

FILED²

JUN 19 2007

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

Metropolitan St. Louis Sewer District,

Complainant,

v.

Missouri American Water Company,

Respondent.

Case No. WC -2007-0040

**COMPLAINANT'S AMENDED MOTION TO EXTEND EFFECTIVE DATE,
FOR EXPEDITED RULING, AND FOR LEAVE TO FILE
APPLICATION FOR REHEARING**

COMES NOW Complainant Metropolitan St. Louis Sewer District ("MSD"), and pursuant to Section 386.490, RSMo, the Missouri Code of State Regulations 4CSR 240-2.050, and other rules, regulations and statutes applicable to the review of a Commission Order, hereby moves the Public Service Commission ("PSC") to amend the May 22, 2007 Commission Order to an effective date of either (1) June 21, 2007, which would provide MSD the statutorily authorized thirty days in which they may file an Application for Rehearing in the above-captioned case; (2) ten days following issuance of Commissioner Gaw's dissenting opinion; or (3) ten days following proper service of a certified copy of the Order upon MSD's chief executive officer. In addition, MSD respectfully requests that the Commission take up this motion by teleconference prior to Thursday, June 21, 2007 or enter an Order staying this matter pending a ruling on MSD's motion to amend the effective date. Finally, MSD moves for leave to file the attached application for rehearing. In support of its motion, MSD states as follows:

1. When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission, at its discretion, may— (A) Order the period enlarged before the expiration of the period originally prescribed or as extended by a previous

order; or (B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. 4 CSR 240-2.050.

2. Section 386.490.3, RSMo, provides that every order or decision of the Commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided.

3. The Commission is permitted to amend the effective date of its orders pursuant to Section 386.490.3, which further states that “such order shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission[.]”

4. On May 22, 2007, the PSC issued its Report and Order (the “Order”) in the above-captioned case, setting forth an effective date of June 1, 2007.

5. The Order further provided that Commissioner Gaw would file a separate dissenting opinion. *See* Order at p.10.

6. As of June 15, 2007, Commissioner Gaw has not yet filed his opinion.

7. Based on Commissioner Gaw’s statements at the March 7, 2007 hearing, MSD believes that his dissent will likely contain analysis and statements of law that will implicate MSD’s appeal and better enable the circuit court to review this case on appeal. Commissioner Gaw’s dissenting opinion is critical to MSD’s application for rehearing.

8. Relying on the PSC’s guidance in the Order itself that Commissioner Gaw’s dissenting opinion was forthcoming, MSD has waited to finalize its position in the application for rehearing to obtain the benefit of Commissioner Gaw’s insights.

9. Moreover, MSD reasonably assumed that the Order could not be a final order, capable of becoming effective and appealed without Commissioner Gaw’s opinion.

10. 4 CSR 240-2.050(3) provides that the Commission may enlarge the original time

period in which an act is required or allowed to be done, or permit an act that could have been done to be done after the expiration of the original time period “where the failure to act was the result of excusable neglect.”

11. MSD did not file the attached application for rehearing because of its belief that Commissioner Gaw’s dissenting opinion was required not only for purposes of a valid, final order that can be appealed but also for purposes of including and relying on portions of his opinion in the application for rehearing.

12. MSD’s actions constitute excusable neglect under 4 CSR 240-2.050(3), and no party would be prejudiced should the Commission extend the effective date.

13. In addition, the Order was not served on MSD in accordance with Section 386.490(1), RSMo.

14. Section 386.490(1), RSMo, provides that the PSC’s orders “shall be served upon every . . . corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, . . . to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure.”

15. Because MSD is a quasi-public corporation, there are special service provisions adopted by the Supreme Court in the Missouri Rules of Civil Procedure that apply here.

16. Pursuant to Rule 54.13(b)(4) of the Missouri Rules of Civil Procedure, service must be made “[u]pon a public, municipal, governmental, or quasi-public corporation or body, by delivering a copy of the summons and petition . . . to the chief executive officer in the case of any public, municipal, governmental or quasi-public corporation or body.”

17. As the Clerk’s Certificate of Service makes clear, and MSD has confirmed, the

chief executive officer of MSD was never served with a certified copy of the Order. See Certificate of Service, attached hereto as Exhibit 1.

18. Because service of the Order was not properly effectuated, the effective date should be amended and the timeframe allowed to file an application for rehearing should be extended.

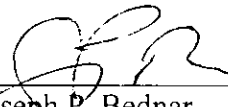
19. Accordingly, the Commission should amend the June 1, 2007 effective date of the Order to an effective date of either (1) June 21, 2007, thereby providing MSD the statutorily authorized thirty days in which to file an application for rehearing in the above-captioned case; or (2) ten days following issuance of Commissioner Gaw's dissenting opinion. In addition, the PSC should grant MSD leave to file the attached application for rehearing.

WHEREFORE, Complainant Metropolitan St. Louis Sewer District respectfully prays the Commission amend its Order to reflect an effective date of either (1) June 21, 2007, thereby providing MSD the statutorily authorized thirty days in which to file an application for rehearing in the above-captioned case; (2) ten days following issuance of Commissioner Gaw's dissenting opinion; or (3) ten days following proper service of a certified copy of the Order upon MSD's chief executive officer. In addition, MSD respectfully requests that the Clerk of this Commission serve a copy of the Order issued in this matter upon the Chief Executive Officer of MSD pursuant to Section 386.490(1), RSMo. In addition, MSD respectfully prays that the Commission take up this motion by teleconference prior to Thursday, June 21, 2007 or enter an Order staying this matter pending a ruling on MSD's motion to amend the effective date. Finally, MSD prays the Commission grant it leave to file the attached application for rehearing, and for such other and further relief the Commission deems just and proper.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

BY:



Joseph P. Bednar #33921

Byron B. Francis #23982

E.W. Gentry Sayad #42414

J. Kent Lowry #26564

Jacqueline Ulin Levey #51222

One Metropolitan Square, Suite 2600

St. Louis, Missouri 63102-2740

(314) 621-5070

(314) 621-5065 (facsimile)

jbednar@armstrongteasdale.com

bfrancis@armstrongteasdale.com

klowry@armstrongteasdale.com

gsayad@armstrongteasdale.com

jlevey@armstrongteasdale.com

ATTORNEYS FOR COMPLAINANT

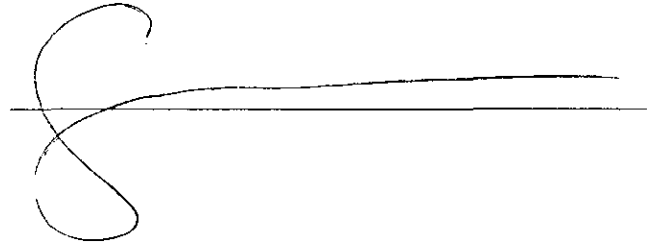
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served via electronic submission and/or by U.S. Mail, postage prepaid, this 19th day of June, 2007, upon the following parties/counsel of record:

Kenneth C. Jones
Missouri-American Water Company
727 Craig Road
St. Louis, MO 63141

Lewis R. Mills, Jr.
Public Counsel
Office of the Public Counsel
P. O. Box 2230
Jefferson City, MO 65102

Kevin A. Thompson
General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102


A handwritten signature, likely of Kevin A. Thompson, is written over a horizontal line. The signature is a stylized, cursive 'S' shape.

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 22st of May, 2007.**



Colleen M. Dale
Secretary



MISSOURI PUBLIC SERVICE COMMISSION

May 22, 2007

Case No. WC-2007-0040

General Counsel's Office
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

Lewis R. Mills, Jr.
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102

Metropolitan St. Louis Sewer District
(MSD)
Jacqueline Levey
One Metropolitan Square, Ste. 2600
St. Louis, MO 63102-2740

Metropolitan St. Louis Sewer District
(MSD)
J. Kent Lowry
One Metropolitan Square, Ste. 2600
St. Louis, MO 63102-2740


Metropolitan St. Louis Sewer District
(MSD)
E.W. Gentry Sayad
One Metropolitan Square, Ste. 2600
St. Louis, MO 63102-2740

✓ Metropolitan St. Louis Sewer District
(MSD)
Byron Francis
One Metropolitan Square, Suite 2600
211 North Broadway
St. Louis, MO 63102

Missouri-American Water Company
Kenneth Jones
727 Craig Road
St. Louis, MO 63141

Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Colleen M. Dale
Secretary**

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Metropolitan St. Louis Sewer District,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2007-0040
)	
Missouri-American Water Company,)	
)	
Respondent.)	

COMPLAINANT’S APPLICATION FOR REHEARING

COMES NOW Complainant, Metropolitan St. Louis Sewer District (“MSD”), pursuant to Section 386.500.2 RSMo and 4 CSR 240-2.160(1), and for its Application for Rehearing states as follows:

1. On May 22, 2007, the Commission entered its Report and Order (the “Order”) on stipulated facts in which it ordered that MSD was required to compensate Missouri-American Water Company (“MAWC”) for its meter-reading data. The Report and Order of the Commission is unlawful, unjust and unreasonable for the following reasons.

2. In the Order, the Commission ignored the fact that Section 249.645 RSMo, the statute at issue, does not require MSD to pay a fee to gain access to MAWC’s data.

3. In the Order, the Commission erred in accepting the argument of MAWC that Section 249.645 is not ambiguous, while at the same time, finding that the language “upon reasonable request” assumes a reasonable charge and that the parties past behavior should be given consideration in interpreting the statute.

4. In the Order, the Commission erred in failing to consider the language of Section 250.233, a virtually identical statute dealing with municipal sewer districts, which provides that

such data shall be provided *at reasonable charge* upon reasonable request, and to read such language *in para material* with the language of Section 249.645.

5. In the Order, the Commission erred in failing to take into consideration the legislative history of Sections 249.645 and 250.233.

6. In the Order, the Commission erred in holding that the adoption of MSD's interpretation of Section 249.645 would ensure, not avoid, an unjust, unreasonable, absurd and confiscatory result.

7. In the Order, the Commission erred in ignoring MSD's argument that the parties' previous course of conduct was irrelevant.

8. In the Order, the Commission erred in suggesting that MSD was urging the Commission to look outside the statute to find ambiguity while accepting MAWC's *insertion* of the words "at reasonable charge" into the statute.

9. In the Order, the Commission erred in imposing a duty on MSD to explain the distinction between the treatment of municipal sewer districts in 250.233 and sewer districts, like MSD, in 249.645.

10. In the Order, the Commission erred in suggesting that the General Assembly should have added the language "free of charge" to Section 249.645 if it had wanted the data to be provided without charge.

11. The Commission's Order is unjust, unreasonable and unlawful in finding that MSD is *not* being forced to subsidize or share in the meter reading costs of MAWC where it is effectively being forced to pay one-half of the meter reading costs of MAWC which costs MAWC would be forced to incur notwithstanding MSD's request for such data.

12. The Commission's Order is unjust, unreasonable and unlawful in ordering MSD to compensate MAWC for MAWC's meter reading data.

WHEREFORE, Complainant, Metropolitan St. Louis Sewer District, respectfully requests the Commission to enter its order ordering a rehearing of this matter on the grounds set forth above.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

BY: 

Joseph P. Bednar	#33921
Byron E. Francis	#23982
E.W. Gentry Sayad	#42414
J. Kent Lowry	#26564
Jacqueline Ulin Levey	#51222
One Metropolitan Square, Suite 2600	
St. Louis, Missouri 63102-2740	
(314) 621-5070	
(314) 621-5065 (facsimile)	
jbednar@armstrongteasdale.com	
bfrancis@armstrongteasdale.com	
klowry@armstrongteasdale.com	
gsayad@armstrongteasdale.com	
jlevey@armstrongteasdale.com	

ATTORNEYS FOR COMPLAINANT

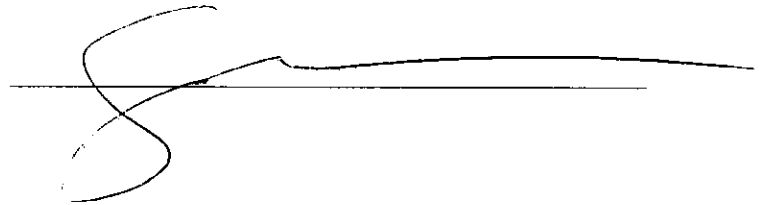
CERTIFICATE OF SERVICE

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Missouri-American Water Company
727 Craig Road
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Lewis R. Mills, Jr.
Public Counsel
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P. O. Box 2230
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Kevin A. Thompson
General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to be 'Kevin A. Thompson', is written over a horizontal line.