

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

In the Matter of Missouri-American       )  
Water Company's Request for Authority   )  
to Implement a General Rate Increase     )  
for Water Service Provided in Missouri   )  
Service Areas                                )

**Case No. WR-2007-0216, et al.**

**ORDER EXTENDING TIME FOR RESPONSES TO LATE-FILED**  
**EXHIBITS AND STRIKING AMENDMENT TO LATE-FILED EXHIBIT**

Issue Date: August 27, 2007

Effective Date: August 27, 2007

The hearing in this matter was complete on August 14, 2007.<sup>1</sup> The Commission had directed Joplin to late-file two exhibits. The first was described as follows:

No later than August 22, 2007, **the City of Joplin shall file any documents, work papers, letters, memoranda, notes, reports, analyses, computer analyses, adding machine calculations, test results, studies or data recordings, transcriptions, and printer, typed, or written materials of any kind, in any format, that relate to demonstrating the revenue effect on the specific revenue requirement for the Joplin district that were generated by the City of Joplin or its witness, Ms. Leslie Jones, to serve as a basis for the testimony the City of Joplin submitted to the Commission.** If no such materials exist, the City of Joplin shall file a pleading verifying that such materials do not exist.

The second late-filed exhibit that Joplin was directed to file required Joplin:

to generate and file with the Commission calculations showing the effect that Joplin's **currently advocated positions** with regard to the disputed issues would have on its revenue requirement.<sup>2</sup> These calculations are to include the effects of Joplin's position on the proper method of allocating MAWC's corporate administrative and general expenses, payroll tax payments as annualized for the Joplin District and corporate allocation of corporate depreciation, as well as any other disputed issue identified in its revised list of

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<sup>1</sup> All dates throughout this order refer to the year 2007 unless otherwise noted.

<sup>2</sup> During the hearing on August 14, Joplin's witness was allowed to supplement her prefiled testimony; whereupon her supplemental testimony advocated a change in positions from that in her pre-filed testimony.

issues. These calculations must include the determination of the value of each issue and its effect on Joplin's [sic]<sup>3</sup> revenue requirement.

Joplin timely filed the documents as directed on August 22, and the Commission will designate the documents "Joplin-2," and "Joplin-3" respectively. The Commission points out that while it directed Joplin to file these exhibits, it made clear that the other parties to this action would have adequate time to respond and that the actual receipt of these exhibits into the evidentiary record was subject to all reasonable and customary objections of the other parties. The admissibility of these documents has not yet been ruled upon.

On August 24, the City of Joplin ("Joplin") filed a document entitled "Amended Statement of Filing of Documents Pursuant to Commission's Order of August 15, 2007."<sup>4</sup> The document purportedly amends late-filed exhibit, Joplin-2. Joplin states that due to counsel's oversight, several pages of the required filing were omitted when the original documents were filed. Joplin added four pages to its original filing, which were comprised of a confidential settlement agreement that was distributed to the non-Missouri-American Water Company ("MAWC") parties on July 31.

The Office of the Public Counsel ("OPC") and AG Processing, Inc. ("AGP") objected to the amended filing of "Joplin-2" because the new portions to the filing are privileged documents that should not have been made public on the Commission's Electronic Filing

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<sup>3</sup> The order should have read the portion of Missouri-American Water Company's revenue requirement that was allocated to Joplin.

<sup>4</sup> The Commission notes that Commission Rule 4 CSR 240-2.080(20) allows pleadings to be amended within ten days of the original filing unless a responsive pleading has already been filed, or at any time by leave of the Commission. Joplin's amended pleading was filed within the allowable time frame as no responsive pleading had yet been filed and the Commission had not restricted the time for amending this filing. However, there are other issues that must be addressed with regard to Joplin's amendment of its late-filed exhibit, "Joplin-2."

and Information System (“EFIS”) or distributed to MAWC in any manner. The documents are clearly marked “Confidential – For Settlement Discussion Purposes Only.”

Section 536.070(8), RSMo 2000, and Commission Rule 4 CSR 240-2.130 provide that the rules of privilege are effective to the same extent that they are in civil actions. Commission Rule 4 CSR 240-2.090(7) notes that settlement offers are privileged, except by agreement, and shall not be used against participating parties unless fully substantiated by other evidence. “Because settlements are encouraged under the law, the general rule is that evidence procured from settlement is to be excluded at trial.”<sup>5</sup>

Joplin’s amendment contains privileged information. There is no indication that this privilege has been waived. Not only is this incompetent evidence, but Joplin’s amendment is also non-responsive to the Commission’s order which directed the filing of materials **that were generated by the City of Joplin or its witness, Ms. Leslie Jones**, not the other non-MAWC parties engaged in settlement discussions.

Because Joplin’s amended pleading is not responsive to the Commission’s order, and because it included privileged and confidential information, it shall be stricken. Joplin’s original filing of the exhibit on August 22 shall remain in the record and keep the designation of “Joplin-2.” The Commission shall direct its data center to remove the amended filing from EFIS. Additionally, MAWC, who was not intended to view this proposed settlement agreement, shall be directed to retrieve all copies of this document that MAWC, its employees or its counsel may have received and destroy said copies.

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<sup>5</sup> *Hancock v. Shook*, 100 S.W.3d 786, 799 (Mo. banc 2003). Such evidence is normally excluded because a party making a settlement offer should not be penalized by revealing an offer to the jury if negotiations fail. *Id.* See also IV John Henry Wigmore, Wigmore on Evidence § 1061 (1972).

Due to the delay Joplin's amended pleading created among the parties in their ability to fully respond to Joplin's proper late-filed exhibits, the deadline for those responses shall be extended until midnight August 28.

**IT IS ORDERED THAT:**

1. The City of Joplin's August 24, 2007 pleading entitled, "Amended Statement of Filing of Documents Pursuant to Commission's Order of August 15, 2007," is stricken from the record in this matter.

2. The Commission's Data Center is directed to remove the City of Joplin's August 24, 2007 pleading entitled, "Amended Statement of Filing of Documents Pursuant to Commission's Order of August 15, 2007," from the Commission's Electronic Filing and Information System.

3. Missouri-American Water Company is directed to identify, retrieve and destroy any copies of City of Joplin's August 24, 2007 pleading entitled, "Amended Statement of Filing of Documents Pursuant to Commission's Order of August 15, 2007," or any copies of any portions thereof.

4. The deadline for parties to respond to the City of Joplin's late-filed exhibits is extended until midnight August 28, 2007.

5. This order shall become effective on August 27, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Harold Stearley, Regulatory Law Judge,  
by delegation of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 27th day of August, 2007.