

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

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| In the Matter of the General Rate Increase |) | |
| for Water and Sewer Service Provided |) | Case No. WR-2007-0216 |
| by Missouri-American Water Company. |) | SR-2007-0217 |

**MAWC’S SUGGESTIONS IN OPPOSITION
TO JOPLIN’S MOTION TO CONSOLIDATE**

Comes now Missouri-American Water Company (MAWC or Company), and, for its suggestions in opposition to the Motion to Consolidate filed by the City of Joplin (Joplin), states as follows to the Missouri Public Service Commission (Commission):

BACKGROUND

1. On March 29, 2007, Joplin filed its Motion to Consolidate wherein it moved the Commission to consolidate Commission Cases Nos. WR-2000-281 and WR-2007-0216.
2. Commission Rule 4 CSR 240-2.110(3) states that the Commission may consolidate cases that involve related questions of law or fact.
3. Joplin alleges that there are related questions of law or fact because “the parties to case WR-2000-0281 are parties to the above-captioned cases and there are common questions of law and/or fact between both cases.” Jop. Mot., para. 12.
4. MAWC believes that the many differences between the cases create a situation where judicial economy will not be furthered by the proposed consolidation

PROCEDURAL POSTURE

5. Case No. WR-2000-281 is in a much different procedural posture than the current case. The Commission issued a Report and Order in Case No. WR-2000-281 on August 31,

2000. The compliance tariffs became effective on September 20, 2000.

6. Case No. WR-2000-281 has been to the Circuit Court twice (as the result of multiple appeals the first time) and the Court of Appeals twice. The first time the case was at the Circuit Court, the Court remanded the case “for the Commission to explain its action by issuing additional findings of fact and conclusions of law.” *State ex rel. City of Joplin v. Public Service Commission*, 186 S.W.3d 290, 296 (Mo. App. 2005). When parties attempted to appeal this first Circuit Court decision to the Court of Appeals, the Western District dismissed the appeals on December 13, 2001. It found that because the Circuit Court remanded the case to the Commission for additional findings of fact as to certain issues, the judgment of the Cole County Circuit Court was not final and, consequently, not yet subject to appeal.

7. Thereafter, on May 24, 2004, the Commission issued its Report and Order on Remand wherein it found that the appeal of Case No. WR-2000-281 was moot. The Commission based its decision on the fact that the rates that resulted from Case No. WR-2000-281 were superseded by new rates approved in Commission Case No. WR-2003-0500.

8. The City of Joplin appealed this mootness decision to the Cole County Circuit Court. On November 19, 2004, the Circuit Court issued its Order and Judgment affirming the Commission’s decision as to mootness. The decision was appealed to the Court of Appeals.

9. On December 6, 2005, the Court of Appeals issued the decision that is attached to Joplin’s Motion to Consolidate. The Western District remanded the case “for the Commission to issue findings of fact and conclusions of law that will allow the courts to determine whether the rates were unduly prejudicial under section 393.130.3.” *City of Joplin* at p. 300.

10. Thus, all that is required by the courts at this time in regard to Case No. WR-

2000-281 is an explanation of the Commission's Report and Order. There is no need for the hearing of additional evidence or briefing. The record was closed and the briefing completed many years ago. The Court of Appeals pointed out in regard to Joplin's arguments that "the Commission lacks authority to retroactively correct rates," lacks the authority to refund money," and may not "take into account overpayments when fashioning prospective rates." *City of Joplin* at p. 297. Thus, there are no rate impacts at issue.

11. Case No. WR-2007-0216, on the other hand, is in its infancy. Only MAWC has filed testimony. Other parties' direct testimony, as well as rebuttal and surrebuttal testimony has yet to be filed. The local public hearings, evidentiary hearing and true-up hearing have yet to take place, nor has the case been briefed.

12. Case No. WR-2000-281 and WR-2007-0216 are in dramatically different postures in terms of necessary, and possible, Commission action.

DIFFERENT FACTS AT ISSUE

13. The facts at issue are also much different in the subject cases. Case No. WR-2000-281 was based on a test year consisting of the twelve-months ending September 30, 1999, updated for known and measurable changes through December 31, 1999, and trued-up for specific items as of April 30, 2000.

14. The current case is based on a test year consisting of the twelve-months ending June 30, 2006, updated for known and measurable changes through December 31, 2006, and trued-up for specific items as of May 31, 2007.

15. Almost seven (7) years separate the period of time the Commission is to consider in each of the subject cases. Accordingly, there are no common facts to be analyzed in these two

cases.

NOT THE SAME PARTIES

16. Joplin alleges that the two cases “involve the same parties.” Jop. Mot., para. 11 and 12. This is not entirely the case. A review of the appearances recited in the Report and Order in Case No. WR-2000-281 reveals several parties to Case No. WR-2000-281 that are not parties to Case No. WR-2007-0216 -- St. Peters; O’Fallon; Weldon Spring; St. Charles County; Central Missouri State University; Hawker Energy; Harmon Industries; Stahl Manufacturing; Swisher Mower and Machine; Wire Rope Corporation of America, Inc.; Friskies Petcare, a division of Nestle USA; Public Water Supply District No. 2 of St. Charles County; St. Joseph Building and Construction Trades Council; Public Water Supply District 1 of Buchanan County. Additionally, there are several parties to Case No. WR-2007-0216 that were not parties to WR-2000-281 -- Jefferson City; Parkville; Metropolitan St. Louis Sewer District; Missouri Energy Group; and, Utility Workers Union of America Local 335.

17. There is no good reason to thrust these parties into cases in which they have shown no interest.

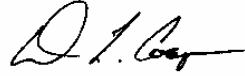
CONCLUSION

18. The consolidation of Cases No. WR-2000-281 and WR-2007-0216, as requested by the City Joplin, would not further judicial economy in that the procedural posture of the cases is extremely different, the facts to be considered by the Commission concern test years separated by almost seven years and the parties to the cases differ greatly.

WHEREFORE, MAWC respectfully requests the Commission deny Joplin’s Motion to

Consolidate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 5th day of April, 2007, to:

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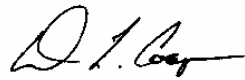
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