

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day
of October, 2007.

In the Matter of Missouri-American)	<u>Case No. WR-2007-0216, et al.</u>
Water Company's Request for Authority)	Tariff Nos. YW-2008-0219, YW-2008-0220
to Implement a General Rate Increase)	YW-2008-0221, YW-2008-0222, YW-2008-
for Water Service Provided in Missouri)	0223, YW-2008-0224, YS-2008-0225, YS-
Service Areas)	2008-0226, YS-2008-0227

ORDER DENYING MOTION FOR REHEARING

Issue Date: October 18, 2007

Effective Date: October 18, 2007

The Missouri Public Service Commission issued its Report and Order in this matter on October 4, 2007,¹ bearing an effective date of October 14. In that order, the Commission approved a general rate increase for water and sewer service provided by Missouri American Water Company ("MAWC").

On October 12, the City of Joplin ("Joplin") timely filed a motion for rehearing. The Commission is authorized to grant rehearing "if in its judgment sufficient reason therefore be made to appear."²

Joplin takes issue with one determination made by the Commission and claims that the Commission's order is unjust, unlawful and unreasonable. Specifically, Joplin claims

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

² Section 386.500.1, RSMo 2000. Having granted rehearing, "[i]f . . . the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same." Section 386.500.4, RSMo 2000. The Court of Appeals has stated, "When a rehearing is granted by the PSC, the case stands as if it had not been previously heard." *State ex rel. AG Processing v. Thompson*, 100 S.W.3d 915, 921 (Mo. App. 2003); *State ex rel. State Highway Comm'n v. Pub. Serv. Comm'n*, 459 S.W.2d 736, 739 (Mo. App. 1970).

that the Commission failed to affirmatively determine that the use of payroll was the “most appropriate” method for allocating each specific corporate expense itemized, including call center expense, customer account expense, shared services, and administrative and general expenses. Joplin claims that the Commission merely relies on one statement from subject matter expert Stephen Rackers to support its decision adopting this as the appropriate allocation factor.³ Joplin further alleges that its witness and MAWC’s witnesses agreed that the proper allocation factor for a call center would be the number of customers versus payroll.

Joplin’s Motion for Rehearing disregards the Commission’s remaining findings of fact regarding this issue and the conclusions of law the Commission reached based upon those findings of fact. These findings and conclusions are delineated in pages 55-74 of the Report and Order. In particular, see Findings of Fact Numbers 102-110, 116, 154-169, and Footnotes 252-256 and their associated text.

There were, in fact, three subject matter experts, including two of MAWC’s witnesses, who testified as to the reasonableness of the position advocated by Mr. Rackers and adopted by all of the signatories to the joint recommendation that was submitted to the Commission. See Transcript pp. 178-180 (Testimony of Edward J. Grubb); pp. 230-231 (Testimony of Donald J. Petry); and pp. 319-320 (Testimony of Stephen Rackers). All of the signatories to the joint recommendation advocated the adoption of payroll as the appropriate allocation factor for the expenses at issue, and no non-signatory to the recommendation, with the exception of Joplin, contested the use of this allocation factor.⁴

³ See Report and Order, Finding of Fact Number 103, page 57.

⁴ See *Non-Unanimous Stipulation and Agreement*, filed August 9, 2007.

Joplin did not provide any credible evidence that any other allocation factor is more reasonable, or that the payroll allocation factor adopted is in any way unreasonable.

Joplin fails to demonstrate sufficient reason for convening a subsequent proceeding and points to no credible evidence to rebut the current findings of fact and conclusions of law made by the Commission. Consequently, the motion for rehearing shall be denied.

Joplin raises one further issue in its application. Joplin complains that its motion to consolidate this case with the pending decision in the remand of Case Number WR-2000-281 should not have been denied. Joplin had filed a motion for reconsideration of the order denying consolidation on May 16, and that motion was denied in the Commission's October 4 Report and Order.

As the Commission stated in its original order denying Joplin's motion to consolidate on May 15:

As Missouri-American notes in its April 5, 2007 suggestions in opposition to Joplin's motion, all that is required at this time in WR-2000-281 is alteration of the Commission's existing Report and Order. There is no need for additional evidence or briefing. The record was closed and the briefing completed many years ago. The Court of Appeals pointed out in regard to Joplin's arguments that "the Commission lacks authority to retroactively correct rates," lacks the authority to refund money," and may not "take into account overpayments when fashioning prospective rates." *City of Joplin* at p. 297.

The process under way in the current case is unrelated to alteration of the 2000 Order. The findings of fact and conclusions of law to be added to the 2000 Order must be drawn from that case's existing record and then-applicable laws, an entirely different process from issuing a Report and Order based on the facts adduced in the record of the present case and applying presently applicable laws to those facts. Judicial economy is likely to suffer, rather than benefit, from consolidation of these two cases, with their separate records and circumstances.

Commission Rule 4 CSR 240-2.110(3) states that the Commission may consolidate cases that involve related questions of law or fact. Although there may happen to be some facts in common, rate cases require the Commission to review the record in its entirety to determine just and

reasonable rates. Any findings and conclusions that need to be added to the 2000 case must be determined after review of the whole record in that case. Therefore, the Motion to Consolidate will be denied.

The Commission's Rule on consolidation, 4 CSR 240-2.2.110(3), and Missouri Supreme Court Rule 66.01 are both discretionary on the part of the tribunal. And contrary to Joplin's position, nothing in these rules mandates the Commission consolidate actions even if they involve related questions of law or fact, especially when consolidation may be injurious to the proper and timely resolution of the matters at issue. The Commission appropriately determined that judicial economy was likely to suffer if the cases were consolidated and appropriately denied Joplin's motion. The Commission's subsequent decision to deny Joplin's motion for reconsideration on this ruling in its October 4 Report and Order was similarly appropriate.

IT IS ORDERED THAT:

1. The City of Joplin's October 12, 2007 Application for Rehearing of Report and Order is denied.
2. This order shall become effective on October 18, 2007.

BY THE COMMISSION



**Colleen M. Dale
Secretary**

(S E A L)

Davis, Chm., Clayton, Appling, Jarrett, CC., concur.
Murray, C., absent.

Stearley, Regulatory Law Judge