

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri-American)	<u>Case No. WR-2007-0216</u>
Water Company's Request for Authority)	Tariff File Nos. YW-2007-0407, YW-2007-
to Implement a General Rate Increase)	0409, YW-2007-0410, YW-2007-0411,
for Water Service Provided in Missouri)	YW-2007-0412, and YW-2007-0413
Service Areas)	

**CITY OF JOPLIN'S REPLY SUGGESTIONS IN SUPPORT OF
MOTION TO CONSOLIDATE**

COMES NOW Intervenor, City of Joplin, Missouri, by and through counsel, and for its Reply Suggestions in Support of Motion to Consolidate states as follows:

On March 29, 2007, Intervenor City of Joplin filed its Motion to Consolidate, Case No. WR-2000-0281, in the above-captioned matter. On April 5, 2007, Missouri-American Water Company filed Suggestions in Opposition to that Motion to Consolidate. The Public Service Commission Staff and the Office of Public Counsel, and all other parties to the current matter, have filed no pleading in response to Intervenor City of Joplin's Motion to Intervene. In the absence of any opposition referenced by those parties, Intervenor City of Joplin files these Reply Suggestions solely relating to the Suggestions in Opposition filed by Missouri-American Water Company. Under Rule 66.01 and 4 CSR 240-2.110(3), consolidation is appropriate for the current matter.

Related Questions of Law or Fact

First, there are "related questions of law or fact" in the current matter. The same utility, MAWC, was the utility in the 2000 case seeking a rate increase and is the utility in today's case seeking a rate increase. The same city and District, the City of Joplin, is involved in both the 2000 case and the current case. Most importantly, the rates are to be set are for the same services, to wit: Water service provided by MAWC, including that water service to the City of Joplin, in all cases. Even the rate classifications contained in the current case are related to, if not identical to, the rate

classifications in the 2000 case. In fact, all the facts are the same with the exception of the test year in each case. Intervenor is entitled to raise any issues germane to these matters in this proceeding. See 4 CSR 240-2.075(2) (allowing intervention) and 4 CSR 240-2.080(7) (allowing claims), and request to be raised by pleadings before the Public Service Commission. As a result, under 4 CSR 240-2.110(3), there are related facts in question.

Additionally, there are related legal issues at question. The lawfulness of rates was in question in the 2000 case and is in question in the current case. As the Western District Court of Appeals noted in *State ex rel. City of Joplin v. Public Service Commission*, 186 S.W.3d 290 (Mo. App. W.D. 2005), the determination of whether the 2000 rates were lawful or not has been firmly set before this Commission. Even MAWC would agree that the Commission must make a determination as to whether the 2000 rates, which were set against Joplin, were not unduly discriminatory and unlawful. *Id.* at 301. As the Court in Joplin stated:

We, too, are unable to order the return of any funds to Joplin in this proceedings, because they have not been segregated as provided under section 386.520, but would suggest that, by exercising our discretion under the mootness doctrine exception in remanding the case for further findings and conclusion as to the legitimacy of the 2000 rates, Joplin ratepayers may have an opportunity ultimately to be made whole. *Straube [v. Bowling Green Case Company]*, 227 S.W.2d [666] at 671 [Mo. 1950] (unjust enrichment does not lie where money paid to public utility was based upon a *legally* established rate); see also *May Department Stores v. Union Electric Light and Power Company*, 341 Mo. 299, 107 S.W.2d 41, 58 (1937) (where public utility collects more from anyone than full amount of rate established by commission for service rendered, customer will recover excess by appropriate action in the courts.)

Id. at 300-301. As is clear from the Western District's opinion, if this Commission cannot determine that the 2000 rate decision, which it imposed against Joplin was properly justified with specific

findings of fact and conclusions of law, then it should declare the rates unduly discriminatory and unlawful. Upon such a declaration by this Commission, the ratepayers of the City of Joplin may, as the Court recognized, ultimately be made whole through the vehicle of a decision of this Commission.

Undoubtedly, the best way by which to make the ratepayers of the City of Joplin whole would be through and in conjunction with the pending rate case. There is no doubt that the questions of law and fact are related in the two matters. Moreover, the interests in fairness and judicial and administrative economy are clearly best served by consolidation.

Similar Parties in Cases

MAWC alleges that the parties in the 2000 case and in the current matter are not similar parties. While there are parties that were not involved in the 2000 rate case that are involved in the current case and vice-a-versa, not one of those parties involved in the current case has objected to consolidation or filed any opposition thereto. That MAWC has taken upon itself to represent these other opposing entities is ironic to say the least. It has no standing to do so. Moreover, the opposition by MAWC is unrelated to whether the entities which are in the current matter, but not in the original matter, would be unduly prejudiced in some manner. They would not. Opposition of MAWC is based solely on its bald assertion that the two cases do not have the exact identical list of parties. The contention lacks any merit. The key parties to the resolution of all claims are present: The City of Joplin and MAWC are both in the current case and the original case, as are the PSC Staff and the Office of Public Counsel. Moreover, the parties that are represented in the current case have the opportunity to be heard in the proceedings. This Commission's obligation and authority to

structure new rates to remedy any unlawful rates imposed against Joplin ratepayers in the 2000 case should not be frustrated by such empty arguments. Consolidation is appropriate.

No Prejudice to Any Party

There is ultimately no prejudice to MAWC or any other entity if this Commission were to consolidate the two cases. If the Commission were to divine a theory and support it with facts to authorize the apparently discriminatory rates against the City of Joplin in the 2000 case, no prejudice would occur to any other party. On the other hand, if the Commission were to correct the undue discrimination by decision on remand, as the Western District Court of Appeals has clearly mandated it should, then any remedy which could be constructed as part of this rate case would be reviewable by the courts on an appeal of the Commission's decision. Since the parties directly and indirectly affected, are all parties to this case, everyone with a potential impact from the decision of this Commission would have the ability to take an appeal of the final rates that are issued. Additionally, if the Commission were to properly determine the rates unduly prejudicial and unlawful, the current rate case is the perfect vehicle to construct the remedy the Court of Appeals has indicated should be created.

Conclusion

Consolidation of WR-2000-0281 with the current matter serve the best interest of everyone involved in reaching the questions left unresolved by this Commission in the 2000 case under the remand from the Western District Court of Appeals. Moreover, the resolution in the current case of the issues under such remand would serve judicial economy by allowing one final decisions to be made with findings of fact and conclusions of law which could then ultimately be fully and finally


adjudicated thus ending this lengthy and wasteful litigation. The City of Joplin therefore respectfully urges this Commission to order consolidation.

WHEREFORE, the City of Joplin respectfully prays that this Court enter its Order consolidating cases WR-2000-0281 and WR-2007-0216, and for such other relief as this Commission deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing City of Joplin's Suggestions in Support of Motion to Consolidate were sent to each of the following persons by electronic mail this 11th day of May, 2007:

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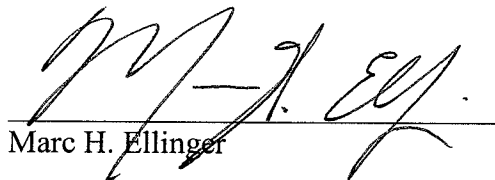
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