONABLE. THE COMMISSION SHOULD TERMINATE THE STP EXPERIMENT AND RETURN TO DISTRICT SPECIFIC PRICING (DSP).

Both the St. Joseph District and the Platte County (Parkville) District stand to see greater rate increases in the short run should the Commission reject Single Tariff Pricing (STP) and return to District Specific Pricing (DSP). Inasmuch as Ag Processing, Friskies Petcare and Wire Rope Corporation are located in the St. Joseph District and the City of Riverside is located in the Platte County (Parkville) District, one would expect them to favor the continuation of STP. However, that is not the case. Despite the fact that STP would be beneficial to them in the short run, both the St. Joseph Industrials and Riverside consistently continue to oppose the continuation of STP because it is both unlawful and unreasonable in violation of the common law and Section 393.130. RSMo., which is declarative of the common law rule against discrimination.

A. Single Tariff Pricing Is Unlawful and Discriminatory.

Company's STP proposal is nothing more complicated than taking all the costs of the seven separate company operating districts and combining them, then developing essentially uniform tariffs that recover those costs across the separate districts. This mechanism, of course, disregards costs that are specific to each district, especially the district specific capital costs necessary to supplying water to each separate district. Instead of directly charging each district for its unique costs, STP

simply "averages" those costs and distributes them to all the districts with the result being that company customers in any of the districts only accidentally pay the actual costs that the company incurs to provide them with service. While this may be more convenient and expedient for the Company in preparing rate cases, the Courts of this state have often cited an axiom that aptly fits this situation:

[N]either convenience, expediency or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by the statute.

See State ex rel. Kansas City v. Public Service Commission, 257 S.W. 462 (Mo. banc 1923); State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W. 41, 49 (Mo. banc 1979); State ex rel. Missouri Cable Telecommunications Ass'n v. Public Service Commission, 929 S.W. 2d 768, 772 (Mo. App. W.D. 1996).

The Commission would do well to keep this guiding principle in mind as it considers the issuance of its order in this case. The legal requirement is that the rate approved by the Commission must be lawful, reasonable and nondiscriminatory.

The Commission's jurisdiction is determined by the General Assembly's statutory delegation of regulatory power to the Commission. Section 393.130, RSMo. 1994, limits the Commission's power in this particular case. Single Tariff Pricing (STP) violates § 393.130, which provides in pertinent part:

1 All charges made or demanded by
any... water corporation... for water...
service rendered or to be rendered shall be

just and reasonable... Every unjust or unreasonable charge made or demanded for... water... service, or in connection therewith... is prohibited.

3. No... water corporation... shall make or grant any undue or unreasonable preference or advantage to any... locality, or to any particular description of service in any respect whatsoever, or subject any... locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [Emphasis Added]

Subsection 1, is the statutory provision, which requires rates to be just and reasonable for the "**water...service rendered.**" The setting of rates for service in a district, which are higher than the reasonable cost to render the water service in such district violates such subsection. Inasmuch as none of the seven districts are interconnected, none of the customers in any one of the districts is rendered water service by any of the other districts. Thus, any attempt to impute or include in the rates of one district, the costs of rendering water service to another district, violates the law and is prohibited by Subsection 1 of Section 393.130.

Subsection 3 contains the anti-discrimination and anti-preference provision of the Public Service Act relating to water companies. This provision is written in the disjunctive so that not only is it unlawful to subject a locality to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever"; it is equally unlawful to grant a locality "any undue or unreasonable preference or advantage . . . in any respect whatsoever." See Alexander v. Chicago, M. & St. P. R. Co., 147 S.W.

217 (Mo. 1912), interpreting what is now Section 387.110, which provides virtually identical language pertaining to common carriers.

In the case of Single Tariff Pricing for non-interconnected districts with substantially different district specific costs of service, both prohibitions in Section 3 are broken. Not only does STP violate the law by granting undue or unreasonable preference or advantage to those localities (districts), whose resulting rates are lower than the cost of rendering such districts with water service, but STP also violates the law by subjecting other localities (districts) to undue or unreasonable prejudice or disadvantage, by requiring them to pay higher rates than justified by the cost of rendering those districts with water service. Under STP, it is only happenstance and chance that the rates in any one locality (district) recover no more or no less than the cost of rendering such district's water service.

Selection of terms such as "undue preference" and "unreasonable discrimination" as limitations on a utility's authority were intentional. They are declarative of the common law rule, founded on public policy requiring one engaged in a public calling to charge a reasonable rate without discrimination. State ex rel. Laundry, Inc. v. Public Service Commission, 34 S.W. 2d 37 (Mo. 1931).^{16/} Use of these terms sets clear lim-

^{16/} The Laundry case should be required reading for anyone interested in understanding the anti-discrimination provisions of Section 393.130.2 and 3. There is a very scholarly discussion of the purpose of the law prohibiting undue discrimination and undue
(continued...)

its on the grant of authority to the Commission. The terms "discrimination" and "preference," qualified with the additional terms "undue" and "unreasonable" have been construed by our courts to foreclose severance of the close relationship between cost-causers and cost-payers.

In State ex rel. City of Cape Girardeau v. Public Service Commission, 567 S.W.2d 450, 454 (Mo.App., 1978), the court confirmed rejection of a rate proposal that would have "pass[ed] on to all residential customers within the city the benefits derived from the consumption of one user; it would [have] establish[ed] residential rates which would not reflect the true cost to those individual customers.

In State ex rel. City of West Plains v. Public Service Commission, 310 S.W.2d 925 (Mo. en banc 1958), the Supreme Court noted that a telephone utility's prior tariffs that passed through several individual municipal franchise taxes to ratepayers in other communities that did not impose such taxes was an "unjust discrimination" and upheld tariffs that limited charges for municipal taxes only to the utility customers living within those municipalities.

^{16/} (...continued)
preference found there. In Laundry, the Court determined that there was undue and unlawful discrimination for failure to give the same rate to all who used water under the same or substantially similar circumstances. In that case the company had a manufacturers rate and refused to give it to laundries, who were not manufacturers but used water the same as manufacturers. Quite obviously, the converse, where one locality is charged the same rate as another locality but the costs to serve each locality are substantially different, is also discrimination.

In State ex rel. City of Grain Valley v. Public Service Commission, 778 S.W.2d 287 (Mo. App. W.D. 1989), the Missouri Court of Appeals held that Southwestern Bell was in violation of Section 392.200, RSMo., the anti-discrimination statute applicable to telephone companies, for providing the same service under the same conditions to two localities but charging one locality a different rate than the other locality. This, of course, is the converse to STP, which is the providing of a different service under different conditions to seven localities but charging all seven localities the same rates, thereby subjecting some districts (localities) to undue or unreasonable prejudice or disadvantage while granting undue or unreasonable preference or advantage to the other districts (localities) in violation of Subsection 3 of Section 393.130.

It is undisputed that MAWC's seven districts are operationally separate. There is no physical connection between these districts. There is no possibility that the water treatment plant, mains or distribution facilities in St. Joseph may be used by the ratepayers in St. Charles, nor can the wells that provide MAWC's supply in Joplin provide service to customers in Warrensburg. The separate districts are discrete operating entities that have their own unique treatment plants, if they have a treatment plant, and their own unique sources of supply. Costs that are imposed by the provision of service to customers in one district are not incurred in any manner by customers in another district. Utility plant that is used and useful in

providing service to customers in St. Charles is not used and useful in providing service to customers in Joplin.

The touchstone of public utility rate regulation is the rule that one group or class of consumers shall not be burdened with costs created by another group or class. Coffelt v. Ark. Power & Light Co., 248 Ark. 313, 451 S.W. 2d 881 (1970); Utilities Comm. v. Consumers Council, 18 N.C. App. 717, 198 S.E. 2d 98 (1973); Jones v. Kansas Gas & Elect. Co., 222 Kan. 390, 401, 565 P.2d 597, 606 (1977).

Under Section 393.130.3, an undue or unreasonable preference or advantage is granted some districts while other districts are subjected to undue or unreasonable prejudice or disadvantage by transferring a significant portion of the costs caused by the use of a physically discrete utility plant and necessitated and caused by the usage of one group of customers in the locality served by such physically discrete utility plant to another group of customers in localities situated in different parts of the state, and who have or derive no benefit whatever from that utility plant. Under STP, depending upon the district in which they are located, the customers of Missouri-American are either being subjected to an undue or unreasonable prejudice or disadvantage or are being granted an undue preference or advantage. Under either scenario, Missouri-American is violating Section 393.130.3.

At its most basic, the justification for ignoring these undisputed cost differences is that it will allow the Company to

spread the costs of its operations over more customers. Just as obviously, those who would otherwise have to pay the costs are given an unreasonable preference, those who have to pay costs that they did not cause are unduly prejudiced.

Spreading one district's discrete costs to the other districts without question will reduce the rate impact on the customer in the **benefited** district. There is no doubt at all that municipal authorities in St. Joseph would like for other ratepayers in the state to pay two-thirds of their new plant. But both the common law and Section 393.130 stand as barriers to the discrimination between cost-causers and cost-payers.

There is a useful (though imperfect) analogy in the electric field. Several years ago, the citizens of the State of Missouri, through an initiative Proposition, amended the Public Service Commission statutes to deny the Commission the authority to pass through costs associated with electric plant that was not used and useful. See, Section 393.135 RSMo 1994. Although applicable explicitly only to electric utilities, the section, and the fact that it was passed by an initiative, strongly hints that public sentiment would preclude the use of regulatory devices to charge ratepayers costs that are associated with utility investment that is not used and useful to them.

B. Single Tariff Pricing Is Unreasonable.

We have noted above the illegality of the Company's Single Tariff Pricing ("STP") proposal based on its preferential treatment for some districts and its prejudicial treatment against other districts via its complete and undisputed departure from district by district cost of service. The Single Tariff Pricing proposal also is unreasonable on the same basis. Approaching the question from this perspective reveals an entirely different analysis.

As held in the Jones case, supra, the relationship between costs and rates is the essence of public utility regulation. Consider for a moment how this relationship came to be recognized.

Public utility regulation was established because the people, through their elected representatives, recognized that public utility operations were capital intensive and that duplication of competing facilities within a geographical territory was economically inefficient. Accordingly, public utilities were permitted to have a monopoly in a given service territory. Recognizing, however, that monopoly powers were destined to result in abuses, the legislature established a regulatory commission to counterbalance what would otherwise be the unrestrained exercise of monopoly power. The regulatory commission was established as the substitute for competition and was intended to establish, through regulation, a close approximation of the pricing structure that would result if competition were permit-

ted. Thus the quid pro quo for the monopolistic rights granted the utility was its submission to regulation and its commitment to safe, adequate and non-discriminatory service to all requesting that service within its monopoly territory.

One of the typical abuses of monopoly power that the regulators were to prevent was the monopolist's ability to enhance or protect its market dominance by overcharging customers for services as to which there was no effective competition, while using the excess monopoly rents gained thereby to subsidize below-cost operations in other areas. Thus was born the companion principle that each separate utility service should, to the maximum extent possible, be priced based on its cost including an approximately equal rate of return for the utility on the value of its investment used to provide that service. To say it in another way, the question was posed: What rate would likely result if robust competition were permitted? The answer is that no service would be provided at much above or much below cost, since, in either case, in a competitive environment, either the below-cost supplier would be forced out of business, or competitors would undercut the prices of the above-cost supplier. In all cases, after several iterations of this model, rates that represented a return of the cost to provide the particular service, including a reasonable rate of return on the needed investment, would develop.

Thus approached, the concept of "cost of service" is not limited to the aggregate revenue requirement of the utility,

but extends to cover the appropriate pricing of service to customers and groups of customers that are reasonably related as to cost and usage characteristics. Regulation that does not achieve this objective is failing its basic mission and purpose. Regulation that achieves control only of the **aggregate** level of utility revenues is doing an incomplete job.

This case demonstrates the effect of abandoning these basic principles of public utility regulation. Cost differences between physically discrete service districts are acknowledged as present, but then dismissed or ignored under STP.

There are other practical reasons behind cost-based rates, including:

- **Cost based rates send proper price signals to utility customers.** They permit appropriate evaluation of alternatives such as housing insulation, electric appliances, selection of manufacturing equipment on efficiencies, and (in this case) the evaluation of the cost of the use of scarce resources such as water, whether to install more efficient plumbing fixtures or engage in "zero-scaping" to reduce lawn-watering. They promote wise use of resources and meaningful comparison of available alternatives. In some instances, they may even cause previously unexplored alternatives to become economic.
- **Cost based rates provide appropriate public feedback** for the utility regarding its investment and encourage prudence in making that investment. If rates do not track costs, or if ratepayers are over-charged or under-charged, customer reaction to the costs associated with utility investment will be misdirected and inappropriate. Excessive investment will be inhibited by the fear of public scrutiny and wrath.
- **Cost based rates provide earnings stability for the utility.** When customer usage patterns shift, utility revenues will shift. If rates are tied to costs, costs will also shift in synchrony with changes in usage patterns and utility earnings will remain stable. Conversely, if rates and costs are not related, custom-

er usage shifts will still change revenues, but underlying costs may not change with resultant instability and unpredictability in utility earnings.

In In re Gas Service Company, 21 Mo. P.S.C. (N.S.) 262 (1976), this Commission ruled:

Above all, in the opinion of the Commission, the touchstone of rate design is that the rates must and should reflect the cost to serve that particular customer or group of customers. To depart from this basic principle will place the regulator in a never-never land wherein he can design rates to suit his own particular whim or caprice, or satisfy his own preconceived ideas of how society should be charged for services. [Emphasis added].

The Commission of today should recognize the validity of these well-established principles. By promoting STP, the Company seeks to ignore costs, how costs are incurred, and for whose benefit costs are incurred. Now is the time to end STP. However, because of the rate shock that certain districts will experience due to the fact that STP has been in effect for several years, STP should be phased out over a period of years just as it was phased in over a period of years. Had STP never been authorized, current rates would be at the district cost of service and there would be no need for a phase out. That, however, is not the case. STP had been authorized and rates are now set on such basis. Thus, the Commission should announce that it is ending the STP experiment now and commence phasing out the STP rates over a period of years in districts that would receive a rate shock from an immediate return to DSP.

Recognizing that the intervenors representing the Warrensburg, St. Charles and Joplin Districts, will be preparing persuasive briefs on the issue of terminating STP and returning to DSP, we will not burden the record any further on this issue at this time.

IV. CLASS COST OF SERVICE ISSUES.

Despite the focus on the District Specific and Prudence issues, class cost of services issues are nonetheless important and need to be resolved. There are large areas of agreement between MAWC, Staff and St. Joseph Industrials on this issue. We will address the significant disagreement that all other parties have with Public Counsel, and also the area of disagreement between Mr. Harwig and Mr. Hubbs of the Staff. That disagreement, while appearing to be minor, has significant implications for larger customers in the St. Joseph district.

A. MAWC, Industrial Intervenors and Staff Appear to Agree On the Use of the Base-Extra Capacity Method.

The company's initial filing proposed to use the well-recognized Base-Extra capacity method. Drawn from the Manual of the American Waterworks Association (AWWA Manual), Base-Extra was used by company Witness Stout to perform his initial allocations.

B. Preferred Result is a DSP District Specific Class Cost of Service Study that Recognizes Differences Between Load Characteristics of Various Districts.

Although using an appropriate method, Mr. Stout performed his allocations as though all seven districts had been combined. Tr. 215. He used an average of all the districts to derive his allocators (Tr. 217), but recognized that this failed to recognize differences between the various districts of the company. Tr. 215. In effect, Mr. Stout treated MAWC as though it was one big district. Tr. 216.

According to Mr. Harwig, Mr. Stout's study, provided a basis for evaluating the rates recommended by MAWC in this case (Harwig, Direct, Ex. 57, p. 20), but not a sound basis. Its defect is that:

It lumps together like customer classes from seven districts for cost allocation purposes, but usage patterns of like classes can be very different from one district to another. . . . Thus the cost allocations cannot be considered to be representative for residential customers in all districts.

Harwig, Direct, Ex. 57, p. 20.

Rather, Mr. Harwig recommended that revenue requirements be determined on a DSP basis, and that cost of service studies be performed with the DSP revenue requirements and load ratios appropriate for the customer classes in each district. Ex. 57, p. 21.

**C. The Proper Treatment of Large Customers
Served from Transmission-Size Mains.**

Messrs. Harwig and Hubbs were in disagreement over two aspects of Mr. Hubbs' class cost of service study. First, Mr. Hubbs used the same peak day and peak load factors across all the seven districts. As a result, Mr. Harwig testified that Mr. Hubbs' studies "may not be a reliable guide to determining an appropriate rate charge for each class **within a given district.**" Harwig, Rebuttal, Ex. 61, p. 4.

In cross-examination on this point, Mr. Hubbs acknowledged that the same allocation factors were used for all districts. Tr. 964. While not fatal to his study, as Mr. Harwig testified, this may limit the utility of Mr. Hubbs' study.

The second point, a distinction between mains 12" and larger and those 10" and smaller should be recognized, as Mr. Harwig testified, to do a more precise job of cost allocation between those large users who could not take service from the smaller mains, but can take from the larger 12" mains. Mr. Hubbs recognized the distinction and agreed that subsidies among customers would be minimized if the cost of distribution mains were allocated only to the customers in the class who made use of them. Tr. 970. He also recognized that not all industrial and wholesale customers could be adequately served by the smaller mains in the system (Tr. 969) thereby conceding Mr. Harwig's point.

However, Mr. Hubbs refused to take the obvious step of correcting his cost study because of a lack of data. Tr. 965-66.

Mr. Hubbs indicated that he would have liked to have done a further segregation of larger users, but lacked the data to perform his analysis. Tr. 965. Studies that had recognized the distinction in three other states were "not appropriate" even though Mr. Hubbs had not reviewed them (Tr. 966). Mr. Hubbs then argued that the "facts in this case are completely different than that," but then cited to Brunswick, the smallest district, with roughly 500 customers. Mr. Hubbs made no reference to St. Joseph which is where Mr. Harwig, because of budget constraints, had made the corrective allocation. Mr. Hubbs thus really ducked the question, both as to the appropriateness of the out-of-state studies, and the higher degree of precision employed by Mr. Harwig.

The result of Mr. Hubbs' failure to recognize the transmission/distribution distinction creates an anomalous situation in which the commodity rates for these large customers are higher than for residential customers served from much smaller mains. Tr. 962. While Mr. Hubbs sought to argue that average costs were lower, he conceded that a commodity-based increase had more impact on industrials. Tr. 963.

The issue also has implications for the public water supply districts service from the St. Joseph district. These wholesale customers are among the largest customers on the St. Joseph district and are severely impacted by Mr. Hubbs' failure to recognize this important distinction between transmission and distribution mains. Correcting his study, at least in the case

of the St. Joseph district, brings these rates more into line and avoids the necessity for other mitigation measures.

At the final analysis, Mr. Harwig suggested that class rates in this case be adjusted based on an equal percentage or "across the board" approach, simply because of the significant impact that the proposed increase would have even with the large disallowance St. Joseph Industrials and Riverside have proposed.

D. Public Counsel' "Economies of Scale" Argument.

Public Counsel proposed a dramatic interclass revenue shift, based on what its witness termed "economies of scale." This position met with virtually universal rejection from the other parties, even those who had not sponsored witnesses on this issue.

Public Counsel's approach, advocated by Hong Hu, started with the accepted Base-Extra capacity allocation method. Then adjusted the allocation factors for what she termed "economies of scale" by a factor of .5 applied to all capacity-related facilities. This method is in error and should be rejected for several reasons:

First, the Base-Extra capacity method is widely accepted as giving balanced recognition to system peak usage as well as system average usage. Somewhat similar to the Base-Excess allocation method used in some electric and gas cases, the Base-Extra capacity methodology uses ratios of daily and hourly peak to system load factors to assign costs on a cost causal basis.

Contrary to the assertions of Witness Hong, the method is not a coincident peak method, rather is a non-coincident peak method. The Base-Extra capacity method uses maximum day and maximum hour volumes to determine peak allocation factors.

Second, to be consistent, a methodology should be used throughout the system to be allocated. Ms. Hong disclaimed being an engineer, admitted that she had no knowledge of the size or driving factors for pipe and other functions of the treatment plant. Tr. 621-22. At the same time she acknowledged that the new treatment plant was the driving factor behind the rate increase request by MAWC. Tr. 623. She had made no study of sources of supply and had made no adjustments thereto. Tr. 621. She stated that she did not know whether her square root method would be appropriate for a treatment plant. Tr. 622. She also did not apply her square root calculation to meter costs. Tr. 623.

Third, no regulatory commission has accepted her method, nor was she able to cite to any regulatory commission that has approved the methodology. Tr. 618. In contrast, Base-Extra is widely accepted and already recognizes economies of scale as they are generally understood to exist. Tr. 211-12.

Ms. Hong's sometimes confusing testimony was at times difficult to follow. She appeared to have difficulty understanding that if some part of something is "extra," some part of the something is not extra and that the comparison, if it is to be meaningfully made, must have some basis. Tr. 619-21. What data

she utilized was not current and was not synchronized to this test year. Tr. 623, 626. She admitted that she had performed no independent evaluation of factors for this case. Tr. 624. Instead, she admitted that she could not get data from the company, so had used data from an earlier case and from another (and now departed) Public Counsel witness as her starting point. Tr. 623, 626.

As with MAWC, providing data to other parties also appeared to be a challenge. Although she admitted that we St. Joseph Industrials had tendered a data requests seeking all her work papers (Tr. 631), she nevertheless determined to withhold what she claimed was an AWWA-compliant class cost of service study because it had been done "for my own purpose of comparison" and was "back of the envelope." Tr. 630.

Ms. Hong also appeared to have two major frustrations. First, her testimony was that the AWWA Manual had not appeared to have considered the viewpoints of persons that she believed it should. When confronted with the listing of the members of the AWWA committee responsible for the manual, she was forced to concede the there were regulators and theoretical persons on the committee. Tr. 633-35. She then appeared to change her assertion to be that the manual itself didn't reflect that the view points that she wanted had been discussed. However, she acknowledged that she was not privy to what discussions had been held, did not know who participated in the discussions or what ideas had been advanced. Tr. 636. She suggested that the Manual

did not appear to reflect "what she had discovered," (Tr. 637, 11. 4-5) apparently forgetting that she had earlier testified that she had performed no independent work in the case at all but had relied on a predecessor's work. Tr. 623-24). She later acknowledged that the notion of economies of scale existed when the AWWA Manual was developed. Tr. 665.

The second area of Ms. Hong's discontent was with the Base-Extra capacity method itself. She sensed that it produced an equivalent result to single peak, stating that she had "proven" that the Base-Extra capacity method was equivalent to single peak responsibility. Hong, Surrebuttal, Ex. 32, p. 4.^{17/} When pressed about her proof, however, her conviction seemed to waiver. "I did say that it's similar or identical. So, I mean, even if it's not" Tr. 639. Subsequently, her position was transformed to: "What I said is if it produced similar result, then my opposition is still -- still stands." Tr. 639. Translation: I've made up my mind; don't confuse me with facts.

The **facts** are that the Base-Excess capacity method is not equivalent to a single peak capacity method. Exhibits 68, 69 and 70 show three different sets of allocators. If the two methods were identical as Ms. Hong claims, then the results will match in each case. They don't. Instead, the three exhibits

^{17/}The full quotation is:

"I have proven that the traditional B&EC method is equivalent to a single peak responsibility method"

Hong, Surrebuttal, Ex. 32, p. 4

demonstrate that there is no equivalence between the methods at all. Certainly, one can force a set of special facts in which both methods would produce the same result, but as Mr. Stout testified, he had "never seen such as system" in which the precise situation concocted by Ms. Hong to show "equality," i.e., where the residential customer class would have a peak that was off the non-coincident peak, occurred.

Terminology also seemed to be a problem for Ms. Hong. She testified that having someone propose a methodology in Missouri equated in her mind to having that approach be "generally accepted." Tr. 648. In this view, some method could be "generally accepted," yet not have been approved by a single regulatory commission anywhere. All that it would require was just that some party have proposed it in Missouri. Tr. 648. If nothing more, this is a uniquely convenient approach.

The implications of Ms. Hong's aberrant significant for larger users, including the public water supply districts whose rates could go up over 268% using her method. While admitting that the residential user is the high peak user on the system (Tr. 628-29), the real impact of her proposal is to shift more revenues from the residential class to other customers. Tr. 670. Yet she agreed that there could be community damage if large industrials and other sources of employment were to leave. Tr. 679. Indeed, there was such testimony in this proceeding. Increases in costs cannot be passed on in a truly competitive market. St. Joseph Public Hearing, Tr. 56-57. Already some

customers are exploring other supply options, even at the current rates. St. Joseph Public Hearing, Tr. 53-54.

Another industrial customer, Brad Allen, the Joplin plant manager for Gilster-Mary Lee, a private brand manufacturer, testified at the Joplin public hearing. His testimony is particularly pertinent on this point:

Gilster Mary Lee strongly supports true cost base water rates for a number of reasons. Any increased costs, particularly one from which we receive no additional benefit, will hurt our ability to remain efficient in what I've described as a hyper competitive market. Our customers consistently challenge us to get to the true costs of our products. Anything but a true cost in our utilities will prevent us from meeting their expectations. In this extremely competitive market, it is our customers -- our customers will not accept price increases and will not pass them on to consumers. Today, millions of dollars in business literally swings on as little as five to ten cents a case.

Joplin Public Hearing, Tr. 47. Mr. Allen also commented that his own plant was particularly concerned regarding a proposed increase of as much as 60 percent because of its specific competitive situation. Id. This type of testimony should be given full consideration by the Commission.

The approach Ms. Hong suggest is counterproductive to the group she claims to represent and may, in fact, work to their ultimate detriment. Her method is internally inconsistent, built on a flawed basis with outdated data and studies, and should not be approved in this case.

E. Motivation to Increase Rate Base and Revenue

As a function of the public utility equation, set forth in Ms. McKiddy's Direct testimony, Schedule 29, it is clear that an increase in rate base will result in higher rates, earnings and higher revenue for the utility. The utility will attempt to assert that this is offset by lowered costs of operations, but when discussion of a rate base addition is the topic, it must be kept in mind that the increase in depreciation, which is recognized as an expense for regulatory purposes, represents a paper expense to the utility.

It is clear that the system of cost of service regulation creates an incentive on the part of the public utility to avoid the erosion of depreciation by continuing to invest in rate base additions. That is bad only if it is not recognized and is not offset by the sharp eye of the regulator that assures that only that investment that is truly needed and is truly cost-justified is permitted rate base treatment.

That, of course, is what this case is about. The Commission is the counterbalance to the monopoly power of the utility. The Commission is the counterbalance to the legal requirement that once investment is included in rate base as used and useful, the utility is entitled as a matter of constitutional law to an opportunity to earn a reasonable rate of return on its value. The decision to include a dollar in rate base is not one that should be taken lightly by the Commission. In this case,

that decision will stalk the streets and byways of St. Joseph for the next generation.

It would be our wish that this Commission, and its members, would be proud of the decision that they would make in this case. It would be our hope that this Commission and these Commissioners, were they to some day walk the streets of Joplin, or St. Joseph, or Warrensburg, Riverside or St. Charles, could proudly and happily meet the residents of those communities also walking those streets and say that they were part of the Commission that brought justice and fairness to the water rates they pay as a member of those communities. It would be our hope that they would proudly be able to meet others on those streets, rather than to feel that they must avert their face and cross to the other side of the street. The choice is yours.

V. COMMISSION REQUESTED BRIEFING.

During the hearing, Chair Lumpe requested that the parties brief the issue of the legality of a capital improvements surcharge. That analysis follows.

A. Issue of Capital Improvements Surcharge

To a large extent, we are of the sense that a capital improvements surcharge, provided it was set during a full rate case where all relevant issues are considered by the Commission, would be permissible. However, if it were the thought that such surcharge could be varied independently and without a full rate case procedure akin to the purchased gas adjustment charge, we do

not believe that this is within the power of the Commission to authorize.

As we understand the context of the question and the concept that has been considered, a capital improvements surcharge would separately state a correctly calculated portion of the rate as being related to specific capital improvements in the customer's service district. At the same time, so-called "joint and common costs" would be allocated to each district.

Given that model, the suggested capital improvements surcharge is really nothing more than a different way of presenting the rate that is charged to the customer. Thus the customer would pay the same total amount whether the capital improvements surcharge were shown on their billing or not. The advantage would be that the customer would be informed as regards the portion of their billing that related to the capital improvements installed by the company in their district.

The governing authority for this question is the case of State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W. 41 (Mo. banc 1979) ("UCCM"). The UCCM case invalidated the fuel adjustment charge for Missouri utilities. Among other things, UCCM holds that in setting rates the Commission must consider **all** relevant factors, even when a decision is made not to suspend a proposed tariff. The UCCM court distinguished a prior case, Hotel Continental v. Burton, 334 S.W.2d 75 (Mo. 1960) which had upheld a tax adjustment clause by which a separate line item for gross receipts tax was stated on the

customers' bills. The UCCM court said that the "tax was a direct charge, exactly proportioned to the customer's bill, the amount of which was directly determined by the amount of that bill." UCCM, at 52. This would not be true of a capital improvements surcharge.

Nor would a separately stated surcharge for capital improvements vitiate the statutory prohibition discussed earlier against one customer or community granted a preference over another.

Thus, while that surcharge could be established in the context of a full rate case, it would represent nothing more than a different and perhaps more informative means of presenting a customer's bill. Any sort of an automatic adjustment, since such would directly affect the earnings of the utility, could not be approved under UCCM.

VI. CONCLUSION.

WHEREFORE, for the foregoing reasons and arguments, these Intervenor respectfully pray that the Commission should disallow inclusion of imprudent capital expenditures in rate base, reject the concept of single tariff pricing, and otherwise

direct that rates be calculated in accordance with the recommendations contained herein.

Respectfully submitted,

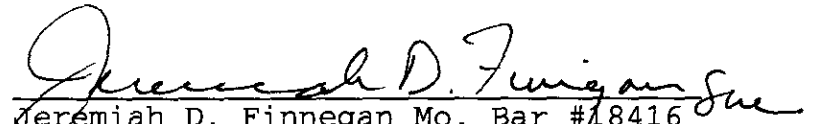
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