

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

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

**Dissenting Opinion of Commissioner Steve Gaw**

I dissent in this case primarily because I disagree with the statutory construction analysis of the Majority. The Majority decision ignores a significant rule of interpretation. Words in a statute should be assumed to have some intended meaning. In this case the relevant statute, Section 249.645 RSMo states in pertinent part: ... *Any private water company, public water supply district, or municipality supplying water to the premises located within a sewer district shall, **upon reasonable request**, make available to such sewer districts 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 ...*

The question as to the meaning of this language as it applies to the question before us is not clear. On its surface the statute does not appear to suggest that there should be a charge for the access by Metropolitan St. Louis Sewer District (MSD) of information collected by Missouri American as a result of its normal and necessary actions in collecting customer billing information. This interpretation is bolstered by language used in another section on the same subject but regarding different political subdivisions. Section 250.233 RSMo, in pertinent part

states: ... *Any private water company or public water supply district supplying water to the premises located within said city, town or village shall, **at reasonable charge upon reasonable request**, make available to such city, town or village its records and books so that such city, town or village may obtain therefrom such data as may be necessary to calculate the charges for sewer service...*

The additional language in this section as highlighted under rules of statutory construction must be given some meaning. The statutory history in this case makes it clear that the legislature opened §249.645 at the time it enacted §250.233. Yet the difference in the language is clear. By not acknowledging a difference, the Majority renders the additional language in §250.233 meaningless. The legislature appears to have intended that MSD have open access to the billing books of Missouri American in order to avoid unnecessary duplication of meters and meter reading. Providing MSD access to this information in and of itself, arguably does not cause cost to Missouri American. Moreover access is not the same as a request by MSD for manipulation or delivery of the data by Missouri American which would be subject to appropriate charges. The statute does not require anything of Missouri American other than granting access to its records upon reasonable request.<sup>1</sup>

There may be a question as to whether the state unconstitutionally requires Missouri American to provide access to its records by another entity other than a regulatory authority. However, this Commission does not have the authority to declare statutes unconstitutional. Absent such a finding, the legislature's decision to add language in §250.233 allowing for a

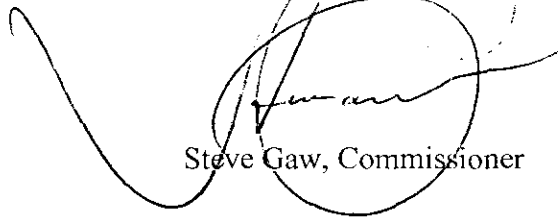
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<sup>1</sup> The Majority opinion's legal analysis suggesting that MSD must find some logical explanation for why the legislature might have decided to have a different policy for MSD than for sewer districts in other areas is not supported by cited legal authority. The Missouri statutes are filled with provisions that vary from one class of political subdivision to another. To expect a party to explain why the legislature might have enacted different policy for one class of political subdivisions than another before the difference would be given meaning, appears to be a novel concept in statutory interpretation.

reasonable charge would seem to express an intent that there be no charge for access to information when the language is absent in §249.645

For these reasons, I must dissent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve Gaw", is written over a large, circular, loopy flourish. The signature is positioned above the printed name "Steve Gaw, Commissioner".

Steve Gaw, Commissioner

Dated at Jefferson City, Missouri,  
on this 17<sup>th</sup> day of July, 2007.