

*Exhibit No.:*  
*Issue(s):*                      *Rate Design*  
*Witness:*                        *Janice M. Zimmerman*  
*Sponsoring Party:*        *Intervenor Metropolitan*  
                                         *St. Louis Sewer District*  
*Type of Exhibit:*        *Direct Testimony*  
*Case No.:*                      *WR-2007-216*  
*Date:*                              *June 12, 2007*

**MISSOURI PUBLIC SERVICE COMMISSION**

**DIRECT TESTIMONY**

**OF**

**JANICE M. ZIMMERMAN**

**ON BEHALF OF**

**METROPOLITAN ST. LOUIS SEWER DISTRICT**

**IN THE MATTER OF MISSOURI-AMERICAN WATER COMPANY'S  
REQUEST FOR AUTHORITY TO IMPLEMENT A GENERAL RATE  
INCREASE FOR WATER SERVICE PROVIDED IN MISSOURI SERVICE  
AREAS**

**CASE NO. WR-2007-216**

*Jefferson City, Missouri*  
*June 2007*

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**DIRECT TESTIMONY**

**OF**

**JANICE M. ZIMMERMAN**

**ON BEHALF OF**

**METROPOLITAN ST. LOUIS SEWER DISTRICT**

**CASE NO. WR-2007-0216**

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**Witness Background and Experience**

Q: Please state your full name and business address.

A: My name is Janice M. Zimmerman, 2350 Market Street, St. Louis, Missouri, 63103.

Q: What is your occupation?

A: I am the Director of Finance for the Metropolitan St. Louis Sewer District ("MSD").

Q: What is your educational background?

A: I am a graduate of Eastern Illinois University with an undergraduate degree in Finance. I received my Master of Finance degree from St. Louis University in August 1987.

Q: Please describe your work background and experience.

A: Prior to joining the MSD, I was a Principal of Raine Consulting, Inc. and Executive Consultant for its education practice. I also served as the Chief Financial Officer of Fox River Learning, Inc., a manager in the K-12 Education Unit at Coopers & Lybrand L.L.P., and filled a variety of financial positions with the St. Louis Public Schools, Community Federal Savings and Loan Association, the Illini Federal Savings and Loan Association and the Federal Reserve Bank of St. Louis. I have been employed by the MSD since April 16, 2001.

Q: What is your specific rate design experience?

A: I led the rate design efforts and development of the rate proposals for MSD's 2002/2003 and current 2007 rate proceedings conducted by the MSD Rate Commission as required by MSD's voter-approved Charter. These efforts used a comprehensive rate design model developed by the internationally renown firm of Black & Veatch and resulted in thorough cost of service and cost allocation studies. These studies provided MSD's ratepayers and the MSD Rate Commission with a detailed breakdown of all MSD costs

1 and their allocation to detailed operational functions. I have a working knowledge of the  
2 Black & Veatch Rate Model which is based on current and generally accepted water and  
3 wastewater industry rate design principles and standards.

4 Q: Do you believe these generally accepted water and wastewater industry rate design  
5 principles and standards apply to Missouri-American Water Company ("MAWC")?

6 A: I would anticipate that a water company the size and complexity of MAWC would utilize  
7 these acknowledged rate design principles as part of a best practice to ensure thorough  
8 transparency of its rate design for its customers and the Public Service Commission.

9 **Summary of Testimony**

10 Q: What is the purpose of your direct testimony?

11 A: The purpose of my testimony is to provide an overview of the dispute and related  
12 ongoing litigation between MSD and MAWC concerning MAWC's provision of water  
13 usage data to MSD, and to set forth MSD's position regarding the appropriate rate, if any,  
14 that MSD should be charged by MAWC in connection with MAWC's provision of water  
15 usage data to MSD and the computation of such rate.

16 **Overview of MSD**

17 Q: What is the MSD?

18 A: MSD is a political subdivision of the State of Missouri and municipal corporation  
19 situated in the City of St. Louis, which provides an integrated sewer system for single and  
20 multi-family residences and commercial and industrial customers throughout the City of  
21 St. Louis and most of St. Louis County, Missouri.

22 Q: Does MSD bill its customers for the use of the sewer system maintained by MSD?

23 A: Yes.

1 Q: How does MSD determine what amount to bill each customer?

2 A: MSD bills its customers based on the amount of each customer's water usage.

3 **MAWC's Provision of Water Usage Data to MSD**

4 Q: How does MSD obtain the water usage data necessary for its billing purposes?

5 A: Under Missouri law, Section 249.645, RSMo, MAWC is required to provide such water  
6 usage data to MSD or to make such data otherwise available to MSD.

7 Q: Do you know whether MSD has entered into any agreements with MAWC for the  
8 provision of water usage data?

9 A: Yes. MSD and MAWC entered into an Agreement on or about February 14, 2002,  
10 whereby, in exchange for payment, MAWC agreed to provide to MSD certain St. Louis  
11 County water usage and customer identification data, referred to as "water usage data," to  
12 be used by MSD in calculating its customers' billing statements (the "2002 Agreement").

13 Q: Based on your understanding of the 2002 Agreement, do you know how MAWC obtains  
14 the customer water usage data, which it agreed to provide to MSD?

15 A: MAWC's water usage data is accumulated through meter readings and estimates  
16 conducted by MAWC for its own billing purposes.

17 Q: Under the terms of the 2002 Agreement how much did MSD agree to pay MAWC for the  
18 water usage data?

19 A: In the 2002 Agreement, the parties agreed that in exchange for the water usage data,  
20 MSD would pay MAWC approximately 50% of MAWC's cost of obtaining the data,  
21 which was set at a rate of \$0.54 per account read, by tariff, as approved by the Missouri  
22 Public Service Commission (the "Commission"), effective April 11, 2002.

23 Q: Can you identify MSD Exhibit 1?

1 A: Yes. MSD Exhibit 1 is a true and accurate copy of MAWC Tariff Sheet P.S.C. Mo. No.  
2 6, Fourth Revised Sheet No. RT 16.0, reflecting MAWC's tariff for the provision of  
3 water usage data to MSD, at the rate of \$0.54 per account read, per the terms of the  
4 parties' 2002 Agreement.

5 Q: Is the 2002 Agreement still in effect?

6 A: No. The 2002 Agreement was terminated by both parties, effective December 31, 2003.

7 Q: Have MSD and MAWC entered into a new agreement regarding the provision of water  
8 usage data to MSD?

9 A: No. The parties have been unable to finalize a new agreement.

10 Q: Is it MSD's position that the tariff reflected in MSD Exhibit 1 has expired?

11 A: Yes. The tariff reflected in MSD Exhibit 1 was established pursuant to the parties' 2002  
12 Agreement. As a result, it is MSD's position that the tariff terminated upon the  
13 expiration of the parties' 2002 Agreement, effective December 31, 2003.

14 Q: Although the parties have not been able to finalize a new water usage data agreement, is  
15 MSD still receiving water usage data from MAWC?

16 A: Yes. Although the tariff set forth in the 2002 Agreement expired on December 31, 2003,  
17 during the pendency of the parties' negotiations and the litigation concerning the  
18 provision of the water usage data, MAWC has continued to provide MSD with the water  
19 usage data and MSD has continued to pay MAWC for such data as per the tariff agreed to  
20 in the Agreement. MSD has made it clear since January 2004 that its continued payment  
21 of the previous tariff amount has been subject to and without waiving MSD's challenge  
22 to MAWC's imposition of a fee for such data and the amount of the fee.

**Overview of Litigation Concerning MAWC's Provision of Water Usage Data to MSD**

Q: What litigation are you referencing concerning MAWC's provision of water usage data to MSD?

A: Section 249.645, RSMo, which authorizes MSD "to establish, make and collect charges for sewage services," requires MAWC to provide the water usage data to MSD free of charge or to allow the MSD to review the water meter reading information it requires from MAWC without cost, upon reasonable request from the MSD. The statute provides that "[a]ny private water company...shall, upon reasonable request, make available to such sewer district its records and books so that such sewer district may obtain therefrom such data as may be necessary to calculate the charges for sewer service." Unlike its companion statute, Section 250.233, RSMo, which expressly provides that public water companies, such as MAWC, can charge municipal sewer systems for the provision of water usage data, nothing in Section 249.645 suggests that MAWC may similarly impose a fee for making its water usage data available to MSD. Yet despite the plain language of Section 249.645, MAWC refuses to provide the water usage data to MSD or to permit MSD to inspect MAWC's water meter reading records without the payment of a substantial fee. For example, from 2001 to 2002, the annual water usage data charges paid by MSD to MAWC increased by almost \$250,000. According to recent representations made by MAWC, MAWC has budgeted \$1.9M to collect water usage data in St. Louis County in 2007, and claims that MSD would now be required to pay MAWC \$963,105, which amounts to a \$200,000 increase from what MSD paid in water usage fees in 2006. Because the meaning of Section 249.645, RSMo, has never been considered or resolved by the courts in this State, MSD has been willing to pay a

1 reasonable fee for the provision of the water usage data in the past instead of pursuing  
2 litigation regarding the meaning of the statute. However, MAWC's recent, unreasonably  
3 high fee demands, notwithstanding MSD's request for less information, left MSD with no  
4 choice but to challenge MAWC's right to impose a fee and the amount of such fee. As a  
5 result, MSD commenced litigation against MAWC, seeking a determination that  
6 MAWC's charging of a fee for the water usage data constitutes a violation of Section  
7 249.645.1, RSMo, and that pursuant to that statute, MAWC is required to provide the  
8 water usage data to MSD free of charge or is otherwise required to make its water meter  
9 reading information and other pertinent records available to MSD at no cost.

10 Q: When did MSD file suit against MAWC?

11 A: On August 19, 2005, MSD filed a Petition for Declaratory Relief against MAWC in the  
12 Circuit Court of St. Louis County, Missouri, Cause No. 05CC-003671, in which MSD  
13 asserted that, despite the plain language of Section 249.645.1, RSMo, MAWC was  
14 requiring MSD to pay a substantial fee for the provision of water usage data and,  
15 therefore, a justiciable controversy was in existence and was ripe for determination.  
16 MAWC moved to dismiss MSD's Petition on the grounds of the Filed Rate Doctrine and  
17 Primary Jurisdiction. MAWC asserted that the Commission had exclusive jurisdiction  
18 with respect to the dispute and that MSD had failed to exhaust its administrative remedy  
19 to challenge the tariff. The Commission intervened in the St. Louis County Circuit Court  
20 action and also moved to dismiss the Petition asserting that "the Commission has the  
21 statutory authority and duty to consider complaints of the type MSD is making in its  
22 Petition for Declaratory Relief. . . ." On April 24, 2006, the Circuit Court of St. Louis  
23 County issued its Judgment of Dismissal finding that primary jurisdiction of the matter



1           rested with the Commission and that, until such time as the Commission hears the matter,  
2           the Court lacks jurisdiction to act.

3    Q:     Did MSD initiate a claim against MAWC before the Commission?

4    A:     Yes. MSD filed a Complaint and initiated a proceeding, Cause No. WC-2007-0040,  
5           before the Commission on July 28, 2006. On December 15, 2006, MSD filed a Motion  
6           for Summary Determination, seeking an Order in its favor from the Commission on  
7           MSD's claim that the imposition of a fee by MAWC for making its water usage data  
8           available to MSD constitutes a violation of Section 249.645.1, RSMo. The Commission  
9           heard oral argument on MSD's Motion on March 7, 2007, and the parties submitted Post-  
10          Hearing Briefs shortly thereafter.

11   Q:     Has the Commission issued an Order in MSD's proceeding against MAWC, Cause No.  
12          WR-2007-0040?

13   A:     Yes. The Commission, Judge Kennard L. Jones presiding, issued its Report and Order in  
14          the MSD's proceeding on May 22, 2007, determining that a reasonable request within the  
15          context of Section 249.645, RSMo, includes a reasonable charge. The Commission  
16          ordered MSD to compensate MAWC for the water usage data and held that the amount of  
17          such compensation shall be considered in connection with this case. Commission Report  
18          and Order at 9. Commissioner Gaw dissented and his separate dissenting opinion is  
19          forthcoming.

20   Q:     Do you request that Commission take official notice of the parties' submissions and the  
21          Commission's Orders issued in the case of *Metropolitan St. Louis Sewer District v.*  
22          *Missouri-American Water Company*, Cause No. WC-2007-0040?

23   A:     Yes.

1 Q: Does MSD intend to seek review of the Commission's May 22, 2007 Order?

2 A: Yes. MSD's deadline for filing a Petition for Review in State Court is June 21, 2007, and  
3 MSD will be filing such a Petition in the Circuit Courts of Cole County or St. Louis  
4 County, Missouri.

5 **MSD's Position Concerning Appropriate Rate to Be Charged by MAWC for the Provision**  
6 **of Water Usage Data**

7 Q: If the Court upholds the Commission's May 22, 2007 Order, requiring MSD to pay  
8 MAWC a reasonable charge for the provision of water usage data, what is MSD's  
9 position as far as what constitutes a reasonable charge?

10 A: Subject to MSD's position that Section 249.645 does not authorize MAWC to charge  
11 MSD any fee whatsoever for making its water usage data available to MSD, MSD has  
12 advised MAWC and the Commission that it will voluntarily pay MAWC the incremental  
13 costs incurred by MAWC in providing the data to MSD in a readily-ascertainable and  
14 usable format. MSD believes that the incremental costs incurred by MAWC in providing  
15 the water usage data to MSD—expenses that MAWC would not otherwise incur in  
16 connection with its own necessary operations and data collection efforts—constitute the  
17 only reasonable and appropriate charge.

18 Q: What is the difference between charging MSD the incremental costs incurred by MAWC  
19 in providing the water usage data to MSD, as MSD is suggesting, and the amounts MSD  
20 has been paying MAWC pursuant to the tariff set forth in the 2002 Agreement?

21 A: MSD has been paying MAWC 50% of MAWC's *total* cost to read its meters and collect  
22 the water usage data. Yet MAWC's capital and operating costs associated with installing  
23 and reading its meters are ongoing irrespective of MSD's request for the water usage

1 data. In other words, if MSD did not need the water usage data in order to bill its  
2 customers, MAWC would incur its data collection costs in any event. MSD should not  
3 be required to subsidize one-half of MAWC's own data collection efforts, which are  
4 necessary for MAWC's own billing purposes. For several years, MSD has retrieved the  
5 water usage data from information downloaded by MAWC or one of its affiliated  
6 companies on an American Water website. Should MSD be required to pay MAWC for  
7 its provision of water usage data, MSD believes that the only reasonable charge should be  
8 reimbursement of MAWC's expenses in downloading such information and maintaining  
9 the website and any other additional incremental expenses incurred by MAWC in  
10 affirmatively providing the water usage data to MSD in a readily ascertainable format.

11 Q: Based on your experience and ratemaking expertise in connection with MSD's  
12 ratemaking process, do you believe that a rate encompassing solely the incremental costs  
13 incurred by MAWC in providing the water usage data to MSD is the appropriate rate to  
14 use in this situation?

15 A: Yes.

16 Q: Do you know what MAWC's incremental costs are in providing the water usage data to  
17 MSD in a readily ascertainable and usable format?

18 A: No. MSD's Data Requests directed to MAWC specifically requested information  
19 regarding the incremental costs incurred by MAWC in providing the water usage data to  
20 MSD. Specifically, MSD DR1-009 sought the following information: "[f]or each year  
21 from 2002 through the test year, please state the total incremental cost incurred by  
22 MAWC in providing MSD with the water usage and customer identification data  
23 contemplated under the Agreement entered into between MSD and MAWC on or about

1 February 14, 2002 ("Water Usage Data"), and also itemize each separate expense  
2 included in the total cost amount, including, but not limited to, all costs incurred in  
3 maintaining and updating the secure web site from which MSD procures such data, and  
4 all labor, software and other costs associated with the provision of such data to MSD."

5 Don Petry responded to MSD DR 1-009 on behalf of MAWC as follows: "[t]he  
6 provision of water usage and customer identification data has been provided (and is  
7 currently provided) with reference to MAWC's total meter reading expenses.

8 Accordingly, MAWC has not previously tracked nor estimated the total incremental cost  
9 associated with the provision of water usage and customer identification data to MSD. If  
10 MAWC develops an estimate of such costs in the future, MAWC will provide the  
11 estimate to MSD at that time." As a result, MAWC apparently does not have any  
12 information or substantiating data concerning its incremental costs that it can provide to  
13 MSD and the Commission for considering the appropriate rate to be charged to the MSD  
14 should MAWC prevail on appeal.

15 Q: What is MSD's position on this issue should MAWC prevail on appeal?

16 A: Based on current, generally accepted ratemaking principles and standards, MSD believes  
17 that the Commission should order MAWC to conduct a cost of service study to establish  
18 the incremental costs incurred by MAWC in providing the water usage data to MSD on a  
19 going-forward basis and then establish a rate to be charged to the MSD based upon the  
20 results of such study.

21 Q: Based on your experience and ratemaking expertise in connection with MSD's  
22 ratemaking process, do you believe that a cost of service study in connection with the

1 incremental costs incurred by MAWC in providing the water usage data to MSD is  
2 appropriate under generally accepted ratemaking principles and standards?

3 A: Yes, based on MSD's ratemaking process and my involvement in that process, I know  
4 that cost of service and cost allocation studies, providing a detailed breakdown of certain  
5 costs and their allocation to detailed operational functions is a key component in  
6 establishing particular rates and is an appropriate assessment mechanism under generally  
7 accepted ratemaking principles and standards.

8 Q: Does this conclude your direct testimony?

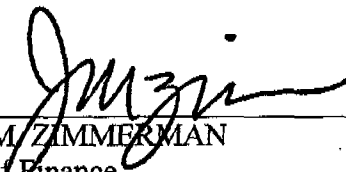
9 A: Yes.

STATE OF MISSOURI                     )  
                                                      ) SS.  
CITY OF ST. LOUIS                    )

**AFFIDAVIT OF JANICE M. ZIMMERMAN**

COMES NOW Janice M. Zimmerman, being first duly sworn upon her oath, who  
deposes and states as follows:

1.     I am over the age of eighteen and I have personal knowledge of the facts that I  
recite in this Affidavit.
2.     The testimony set forth above is true and accurate to the best of my knowledge,  
information and belief.

  
\_\_\_\_\_  
JANICE M. ZIMMERMAN  
Director of Finance  
Metropolitan St. Louis Sewer District

On this 12 day of June in the year 2007, before me, JANICE ANN FENTON, a Notary  
Public in and for said State, personally appeared Janice M. Zimmerman, known to me to be the  
person who executed the within Affidavit, and acknowledged to me that she executed the same  
for the purposes therein stated and that the sworn testimony set forth above is true and accurate  
to the best of her knowledge, information and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the  
County and State aforesaid, the day and year first above written.



  
\_\_\_\_\_  
Notary Public

My Commission Expires: 2/23/2008

FORM NO. 13 P.S.C. MO. No. 6 Fourth Revised SHEET No. RT 16.0  
Cancelling P.S.C. MO. No. 6 Third Revised SHEET No. RT 16.0

ST. LOUIS COUNTY WATER COMPANY d/b/a  
MISSOURI-AMERICAN WATER COMPANY

For Service in Certificated Areas in St. Louis  
And Jefferson Counties

ST. LOUIS COUNT WATER COMPANY  
FOR  
ST. LOUIS COUNTY, MISSOURI AND JEFFERSON COUNTY, MISSOURI

Availability: This rate is available to The Metropolitan St. Louis Sewer District, for all water usage meter +  
reading data and customer billing information.

RECD MAR 11 2002

Rate: \$.54 per account read. (1)

Service Commission +

This rate is available to the Metropolitan St. Louis Sewer District, under the terms and conditions of the  
contract on file with the Missouri Public Service Commission.

Payment Terms: Bills are net, and are due and payable within ten (10) days after date of bill.

(1) Exclusive of every tax or payment imposed upon the Company by political subdivision of the State of  
Missouri, for the right to do business in such political subdivision. See P.S.C. No No. 6 Original Sheet  
No. RT 11.0.

Missouri Public

FILED APR 11 2002

02-431

Service Commission

\*Indicates new rate or text

+Indicates change

DATE OF ISSUE March 11, 2002 DATE EFFECTIVE April 11, 2002

ISSUED BY D.P. Abernathy, 535 N. New Ballas Road  
V.P., Corporate Counsel St. Louis, MO 63141

**MSD**  
**Exhibit 1**