

**FISCHER & DORITY**  
PROFESSIONAL CORPORATION

James M. Fischer  
Larry W. DORITY

Attorneys at Law  
Regulatory & Governmental Consultants

101 Madison, Suite 400  
Jefferson City, MO 65101  
Telephone: (573) 636-6758  
Fax: (573) 636-0383

September 13, 2000

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102

RE: *Missouri-American Water Company*  
Case No. WR-2000-281

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of St. Joseph Area Public Water Supply District's Application for Rehearing, Motion for Reconsideration and Request for Stay. A copy of the foregoing document has been hand-delivered or mailed this date to each party of record.

Thank you for your attention to this matter.

Sincerely,



Larry W. DORITY

/jr  
Enclosures

cc: Parties of Record

**FILED<sup>3</sup>**  
SEP 13 2000  
Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
SEP 13 2000  
Missouri Public  
Service Commission

In the Matter of Missouri-American Water )  
Company's Tariff Sheets Designed to )  
Implement General Rate Increases for )  
Water and Sewer Service Provided to )  
Customers in the Missouri Service Area )  
of the Company. )

Case No. WR-2000-281

**ST. JOSEPH AREA PUBLIC WATER SUPPLY DISTRICTS'**  
**APPLICATION FOR REHEARING, MOTION FOR RECONSIDERATION**  
**AND REQUEST FOR STAY**

**COME NOW** Intervenors Public Water Supply District No. 1 of Andrew County, Public Water Supply District No. 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County (collectively referred to herein as "St. Joseph Area Public Water Supply Districts" or "Water Districts"), pursuant to 4 CSR 240-2.160 and Section 386.500, RSMo 1994, and for their application, motion and request in the above-captioned case respectfully state as follows:

1. The Missouri Public Service Commission ("Commission"), on a 3-2 vote, issued its Report and Order in this case on August 31, 2000 (effective September 14, 2000). Thereafter, a Notice of Correction was entered on September 1, 2000, followed by an Order of Clarification entered on September 12, 2000 (effective September 22, 2000). All of said Orders and Notices are referred to collectively herein as the "Order."

2. The Order is unlawful, unjust, unreasonable, arbitrary and capricious, not supported by appropriate findings of fact, not based upon substantial and competent evidence on the whole record, an abuse of discretion, discriminatory, made on unlawful procedure, and deprives the Water

262

Districts of their rights to due process and equal protection as guaranteed by the Missouri and United States Constitutions, all for the reasons as set forth below.

3. The section of the Report and Order entitled “Rate Design,” set forth at pages 57-61, is not supported by appropriate findings of fact, and does not meet the statutory findings of fact requirement of Section 386.420, RSMo 1994. After a skeletal description of one of the critical issues presented in this proceeding, the retention of Single Tariff Pricing (“STP”) or the adoption of District Specific Pricing (“DSP”), the Commission announces in one sentence: “The Commission will move away from STP and toward DSP.” The Commission fails to make any specific findings of fact in support of its decision, its statements are completely conclusory, and the Order provides no insights into if and how controlling issues were resolved. While a single reference is made to testimony adduced at local public hearings (which is repeated in the Commission’s “Notice of Correction”), the Order is devoid of any discussion, let alone findings of fact, concerning the wealth of expert testimony presented on this issue during the evidentiary hearings held in this matter. Regarding the testimony at local public hearings, as pointed out in the Dissenting Opinion of Vice Chair M. Dianne Drainer, “[A]lthough the public hearings indicated a preference for DSP over STP, nowhere was the public informed of the actual impact of DSP on their district rates for each customer class. Rather the public was given only the worse case scenario of a 51 percent increase in rates from STP with the false indication that DSP would result in lower rates for all customers.” It should come as no surprise that the public witnesses in districts other than the St. Joseph District would indicate such a preference, given the above scenario. In addition, the Commission appears to discount or ignore the testimony at the St. Joseph public hearing. The decision of the Commission is not accompanied by adequate and proper findings of fact and conclusions of law sufficient to allow a reviewing court to determine the evidentiary and legal basis for the decision.

4. The Commission's Order on rate design is not based upon competent and substantial evidence on the whole record, and is unreasonable, unjust, unlawful, and arbitrary and capricious. The Water Districts presented the expert testimony of two witnesses on the rate design issue in this proceeding, Dr. Janice A Beecher, who provided a thorough public policy analysis of the STP issue and its resulting benefits, and Helen Price, who addressed the rate design issues from the perspective of the rural water districts she represented. The Commission Order fails to acknowledge, let alone address, the record evidence presented by these witnesses and the expert witnesses sponsored by Missouri-American Water Company ("MAWC") in this proceeding on this important issue, and the Order is unlawful and not based upon competent and substantial evidence.

5. The Commission erred in stating, at page 58 of the Order: "In the past, this Commission has permitted MAWC to move toward STP in its rate design, although that goal was never attained." (Emphasis added.) In fact, the record evidence in this proceeding clearly showed that the Commission had previously found that single tariff pricing for MAWC and all of its districts was in the public interest and, in MAWC's last rate case, had approved the use of STP throughout MAWC's service areas, thereby culminating a regulatory plan that had been implemented over many years by numerous Commissions and Commissioners. The Commission's decision to "move away from STP and toward DSP," at the time it is the St. Joseph District's turn to have its facilities upgraded after supporting the other districts' capital investments for years, is unreasonable, unlawful, unjust, arbitrary and capricious, and violative of Section 393.130, RSMo 1994, the anti-discrimination and anti-preference provisions of the Public Service Commission law. By abandoning STP in this proceeding, the Commission unlawfully subjects the ratepayers of the St. Joseph District, including the Water Districts, to an undue and unreasonable prejudice and disadvantage, thereby creating an undue preference for the customers of other districts while

unlawfully discriminating against the St. Joseph District. The Commission's action also violates the Water Districts' rights to due process of law and equal protection under the Missouri and United States Constitutions. The Commission also fails to explain the reasons it has reversed its public policy, which previously found the use of STP to be in the public interest. It is unlawful for the Commission to reverse its public policy on this issue unless it clearly explains the reasons for doing so.

6. At page 57 of the Report and Order, the Commission notes: "[I]t is not the methodology or theory but the impact of the rate order which counts in determining whether rates are just, reasonable, lawful, and non-discriminating." *State ex rel. Associated Natural Gas Co. v. Public Service Commission of Missouri*, 706 S.W. 2d 870, 879 (Mo. App., W.D. 1985)." However, after this introductory paragraph to the rate design issue, the concept of rate impact is never discussed again. Accordingly, no one reading this Report and Order could be sure as to the impact of the rate order on any customer, any class, any district. As a result, no press release could be issued by the Commission following its decision addressing the rate impact on customers, nor could the Company or Commission Staff prepare tariffs in response to the Order. (See, Motions for Clarification and for Expedited Treatment, filed by MAWC and Staff on September 6 and 7, 2000, respectively.) Conclusory statements by the Commission are not appropriate findings of fact, and the Order is unlawful, unjust and unreasonable in this regard.

7. While MAWC has yet to file proposed tariff sheets in compliance with the Order due to the infirmities discussed above, it is the Water Districts' understanding and belief that the resulting rate increase to their Sale for Resale Class of the St. Joseph District may well be in excess of 260 percent! Such resulting rate is unlawful, unjust and unreasonable. Every unjust and unreasonable charge is prohibited by Section 393.130(1), RSMo 1994. As discussed in the

dissenting opinions of Vice Chair Drainer and Commissioner Murray, “. . . the rate design adopted by the majority will result in increases to some classes in some districts of as much as 269%” (Murray Dissent, p. 4) and “. . . not only specific districts but specific customer classes, such as the residential, sale for resale and industrial customers in many of the districts will receive such a rate shock from this case that their future rates can only be viewed as unjust and unreasonable.” (Drainer Dissent, p. 4.) Vice Chair Drainer goes on to point out: “Further, I find the rate design adopted in this case results in gross inequities and is detrimental to the public interest.” (Drainer Dissent, p. 4.)

8. To ameliorate the horrendous rate shock resulting from the Commission’s move to DSP, many parties recommended a phase-in of the resulting rate increases. Again, the Order fails to address the record evidence on this issue, but simply announces: “As the Company requested, no phase-in of rate increases shall be permitted.” (Report and Order, p. 58.) There are no findings of fact concerning this issue and the Order is unlawful, unjust and unreasonable in this regard.

9. The Commission clearly erred in its resolution of the rate design issue concerning the allocation of rate increases in each district across customer classes. The Commission’s conclusion that “Staff’s class cost of service study, developed using the BXC method, is the appropriate method by which to allocate costs among customer classes in each district and to design rates by which to recover appropriate revenues within each district,” is unlawful, unjust, unreasonable, contrary to the competent and substantial evidence on the whole record, and not supported by findings of fact. The “Motions for Clarification” filed by MAWC and the Commission’s own Staff, discussed *supra*, underscore the legal error and unlawful nature of the Report and Order and subsequent Order of Correction adopted by the majority of the Commission.

The dilemma “concerning some aspects of the rate design that the Commission has ordered”<sup>1</sup> is based on the fact that the majority misconstrued (or simply ignored) the positions of the parties on the issue of class cost of service, and devised a specific rate design that was not presented by any of the parties, and that produces unreasonable and unlawful results. As noted by the Commission’s own Staff, the specific rate design chosen by the Commission was not presented by any of the parties and the record does not contain specific evidence relating to it. And while the Staff may offer to speculate about possible scenarios, they rightfully point out that “neither the foregoing scenario nor any of the other possible scenarios are in the record in this case.”<sup>2</sup> (Emphasis added.)

In MAWC’s Motion, the company takes issue with the majority’s erroneous characterization of its position as to Staff’s class cost of service study, and points out that company stated “however, given the fact that any movement from single tariff pricing to district specific pricing will result in dramatic shifts in revenue requirements between districts, further shifts between customer classes within districts would not seem to be warranted at this time and Company would recommend, if the Commission adopts district specific pricing, that rates within districts simply be increased by the uniform percent necessary to achieve the revenues allocated to each district. (MAWC Initial Brief, page 66).”<sup>3</sup>

Recognizing the significant rate increases and resulting rate shock that would result to many districts given any movement from single tariff pricing to district specific pricing, no party

---

<sup>1</sup>Staff Motion, p. 1, par. 2.

<sup>2</sup>Staff Motion, p. 5, par.12.

<sup>3</sup>MAWC Motion, p. 2, footnote 1.

to this proceeding, including Staff, recommended that class cost of service revenue shifts be implemented on a flash-cut basis on top of the adoption of DSP.<sup>4</sup> (Municipal and Industrial Intervenor Initial Brief, p. 53; Water Districts Initial Brief, pp. 10-11.) In fact, as the St. Joseph Industrial/Riverside Intervenor noted in their Brief at page 53: "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." (Emphasis added.)

What is in the record evidence of this proceeding is Staff's own witness Hubbs' testimony that the resulting 268% rate increase suggested for the St. Joseph Public Water Supply Districts was "beyond the bounds of gradualism":

[Fischer]: Q. Would you agree that an increase of 268 percent for my clients, the public water supply districts around St. Joseph, would also be . . . beyond the bounds of gradualism?

[Hubbs]: A. Yes. The initial implementation of that would be beyond the bounds of gradualism.

[Fischer]: Q. And that would also be true in the Brunswick area for a 478 percent increase for the sales for resale class?

[Hubbs]: A. Yes, sir.

(Tr. 994).

---

<sup>4</sup>Staff erroneously suggested that a five-year phase-in period keeps the effect of the move to DSP within the bounds of gradualism. (Hubbs Surrebuttal, Ex. 43, pp. 4-5; Staff Reply Brief, p. 24.) However, Staff's comfort-level with a phase-in proposal was clearly misplaced when, after the record was closed and Staff offered its Late-filed exhibit reflecting rate impacts, the parties and the Commission were finally informed of the devastating impacts carrying costs added to the Staff's projections (e.g., St. Joseph Area Water Districts would see a 490+% cumulative increase in year 5).



Indeed, in its Initial Brief in this matter, Staff acknowledges that “the specific reason for the phase-in is to prevent the extreme rate increases from being implemented at one time.” (Staff Initial Brief, pp. 68-69.) These percentage increases in rate impacts resulting from the majority’s move to district specific pricing coupled with changes due to class cost of service studies become, in the company’s own words, outrageously high. (Company Brief, pp. 72-73, emphasis added.) Simply put, such percentage increases are unprecedented. There is no substantial and competent evidence in this record that would support the majority’s decision to adopt, on a flash-cut basis, interclass revenue shifts in addition to the very substantial rate increases resulting from the movement to DSP. Any adjustments to the relationships among individual class rates should be considered in subsequent rate or rate design cases. Again, as Vice Chair Drainer and Commissioner Murray acknowledge in their Dissenting Opinions, “[A]lthough the Commission can and should look at the cost of service to each district and each customer class in a rate case, cost of service is only one of the guidelines reviewed by the Commission. Other guidelines the Commission should review in setting rates are equity issues in changing rates among customer classes and gradualism in changing rates to avoid excessive rate shock. The final responsibility of the Commission is to assure that all rates set in a rate case are just and reasonable.” (Drainer Dissent, p. 3.) “I would spread the increases evenly among the classes, as proposed by the St. Joseph Area PWSD Interveners and the Municipal Interveners.” (Murray Dissent, p. 3.)

10. The Commission erred in issuing its “Order of Clarification,” dated September 12, 2000, effective September 22, 2000. On September 6, 2000, MAWC filed a motion for clarification and for expedited treatment. On September 7, 2000, the Staff of the Commission filed a motion for clarification and for expedited treatment. Counsel for the Water Districts received the MAWC Motion via facsimile late in the afternoon of September 6. This matter was added for “good

cause shown" to the Commission's Agenda Meeting held on Thursday morning, September 7, 2000, with Staff's Motion being filed with the Commission just prior to the Agenda Meeting. Counsel for the Water Districts was served with a copy of Staff's Motion, via e-mail, later that morning. The Water Districts believe and understand that both the MAWC and Staff Motions were considered and discussed during the September 7, 2000 Agenda Meeting, although the Water Districts had not had an opportunity to respond to said motions (having not even been served with the Staff Motion at that point in time). Accordingly, the Water Districts were denied sufficient time to review and respond to these Motions prior to their receipt and review by the Commission. While the Water Districts did file a timely Response with the Commission pursuant to the Commission's "Notice Setting Time for Response" issued September 7, 2000, it appears that the substantive discussions regarding these motions had already occurred during the Commission's Agenda meeting earlier that very day. Accordingly, the Water Districts were denied due process and equal protection in the Commission's consideration of this matter.

The Commission's Rules of Practice and Procedure, Chapter 2, prescribe the method of issuing commission orders and the effective date of such orders,<sup>5</sup> and the procedure for requesting a rehearing of a final order.<sup>6</sup> The Commission's Rules do not provide a mechanism, such as that

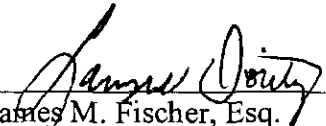
---

<sup>5</sup>4 CSR 240-2.150 Decisions of the Commission (1) provides that "[T]he record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument. Paragraph (4) of said Rule provides that the "commission may, at its discretion, issue a preliminary order and allow parties to provide responses to the preliminary order. The commission may then issue its order after reviewing the responses of the parties." However, the Commission did not utilize this provision in this matter, issuing its Report and Order on August 31, 2000, to become effective September 14, 2000.

<sup>6</sup>4 CSR 240-2.160 Rehearings and Reconsideration (1) provides that "[A]pplications for rehearing may be filed pursuant to statute." Section 386.500 RSMo 1994.

WHEREFORE, the St. Joseph Area Public Water Supply Districts respectfully request that the Commission: (1) grant a stay of the implementation of rates ordered in this Commission's Order pending rehearing and reconsideration and a decision by the Commission upon rehearing and reconsideration; and (2) grant rehearing and reconsideration for the reasons stated above.

Respectfully submitted,

  
James M. Fischer, Esq. MBN 27543  
E-mail: [jfischerpc@aol.com](mailto:jfischerpc@aol.com)  
Larry W. Dority, Esq. MBN 25617  
E-mail: [lwdority@sprintmail.com](mailto:lwdority@sprintmail.com)  
FISCHER & DORITY, P.C.  
101 Madison Street, Suite 400  
Jefferson City, Missouri 65101  
Telephone: (573) 636-6758  
Facsimile: (573) 636-0383

Attorneys for  
St. Joseph Area Public Water Supply Districts

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document of St. Joseph Area Public Water Supply Districts has been hand-delivered or mailed, First Class mail, postage prepaid, this 13th day of September, 2000, to:

John B. Coffman  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City MO 65102

Dana K. Joyce, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City MO 65102

C. Brent Stewart  
Stewart & Keevil  
1001 Cherry Street, Suite 302  
Columbia MO 65201

Stuart W. Conrad  
Finnegan Conrad & Peterson  
3100 Broadway, Suite 1209  
Kansas City MO 64111

Leland B. Curtis  
Curtis Oetting Heinz Garrett & Soule  
130 South Bemiston, Suite 200  
Clayton MO 63105

Diana M. Vuylsteke  
Bryan Cave, LLP  
211 north Broadway, Suite 3600  
St. Louis MO 63120

Keith R. Krueger  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City MO 65102

James B. Deutsch  
Blitz Bardgett & Deutsch  
308 East High Street, Suite 301  
Jefferson City MO 65101

Karl Zobrist  
Blackwell Sanders Peper Martin  
2300 Main Street, Suite 1100  
Kansas City MO 64108

W.R. England, III  
Brydon Swearengen & England PC  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City MO 65102-0456

Louis J. Leonatti  
Leonatti & Baker PC  
123 E. Jackson Street  
P.O. Box 758  
Mexico MO 65265

Lisa M. Robertson  
City of St. Joseph  
City Hall, Room 307  
11<sup>th</sup> & Frederick Avenue  
St. Joseph MO 64501

Joseph W. Moreland  
Martin W. Walter  
Blake & Uhlig  
2500 Holmes Road  
Kansas City MO 64108

Ernest Harwig  
Brubaker & Associates Inc.  
1215 Fern Ridge Parkway, Suite 208  
P.O. Box 412000  
St. Louis MO 63141-2000

James W. Farley  
Attorney at Law  
258 Main Street  
P.O. Box 1130  
Platte City MO 64079

Jack Livingston  
Public Water Supply District  
No. 1 of DeKalb County  
P.O. Box 79  
Clarksdale MO 64430

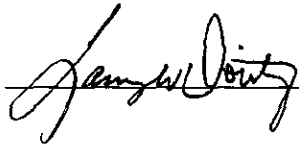
Phyllis Carpenter  
Public Water Supply District  
No. 1 of Andrew County  
803 S. 71 Highway  
Savannah MO 64485

Bob Ross  
Alliance Water Resources Inc.  
206 South Keene Street  
Columbia MO 65201

Mark Hubbard  
Hubbard & Rehard PC  
500 third Street  
Platte City MO 64079

Helen Price  
Public Water Supply District  
No. 2 of Andrew County  
Box 210  
Cosby MO 64436

Jarry Thomas  
Public Water Supply District  
No. 1 of Buchanan County  
P.O. Box O  
101 Market Street  
Rushville MO 64484



---