

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

In the Matter of Missouri-American)	
Water Company's Request for Authority)	
to Implement a General Rate Increase)	Case No. WR-2007-0216 and
for Water Service Provided in Missouri)	SR-2007-0217
Service Areas)	

In the Matter of Missouri-American)	
Water Company's Filing of Revised Sewer)	
Tariff Sheets to Implement a Capacity)	Case No. ST-2007-0443
Charge for Missouri-American's Warren)	Tariff Nos. JS-2007-0713
County and Jefferson County Sewer)	and JS-2007-0714
Districts)	

**JOINT INITIAL POST-HEARING BRIEF
OF SIGNATORY PARTIES**

COME NOW Missouri-American Water Company (MAWC or Company), the Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (Public Counsel), AG Processing Inc. (AGP), Missouri Energy Group (MEG), City of Warrensburg (Warrensburg), Public Water Supply District Nos. 1 and 2 of Andrew County and Public Water Supply District No. 1 of DeKalb County (Water Districts), Missouri Industrial Energy Consumers (MIEC), Metropolitan St. Louis Sewer District (MSD), the City of Parkville (Parkville), and the Home Builders Association of St. Louis and Eastern Missouri, Inc. (HBA), and respectfully state the following to the Missouri Public Service Commission (Commission) as their Initial Brief:

I. INTRODUCTION

A. Procedural History of Case Nos. WR-2007-0216 and SR-2007-0217

On December 15, 2006, Missouri-American Water Company (MAWC or the Company) submitted to the Missouri Public Service Commission certain proposed tariff sheets designed to

implement a general rate increase for water and sewer service provided by the Company, along with direct testimony in support of the proposed rates. The revised rates were designed to produce an additional \$41,387,823 in gross annual water and sewer revenues, excluding gross receipts and sales taxes. The Commission identified these tariff filings as Case Nos. WR-2007-0216 and SR-2007-0217. The two cases were later consolidated.

On January 3, 2007, the Commission issued its Suspension Order and Notice, Order Setting Hearings, and Order Directing Filing, wherein, among other things, the Commission suspended the proposed tariff sheets until November 14, 2007. Subsequently, the following parties requested, and were granted, intervention: Utility Workers Union of America Local 335 (UWUA Local 335), City of Joplin (Joplin), AG Processing Inc. (AGP), Missouri Energy Group (MEG), City of Warrensburg (Warrensburg), Public Water Supply District Nos. 1 and 2 of Andrew County and Public Water Supply District No. 1 of DeKalb County (Water Districts), Missouri Industrial Energy Consumers (MIEC), City of St. Joseph (St. Joseph), Metropolitan St. Louis Sewer District (MSD), City of Jefferson (Jefferson City), the City of Parkville (Parkville).

From June 5, 2007 through June 14, 2007, the Commission conducted eleven (11) separate local public hearings in various MAWC operating districts in order to provide the public with the opportunity to comment. Direct, rebuttal and surrebuttal testimony was filed by numerous parties.¹

On July 16, 2007, MAWC and MSD filed a Stipulation and Agreement as to MSD Rate Design Between MAWC and MSD. No party objected to this Stipulation and Agreement and it, therefore, may be treated as unanimous according to Commission rule. 4 CSR 240-2.115. The Commission has not yet issued an order concerning this stipulation.

¹ UWUA Local 335 filed the Rebuttal Testimony of Alan Ratermann. The Commission struck this testimony on August 14, 2007. Tr. 433.

On August 1, 2007, MAWC filed a List of Issues, Order of Witnesses and Order of Cross-Examination on behalf of several parties. The List of Issues was unopposed by the other parties, except for an Amendment provided by AGP on August 2, 2007.

On August 9, 2007, certain of the parties filed a Nonunanimous Stipulation and Agreement (Nonunanimous Stipulation). Joplin indicated its opposition to the Nonunanimous Stipulation and was directed to file a pleading identifying its opposition to the Nonunanimous Stipulation. The Commission further established a date by which parties were to file statements in opposition to the Nonunanimous Stipulation. No party other than Joplin filed a pleading opposing the Nonunanimous Stipulation. However, because Joplin objected to the Nonunanimous Stipulation, by Commission Rule, it is to be treated as a position of the signatory parties, or as a joint recommendation. 4 CSR 240-2.115.

On August 10, 2007, Joplin filed its List of Disputed Issues and Witness wherein it identified the issues which it desired to have heard by the Commission and the witnesses it wished to cross-examine. A hearing was held by the Commission on August 14, 2007. At the hearing, testimony was offered by the parties and admitted into the record. Cross-examination was conducted where parties desired such. Joplin filed its Revised List of Disputed Issues on August 17, 2007, and therein identified those issues it believed to still be in dispute after the hearing.

On August 23, 2007, the Commission issued its order providing a specific briefing schedule. Among other things, the Commission formally adopted the August 1 Issues List (as amended by AGP's pleading) and directed that the briefs follow the adopted list of issues.

Also on August 23, 2007, Jefferson City, MAWC, Public Counsel and the Staff filed a Stipulation and Agreement as to Jefferson City Issues. No party objected to this Stipulation and

Agreement and the Commission, on September 6, 2007, issued its Order Approving Nonunanimous Stipulation and Agreement as to Jefferson City Issues.

On August 29, 2007, MAWC, on behalf of all of the parties except UWUA Local 335 and Warrensburg, filed an Amended List of Issues and Motion to Modify Order. Therein it was stated that those parties believed that the issues list should be amended to include only the following remaining issues from those which had been identified in Joplin's Revised List of Disputed Issues, filed on August 17, 2007:

A. The Proper basis for allocating MAWC's corporate expenses to the various districts, to include administrative and general expenses, customer accounts, depreciation, other general taxes; and,

B. Payroll tax payment as annualized for the Joplin District and certain depreciation issues.

It was further stated that none of the other issues addressed by the Nonunanimous Stipulation had been objected to or were in dispute. Accordingly, the parties requested that the Commission modify its Order Providing Specific Dates for Briefing Schedule, Directing the Filing of a Revised Reconciliation and Further Clarifying Requirements for Proposed Findings of Fact and Conclusions of Law such that the above amended issues list was adopted by the Commission and that the briefs follow this amended list of issues.

The Commission granted this motion on August 30, 2007, in its Order Granting Motion to Modify Order and Amend Issues List. The only response to the Amended Issues List and the Commission's order was provided by UWUA Local 335, which filed its Advice to the Commission on September 4, 2007. Therein, UWUA Local 335 stated that it did not join in the amended issues list, stated that it did not object to the outcome of the case proposed by the

Nonunanimous Stipulation, and identified three issues it considered to still be “live”, but which it acknowledged “may not be outcome determinative.”

B. Procedural History of Case No. ST-2007-0443

On April 3, 2007, MAWC filed tariffs designed to implement a new capacity charge for Missouri-American’s Warren County and Jefferson County Sewer Districts. The Public Counsel asked the Commission to suspend these tariffs and the Home Builders Association of St. Louis and Eastern Missouri, Inc. (HBA) sought to intervene in the matter. The proposed capacity charge tariff sheets were designated by the Commission as Case No. ST-2007-0443.

The Commission ultimately suspended the capacity charge tariff sheets until November 14, 2007, and consolidated Case No. ST-2007-0443 with Case No. WR-2007-0216. A separate procedural schedule was established related to the capacity charge tariffs and on July 13, 2007, MAWC filed its direct testimony in support of those tariff sheets. On August 9, 2007, the Nonunanimous Stipulation was filed in Case No. WR-2007-0216. Among other things, that Nonunanimous Stipulation would resolve the issues related to ST-2007-0443. On August 10, 2007, the procedural schedule in Case No. ST-2007-0443 was suspended, pending the Commission’s consideration of the Nonunanimous Stipulation.

II. ARGUMENT

A. Correction of the Amount of Chemical Expense Attributable to the Joplin District

Initially, Joplin questioned the amount of chemical expense attributable to the Joplin District. Upon further review, the Company discovered an error in its calculation of the annualized level of chemical expense for the Joplin District. In annualizing the amount of chemical expense, the Company determined the annual amount of water it expects to treat and

multiplies it by the usage (per million gallons) of chemicals needed to treat the water. Then, that product is multiplied by the price per pound of the chemical, which price is based upon contracts with chemical suppliers. (Tr. 150) In annualizing the amount of chemical expense for the Joplin District, the Company found that the number of pounds needed to treat an annualized level of water for three of the eleven chemicals used in the Joplin District was overstated. As a result, the annualized chemical expense for the Joplin District was overstated by \$236,416. (Tr. 150) In order to correct for this error, Company proposed to take the amount of revenue increase attributable to Joplin, pursuant to the Nonunanimous Stipulation, of \$4,856,240 and reduce it by \$236,416, for a net increase to Joplin of \$4,619,824. (Tr. 151) All of the Parties either indicated agreement with this proposed correction or expressed no objection. (Tr. 147, 208) More importantly, Joplin's witness, Ms. Leslie Jones, testified that in light of this correction the chemical expense issue had been resolved. (Tr. 355) Accordingly, the Nonunanimous Stipulation should be amended to reflect a proposed increase in the Joplin District of \$4,619,824.

B. The Proper Basis for Allocating MAWC's Corporate Expenses to the Various Districts, to Include Administrative and General Expenses, Customer Accounts, Depreciation and Other Taxes

1. Introduction

In determining the revenue requirements for each operating district, there are certain costs which are directly attributable to the district (e.g., employees, office space, vehicles, etc.) and thus directly assigned to that district and there are general corporate costs which are not directly attributable to a specific district(s) and therefore must be allocated to the districts. Examples of these general corporate costs include management fees charged by the American Water Works Service Company (Service Company) to the operating subsidiaries (such as

MAWC). (Tr. 160) Functions provided by the Service Company include financial services, accounts payable, human resources, purchasing, etc. (Tr. 160, 164) These costs are consolidated at the Service Company level to achieve economies of scale. (Tr. 164) They are then allocated by the Service Company to the operating subsidiaries based on the number of customers served by the operating subsidiary as a percentage of total customers served by all operating subsidiaries. (Tr. 160, 161) In addition to Service Company costs, MAWC incurs its own administrative and general expenses, such as corporate employees' salaries, collection agency fees, customer billing expense, postage, rents, office supplies, and janitorial expenses. These administrative and general costs are recorded in a corporate business unit so they can be identified and controlled and are then allocated to the districts for recovery in a rate case. (Tr. 162, 163)

2. The Company's Proposed Allocation Factors

For purposes of its filed case, MAWC proposed to allocate these general corporate costs to the various districts primarily on the number of customers served in each district as a percentage of total customers served statewide. (Tr. 155) Exceptions to this general allocation factor include workers compensation expense which is allocated based on payroll (Tr. 216); transportation expense which is allocated based on vehicles (Tr. 159, 160); and corporate depreciation expense which is allocated based on plant-in-service. (Tr. 217, 218) The Company has chosen to use customers as its primary allocation factor for most of the general corporate costs because it believes that its focus is serving its customers and it is the customers which drive all of the costs incurred by the Company. (Tr. 178) In addition, it is also important to use an allocation factor that is consistent and reasonable. It is not appropriate to use a factor that

“jumps around” (*i.e.*, a factor that may increase significantly in one timeframe and then decrease significantly in another timeframe). (Tr. 178)

3. The Staff’s Proposed Allocation Factors

The Staff primarily allocated general corporate costs based on the total payroll expense directly attributable to a district as a percentage of the total payroll attributable to all districts. In fact, of the approximately thirty (30) different categories of administrative and general expense at the corporate level, Staff used payroll as its allocation factor on all but one expense. (Tr. 311, 312) Staff asserts that payroll is the most appropriate allocation factor because the costs of corporate employees, as well as other costs incurred at the corporate level, are incurred to support the employees at the district level. (Tr. 307, 308, 310) There is also a correlation between payroll and customers. (Tr. 157) The amount of employees assigned to a particular district is a function of the number of customers that those employees are required to serve. Staff’s use of payroll as an allocation factor is consistent with the way in which it has allocated costs in previous MAWC rate cases. (Tr. 320, 321) It is also consistent with the way in which Staff has traditionally allocated corporate type expenses in other utility rate cases. (Tr. 295, 320)

4. The City of Joplin’s Proposed Allocation Factors

Joplin’s initial proposal in this case was to allocate all corporate costs on “length of mains” (*i.e.*, the linear feet of mains in a district as a percentage of the total linear feet of mains statewide). (Tr. 359) Using this allocation factor, Joplin proposed to allocate .011% of general corporate costs to the Joplin District. In her prepared rebuttal testimony, Joplin witness Jones unequivocally stated that the “most appropriate factor” is length of mains because the amount of usage of corporate services is directly tied to the actual infrastructure on the ground in an utilities (sic) environment. (Joplin Exh. 1, p. 2) Ms. Jones further testified that other allocation factors

(e.g., number of customers and payroll) do not accurately reflect the needs and uses of corporate resources to the extent that infrastructure basis would. (Joplin Exh. 1, p. 2) At the hearing, however, Ms. Jones sought to “correct” her testimony as a result of a correction Staff made to the linear feet of mains in the St. Louis County District. Since the Staff used this allocation factor sparingly, this change had an immaterial effect on the Staff’s case. (Tr. 271 and 272) However, if the length of mains allocation factor is used in the manner originally proposed by Ms. Jones, Staff’s correction had the effect of changing the allocation of corporate costs to the Joplin District based on length of mains from .011% to 7.105%. (Tr. 333) Although Joplin was denied the opportunity to correct its testimony because it went beyond the point of corrections and amounted to a complete change in position, Joplin was nevertheless permitted to supplement its testimony on the basis of Staff’s correction. (Tr. 348, 352) Joplin’s new position was to allocate all expenses under customer accounts based on the Company’s customer allocation factor; corporate benefits, workers compensation, OPEBs and pension expenses based on Staff’s payroll allocation factor; other general taxes based on the Company’s customer allocation factor; and Belleville Labs based on Staff’s “per test” allocation factor. (Tr. 342, 353-354) Only corporate depreciation expense would be allocated using length of mains. (Tr. 342, 354) In essence, Joplin’s new position was to adopt, for all but one of the corporate expense items, the same allocation factors proposed by the Company or Staff (i.e., customers or payroll). (Tr. 411-413)

5. The Nonunanimous Stipulation Results in a Fair and Reasonable Allocation of Costs to All Districts, Including Joplin

The Nonunanimous Stipulation originally proposes an overall (*i.e.*, statewide) increase in revenues for MAWC of \$28,700,000, and that the Joplin District be responsible for \$4,856,240 of that total. After adjusting for the chemical expense error previously discussed, the Nonunanimous Stipulation now proposes that Joplin be responsible for \$4,619,824 of a total

increase of \$28,463,584 (*i.e.*, \$28,700,000 less \$236,416). Each District's increase as proposed by the Non-Unanimous Stipulation is based on an allocation of general corporate costs using Staff's allocation factors. Although Staff used different allocation factors than Company, the end result of Staff's allocation was reasonable in the opinion of the Company. (Tr. 191) For example, under the Company's method of allocating costs, 5.03% of the total, per book corporate costs were allocated to the Joplin District. Under Staff's method of allocating costs, 5.11% of total, per book corporate costs were allocated to the Joplin District. (Tr. 155-156) Thus, the end result of Staff's allocations was very similar to that of Company and within the realm of reasonableness. (Tr. 181, 189) This is not surprising because, as Company witness Grubb explained, the amount of payroll in a district is a function of the amount of customers served by that district. (Tr. 157)

Staff witness Rackers testified that the use of payroll as a primary allocator is most appropriate because costs incurred at the corporate level are primarily incurred for the benefit and support of the employees in the field or districts. (Tr. 285-286, 296, 329) Furthermore, Staff has consistently used payroll as an allocation factor in previous MAWC rate cases. (Tr. 321) Staff has also traditionally used payroll as an allocation factor for other corporate type expenses in other utility rate cases. (Tr. 320) Staff's position is also consistent with the Commission's decision in a 1985 rate case involving Union Electric Company. In that case, the Commission was required to determine, among other things, the appropriate allocation of administrative and general (A & G) expenses for purposes of assigning costs to various classes of customers. Noting that "allocation factors are used to allocate those costs which cannot be directly assigned to a particular customer class" the Commission found that the proper method for allocating A&G expenses is on the basis of direct payroll (*i.e.*, labor)(*In Re: Union Electric*, 27

Mo.P.S.C.(N.S.) 183, 275 & 290.) In adopting Union Electric's position, the Commission stated "... that it is through its [Union Electric's] employees that the coordination and management of all facets of its operations are conducted, and that therefore the proper method to allocate costs associated with those employees' expenses is by direct labor." (27 Mo.P.S.C.(N.S.) at 290) Therefore the evidence shows that the corporate expenses have been allocated in a rational manner within the Nonunanimous Stipulation and the Nonunanimous Stipulation reflects the desire for reasonable allocations sought by all the Parties including Joplin.

6. Length of Mains is Not An Appropriate Allocator

In its initial prefiled testimony, Joplin proposed to allocate all general corporate costs using the length of mains allocation factor. (Tr. 359) In contrast, the Company does not use length of mains to allocate any general corporate expense and Staff only uses it to allocate distribution expense, which is relatively minor amount of expense – roughly \$6,000. (Tr. 281) Both Staff and Company regarded length of mains as an inappropriate factor for purposes of allocating expenses. The amount of mains located within a district is not an appropriate indication of the amount of corporate costs attributable to that district. (Tr. 183) Staff rarely looks at length of main as a factor for allocating corporate general costs. (Tr. 281) There is no correlation between the feet of pipe located within a district and the number of customers that the Company serves in that same district. So, for example, allocating call center costs (which are customer driven) on length of pipe makes no sense. (Tr. 165-166) Yet that is what the City of Joplin proposed in its prefiled testimony. Now, however, the City of Joplin admits that length of mains is not an appropriate allocator. In fact, Joplin witness Jones now proposes that only one expense item (*i.e.*, corporate depreciation expense) of approximately 30 be allocated based on length of mains. (Tr. 342, 353-354) Upon closer scrutiny even that does not make sense.

Corporate depreciation expense should not be allocated using length of mains because transmission mains only recognize a portion of the plant investment in a district. In addition to transmission mains, the Company has investments in water treatment, production and storage facilities, as well as office space, office equipment, vehicles, etc. The City of Joplin's length of mains allocation factor does not reflect the total plant investment in all districts. (Rackers Surrebuttal Testimony, Staff Exh. 30, p. 2) The Nonunanimous Stipulation on the other hand reflects an allocation of corporate depreciation expense based on payroll which reflects the fact that the general corporate assets, such as vehicles, computers, etc., exist to support the employees or work force assigned to each of the districts. (Tr. 302)

7. The City of Joplin's "New" Position Regarding Allocations is Simply Not Credible

The City of Joplin's last minute change of position is nothing more than a transparent attempt to arbitrarily shift costs away from Joplin to other districts² and thus minimize the impact of any district-specific rate increase. This conclusion becomes quite clear when one considers the chronology of events surrounding this change of position.

On July 13, 2007, Joplin filed the rebuttal testimony of its witness Leslie Jones, who unequivocally testified that "there are several factors that would be more appropriate than Staff's Corporate Income Distribution Allocation Factors, the most appropriate factor being "length of mains." Ms. Jones argued that length of mains was most appropriate "(b)ecause the amount of usage of corporate services is directly tied to the actual infrastructure on the ground in an utilities

² It is also important to note that when Joplin proposes to shift costs away from its district, those costs flow to other districts. So while Joplin may get the benefit of a reduced revenue requirement, it has done so at the expense of one or more other districts. As Joplin witness Jones acknowledged in response to questioning from the bench – "... obviously, the revenue requirement for Joplin should go down. By how much, I cannot tell you. And, ... that would make the revenue requirement for some other districts increase." (Tr. 415, 416)

(sic) environment. Other factors do not accurately reflect the needs and uses of corporate resources to the extent that infrastructure bases would.” (Joplin Exh. 1, p. 2, lines 5-7)

In its Prehearing Brief filed August 2, 2007, the City of Joplin continued its support of length of mains as an appropriate allocation factor stating, “The proper allocation of the corporate administrative and general expenses is by linear feet of pipe within each district.” (Prehearing Brief of Intervenor/City of Joplin, p. 2) Further, Joplin argued that it “. . . is not seeking that the corporate administrative and general expenses be reduced or not recovered by the Company; merely that the allocation of those expenses be more properly used through a linear foot allocation factor and not through the payroll factor advocated by the Staff.” (Id, p. 5)

As late as August 10, 2007 (three (3) days before the hearing), the City of Joplin steadfastly maintained its position that corporate administrative and general expenses be allocated based on length of main. “The proper allocation of the corporate, administrative and general expenses is by linear feet of pipe within each district and not by payroll expenses as advocated by Staff.” (City of Joplin’s List of Disputed Issues and Witness, p. 1) It is also significant to note that this pleading was filed on Friday, August 10, 2007, one day after Joplin’s witness had been advised by Staff witness Rackers of an error in Staff’s calculation of linear feet of main attributable to the St. Louis County District. (Tr. 396) Mr. Rackers stated that he had personally informed Joplin’s attorney, Mr. Ellinger of the error on Wednesday, two days before the August 10, 2007 filing. (Tr. 274)

On Tuesday, August 14, 2007, after hearing the testimony of Company and Staff witnesses and, more importantly, hearing the corrected number of linear feet of main in the St. Louis County District, Ms. Jones took the witness stand, and attempted to “correct” her

testimony and her position regarding the proper allocation of corporate costs.³ Although Ms. Jones was denied the opportunity to “correct” her testimony, she was permitted to supplement her prefiled testimony based upon corrections made by Staff to the feet of main in the St. Louis County District. (Tr. 348, 422)

Again, it is significant to note that Ms. Jones was informally notified of Staff’s error on Thursday, August 9, 2007, yet she made no effort to notify parties of her change in position prior to taking the witness stand late in the day on Tuesday, August 14, 2007. As a matter of fact, Ms. Jones testified that her change in position was based upon additional review of Staff’s Accounting Run and listening to the testimony at the hearing that day. (Tr. 337, 359, 361-362) Ms. Jones’ testimony would suggest her change of position was a spur of the moment decision:

“Q. (By Mr. Hess) Did you intend to change your factual testimony today from the testimony in your pre-filed testimony when you came to the hearing today?

A. It was my intent when I walked up here to testify as I did.”. (Tr. 362)

However, when pressed on cross examination, Ms. Jones backtracked and testified that she decided to change her testimony sometime between Friday, the 10th of August and Tuesday morning at 9:00 a.m. (Tr. 382) If Ms. Jones had decided to change her testimony sometime prior to 9:00 a.m. on the morning of the hearing, this does not square with her other testimony that her change in position was due to “listening to the testimony today” and that she only decided to change her testimony when she “walked up here to testify.” (Tr. 361, 362)

³ It is also important to note that Joplin vigorously objected to Staff’s attempt to correct its exhibit (Tr. 265-275). One can only speculate if Joplin would have changed its testimony had its objection been successful, yet knowing that its length of mains allocation factor was based on erroneous information.

It is clear that Ms. Jones did not change her testimony based upon her belief that number of customers and payroll were, in fact, more appropriate allocators but because Staff's correction resulted in her initially preferred allocation factor (*i.e.*, length of mains) to increase from .011% to 7.105%. Staff witness Rackers testified that using the corrected allocation factor for length of mains in Joplin's advocated position would actually result in a higher allocation of costs to Joplin than Staff (and the Nonunanimous Stipulation) had proposed. (Tr. 324) In other words, had Ms. Jones stuck with her initial position that the "amount of usage of corporate services is directly tied to infrastructure on the ground" (*i.e.*, lengths of mains) she would have allocated more costs to the Joplin District than either Staff or the Company. Ms. Jones revealed her true purpose when she testified that when the length of main allocator was very small (*i.e.*, .011%) Joplin was "more comfortable with using pipe length as an allocation factor." (Tr. 374)

1 Q Before he testified, had you checked the pipe
2 length calculations in those schedules?

3 A I had not. I'm not even sure I have that
4 schedule.

5 Q All right. So you had never checked the
6 calculations for pipe length in that schedule?

7 A No.

8 Q All right. Did the change to Mr. Rackers'
9 testimony have any effect on your testimony?

10 A It had some effect.

11 Q What effect would that be?

12 A Well, obviously, when you're going to present a
13 700 percent increase when it has -- when that number is
14 going to affect Joplin, you know, I have to stop and
15 re-evaluate that information.

16 Q All right. When the pipe length percentage was
17 -- what you thought was very small, .011 percent or
18 something in that neighborhood, Joplin was more
19 comfortable using pipe length as an allocation factor; is
20 that correct?

21 A And, again, we -- the basis for that is to tie
22 it to the infrastructure.

23 Q And then ---
24 A So yes.⁴

It is clear from the testimony in this case that Joplin's basis for allocation is nothing more than an effort to arbitrarily minimize the allocation of costs to the Joplin District and not to identify factors which most appropriately allocate costs to the district based upon the nature of the function being performed. Joplin's variable positions are revealed as driven by Joplin's varying perceptions of expediency rather than by reasoned analysis. It is a mistake to think that "just and reasonable rates" can be established for Joplin alone, for MAWC does not serve Joplin exclusively. Inappropriately shifting Joplin's costs to other districts and communities *is* discriminatory.

C. Annualization of Payroll and Payroll Tax Expense

Joplin continues to identify the level of payroll and payroll tax annualization attributable to the Joplin District as an "issue" with the Nonunanimous Stipulation. However, in its Statement of Filing of Calculations (filed August 22, 2007), the City of Joplin states that "there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones' testimony on August 14, 2007." Accordingly, it is not clear what, if any, objection Joplin continues to have with the payroll and payroll tax annualization amounts. Nevertheless, in an abundance of caution, this section will demonstrate that the payroll and payroll tax annualization amounts calculated by Staff and embodied in the Nonunanimous Stipulation are appropriately calculated and are a reasonable reflection of the annualized payroll and payroll tax expense which MAWC will incur on a going-forward basis.

For purposes of its case, the Company annualizes payroll and associated payroll tax by determining the number of employees on its payroll at the end of the test period (i.e., June 30,

⁴ Tr. 374.

2006). Then it adjusts this number for any vacancies or new hires that occurred through the end of the true-up period (*i.e.*, May 31, 2007) and calculates labor rates based on pay rates existing at the time of the true-up. Payroll taxes were based on the annualized payroll for each employee using the appropriate tax rates. (Tr. 220) It is important to note that there are two aspects to the payroll and payroll tax. First, there is payroll and payroll tax directly attributable to those employees who work within a specific district and that payroll and payroll tax amount is directly assigned to that particular district; and then there is the payroll and payroll tax associated with employees working at the corporate office which is allocated to the various districts. (Tr. 221)

Staff calculates and annualizes payroll and payroll tax in virtually the same way as the Company. Staff looks at all employees as of the end of the test year (*i.e.*, June 30, 2006), then it includes any employees that were hired subsequent to that date and through the true-up period. Staff also eliminated any employees that had been terminated during that period of time. Staff's annualization takes into effect any union labor rate increases and any changes in positions of the employees that would cause their salary to change. Staff takes an individual's hourly rate and multiplies it by the number of hours given the employee's position (including overtime amounts, shift differentials, etc.) and then arrives at an annualized salary amount for each employee. Staff takes the annualized salary amount for each employee and factors it up for payroll taxes. (Tr. 242) Like the Company, Staff annualized payroll and payroll tax for each employee whether they were working in a specific district or at the corporate office. (Tr. 243) Company witness Grubb testified that he had reviewed Staff's workpapers and concluded that they had properly calculated payroll and payroll tax. (Tr. 186)

It is clear from Staff's testimony that payroll and payroll taxes have been accurately calculated and appropriately annualized. The payroll and payroll tax annualization reflects

actual employee levels as of the end of the true-up period and reasonably reflects a going-forward level of payroll and payroll tax expense the Company will likely incur at the time rates set in this proceeding will become effective. (Tr. 247, 259) Other than to generally complain that Staff's payroll and payroll tax annualization amounts appear to be too high, the City of Joplin offered no evidence to support its position. Similarly, it offered no calculation of an alternative payroll and payroll tax annualization amount. Under the circumstances, not only is Staff's calculation of payroll and payroll tax appropriate, there is no credible evidence to suggest otherwise and City of Joplin's objection must be rejected.

D. The Nonunanimous Stipulation Is A Fair Resolution To All Of Joplin's Issues

Joplin stands alone in opposing the Nonunanimous Stipulation.⁵ In its Suggestions in Opposition to the Stipulation and Agreement Filed On August 9, 2007, Joplin urged the Commission to reject the proposed Stipulation and Agreement and "...allocate MAWC corporate expenses in a rational manner, insure that the chemical expense is properly normalized...and provide for proper payroll tax annualization." Joplin has stated that it opposes the discriminatory rates proposed in the Nonunanimous Stipulation. But, Joplin also stated in its List of Disputed Issues that it did not oppose the resolution of any additional issues encompassed in the Stipulation and Agreement that it had not identified as being unresolved.

Joplin identified as many as four and as few as two disputed issues. In the most recent iteration of the Issues List, Joplin now agrees that there are only two issues. One of Joplin's original issues, that of chemical expense not being properly normalized, has been resolved according to Joplin's witness. (Tr. 355) By amending the Nonunanimous Stipulation and Agreement to reflect a proposed increase in the Joplin District of \$4,619,824, Joplin's issue

⁵ It is acknowledged that, because of Joplin's sole opposition, the Nonunanimous Stipulation becomes, in effect, the joint recommendation of the signatory parties. Nevertheless, as noted in this brief, Joplin appears to not contest the bulk of the Nonunanimous Stipulation – at least the parts thereof that provide benefit for Joplin.

regarding chemical expense has been resolved and the Nonunanimous Stipulation reflects the position of all the parties *including* Joplin.

Joplin's issue of the proper level of payroll and payroll tax annualization attributable to the Joplin District seems to have been resolved as well. In its Statement of Filing of Calculations (filed August 22, 2007), Joplin states that "there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones' testimony on August 14, 2007." By stating that it cannot find a direct revenue impact on the payroll tax annualization and payroll annualization, Joplin concedes that its issue regarding payroll and payroll tax annualization has been resolved and the Nonunanimous Stipulation reflects the position of all the parties *including* Joplin. In any event, the record clearly supports the conclusion that Staff's payroll and payroll tax annualization that is embodied in the Nonunanimous Stipulation is accurate and reasonable. (See Argument in Section II.C. above)

Joplin's issue that the corporate expenses be allocated in a rational manner is also appropriately and reasonably resolved by the Nonunanimous Stipulation. Staff witness Rackers testified that the use of payroll as a primary allocator is most appropriate because costs incurred at the corporate level are primarily incurred for the benefit and support of the employees in the field or districts. (Tr. 285-286, 296, 329) Furthermore, Staff has consistently used payroll as an allocation factor in previous MAWC rate cases. (Tr. 321) Staff has also traditionally used payroll as an allocation factor for other corporate type expenses in other utility rate cases. (Tr. 320) Staff's position is also consistent with previous Commission's decisions. Therefore the evidence shows that that the corporate expenses have been allocated in a rational manner within the Nonunanimous Stipulation and the Nonunanimous Stipulation reflects the desire for reasonable allocations sought by all the Parties including Joplin.

Joplin's statement that the rates proposed in the compromise that the Nonunanimous Stipulation represents are discriminatory goes against the evidence presented in this case. First, Staff used the same allocation factors to allocate costs to all districts, it did not develop a different set of factors for Joplin. So it is clear that there has been no discrimination in allocating costs to Joplin vis a vis allocating costs to other districts.

Second, just because Joplin can identify different allocation factors that will allocate less costs to Joplin does not demonstrate that Staff's factors are discriminatory, wrong or irrational.⁶ Joplin must demonstrate that the basis or rationale for Staff's factors is unreasonable. This Joplin has failed to do, particularly where it proposes to use many of the same allocation factors as Staff.

Finally, as a result of the compromises contained in the Nonunanimous Stipulation, the allocation of costs to the Joplin District under the Nonunanimous Stipulation is actually less than it would be under a strict application of district-specific costs. For example, in Staff's True-Up Accounting Schedule (which at the time it was filed assumed a total revenue increase of \$19,493,370 based on Staff's mid-point return on equity of 9.10%) Joplin's revenue increase would be \$4,580,185 using a strict district-specific cost assignment. (Staff True-Up Accounting Schedule 1, Total Company and Joplin District, in Exhibit Staff-29) The Nonunanimous Stipulation proposes an overall revenue increase of \$28,700,000 (Appendix A-1-1), which is approximately \$9 million greater than the Staff's True-Up Accounting Schedules. Factoring up the Joplin increase to reflect Joplin's ratable share of the increase in the revenue requirement deficiency on a total company basis between Staff True-Up Schedule and the Nonunanimous Stipulation would add roughly \$670,060 to the Joplin District revenue requirement on a district

⁶ Recall that Joplin stated that "rational" factors should be used. Joplin Suggestions in Opposition to the Stipulation and Agreement, filed August 9, 2007.

specific basis. (Revised Reconciliation, filed September 7, 2007) Thus, the total revenue requirement on a district specific basis for Joplin would be \$5,250,245 (\$4,580,185 + \$670,060), prior to correction for chemicals. In contrast, the Nonunanimous Stipulation proposes that Joplin's share of this stipulated total water revenue requirement deficiency of \$28,579,683 is only \$4,856,240, prior to the correction for chemicals.

Accordingly, the Nonunanimous Stipulation results in a revenue increase for the Joplin District that is far less than it would be under a strict district-specific cost of service allocation (\$4,856,240 compared to \$5,250,245). Joplin's main concern with the Nonunanimous Stipulation was that the resulting increase for Joplin was discriminatory. Given that Joplin would receive a much lower revenue increase due to the Nonunanimous Stipulation than it would receive using strict district specific pricing, there is no credible argument that the Nonunanimous Stipulation is discriminatory.

Therefore, the evidence and Joplin's shift of position as evidenced in the record of the August 14, 2007 evidentiary hearing indicates the Nonunanimous Stipulation results in a fair and reasonable resolution of all of Joplin's issues.

III. CONCLUSION

The issue before the Commission is whether the Nonunanimous Stipulation submitted in this case is a fair and reasonable resolution of all the issues presented in these cases. In considering this issue, the Commission should give significant weight to the fact that all but one of the many Parties to the case either supports the Nonunanimous Stipulation or does not object to it. The Nonunanimous Stipulation was the product of extensive and time-consuming negotiations and strikes a reasonable balance among a myriad of competing stakeholders and interests in the case. (Tr. 180, 231, 319-320) The Commission also needs to determine if Joplin

has presented sufficient and credible evidence to demonstrate that the allocation of costs and proposed district-specific revenue increases embodied in the Nonunanimous Stipulation are not fair and reasonable. Clearly, given the record in this case, the answer to that question is an emphatic "no." Accordingly, the Commission should issue an order approving the Nonunanimous Stipulation and rejecting Joplin's arguments regarding the specific issues it has raised with respect to that Nonunanimous Stipulation.

Respectfully submitted,



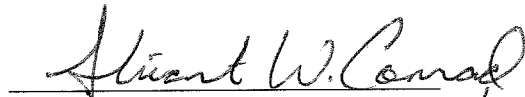
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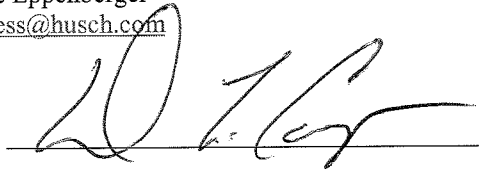
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A handwritten signature in black ink, appearing to read "R. L. Hess II", is written over a horizontal line.