

**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-2008-0311
for Water and Sewer Service Provided	)	
in Missouri Service Areas	)	

**REPLY OF INTERVENORS CITY OF RIVERSIDE AND  
MISSOURI GAMING COMPANY TO MAWC'S RESPONSE TO  
MOTION FOR LEAVE TO FILE REBUTTAL TESTIMONY**

COME NOW intervenors City of Riverside and Missouri Gaming Company, and submit herein the following Reply to *MAWC's Response to Riverside and Missouri Gaming Company's Motion for Leave to File Rebuttal Testimony*.

1. At a minimum, Riverside/MGC certainly are surprised by MAWC's heavy opposition to the testimony of Mike Duffy at this hearing. On the contrary, they would have expected that when a water utility is seeking to increase its rates in the Parkville District by 29.7% in order to improve MAWC's return on investment from 4.49% to 8.6%, (E. Grubb Direct, p. 7), the company would be considerably more judicious in its opposition to relevant evidence from affected parties. Riverside/MGC also would expect MAWC to be more accommodating given the \$2.5 million investment Riverside is making to upgrade water service in the City of Riverside, to the benefit of MAWC, to address MAWC's significant shortcomings there. Such a municipal investment is unprecedented.

2. More specifically, however, it is outrageous for MAWC to attempt to suppress highly pertinent and relevant testimony regarding the quality of their service in the City of Riverside, which presents serious public safety issues, while at the same time asking the Commission to approve a 29.7% rate increase in the Parkville District. Pursuant to section 393.130. 1, RSMo, MAWC's rate must be in exchange for the provision of "such service

instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Whether MAWC is providing service in the City of Riverside within the Parkville District in accordance with this statutory requirement is a highly relevant issue for the Commission’s determination in this hearing. Beyond the apparently foregone presumption that MAWC is entitled to a particular rate of return at the significant expense of consumers, this hearing should not lose sight of the fundamental requirements upon which any utility rate must be based.

3. It is equally outrageous for MAWC to oppose this additional, limited testimony based on blatant misstatements. MAWC states that “good cause” does not exist for the admission of Mike Duffy’s late rebuttal testimony and that it will be prejudiced for not having an opportunity to conduct discovery. Such representations are not grounded in fact.

4. The issue of substandard service in the Parkville District and resulting fire loss (which are the subjects of Mike Duffy’s rebuttal testimony) were first directly raised in this case on September 9, 2008 at the public hearing in Parkville, Missouri. MAWC had company representatives and legal counsel present at this hearing. During this hearing, Mike Fuller, an Alderman from the City of Riverside, specifically testified regarding “numerous complaints in our neighborhood about water pressure. And so much, to the effect that it has affected our firefighters’ ability to fight fires in our community. . . . We’ve had three houses that have burned to the ground in Riverside, and some of it was contributed to lack of water pressure.” (Public Hearing Tr., p. 63 (Sept. 9, 2008)). His testimony further indicates that these issues already had been raised with MAWC and that MAWC would not commit to remedying its deficient fire service. (Public Hearing Tr., p. 64 (Sept. 9, 2008)).

5. In response to this testimony, both the Commission Staff and MAWC representatives instigated *ex parte* communications with Riverside representatives on this issue.

While Riverside/MGC are not asserting that these communications necessarily were improper given the pendency of the present rate case, they do illustrate that the primarily affected parties (Staff and MAWC) were on notice of the issues clarified in Mike Duffy's proposed rebuttal testimony. One purpose of Mike Duffy's testimony is to develop these issues "on the record," as opposed to the *ex parte* fashion currently being attempted.

6. With regard to timeliness, the transcript of the Parkville public hearing was not made available until October 2, 2008, which was after the deadline for the filing of rebuttal testimony in this case.

7. Furthermore, communications directly from MAWC representatives to the City of Riverside started casually as early as September 29, 2008 (the day before rebuttal testimony was due), and MAWC has proposed meeting on these issues to occur during the rate hearing set for this matter. Attached hereto as Exhibit A is an e-mail chain partially showing the evolution of these discussions.

8. It is clear from these e-mails that MAWC representatives Michael Wood, Operations Manager, and Gary Bellafore, Operations Superintendent, have been aware of the issues raised in this case by Mike Fuller and that are the subject of Mike Duffy's proposed rebuttal testimony. In short, MAWC has had full notice and opportunity to conduct discovery on these issues since at least September 9, 2008, but has failed to do so, though it would appear that Michael Wood and Gary Bellafore from MAWC have commenced their own review of these issues, given their repeated requests to meet with the Mayor of Riverside for discussion.

9. Therefore, it is disingenuous for MAWC to suggest that it would somehow be prejudiced for lack of opportunity to conduct discovery on the issues raised by Mike Fuller on September 9, 2008, which are explained in some additional detail in the proposed rebuttal testimony of Mike Duffy.

10. Certainly nothing prevented MAWC from conducting further discovery once Mike Duffy's testimony was offered. Riverside/MGC's motion for leave was filed on October 20, 2008; yet, here one week later, MAWC has requested no discovery, be it formally or informally, on the issues raised by Mr. Duffy's testimony. Simple data requests could have been immediately submitted, even if contingent upon the outcome of Riverside/MGC's motion.

11. Given the notice to MAWC as of September 9, 2008, MAWC's ongoing efforts since that time to gather information on the issues upon which Mike Duffy would testify and the importance of this testimony under the circumstances, good cause exists for the Commission to grant Riverside/MGC's Motion for Leave to offer the rebuttal testimony of Mike Duffy.

WHEREFORE, intervenors City of Riverside and Missouri Gaming Company pray the Commission for its Order granting them leave to file the Rebuttal Testimony of Michael Duffy and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,

**ARMSTRONG TEASDALE LLP**

s/Matthew D. Turner

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Matthew D. Turner MO # 48031  
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jbednar@armstrongteasdale.com  
mturner@armstrongteasdale.com

**ATTORNEYS FOR INTERVENORS  
CITY OF RIVERSIDE AND MISSOURI  
GAMING COMPANY**

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was sent to each of the following by electronic mail on this 27<sup>th</sup> day of October, 2008:

Byron E. Francis  
E-mail: [bfrancis@armstrongteasdale.com](mailto:bfrancis@armstrongteasdale.com)

Jacqueline U. Levey  
E-mail: [jlevey@armstrongteasdale.com](mailto:jlevey@armstrongteasdale.com)

Joe Bednar  
E-mail: [jbednar@armstrongteasdale.com](mailto:jbednar@armstrongteasdale.com)

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John Reichart  
E-mail: [john.reichart@amwater.com](mailto:john.reichart@amwater.com)

s/Matthew D. Turner  
Matthew D. Turner



-----Original Message-----

From: Kathy Rose [mailto:krose@riversidemo.com]  
Sent: Wednesday, October 22, 2008 9:20 PM  
To: David Blackburn; Mike Duffy  
Cc: Joseph Bednar  
Subject: FW: Riverside Meeting

David, Mike & Joe:

Please see information below from Missouri American. Give me some dates and times for them to meet so that I can respond to them accordingly. He sent me another e-mail stating the week of November 10th would be best for them. So, that week, I think sometime on the 12th would be good. Joe, aren't you going to be up here that day?  
Let me know.  
Kathy

-----Original Message-----

From: Michael.Wood@amwater.com [mailto:Michael.Wood@amwater.com]  
Sent: Tuesday, October 21, 2008 3:09 PM  
To: Kathy Rose  
Cc: Gary.Bellafiore@amwater.com; Jodi.Hendren@amwater.com; Mike.McMillian@amwater.com  
Subject: Re: Riverside Meeting

Kathy:

Some of the folks that I would like to attend the meeting can not be there tomorrow due to conflicting schedules. Therefore, I would like to cancel the meeting and see if a date in the first week of November would work for all that you would like to attend. The comments made at the hearing are of concern to us and I think we need to meet as soon as possible to address these issues. Please advise of a date in the first week of November that will work for you.

Please advise.

Michael Wood  
Operations Manager  
Missouri American Water Company  
Northwest Operations  
3901 Beck Road, Suite B  
St. Joseph, MO 64506  
Office (816) 233-4000  
Cell (816) 262-5246

Michael L

Wood/MOAWC/AWWSC

To 10/20/2008 08:26 "Kathy Rose"  
AM <krose@riversidemo.com>

CC Gary W Bellafiore/MOAWC/AWWSC@AWW,  
Jodi G Hendren/MOAWC/AWWSC@AWW,  
Mike A McMillian/MOAWC/AWWSC@AWW

Subject Re: Riverside Meeting(Document  
link: Michael L Wood)

Kathy:

I have talked with Gary since I wrote you earlier this morning. He will be attending the meeting Wednesday at 1:30 if the time works for you.

Please advise.

Michael Wood  
Operations Manager  
Missouri American Water Company  
Northwest Operations  
3901 Beck Road, Suite B  
St. Joseph, MO 64506  
Office (816) 233-4000  
Cell (816) 262-5246

Gary W  
Bellafiore/MOAWC/  
AWWSC

To 10/17/2008 09:39 "Kathy Rose"  
<krose@riversidemo.com>@AWX

AM

CC

Michael L Wood/MOAWC/AWWSC

Subject

Re: Riverside Meeting(Document  
link: Michael L Wood)

(Embedded

image moved (Embedded image moved to file: pic17203.jpg)

to file:

pic09783.jpg)

Kathy,

As I will be on vacation next week, I will let my boss, Mike Wood, respond directly to the date and time's you've furnished. Mike should respond to you Monday as he is on vacation today.

Gary Bellafiore  
Operations Superintendent  
Platte County District  
Missouri American Water Company  
101 E. First Street  
Parkville, MO 64152  
Office: 1-816-741-2992  
Fax: 1-816-741-8279  
Cell: 1-816-935-5824

"Kathy Rose"

<krose@riversidem

o.com>

To

<Gary.Bellafiore@amwater.com>

10/17/2008 08:51

cc

AM

Subject

Re: Riverside Meeting

Gary

Sorry for delay. We can meet next tues or weds at 1:30 pm. At city hall.  
Just fyi because this has to do with the psc rate increase and we are involved with that  
I will probably have our attorney there.  
Just let me know if one of those work for you.  
Kathy Rose

----- Original Message -----

From: Gary.Bellafiore@amwater.com <Gary.Bellafiore@amwater.com>  
To: Kathy Rose  
Cc: Michael.Wood@amwater.com <Michael.Wood@amwater.com>  
Sent: Mon Oct 13 15:52:58 2008  
Subject: Fw: Riverside Meeting

Kathy,

How's the scheduling for our meeting going? The company is anxious so as to address these  
pressure/volume issues so they can respond back to the PSC (Public Service Commission).

Gary Bellafiore  
Operations Superintendent  
Platte County District  
Missouri American Water Company  
101 E. First Street  
Parkville, MO 64152  
Office: 1-816-741-2992  
Fax: 1-816-741-8279  
Cell: 1-816-935-5824

----- Forwarded by Gary W Bellafiore/MOAWC/AWWSC on 10/13/2008 03:49 PM

Michael L  
Wood/MOAWC/AWWSC

To

10/13/2008 02:42  
PM

Gary W Bellafiore/MOAWC/AWWSC@AWW

cc

Greg Weeks/MOAWC/AWWSC@AWW

Subject

Re: Fw: Riverside Meeting(Document

link: Gary W Bellafiore)

Gary:

Would you follow up with Kathy again. We need to get this resolved.

Please advise.

Michael Wood  
Operations Manager  
Missouri American Water Company  
Northwest Operations  
3901 Beck Road, Suite B  
St. Joseph, MO 64506  
Office (816) 233-4000  
Cell (816) 262-5246

To Gary W  
Bellafiore/MOAWC/  
AWWSC

Michael L Wood/MOAWC/AWWSC

09/30/2008 01:17

cc PM

Subject

Fw: Riverside Meeting

here's the latest from Riverside. I would imagine that Kathy is trying to get as many folks together as possible for this meeting and is having some scheduling difficulties.

Gary Bellafiore  
Operations Superintendent  
Platte County District  
Missouri American Water Company  
101 E. First Street  
Parkville, MO 64152  
Office: 1-816-741-2992  
Fax: 1-816-741-8279  
Cell: 1-816-935-5824

----- Forwarded by Gary W Bellafiore/MOAWC/AWWSC on 09/30/2008 01:16 PM  
-----

"Kathy Rose"  
<krose@riversidem  
o.com>

To

<Gary.Bellafiore@amwater.com>

09/30/2008 12:24

cc

PM

Subject

RE: Riverside Meeting

Gary:  
Still trying to coordinate people and times. I will let you know this week.  
Kathy Rose

-----Original Message-----

From: Gary.Bellafiore@amwater.com [mailto:Gary.Bellafiore@amwater.com]  
Sent: Monday, September 29, 2008 9:27 AM  
To: Kathy Rose  
Cc: David Blackburn; Michael.Wood@amwater.com  
Subject: Fw: Riverside Meeting

Kathy,

Not to be a nuisance, but have you come up with a date/time for a meeting?

Gary Bellafiore  
Operations Superintendent  
Platte County District  
Missouri American Water Company  
101 E. First Street  
Parkville, MO 64152  
Office: 1-816-741-2992  
Fax: 1-816-741-8279  
Cell: 1-816-935-5824

----- Forwarded by Gary W Bellafiore/MOAWC/AWWSC on 09/29/2008 09:25 AM

-----

Michael L

Wood/MOAWC/AWWSC

To

09/29/2008 09:17

Gary W Bellafiore/ILAWC/AWWSC@AWW

AM

cc

Subject

Riverside Meeting

Gary:

Where are we at on the above? Anything scheduled yet? We need to get something scheduled as quickly as possible so we can address it with the PSC.

Please advise.

Mike