

Byron E. Francis, P.C.  
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MISSOURI

KANSAS

ILLINOIS

NEVADA

WASHINGTON, DC

SHANGHAI

ATTORNEYS AT LAW

July 27, 2006

FILED<sup>3</sup>

JUL 28 2006

Missouri Public  
Service Commission

**VIA UPS OVERNIGHT**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Judge  
Missouri Public Service Commission  
200 Madison Street  
P. O. Box 360  
Jefferson City, MO 65102-0360

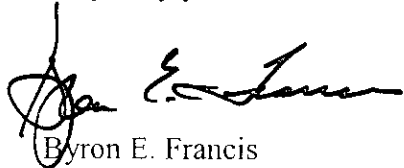
**Re: In the matter of the Complaint of Metropolitan St. Louis Sewer District  
against Missouri-American Water Company**

Dear Mr. Roberts:

Enclosed for filing herewith, please find the original and eight (8) copies of the Complaint of Metropolitan Sewer District against Missouri-American Water Company. I sincerely appreciate your cooperation in seeing that the enclosed are filed and brought to the attention of the Commission.

Please feel free to contact me should you have any questions concerning this matter.

Very truly yours,



Byron E. Francis

BEF/jlr  
Enclosures  
cc: Randy E. Hayman

Missouri Public  
Service Commission

3. On or about February 14, 2002, MSD and MAWC entered into an Agreement whereby, in exchange for payment, MAWC agreed to provide to MSD certain St. Louis County water usage and customer identification data (“Water Usage Data” or “Data”) to be used by MSD in calculating its customers’ billing statements (the “Water Usage Data Agreement”). A true and accurate copy of the Water Usage Data Agreement is attached hereto and incorporated

herein by reference as Exhibit 1.

4. The Water Usage Data is accumulated through meter readings and estimates conducted by MAWC for MAWC's own billing purposes.

5. In the Water Usage Data Agreement, the parties agreed that in exchange for the Water Usage Data, MSD would pay MAWC approximately 50% of MAWC's cost of obtaining the Data, which was set at a rate of \$0.54 per account read by tariff, as approved by the Missouri Public Service Commission (the "Commission") effective April 11, 2002. *See* Exhibit 1 at ¶ 4; *see also* Exhibit 1-A (MAWC Tariff Sheet P.S.C. Mo. No. 6, Fourth Revised Sheet No. RT 16.0A).

6. Pursuant to paragraph 9 of the Water Usage Data Agreement, the term of the Agreement was from "December 1, 2001, to December 1, 2003, and from year to year thereafter subject to termination by either party at any time on 30 days notice."

7. By way of correspondence between both parties on September 16, 2003 and September 24, 2003, respectively, the parties terminated the Water Usage Data Agreement, effective December 31, 2003, with the intention of renegotiating its terms and entering into a new agreement regarding the provision of Water Usage Data to the MSD. True and accurate copies of the September 16, 2003 letter from the MSD to MAWC, and the September 24, 2003 letter from MAWC to the MSD, are attached hereto as Exhibits 2 and 3, respectively.

8. To date, the parties have been unable to finalize a new agreement regarding the provision of the Water Usage Data

9. During the pendency of the parties' negotiations, however, MAWC has continued to provide MSD with the Water Usage Data.

10. Moreover, MSD has continued to pay MAWC for the Water Usage Data as per the tariff agreed to in the Water Usage Data Agreement, subject to and without waiver of MSD's

right to challenge MAWC's imposition of a fee or charge for the provision of such Data and/or the amount of such fee or charge.

11. A substantial amount of the information contained in the Water Usage Data is not required by the MSD in issuing its billing statements.

12. MAWC has advised the MSD, however, that a reduction in the amount of information contained in the Water Usage Data provided to the MSD would not decrease the amount MAWC charges the MSD for such Data.

13. Further, MAWC has advised the MSD that although the MSD does not require the same number of meter readings for billing purposes as the MAWC, both parties must share equally in all of MAWC's meter reading costs.

14. Upon information and belief, MAWC has been and continues to be charging MSD for one half of the meter readings conducted for all of MAWC's customers throughout the State of Missouri, rather than limiting MSD's charges to meter readings for MSD's customers in St. Louis County only.

15. Section 249.645.1, RSMo, which authorizes the 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:

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 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.

§ 249.645.1, RSMo 2002 (emphasis added).

16. Despite the plain language of Section 249.645.1, RSMo, which does not require a

sewer district to pay a fee for reviewing or receiving a water utility's meter reading records, MAWC fails and refuses to provide the Water Usage Data to MSD or to permit MSD to inspect MAWC's water meter reading records for St. Louis County customers free of charge.

17. If MSD does not pay the fee required by the MAWC, it has no way of calculating its charges for sewer service, other than conducting its own water meter readings.

18. In its last rate proceeding (Case No. WR-2003-0500), MAWC submitted tariff sheets on April 7, 2004, purporting to comply with the Commission's direction to MAWC that it was to submit tariff sheets reflecting the agreements reached in the three stipulations entered into by the parties to that case, along with a companion request by MAWC that the Commission expedite approval of such tariffs.

19. Without notice to MSD, in contravention of the Commission's directive to submit tariff sheets reflecting the agreements reached in the three stipulations entered into by the parties, and in clear contravention of its stated position that it was negotiating with MSD with respect to a new agreement, MAWC included among the tariff sheets submitted April 7, 2004 a Revised Sheet No. RT 16.0 which established a new yearly flat-fee tariff of \$760,000.00 for providing the Water Usage Data and customer billing information to MSD. A true and accurate copy of MAWC Tariff Sheet P.S.C. Mo. No. 6, Fifth Revised Sheet No. RT 16.0, issued April 7, 2004, is attached hereto and incorporated herein by reference as Exhibit 4.

20. MAWC's original rate filing in Case No. WR-2003-0500 did not contain any new or revised tariffs applicable to the Water Usage Data and billing information provided to MSD and, because the Water Usage Data Agreement had expired and the parties were continuing to negotiate a new agreement, MSD had not participated as a party in said rate proceeding and, as a result, was not a party to the stipulations which had been entered into by the parties to the rate proceeding.

21. Upon learning of MAWC's unwarranted actions, MSD filed its Application for Rehearing or Reconsideration on April 15, 2004, requesting that the Commission reject the new Water Usage Data and billing information tariff. On this same date, the Commission suspended the proposed tariff, made MSD a party to the case and set a hearing for April 19 for MAWC to show cause why the proposed tariff should not be rejected. True and accurate copies of MSD's Application for Rehearing (without the attachments) and the Commission's April 15, 2004 Order are attached hereto and incorporated herein by reference as Exhibits 5 and 6, respectively.

22. At the April 19, 2004 hearing, MAWC agreed to voluntarily withdraw the proposed tariff and engage in good faith negotiations with MSD. MAWC and MSD agreed to report to the Commission to seek guidance on an appropriate resolution if an agreement was not reached within ninety (90) days.

23. On August 26, 2004, MSD reported to the Commission that MAWC's approach to the negotiations had left the parties further apart than where they were at the time of the April 19 hearing and, in addition, MSD raised the question of the Commission's authority to resolve the legal issue regarding MAWC's right to charge MSD for water usage data and billing information and advised the Commission that it may seek a judicial remedy. A true and accurate copy of MSD's August 26, 2004 Status Report (without the exhibits) is attached hereto and incorporated herein by reference as Exhibit 7.

24. On September 3, 2004, MAWC responded to MSD's report wherein MAWC denied MSD's characterization of its negotiating position and further stated:

The avenue to pursue disputes as to these charges is not, however, in a concluded rate case. The proper avenue is a complaint case filed pursuant to Section 386.390 RSMo or Commission Rule 4 CSR 240-2.070, whereby the MSD would alert the Commission to its specific complaints. Without such information, MAWC believes that it would be impossible for the Commission to

determine what jurisdiction does, or does not, exist in regard to this dispute. In the alternative, if the parties agree, the Commission may act as arbitrators, in accordance with Section 386.230 RSMo 2000.

A true and accurate copy of MAWC's September 3, 2004 response is attached hereto and incorporated herein by reference as Exhibit 8.

25. On October 15, 2004, the Commission issued its Order Closing Case in which, after reiterating the history of the dispute, it stated "MSD may file a complaint with respect to any current controversy between it and Missouri-American. No further activity is expected in this matter; therefore, it may now be closed." A true and accurate copy of the Commission's October 15, 2004 Order is attached hereto and incorporated herein by reference as Exhibit 9.

26. On August 19, 2005, MSD filed its Petition for Declaratory Relief against MAWC in the Circuit Court of St. Louis County, Missouri, Cause No. 05CC-003671, in which MSD asserted that, despite the plain language of Section 249.645.1, RSMo 2002, which does not require MSD to pay a fee for Water Usage Data, MAWC was requiring MSD to pay a substantial fee for such information and, therefore, a justifiable controversy was in existence and was ripe for determination. A true and accurate copy of MSD's Petition (without the exhibits) is attached hereto and incorporated herein by reference as Exhibit 10.

27. MAWC moved to dismiss MSD's Petition on the grounds of the Filed Rate Doctrine and Primary Jurisdiction. Specifically, MAWC asserted in its Motion to Dismiss that the Commission had exclusive jurisdiction with respect to the dispute and that MSD had failed to exhaust its administrative remedy to challenge the tariff. A true and accurate copy of MAWC's Motion to Dismiss and Suggestions in Support are attached hereto and incorporated herein by reference as Exhibit 11.

28. The Commission intervened in the St. Louis County Circuit Court action and also

moved to dismiss the Petition asserting that “the Commission has the statutory authority and duty to consider complaints of the type MSD is making in its Petition for Declaratory Relief. . .” A true and accurate copy of the Commission’s Motion to Dismiss and Suggestions in Support are attached hereto and incorporated herein by reference as Exhibit 12.

29. On April 24, 2006, the Circuit Court of St. Louis County issued its Judgment of Dismissal finding that primary jurisdiction of the matter rested with the Commission and that, until such time as the Commission hears the matter, the Court lacks jurisdiction to act. A true and accurate copy of the Court’s April 24, 2006 Judgment of Dismissal is attached hereto and incorporated herein by reference as Exhibit 13.

30. Based on the foregoing, MSD has directly contact MAWC with respect to the issues about which the complaint herein is being made.

31. The tariff by which MAWC continues to charge MSD for the Water Usage Data expired by its terms upon expiration of the Water Usage Data Agreement.

32. Moreover, MAWC is requiring MSD to pay a substantial fee for the Water Usage Data, which the MSD is statutorily entitled to obtain from MAWC free of charge.

33. MSD requires the Water Usage Data from MAWC in order to operate and maintain an integrated sewer system in the St. Louis metropolitan area.

34. MAWC’s requirement that MSD pay an unreasonable fee for the Water Usage Data constitutes a violation of Section 249.645.1, RSMo and, as a result, pursuant to Section 386.390.1, MSD has the right to file a complaint with respect to a charge in violation of a provision of law.

35. Based upon MSD’s right to file such complaint, and MAWC’s and the Commission Staff’s position in the Circuit Court of St. Louis County that this Commission has primary jurisdiction with respect to this dispute, this Commission has jurisdiction over the




subject matter of this Complaint.

WHEREFORE, Complainant, The Metropolitan St. Louis Sewer District, prays that the Commission enter an Order determining that (1) MAWC's conduct in charging MSD for the Water Usage Data is unreasonable and illegal; (2) MAWC's charging of a fee for the Water Usage Data constitutes a violation of Section 249.645.1, RSMo; and (3) pursuant to said statute, MAWC is required to provide the Water Usage Data to MSD free of charge or is otherwise required to make its water meter reading information and other pertinent records available to MSD at no cost, and awarding such further relief as the Commission deems just and proper.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

BY:   
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E.W. Gentry Sayad #42414  
J. Kent Lowry #26564  
Jacqueline Ulin Levey #51222  
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(314) 621-5065 (facsimile)  
[bfrancis@armstrongteasdale.com](mailto:bfrancis@armstrongteasdale.com)  
[klowry@armstrongteasdale.com](mailto:klowry@armstrongteasdale.com)  
[gsayad@armstrongteasdale.com](mailto:gsayad@armstrongteasdale.com)  
[jlevey@armstrongteasdale.com](mailto:jlevey@armstrongteasdale.com)

**ATTORNEYS FOR COMPLAINANT**

MSD Exhibit 3  
Missouri American Water Co. Data Contract

AGREEMENT

Agreement made this 14<sup>th</sup> day of February, 2002, by and between ST. LOUIS COUNTY WATER COMPANY d.b.a. Missouri American Water Company, a Missouri Corporation and public utility subject to the jurisdiction of the Missouri Public Service Commission (hereinafter "Company"), and THE METROPOLITAN ST. LOUIS SEWER DISTRICT, a political subdivision established under the Constitution of the State of Missouri (hereinafter "MSD").

WITNESSETH:

WHEREAS, Company provides metered water service to customers in St. Louis County, Missouri; and

WHEREAS, MSD has need of certain water usage and customer identification information on which to base its billings, which said information is accumulated through meter readings and estimates by the Company for its billing purposes; and

WHEREAS, Company is willing to provide to MSD the information aforesaid in exchange for payment by MSD of a portion of the cost of obtaining meter reading data; and

WHEREAS, The Missouri Public Service Commission (hereinafter "Commission"), per Chapter 393 RSMo 1992 Supp., has jurisdiction over the Company's books and records with the ability to authorize release of the information contained therein; and

WHEREAS, Company and MSD desire to enter into a contract detailing the terms and conditions under which the aforementioned information can be provided by Company to MSD, subject to the approval of related tariff by the Missouri Public Service Commission ("Commission").

NOW, THEREFORE, for and in consideration of the payment of ten dollars from each to the other paid, the receipt of which is herewith acknowledged, and for the other good and valuable considerations herein contained, Company and MSD agree as follows:

Exhibit

1

1. INFORMATION TO BE PROVIDED. Company will provide MSD with its then current list of customers along with the customer's service address including street, City and unit number if appropriate. Because MSD's customer and Company's customer at a specific address may be different individuals or entities, it will be MSD's responsibility to discern from Company's information the appropriate customer and usage data required for MSD's purposes. Company will provide MSD with Account Change and Premise Change information on a weekly basis. Company will also provide MSD with the Company's monthly meter reading data for each of its customer's daily water usage, which is determined quarterly or monthly in the Company's ordinary course of business through meter readings or lawful estimates. Each customer's daily water usage will be ascertained from meter readings obtained by some combination of either actual readings by Company's personnel, postcard readings mailed in from customers, telephone readings called in from customers, or estimated readings including prorated and "set" readings when the foregoing are unavailable. Data will be from approximately a ninety (90) day period for quarterly billed customers and during approximately a thirty (30) day period for monthly billed customers of a given year. Company will inform MSD as to which customers' meter reading data represent actual or estimated usage and which premises are vacant during this period. MSD is CAUTIONED that estimates which the Company must make when actual meter readings are unavailable may distort actual usage during any specific period, and that this inaccuracy can be significant both when the estimates are used for the usage calculation and when actual readings correct for previous inaccurate estimates and thus include usage from a prior period. While Company's estimating procedure is self-correcting with continued billing in successive periods, sewer bills based on data from an isolated period affected by estimates will probably not reflect accurate water usage in that particular period. Accordingly, to the extent allowed by law, MSD agrees to indemnify, defend and hold Company harmless from any and all claims that sewer bills are based on data, which does not reflect actual usage during any specific period provided said data was not purposely falsified or the result of gross negligence on the part of the company.

2. INFORMATION DUE DATES. Company will provide MSD with a monthly compilation of all of

its customers' meter reading data within the period limitations described in Paragraph 1, on or about the fifth working day of the following month, commencing December 1, 2001, subject to the conditions of paragraph 6 herein.

3. INAPPLICABLE PSC NOTICE REQUIREMENTS. All notice and complaint procedures specified in 4 CSR 240, and Chapter's 386 and 393 RSMo which apply to customer rights to utility service from a regulated utility, SHALL NOT APPLY to actions or inactions by Company pursuant to the Agreement or the Company's election to enter into this Agreement. All notice, complaint procedures and administrative consumer remedies, to the extent that they may exist or be alleged to exist shall be the responsibility of MSD.

4. FEES. The price to be charged to MSD by Company for providing the aforementioned information shall approximate 50% of Company's cost of obtaining the necessary data and shall be set by rate tariff attached hereto as Exhibit "A", which must be approved by the Commission. The charges shall be submitted to the Commission and shall be subject to the Commissions approval or change from time to time in accordance with the provisions of Chapters 386 and 393 RSMo 1992 Supp. Beginning November 1, 2001, and every month thereafter, upon implementation of the Company's new ORCOM system, Company will bill MSD for the previous month's cost for work under the tariff approved rates, and MSD will pay Company within 30 days from receipt of such billing. From time to time additional costs may be incurred by Company, which may be specifically authorized by MSD on a case by case basis, and the Company will be reimbursed by MSD for such costs if said authorization is obtained. If MSD shall fail or refuse to pay amounts due, Company's obligations to deliver data under this Agreement shall cease until such amounts are paid in full, but MSD shall nevertheless be required to pay continuing tariffs costs of accumulating the meter readings as described herein for the term of this agreement.

5. INDEMNIFICATION. To the extent allowed by law, MSD agrees to indemnify, defend and hold Company harmless from and against any and all claims, complaints or causes of actions arising out of the actions or inactions by Company pursuant to the terms of this Agreement or the Company's election to enter into this Agreement.

6. PUBLIC SERVICE COMMISSION APPROVAL. The tariff related to this agreement shall be subject to approval of the Commission and the implementation of the Company's new ORCOM system. The parties agree to accept changes in charges set from time to time by the Commission. If any other aspect of this Agreement or the related tariff are objected to, rejected or modified by the Commission, the Company and MSD shall have the option to declare this Agreement void, with the exception of the indemnification requirements which shall survive with respect to any and all actions theretofore taken pursuant to this Agreement during the time it was in force and effect.

7. CUSTOMER COMMUNICATIONS. MSD shall handle all customer communications regarding the implementation of this Agreement or any actions that have been taken pursuant to this Agreement. Communications from customers to Company regarding MSD billings will be referred and directed to MSD, but the Company will respond to reasonable requests for information from MSD to company to assist MSD in its customer relations.

8. FORCE MAJEURE AND CONFLICTING REQUIREMENTS. Company's actions required under this Agreement shall be excused if due to matters beyond its control, including but not limited to employee work stoppages, strikes, inclement weather, or emergencies requiring utilization of manpower or resources elsewhere. The aforementioned information will cease to be provided if a court of competent jurisdiction or other governmental entity having jurisdiction issues an order to the Company so requiring. At such time, Company will relay such order to MSD, and Company will not knowingly take further actions toward providing said information until MSD notifies Company in writing that it has resolved the matter, or that MSD requests that Company nevertheless proceed subject to the indemnification herein

contained. Thereafter, MSD shall to the extent allowed by law indemnify defend and hold Company harmless for actions taken by Company based on MSD's notification or request.

9. EXPIRATION OR TERMINATION. This Agreement shall be for a term of two years from December 1, 2001, to December 1, 2003, and from year to year thereafter subject to termination by either party at any time on 30 days written notice.

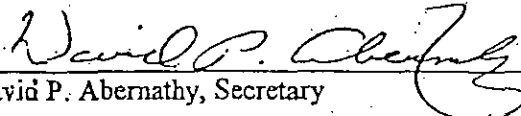
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first above written.

ST. LOUIS COUNTY WATER COMPANY  
d.b.a. Missouri-American Water Company  
("Company")

By: 

Eric W. Thornburg, President

ATTEST:

  
David P. Abernathy, Secretary

METROPOLITAN ST. LOUIS  
SEWER DISTRICT  
("MSD")

By: 

Willie R. Horton  
Executive Director

ATTEST:

Karl J. Tyminski  
Karl J. Tyminski  
Secretary-Treasurer

Approved as to Legal Form

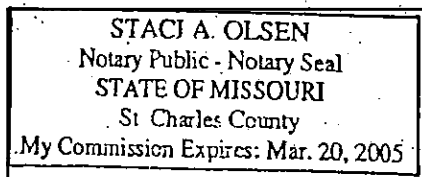
Randy E. Hayman  
Randy E. Hayman  
General Counsel

STATE OF MISSOURI            )  
  ) SS  
County of St. Louis            )

On the 4<sup>th</sup> day of March, 2002, before me appeared Eric Thornburg  
to me personally known, who being my me duly sworn, did say that he is the \_\_\_\_\_  
President of St. Louis County Water Company d.b.a. Missouri-American Water Company and that the  
seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument  
was signed and sealed in behalf of said corporation by authority of its Board of Directors and said  
Eric Thornburg acknowledged said instrument to be the free act and deed  
of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in my  
office in the County of St. Louis, Missouri, the day and year first above written.

My Commission Expires 3-20-05



Staci A. Olsen  
Notary Public

STATE OF MISSOURI            )  
  ) SS  
County of St. Louis         )

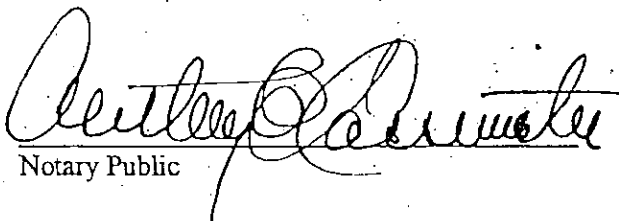
On the 14TH day of FEBRUARY 2002, before me appeared WILLIE R. HORTON,  
to me personally known, who being by me duly sworn, did say that he is the \_\_\_\_\_  
Executive Director of Metropolitan St. Louis Sewer District and that the seal affixed to the foregoing  
instrument is the seal of Metropolitan St. Louis Sewer District and that said instrument was signed and  
sealed in behalf of Metropolitan St. Louis Sewer District by authority of its Board of Trustees and said  
WILLIE R. HORTON acknowledged said instrument to be the free act and deed  
of Metropolitan St. Louis Sewer District.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in my  
office in the CITY of ST. LOUIS, Missouri, the day and year first above  
written.

My Commission Expires \_\_\_\_\_



ANTHONY E. CASSIMATIS  
NOTARY PUBLIC - STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES DEC. 8, 2008

  
Notary Public



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.

REC'D MAR 11 2002

~~Rate is available to the Metropolitan St. Louis Sewer District, for all water usage meter +  
reading data and customer billing information.~~

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

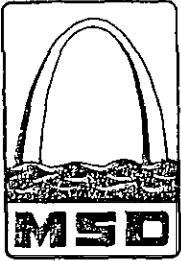
\*Indicates new rate or text

+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

EXHIBIT A



Metropolitan  
St. Louis Sewer  
District

2350 Market Street  
St. Louis, MO 63103-2555  
(314) 768-6200

September 16, 2003

Mr. David Abernathy  
Vice President, Corporate Counsel  
Missouri-American Water Company  
535 N. New Ballas Road  
St. Louis, Missouri 63141

Dear David:

The Metropolitan St. Louis Sewer District ("MSD") currently has an agreement with Missouri American Water ("MO-AM") whereby MO-AM provides MSD with customer and water usage data so that it may effectively bill County of St. Louis customers for sewer services.

This agreement expires as of December 31, 2003. Consequently, I hereby respectfully request renegotiation discussions between both parties commence as soon as possible.

I may be reached at 314-768-6209 and look forward to working with you on this matter.

Sincerely,

Randy E. Hayman  
General Counsel

C: Chuck Etwert, MSD Acting Executive Director  
Jeff Theerman, MSD Director of Operations  
Janice M. Zimmerman, MSD Director of Finance/CFO  
Linda Grady, MSD Attorney II  
Theresa Bellville, MSD Assistant Director of Finance  
Kathy Ahillen, MSD Billing & Customer Service Manager

Exhibit

2

David P. Abernathy  
Vice President, General Counsel  
and Secretary

**Mr. Randy E. Hayman**

General Counsel  
Metropolitan St. Louis Sewer District  
2350 Market Street  
St. Louis, MO 63103-2555

24 September 2003

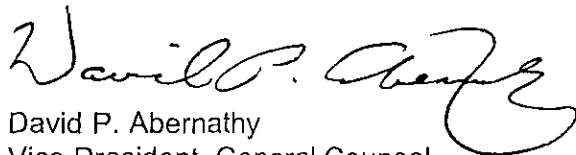
**RE: Water Data Usage Contract between Metropolitan St. Louis Sewer  
District ("MSD") and Missouri American Water ("MAW")**

Dear Randy:

I am in receipt of your letter of September 16, 2003 in regard to the above-mentioned contract in which MSD expresses a desire to terminate the same via modification of the terms contained therein. As we discussed, MAW is also desirous of negotiating new contract terms to allow for the continued availability of our water usage and customer information data to MSD. Consequently, this letter shall serve as MAW's notice of intent to terminate the current water usage data contract between the parties as of December 31, 2003 and to express our willingness to negotiate new terms and conditions acceptable to the parties.

I will contact you shortly to arrange for meeting times and/or discussions on these issues. I thank you in advance for your assistance and interest in assisting with this matter. Please feel free to contact me should you have any questions or concerns.

Sincerely,



David P. Abernathy  
Vice President, General Counsel  
& Secretary

Enclosures  
cc: Eric Thornburg  
Jim Jenkins  
Ed Grubb

American Water  
535 N. New Ballas Road  
St. Louis, MO 63141-6875  
USA  
T +1 314 996 2276  
F +1 314 997 2451  
E [dabernathy@mawc.com](mailto:dabernathy@mawc.com)  
I [www.amwater.com](http://www.amwater.com)

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

MISSOURI-AMERICAN WATER COMPANY  
W/a ST. LOUIS COUNTY WATER COMPANY

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

MISSOURI-AMERICAN WATER COMPANY +  
FOR  
ST. LOUIS COUNTY, MISSOURI AND JEFFERSON COUNTY, MISSOURI

**Availability:** This tariff is available to the Metropolitan St. Louis Sewer District, for all water usage meter reading data and customer billing information. \*

**Annual Fee:** \$760,000.00

This tariff 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:** Annual fee will be billed in twelve (12) equal monthly installments of \$63,333.33 at the end of each calendar month and is due and payable within ten (10) days after date of bill. \*

\*Indicates new rate or text  
+Indicates change

DATE OF ISSUE April 7, 2004 DATE EFFECTIVE May 7, 2004

ISSUED BY D. Abernathy 535 N. New Ballas Rd.  
V.P. and General Counsel St. Louis, MO 63141

**Exhibit**

**4**

FILED<sup>2</sup>  
APR 15 2004

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

IN THE MATTER OF MISSOURI-	)	Case No.	WR-2003-0500
AMERICAN WATER COMPANY'S	)	Tariff Nos.	YW-2003-2012
TARIFF TO REVISE WATER AND	)		YW-2003-2013
SEWER RATE SCHEDULES.	)		YW-2003-2014
	)		YW-2003-2015
	)		YS-2003-2060
	)		YW-2003-2061

APPLICATION FOR REHEARING OR RECONSIDERATION AND  
OPPOSITION TO MOTION FOR EXPEDITED TREATMENT  
OF METROPOLITAN ST. LOUIS SEWER DISTRICT

COMES NOW Metropolitan St. Louis Sewer District ("MSD") and, for its Application for Rehearing or Reconsideration pursuant to Section 386.500.1 R.S.Mo., respectfully states the following:

1. On April 6, 2004, the Commission issued its Order Approving Stipulations and Agreements ("Order") in this matter. The Order approved three stipulations agreed to by the parties settling the contested issues related to the tariff additions and changes sought by Missouri-American Water Company ("MAWC").

2. The Order rejected the proposed tariff changes filed by MAWC on May 19, 2003 and ordered MAWC to submit revised tariff sheets reflecting the agreement of the parties in the three stipulations.

3. On April 7, 2004, MAWC submitted tariff sheets purporting to comply with the Commission's direction to MAWC that it was to submit tariff sheets reflecting the agreements reached in the three stipulations.

4. Accompanying MAWC's April 7, 2004 tariff sheet filing was a request by MAWC that the Commission expedite its approval of the tariff sheets so that the tariff sheets could be approved on or before April 16, 2004, the effective date of the Order.

5. Contained in the tariff sheets submitted by MAWC on April 7, 2004 were two sheets affecting MSD. Revised Sheet No. RT 15.0 reflects rate increases in fees to terminate and restore service to customers. Revised Sheet No. RT 16.0 establishes a new yearly flat-fee tariff of \$760,000.00 for providing customer water usage data and billing information. These portions of the April 7, 2004 tariff sheet filing are attached separately as Attachment A and incorporated herein by reference.

6. MAWC's original filing of revised tariff sheets on May 19, 2003 which commenced this proceeding did not contain any new or revised tariffs applicable to the services MAWC provides to MSD.

7. The existing MAWC tariff for termination and reconnection of customer service provides for lower fees for each of the categories of services than the revised tariff sheet filed by MAWC on April 7, 2004. A copy of the current tariff sheet for termination and reconnect fees is attached as Attachment B and incorporated herein by reference.

8. Until terminated by MAWC at the end of 2003 or early 2004, the fee for customer water usage data and billing information was controlled by a contract between MSD and MAWC in conjunction with a tariff. Since termination of the agreement these services have been subject to ongoing negotiations between the parties. For the interim period, the parties agreed to continue under the terms of the expired contract.

9. MSD did not participate as a party to this case because it has been attempting in good faith to negotiate a new agreement with MAWC for termination and reconnect

services and data services. Correspondence between MSD and MAWC reflecting MSD's efforts to negotiate a new agreement for services provided by MAWC under the prior agreement are attached collectively as Attachment C and incorporated herein by reference.

10. On February 6, 2004, MSD informed the Commission of the fact that it had not intervened in this case because it was negotiating a new agreement for services provided by MAWC. A copy of that letter is attached as Attachment D and incorporated herein by reference.

11. MAWC, since terminating its agreement with MSD, has not negotiated in good faith to enter into a new agreement for the services provided. MSD has made repeated efforts to negotiate a new agreement but MAWC has refused to enter into any agreement that would reduce the amount that MSD pays MAWC, despite the fact that MSD has not needed or requested the amount of the data MAWC has historically provided.

12. MAWC's refusal to negotiate in good faith regarding an agreement for services actually requested and needed by MSD appears now to be consistent with its undisclosed intent to add Revised Tariff Sheet Nos. RT 15.0 and RT 16.0 to the April 7, 2004 filing and obtain Commission approval for the same by April 16, 2004. The effect of approval of these revised tariff sheets would be to unilaterally and without proper notice to MSD increase and fix the fees MSD would owe for termination and reconnection of service to customers and to impose a flat fee pursuant to the new tariff of \$760,000.00 for data services, many of which MSD does not require.

13. The Commission's Order, by authorizing these revised tariff sheets as part of the settlement of this case, is arbitrary, unjust and unlawful by imposing increased fees and a

new tariff against MSD without giving MSD notice and an opportunity to contest the revised and new tariffs.

14. Proposed revised Tariff Sheets Nos. RT15.0 and RT16.0 are in fact customer-specific prices which are, or should be, the subject of ongoing negotiations between MAWC and MSD. The Commission should reject those proposed sheets as unjust and unreasonable and instruct MAWC to resume good faith negotiations while leaving in place the existing contractual relationship. In the event negotiations prove unsuccessful within a reasonable period, the parties could bring the matter to the Commission for resolution.

WHEREFORE, for all of the foregoing reasons, Metropolitan St. Louis Sewer District requests that the Commission deny the motion for expedited treatment of the April 7, 2004 tariff filing, rehear, reconsider and modify its Order Approving Stipulations and Agreements in a manner consistent with this Application.

Respectfully submitted,

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Patrick Kenney #50205

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**ATTORNEYS FOR METROPOLITAN  
ST. LOUIS SEWER DISTRICT**



CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document in Docket No. WR-2003-0500 were served upon the following parties by first-class postage prepaid, U.S. Mail on April 15, 2004.

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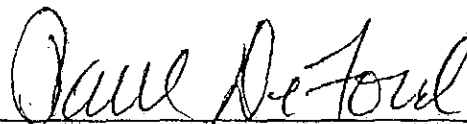
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An Attorney for Metropolitan St. Louis  
Sewer District

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

In the Matter of Missouri-American Water Company's	)	<u>Case No. WR-2003-0500</u>
Tariff to Revise Water and Sewer Rate Schedules.	)	Tariff Nos. YW-2004-1246
		YW-2004-1247
		YW-2004-1248
		YW-2004-1249
		YW-2004-1250

**ORDER SUSPENDING TARIFF  
AND DIRECTING MISSOURI-AMERICAN WATER COMPANY  
TO APPEAR AND SHOW CAUSE WHY THE  
TARIFFS SHOULD NOT BE REJECTED**

In view of the pleading filed on April 15, 2004, by the Metropolitan Sewer District, alleging that the proposed tariff sheets filed herein by Missouri-American are, in fact, not in compliance with the Commission's Order of April 6, 2004, and settlement reached herein by the parties, the Commission will suspend the proposed tariff sheets for seven days beyond April 16, 2004, until April 23, 2004, to permit consideration of the allegations raised by Metropolitan Sewer District.

Therefore, the Commission will direct Missouri-American to appear before the Commission as specifically set out below and show cause why the proposed tariff sheets should not be rejected as non-compliant.

**IT IS THEREFORE ORDERED:**

1. That the proposed tariff sheets filed by Missouri-American Water Company on April 7, 2004, and substituted on April 12, 2004, are hereby suspended for seven days after April 16, 2004, until April 23, 2004. The specific sheets suspended are listed on Appendix A.

2. That Missouri-American Water Company shall appear and show cause as set out above on Monday, April 19, 2004, at 8:30 a.m. at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, in Room 310, a facility that meets accessibility standards required by the Americans with Disabilities Act (ADA). If any person requires additional accommodations to participate in the presentation, please call the Missouri Public Service Commission's Hotline at 800-392-4211 (voice) or dial 711 for Relay Missouri prior to the hearing.

3. That this order shall become effective on April 15, 2004.

**BY THE COMMISSION**

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

( S E A L )

Kevin A. Thompson, Deputy Chief Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 15th day of April, 2004.

FILED

SEP 02 2004

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

IN THE MATTER OF MISSOURI-	)	Case No.	WR-2003-0500
AMERICAN WATER COMPANY'S	)	Tariff Nos.	YW-2003-2012
TARIFF TO REVISE WATER AND	)		YW-2003-2013
SEWER RATE SCHEDULES.	)		YW-2003-2014
	)		YW-2003-2015
	)		YS-2003-2060
	)		YW-2003-2061

STATUS REPORT OF  
METROPOLITAN ST. LOUIS SEWER DISTRICT

COMES NOW Metropolitan St. Louis Sewer District ("MSD" or "District") and, for its Status Report in the above-referenced matter, respectfully states the following:

1. On April 6, 2004, the Commission issued its Order Approving Stipulations and Agreements ("Order") in this matter. The Order approved three stipulations agreed to by the parties settling the contested issues related to the tariff additions and changes sought by Missouri-American Water Company ("MAWC").
2. The Order rejected the proposed tariff changes filed by MAWC on May 19, 2003 and ordered MAWC to submit revised tariff sheets reflecting the agreement of the parties in the three stipulations.
3. On April 7, 2004, MAWC submitted tariff sheets purporting to comply with the Commission's direction to MAWC that it was to submit tariff sheets reflecting the agreements reached in the three stipulations.
4. Accompanying MAWC's April 7, 2004 tariff sheet filing was a request by MAWC that the Commission expedite its approval of the tariff sheets so that the tariff sheets could be approved on or before April 16, 2004, the effective date of the Order.

5. Contained in the tariff sheets submitted by MAWC on April 7, 2004 were two sheets affecting MSD. Revised Sheet No. RT 15.0 reflected rate increases in fees to terminate and restore service to customers. Revised Sheet No. RT 16.0 established a new yearly flat-fee tariff of \$760,000.00 for providing customer water usage data and billing information.

6. MAWC's original filing of revised tariff sheets on May 19, 2003 which commenced this proceeding did not contain any new or revised tariffs applicable to the services MAWC provides to MSD.

7. Until terminated by MAWC at the end of 2003 or early 2004, the fee for customer water usage data and billing information was controlled by a contract between MSD and MAWC in conjunction with a tariff. Since termination of the agreement these services have been subject to ongoing negotiations between the parties. For the interim period, the parties agreed to continue under the terms of the expired contract.

8. MSD did not participate as a party to this case because it was attempting in good faith to negotiate a new agreement with MAWC for termination and reconnect services and data services.

9. On April 15, 2004, MSD filed its Application for Rehearing or Reconsideration, requesting that the Commission reject the subject tariff pages. Also on April 15th, the Commission suspended all proposed tariff sheets, made MSD a party to the case and set a hearing for April 19 at which MAWC would be given an opportunity to show cause as to why the proposed tariffs should not be rejected.

10. At the April 19, 2004 hearing, MAWC agreed to voluntarily withdraw the two proposed tariff sheets affecting MSD and engage in good faith negotiations. It was further

agreed by the parties that if agreement was not reached within ninety (90) days, they would report back to the Commission and seek guidance as to an appropriate resolution to any remaining disputes.

11. More than 90 days have passed since the show cause hearing and, despite the best efforts of MSD, no agreement with MAWC has been reached. In fact, as demonstrated by the correspondence between the parties, attached hereto as *Appendix A*, the parties' positions are further apart than they were at the time of the hearing. MAWC now seeks to impose an even greater charge than the flat \$760,000 for the significantly reduced information MSD is requesting.

12. MSD seeks to expeditiously resolve this dispute because the status quo requires MSD to continue making substantial payments for information it does not want or need. During the course of the April 19 hearing, the consensus of the parties appeared to be that without an underlying agreement between MSD and MAWC, the Commission could not impose a tariff to resolve disputed issues. In light of these facts, MSD is concerned that the Commission lacks authority or jurisdiction to resolve the dispute between the parties.

13. MSD requests that the Commission expeditiously address the authority that it believes it may exercise to assist in resolving this dispute. If the Commission cannot timely resolve these matters, MSD intends to seek a judicial remedy at the earliest appropriate opportunity.

WHEREFORE, Metropolitan St. Louis Sewer District submits this Status Report and requests that the Commission provide specific guidance to ultimately resolve these matters, including the Commission's position with respect to the jurisdictional issue.

Respectfully submitted,

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***ATTORNEYS FOR METROPOLITAN  
ST. LOUIS SEWER DISTRICT***

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document in Docket No. WR-2003-0500 were served upon the following parties by first-class postage prepaid, U.S. Mail, or by electronic mail on August 26, 2004.

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An Attorney for Metropolitan St. Louis  
Sewer District



BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the General Rate Increase	)	
for Water and Sewer Service Provided	)	Case No. WR-2003-0500,
by Missouri-American Water Company.	)	Consolidated with WC-2004-0168

RESPONSE TO STATUS REPORT  
OF METROPOLITAN ST. LOUIS SEWER DISTRICT

COMES NOW Missouri-American Water Company ("MAWC" or "Company"), and states the following to the Missouri Public Service Commission ("Commission") in response to the Status Report of Metropolitan St. Louis Sewer District:

1. On August 26, 2004, the Metropolitan St. Louis Sewer District ("MSD") filed a document in this case entitled "Status Report of Metropolitan St. Louis Sewer District" ("Status Report").
2. This Status Report concerns issues discussed previously in Case No. WR-2003-0500. After the filing and initial approval of certain MAWC tariffs in this case, on April 15, 2004, the MSD filed an Application for Rehearing or Reconsideration and Opposition to Motion for Expedited Treatment, objecting to two tariff sheets that referenced the MSD. The Commission, in response, set a show cause hearing for April 19, 2004. The parties proceeded to appear before the Commission on April 19, 2004, and resolved the tariff dispute by agreement.
3. In its Second Order Approving Tariff in Compliance with Commission Order, Granting Motion for Expedited Treatment and Closing Case, issued on April 20, 2004, the Commission stated in regard to the issues raised by the MSD that "[a]s a settlement, the attending parties agreed that Missouri-American would withdraw its compliance tariffs and re-file them less the two sheets to which the Sewer District objected. *The issues encompassed by those sheets would*

*be negotiated separately*, while the compliance tariffs could be expeditiously approved.” (Emphasis added).

4. MAWC agrees with the MSD that no agreement between the parties has been reached. However, MAWC disagrees with the MSD’s statement that at the April 19, 2004 hearing, it was “further agreed by the parties that if agreement was not reached . . . they would report back to the Commission and seek guidance as to an appropriate resolution to any remaining disputes.” (Status Rep., p. 2-3).

5. In fact, the parties agreed, that if the negotiations were unsuccessful, they would bring the matter back to the Commission “for resolution.” This is supported by the MSD’s Application for Rehearing, which states “in the event negotiations prove unsuccessful within a reasonable period, the parties could bring the matter to the Commission *for resolution*.” (App. For Rehearing, p. 4). It is further supported by Mr. DeFord’s statement at the hearing, on behalf of MSD, that his client “would be more than pleased to engage in negotiations with the company and set a reasonable deadline to bring the matter back to the Commission *for resolution*.” (Tr., p. 2895) (emphasis added).

6. Based upon the current circumstances, this case should be brought back to the Commission “for resolution.” In fact, to the extent there is a dispute between MAWC and MSD based upon an allegation of “any act or thing done or omitted to be done by [MAWC], including any rule, regulation or charge heretofore established to be fixed by or for [MAWC], in violation, or claimed to be in violation, or any provision of law, or of any rule or order or decision of the commission” (Section 386.390.1, RSMo 2000), the Commission has exclusive jurisdiction to address the dispute.

7. It was discussed at the April 19, 2004 hearing that the charges that are the subject of the negotiations are “jurisdictional charges.” That is, they are reflected in existing tariff sheets (Sheets Nos. RT-15.0 and RT-16.0) and have been so reflected since approximately 1993.

Additionally, the contracts between sewer companies and water companies are addressed within the Commission law (Section 393.015, RSMo 2000).

8. The avenue to pursue disputes as to these charges is not, however, in a concluded rate case. The proper avenue is a complaint case filed pursuant to Section 386.390, RSMo and Commission Rule 4 CSR 240-2.070, whereby the MSD would alert the Commission to its specific complaints. Without such information, MAWC believes that it would be impossible for the Commission to determine what jurisdiction does, or does not, exist in regard to this dispute. In the alternative, if the parties agree, the Commission may act as arbitrators, in accordance with Section 386.230, RSMo 2000.

9. The Commission should have a great interest in this matter as the subject of these negotiations -- what the MSD will pay for data and turn off services provided to it by MAWC -- is directly connected to the rates to be charged by MAWC. Currently, these revenues are used by the Commission to reduce, dollar for dollar, the rates to be paid by MAWC's regulated customers. A reduction in the amount received from the MSD will necessarily increase the amount to be paid by MAWC's customers.

10. The MSD alleges that "during the course of the April 19 hearing, the consensus of the parties appeared to that without an underlying agreement between MSD and MAWC, the Commission could not impose a tariff to resolve disputed issues." (Status Rep., p. 3). Having reviewed the transcript, it does not appear to MAWC that this issue was ever discussed, nevertheless that there was any "consensus" one way or the other. As cited above, the clear statement of the parties was that the matter would be brought to the Commission "for resolution."

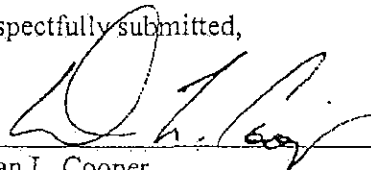
11. Moreover, MAWC also disagrees with the underlying allegations in the MSD's Status Report -- that "MAWC now seeks to impose an even greater charge than the flat \$760,000 for the significantly reduced information MSD is requesting" and that "the status quo requires MSD to

continue making substantial payments for information it does not want or need." MAWC's interest is in receiving compensation equal to the costs necessary to obtain, maintain and provide the information the MSD desires. To receive compensation in a lesser amount, would require MAWC's customers to subsidize the operations of the MSD. The costs identified by MAWC are necessary in order to provide the information requested by the MSD.

12. The rates suggested by MAWC are more than fair considering that if the MSD itself was required to read water company meters in order to accurately capture the two quarters of usage data that it believes it needs, a total of approximately 1,015,000 meter reads would be required. This is approximately 76.5% of the current meter reads made by the MAWC. Using MAWC's cost structure, this would result in a cost to the MSD of \$1.4 million to read the meters and to accurately capture the required data. MAWC feels very strongly that the offers it has made are reasonable and appropriate based upon the costs involved.

WHEREFORE, MAWC respectfully requests that the Commission direct the MSD, to the extent the MSD has a grievance for which it seeks a resolution, to file a complaint in accordance with the statutes and regulations governing such process.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or electronic mail on this 31<sup>st</sup> day of September, 2004, to the following:

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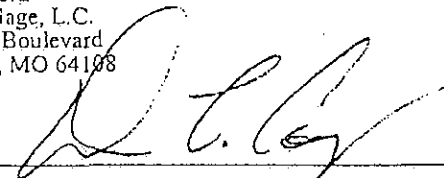
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**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of Missouri-American Water Company's     )  
Tariff to Revise Water and Sewer Rate Schedules.       ) Case No. WR-2003-0500

**NOTICE CLOSING CASE**

On September 2, 2004, the Metropolitan St. Louis Sewer District (MSD) filed its Status Report, advising the Commission that no progress has been made in discussions between MSD and Missouri-American Water Company. Missouri-American responded on September 3.

MSD had raised these issues previously in this case, upon Missouri-American's filing of compliance tariffs, and certain sheets were withdrawn as a result. Thereafter, on April 20, 2004, the Commission approved Missouri-American's revised compliance tariffs and closed this case. Missouri-American, in its response, suggests that MSD file a complaint if it believes one is warranted, but objects to the further consideration of these matters in this case.

This general rate case was complete upon the Commission's approval of Missouri-American's revised compliance tariffs. MSD may file a complaint with respect to any current controversy between it and Missouri-American. No further activity is expected in this matter; therefore, it may now be closed.

**BY THE COMMISSION**

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

(S E A L)

Dated at Jefferson City, Missouri,  
on this 15th day of October, 2004.

Thompson, Deputy Chief Regulatory Law Judge

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

THE METROPOLITAN ST. LOUIS SEWER )  
DISTRICT, )

Plaintiff, )

vs. )

Cause No. )

MISSOURI-AMERICAN WATER )  
COMPANY, )

Division No. )

Serve: )

Registered Agent )

CT Corporation System )

120 South Central Ave. )

St. Louis, Missouri 63105 )

Defendant. )

38

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ST. LOUIS COUNTY

PETITION FOR DECLARATORY RELIEF

COMES NOW Plaintiff, The Metropolitan St. Louis Sewer District ("MSD"), by and through undersigned counsel, and for its cause of action against Defendant, Missouri-American Water Company ("MAWC"), states as follows:

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

2. MAWC is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located in St. Louis County, Missouri. MAWC is a public utility, which provides metered water service to approximately 1.5 million customers throughout the State of Missouri, including customers in St. Louis County.

3. MAWC is a subsidiary of American Water, a national corporation maintaining water utility operations in twenty states, including California, Hawaii, Illinois, New Jersey, New



York and Pennsylvania among others.

4. Venue in this Court is proper pursuant to Section 508.040, RSMo.

5. On or about February 14, 2002, MSD and MAWC entered into an Agreement whereby, in exchange for payment, MAWC agreed to provide to MSD certain St. Louis County water usage and customer identification data ("Water Usage Data" or "Data") to be used by MSD in calculating its customers' billing statements (the "Water Usage Data Agreement"). A true and accurate copy of the Water Usage Data Agreement is attached hereto and incorporated herein by reference as Exhibit 1.

6. The Water Usage Data is accumulated through meter readings and estimates conducted by MAWC for MAWC's own billing purposes.

7. In the Water Usage Data Agreement, the parties agreed that in exchange for the Water Usage Data, MSD would pay MAWC approximately 50% of MAWC's cost of obtaining the Data, which was set by a rate tariff of \$0.54 per account read, as approved by the Missouri Public Service Commission on or about April 9, 2002.

8. Pursuant to paragraph 9 of the Water Usage Data Agreement, the term of the Agreement was from "December 1, 2001, to December 1, 2003, and from year to year thereafter subject to termination by either party at any time on 30 days notice."

9. By way of correspondence between both parties on September 16, 2003 and September 24, 2003, respectively, the parties terminated the Water Usage Data Agreement, effective December 31, 2003, with the intention of renegotiating its terms and entering into a new agreement regarding the provision of Water Usage Data to the MSD. True and accurate copies of the September 16, 2003 letter from the MSD to MAWC, and the September 24, 2003 letter from MAWC to the MSD, are attached hereto as Exhibits 2 and 3, respectively.

10. To date, the parties have been unable to finalize a new agreement regarding the

provision of the Water Usage Data

11. During the pendency of the parties' negotiations, however, MAWC has continued to provide MSD with the Water Usage Data.

12. Moreover, MSD has continued to pay MAWC for the Water Usage Data as per the rate tariff agreed to in the Water Usage Data Agreement, subject to and without waiver of MSD's right to challenge MAWC's imposition of a fee or charge for the provision of such Data and/or the amount of such fee or charge.

13. A substantial amount of the information contained in the Water Usage Data is not required by the MSD in issuing its billing statements.

14. MAWC has advised the MSD, however, that a reduction in the amount of information contained in the Water Usage Data provided to the MSD would not decrease the amount MAWC charges the MSD for such Data.

15. Further, MAWC has advised the MSD that although the MSD does not require the same number of meter readings for billing purposes as the MAWC, both parties must share equally in all of MAWC's meter reading costs.

16. Upon information and belief, MAWC has been and continues to be charging MSD for one half of the meter readings conducted for all of MAWC's customers throughout the State of Missouri, rather than limiting MSD's charges to meter readings for MSD's customers in St. Louis County only.

17. Section 249.645.1, RSMo, which authorizes the 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:

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 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.

§ 249.645.1, RSMo 2002 (emphasis added).

18. Despite the plain language of Section 249.645.1, RSMo, which does not require a sewer district to pay a fee for reviewing or receiving a water utility's meter reading records, MAWC fails and refuses to provide the Water Usage Data to the MSD or to permit the MSD to inspect MAWC's water meter reading records for St. Louis County customers free of charge.

19. If the MSD does not pay the fee required by the MAWC, it has no way of calculating its charges for sewer service, other than conducting its own water meter readings.

20. The MSD has a legally protected interest at stake in this dispute because the MSD needs the water usage information from MAWC in order to operate and maintain an integrated sewer system in the St. Louis metropolitan area.

21. Moreover, the MSD has a legally protected interest at stake because MAWC is requiring the MSD to pay a substantial fee for necessary water usage and customer information, which the MSD is statutorily entitled to obtain from MAWC free of charge.

22. A justiciable controversy exists between the parties which presents a real, substantial, presently-existing dispute. Specifically, MAWC's requirement that the MSD pay an unreasonable fee for the Water Usage Data, constitutes a violation of Section 249.645.1, RSMo.

23. This controversy is ripe for judicial determination, as it is developed enough for the Court to determine the facts, resolve the conflict and grant conclusive relief.

24. This case is appropriate for entry of a declaratory judgment under Sections 527.010, *et seq.*, RSMo, and pursuant to the provisions of Rule 87 of the Missouri Rules of Civil

Procedure.

25. Missouri's Declaratory Judgment Statute, Section 527.010, grants this Court the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

26. The MSD has no adequate remedy at law for the prospective relief it seeks.

WHEREFORE, Plaintiff The Metropolitan St. Louis Sewer District prays for the Court to declare the parties' rights and obligations under Section 249.645.1, RSMo, and declare that MAWC's charging of a fee for the Water Usage Data constitutes a violation of Section 249.645.1, and that pursuant to said statute, MAWC is required to provide the Water Usage Data to the MSD or otherwise make available to the MSD its water meter reading information and other information necessary for the MSD to calculate its sewer service charges at no cost, and award the MSD its costs, attorneys' fees and such other and further relief as the Court deems just and proper.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF



Commission, MSD has an available administrative remedy that has not been exhausted.

Therefore, declaratory relief under Chapter 527, RSMo, is not available to MSD.

### **FACTS**

As stated in the Petition in this matter, MSD currently pays \$0.54 per account read for water usage data (Petition, p. 2). This rate for such water usage data is found in a tariff that was approved by the Missouri Public Service Commission on April 9, 2002, in Commission Case No. WO-2002-431. Missouri-American's tariff sheet P.S.C. Mo. No. 6, Fourth Revised Sheet RT 16.0, which contains the MSD rate, was approved for service effective April 11, 2002. (See Appendix A attached hereto).

Missouri-American's tariffs, and those of its predecessor, St. Louis County Water Company, have included a rate for MSD's water usage data since August of 1993. (*Order Approving Agreement and Tariff*, MoPSC Case No. WO-93-349 (August 10, 1993)). This rate was modified twice prior to the approval of the existing tariff rate (as of January 9, 1997 in Public Service Commission Case No. WR-96-263 and as of January 1, 1998 in Missouri Public Service Commission Case No. WR-97-382).

Section 386.270 of the Revised Statutes of Missouri states that "all rates, tolls, charges, schedules and joint rates fixed by the commission shall be in full force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter." No such suit has been brought before the Missouri Public Service Commission. Thus, Missouri-American's tariff sheet P.S.C. Mo. No. 6, Fourth Revised Sheet RT 16.0 remains in force.

### Filed Rate Doctrine

Under the Filed Rate Doctrine, this Court is not authorized to provide the relief sought by MSD. In *Bauer vs. Southwestern Bell Telephone Company*, 958 S.W.2d 568 (Mo. App. E.D. 1997), the Missouri Court of Appeals for the Eastern District reaffirmed the doctrine that a tariff approved by the Missouri Public Service Commission “becomes Missouri law,” and has the “force and effect of a statute.” *See id.* at 570 (emphasis added). If the tariff in question is clear and unambiguous in its terms, the courts cannot give it another meaning. *Id.* Further, a filed tariff governs the relationship between the company and its customers, “is sanctioned by the government” (through the Missouri Public Service Commission), “and cannot be the subject of legal action.” *Id.* (emphasis added). An approved tariff conclusively presumes that both the utility and its customers know the contents and effects of the tariff. *Id.*

The Filed Rate Doctrine precludes collecting any rate other than the approved tariff rates, and thus constitutes a rule against retroactive rate making or rate alteration. *State ex rel. Associated Natural Gas Company v. Public Service Commission*, 954 S.W.2d 520 (Mo. App. W.D. 1997). Section 393.140(11), RSMo, prohibits a utility from collecting a greater or lesser compensation “than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time.”

As applied to the present case, the Filed Rate Doctrine precludes any legal action brought in circuit court to challenge the \$.54 “per account read” charge for water usage data, as clearly set forth in Missouri-American’s Tariff No. RT 16.0. This tariff was approved by the Missouri Public Service Commission, became effective on April 11, 2002, and is still in full force and effect. The rate for water usage data is made available specifically to MSD.

The Missouri-American Tariff Sheet No. RT 16.0 remains in effect, has not been revised

or superseded, and thus still carries the full force and effect of Missouri law, meaning that it cannot be the subject of legal action. *See Bauer*, 958 S.W.2d at 570. Therefore, under the Filed Rate Doctrine, this Court is not authorized to provide the relief sought by MSD, and the Petition for Declaratory Relief must be dismissed.

1. Primary Jurisdiction lies with the Public Service Commission

Because primary jurisdiction lies with the Missouri Public Service Commission (“Commission”) to determine all matters involving utility rates and related issues in the first instance, this Court does not have jurisdiction over the Petition for Declaratory Relief.

“Missouri has long recognized the doctrine of primary jurisdiction. Under this doctrine, courts generally will not decide a controversy involving a question within the jurisdiction of an administrative tribunal until after the tribunal has rendered its decision.” *MCI Metro Access Transmission Services, Inc. v. City of St. Louis*, 941 S.W.2d 634, 644 (Mo. App. E.D. 1997).

It is well settled that the Commission is vested with full power in all matters of utility rates and rate regulation, subject only to the statutory review process. *See Sonken-Golamba Corp. v. Missouri Pacific Ry. Co.*, 40 S.W.2d 524 (Mo. App. 1931). The Commission has primary authority to regulate rates to be charged by public utilities in this state. *State ex rel. Capital City Water Co. v. Public Service Comm’n.*, 850 S.W.2d 903 (Mo. App. W.D. 1993).

Missouri courts have no authority to determine utility rates, but only to review and affirm, or set aside, reverse, or remand the final rate decision of the Commission, so long as the court does not order the Commission to act retroactively concerning a rate determination. *See id.* Procedurally, the Commission has exclusive jurisdiction to establish public utility rates and may do so either by approval of filed rates, or after investigation and hearing on the matter. *May Dept. Stores Co. v. Union Elec. Light and Power Co.*, 107 S.W.2d 41 (Mo. 1937).



A description of the process that a complainant must use to dispute rates can be found in *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674 (Mo. App. 1978). This case was brought to enforce a previous ruling by the Commission that Fee Fee's tariff classification of the plaintiff was "unjust, unreasonable and unduly discriminatory." In addressing the appropriateness of the Plaintiff's action, the Court of Appeals described the regulatory scheme as follows:

When a utility has two approved rates of service and renders service to a consumer charging the higher rate, the consumer may file a complaint before the Public Service Commission to determine the proper classification. *State ex rel. Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044 (Mo. banc 1943). A circuit court has no jurisdiction to consider the plaintiff's action for recovery until the Commission makes its decision regarding the rates and classification. Matters within the jurisdiction of the Public Service Commission must first be determined by it in every instance before the courts have jurisdiction to make judgments in the controversy. *State ex rel. Hoffman v. Public Serv. Com'n*, 530 S.W.2d 434 (Mo.App.1975); *Katz Drug v. Kansas City Power and Light Co.*, 303 S.W.2d 672, 679 (Mo.App.1957).

Thus, MSD's attempt to litigate these issues in the circuit court is premature; any initial challenge concerning charges for the water usage data must first be brought before the Commission due to its primary jurisdiction over the issue.

MSD seeks to have the circuit court strike down the challenged rate for data collection based on the provisions of a specific statute, § 249.645.1, RSMo, and to require Missouri-American to provide this data free of charge. This makes MSD's challenge one which relates directly to the rate set by tariff. MSD should therefore be required to exhaust its remedies before the Commission, and then if it is unsuccessful before the Commission, seek review of that decision in the circuit court. Because primary jurisdiction lies with the Commission, this Court does not have jurisdiction over this case.

## 2. Declaratory Relief is Not Available to MSD

Because primary jurisdiction lies with the Commission, MSD has an adequate available remedy in the form of a challenge to the rate and a request for relief before the Commission. Therefore, in light of the fact that MSD has an exclusive administrative remedy, declaratory relief under Chapter 527, RSMo, is not available to MSD. *See Shelter Mutual Insurance Company v. Vulgamott*, 96 S.W.3d 96, 103 (Mo. App. W.D. 2003).

Similarly, the remedy provided by the Declaratory Judgment Act (Chapter 527, RSMo) “is subject to the requirement of exhaustion of administrative remedies.” *Willamette Industries v. Clean Water Comm.*, 34 S.W.3d 197, 202 (Mo.App.W.D. 2000), *citing Farm Bureau Town & Country Ins. V. Angoff*, 909 S.W.2d 348, 354 (Mo.banc 1995). That is, where an administrative remedy is available, a court will require exhaustion before assuming jurisdiction. *Id.* at 201. This approach is founded upon the theory that “agencies have special expertise and a factual record can be developed more fully by pursuing the designated channels for relief within the agency.” *Id.*

Missouri statutes provide an administrative remedy to challenge the reasonableness of tariff rates before the Missouri Public Service Commission. This remedy has not been exhausted. Therefore, the Court must not assume jurisdiction of this declaratory judgment action.

## CONCLUSION

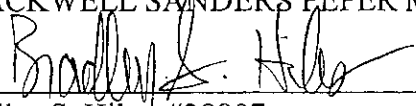
Under the Filed Rate Doctrine, this Court is not authorized to provide the relief sought by MSD. Additionally, the Commission has primary jurisdiction in all matters involving utility rates, which also gives MSD an available administrative remedy that has not been exhausted. Therefore, this Court lacks jurisdiction, declaratory relief is not available, and the Petition for Declaratory Relief must be dismissed.

WHEREFORE, Missouri-American prays the court dismiss the Petition for Declaratory Relief and enter such other orders and relief as the court deems just.

Respectfully submitted,

BLACKWELL SANDERS PEPER MARTIN LLP

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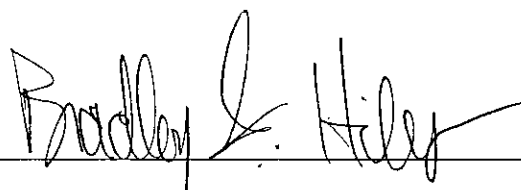
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ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed, United States Mail, postage prepaid, this 23rd day of September, 2005, to:

Byron E. Francis  
E.W. Gentry Sayad  
Jacqueline Ulin Levey  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740

  
\_\_\_\_\_

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 COUNTY 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.

REC'D 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. 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



system in any city of this state except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality;

Section 386.250 RSMo (2000)<sup>1</sup>

To enforce these statutory obligations, the Legislature gave the Commission the authority to: “[e]xamine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business.” Section 393.140(5).

In addition to its powers of supervision and regulation found in Section 386.250, the Commission has specific responsibility for assuring that such utility companies provide service at just and reasonable rates. Section 393.130. RSMo (Supp. 2004). Customer rates, as reflected in a company’s tariff sheets, are required to be filed at the Commission and to be available to the public. Section 393.140(11).

In order to exercise its duties, the Commission requires a utility company to file tariff sheets describing their practices and rates. MAWC’s tariff, under which it charges MSD for customer usage readings, is on file at the Commission. The charges about which MSD complains were originally approved to be effective on April 11, 2002. (Tariff Sheet P.S.C. Mo. No. 6, Fourth Revised Sheet RT 16.0).

Under Sections 386.390.1, and 386.310.1 , the Commission has the statutory authority and duty to consider complaints of the type that MSD is making in its Petition for Declaratory Relief and to consider the issues that MSD raises. This Section states:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to

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<sup>1</sup> All references are to the Revised Statutes of Missouri (2000) unless otherwise noted.

be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . . .

Section 386.390.1.

MSD alleges that MAWC's tariff governing charges for meter reading services is unjust and unreasonable and, thus, in violation of Section 393.130. RSMo (Supp. 2004). That complaint, insofar as it is a challenge to a tariff's lawfulness – a tariff approved by the Commission - is properly first brought before this Commission. These matters are in the first instance within the exclusive primary jurisdiction of the Commission.

“Missouri has long recognized the doctrine of primary jurisdiction.” *MCI Metro Access Transmission Services, Inc. v. City of St. Louis*, 941 S.W.2d 634, 644 (Mo. App. 1997). “Under this doctrine, courts generally will not decide a controversy involving a question within the jurisdiction of an administrative tribunal until after the tribunal has rendered its decision.” *Id.* (citing *Killian v. J & J Installers, Inc.*, 802 S.W.2d 158, 160 (Mo. banc 1991)).

The only exceptions that courts have allowed to primary jurisdiction are when the facts within the jurisdiction of the Commission have been admitted or when the only issue is a pure question of law. See, *Webster v. Joplin Water Works Co.*, 177 S.W.2d 447 (Mo. 1944) and *Main Line Hauling Co. v. Public Service Comm'n*, 577 S.W.2d 50 (Mo. App. 1978). While there is a question of law in this matter, the issue of whether MAWC's tariff is just and reasonable is within the Commission's primary jurisdiction. If the Commission were to determine that the tariff is not just and reasonable, the parties would have an opportunity to resolve the matter at the Commission before involving the Courts.

The justness and reasonableness of a tariff is the type of case, among others, to which the courts have applied the doctrine of primary jurisdiction. In *State ex rel. Cirese v. Ridge*, Kansas City

Power & Light Company (KCPL) requested the circuit court issue an injunction against an electrical corporation, Cirese Power and Light (Cirese) that allegedly was operating without a city franchise and without a certificate of public convenience and necessity from the Commission. Cirese challenged the circuit court's authority to issue an injunction and sought an original writ of prohibition on the basis that the circuit court was without subject matter jurisdiction to consider the issues raised in the injunction. The Missouri Supreme Court agreed with Cirese and stated:

[T]he Kansas City Light and Power Co. contends that the circuit court has concurrent jurisdiction over said subject matter. We do not think so. Generally the courts, including this court, favor the regulation of public utilities by Public Service Commissions. *In State ex inf. Kansas City Gas Co.*, 163 S.W. 854, 860 we state that "he who reads it [Public Service Commission Law], and does not see that the yearning of the lawmaker was to have the courts trust the commission in the first instance to solve such business problems as those presented in this case, reads it to still less purpose." In substance, we have so stated in many opinions.

138 S.W.2d at 1014.

The court went on to explore the rationale behind the doctrine of primary jurisdiction and explained that the Commission's primary jurisdiction is based on the Legislature's power to declare public policy and to choose an administrative agency to enforce that policy:

It is exclusively within the legislative power to determine what the policy of the commonwealth shall be, or it may designate an agency of the government to determine that policy. . . . [T]he Legislature has the power to determine who shall promulgate and enforce its declared public policy, and, when an agency of the government is selected or created for that purpose, no other body, judicial, executive, or municipal, can step in, and by decree, order, ordinance, or otherwise, actively enforce the policy, or do other acts in relation thereto, except possibly to sustain the legislatively created or designated body . . . . There has been placed under the regulation, supervision, and control of the commission generally all matters relating to rights, facilities, service, and other correlated matters of a public service company. . . . Courts were not intended to be the administrative tribunal for this purpose.

138 S.W.2d at 1014.

Later cases have followed the doctrine of primary jurisdiction articulated in this case. In *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981) the general counsel for the Commission brought an



action against Carroll alleging that respondent acted as a contract carrier without a permit issued by the Commission. Carroll responded that the Commission could not pursue a penalty action in circuit court without first holding a hearing to determine if Carroll was operating improperly. The Southern District agreed with Carroll and affirmed the trial court's dismissal of the case saying: "The Public Service Commission should first determine in matters within its jurisdiction if someone is operating unlawfully before the courts should be called upon to act." 620 S.W.2d at 24.

In *Main Line Hauling Co., Inc. v. Public Service Comm'n*, 577 S.W.2d 50, 51 (Mo.App. 1978), the court specifically discussed the doctrine of primary jurisdiction and described it as "a doctrine based on judicial policy of self-restraint [that] calls upon a court to defer to and give an administrative agency the first right to consider and act upon a matter which calls for factual analysis or the employment of special expertise within the scope of the agency's responsibility entrusted to it by the legislature." 577 S.W.2d 50 at 51.

The Supreme Court also has reasoned that matters of this sort are best first referred to the Commission:

When we consider the purpose of the public service commission act and the specialized functions therein conferred upon the commission, the reasons for limitations upon our power of review are apparent. The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state. It is a fact-finding body, exclusively entrusted and charged by the Legislature to deal with and determine the specialized problems arising out of the operation of public utilities. It has a staff of technical and professional experts to aid it in the accomplishment of its statutory powers. Its supervision of the public utilities of this state is a continuing one and its orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the commission, in its discretion, may deem to be in the public interest.

*State ex rel. Chicago, R. I. & P. R. Co. v. Public Service Comm'n*, 312 S.W.2d 791, 796 (Mo. 1958).

It is not the Commission's desire to deny MSD any of its legal rights or claims against MAWC. However, it is the Commission's responsibility to make determinations concerning matters within the jurisdiction granted to it by the General Assembly. The Commission can make that determination only if MSD brings the matter to the Commission.

**WHEREFORE**, the Commission prays that this Court dismiss Plaintiff's prayer for declaratory relief, permitting the Commission to exercise its primary jurisdiction, and enter such other orders and relief as the Court deems just.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

/s/ Lera L. Shemwell

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## Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed, sent by facsimile or hand-delivered to all counsel of record this 3rd day of October 2005.

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/s/ Lera L. Shemwell

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

**FILED**

APR 24 2006

THE METROPOLITAN ST. LOUIS )  
SEWER DISTRICT, )

Plaintiff, )

v. )

MISSOURI AMERICAN WATER CO.)

Respondent )

and )

MISSOURI PUBLIC SERVICE )

COMMISSION, )

Intervener. )

Cause No. 05CC-00367-1  
JOAN M. GILMER  
Circuit Clerk, ST. LOUIS COUNTY

Div. 38

**JUDGMENT OF DISMISSAL**

Cause called and heard on Respondent Missouri American Water Company's and Intervener Missouri Public Service Commission's Motions to Dismiss. Parties appear by counsel. The Court, being fully apprised, finds that primary jurisdiction of this matter rests with the Missouri Public Service Commission and that, until such time as the matter has been heard by said Commission, this Court lacks jurisdiction to act.

Plaintiff METROPOLITAN ST. LOUIS SEWER DISTRICT'S Petition for Declaratory Relief is dismissed, without prejudice. Court costs assessed against Plaintiff.

**SO ORDERED:**

  
Judge Ellen Levy Siwak, Division 38 4-24-06

**Exhibit  
13**

Copy to: Byron Francis, Attorney for Metropolitan St. Louis Sewer District  
Eric Martin and William England, Attorneys for Missouri-American Water Co.  
Lera L. Shemwell, Attorney for Missouri Public Service Commission