

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 17, 2002**

CASE NO: WA-2001-288

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Enclosed find certified copy of DISSENTING OPINION in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

In the Matter of the Application of St. Louis County)
Water Company, doing business as Missouri-American)
Water Company, for Restatement and Clarification of) **Case No. WA-2001-288**
its Certificate of Convenience and Necessity for St. Louis)
County, Missouri.)

DISSENTING OPINION OF COMMISSIONER STEVE GAW

I respectfully dissent because the parties have failed to provide any information from which this Commission may determine whether it is in the public interest to grant the requested certificates.

The Missouri Supreme Court has said that "the single question presented" to this Commission is whether "the exercise of the franchise . . . is necessary or convenient for the public service."¹ The Western District has said, "[I]t is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate."² Yet, the record in this case contains nothing with respect to this point. The Company's original Application, filed on October 31, 2000, does not address the acquisition of the Florissant and Webster Groves distribution systems.

¹ *St. ex inf. Shartel ex rel. City of Sikeston v. Missouri Utilities Co.*, 331 Mo. 337, 349, 53 S.W.2d 394, 398 (Mo. banc 1932).

² *St. ex rel. Intercon Gas, Inc. v. Public Service Commission of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App., W.D. 1993).

Nowhere in the record, for example, is there any indication as to the rates that the Company will charge in Florissant and Webster Groves. Will those rates be higher or lower than the charges those citizens are paying now? The Commission simply does not have this information in the record. There is not enough evidence in this case by which the Commission may determine, in the words of the Western District, that "the public interest would be served in the award of the certificate."³

Furthermore, the Commission could have held local public hearings in Florissant and Webster Groves, on appropriate public notice, in order to hear from the affected ratepayers on the desirability of this transaction. As it is, the Commission is granting these certificates without knowing whether the public received any notice that such a thing was imminent. I cannot say, based upon the present record in this case, that the proposed transaction is or is not in the best interest of the public. I am not completely confident that this Commission has been made aware of all that this transaction involves. With proper development of the record, I very well could have agreed with the decision of the majority. As it is, my duty to determine whether this transaction is in the public interest cannot be fulfilled.

For these reasons, I respectfully dissent.



Steve Gaw, Commissioner

Dated at Jefferson City, Missouri,
on this 17th day of January, 2002.

³ *Id.*

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 17th day of Jan. 2002 .**

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

