

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

In the Matter of Missouri-American Water)	
Company's Request for Authority to)	Case No. WR-2008-0311
Implement a General Rate Increase for)	SR-2008-0312
Water and Sewer Service Provided in)	
Missouri Service Areas.)	

**APPLICATION FOR REHEARING OF ORDER REGARDING
TRUE-UP DATE AND SETTING TRUE-UP PROCEDURAL SCHEDULE**

COMES NOW Intervenor City of Joplin, by and through counsel, and for its Application for Rehearing of Order Regarding True-Up Date and Setting True-Up Procedural Schedule pursuant to Section 386.500, states as follows:

1. On October 20, 2008, this Commission issued its Order Regarding True-Up Date and Setting True-Up Procedural Schedule in the above-captioned matter. A copy of which is attached as Exhibit A. This Order had an issue date of October 20, 2008 and an effective date of October 20, 2008. This Application for Rehearing is filed today, October 21, 2008, and comports with the timing requirements of Section 386.500; in that, due to the late nature of the Order of the Commission and the immediate effective date thereof, there is no delay nor reason to find this Application for Rehearing is out of time.

2. The Commission's Order Regarding True-Up sets a true-up period of nine (9) months from the end of the test year, to wit: September 30, 2008. The Commission also validated use of true-up periods. The decisions of the Commission regarding true-up are not only premature but erroneous and the Commission should grant rehearing on its Order of October 20, 2008.

3. There has been significant substantive testimony filed in the above-captioned matter regarding the validity of having a true-up period at all and what such true-up period should be. Excerpts of testimony from Intervenor's expert, Dr. Mike Ileo, addressing the validity of a true-up

and the period from which such true-up should be ascertained. Additionally, Dr. Ileo proposes a fully adjusted test year. See Exhibit B attached hereto, also attached to Joplin's Response filed on October 9, 2008.

4. The Commission issued its Order of October 20, 2008 without referencing any of this testimony, nor addressing the significant matters raised therein. Matters of evidentiary significance and professional opinion should be reviewed by the Commission as a whole at the conclusion of the hearing after all parties have had the opportunity to cross-examine such witnesses. There is no reference in the Order of the Commission that the various testimony filed has been reviewed by this Commission.

5. Further, the Order refers to an internal Public Service Commission case, *In Re Kansas City Power and Light Company*, 26 Mo. P.S.C. (ns) 104 (1983) for the period that true-up is appropriate and then asserts that nine (9) months of true-up is adequate and sufficient for purposes of a case. First, it is noted that the language contained in the Western District's case, *State ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri*, 645 S.W.2d 44 (Mo. App. W.D. 1982), while it does not directly address true-up, it certainly gives judicial guidance to this Commission that the test year data should be the only data used for the establishment of rates for the next term of a company. *Id.* at 53. Even the language cited by this Commission in *Kansas City Power and Light* reflects that adjustments should be made "upward or downward to exclude **unusual** or **unreasonable** items, or include **unusual** items...". *Id.* at 109. The determination of what is unusual or unreasonable is not a matter that can be determined by this Commission without expert testimony, factual testimony, and a complete and thorough analysis of law. None of that is

contained in this Commission's Order of October 20, 2008, and as a result it is not supported by competent and substantial evidence on the record as a whole.

WHEREFORE, the City of Joplin prays that this Commission grant its Application for Rehearing of Order Regarding True-Up Date and Setting True-Up Procedural Schedule, reconsider its Order and withdraw the same pending the conclusion of testimony in the scheduled hearing which commences October 30, 2008, and for such other relief as this Commission deems appropriate.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:



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CERTIFICATE OF SERVICE

I hereby certify that true copies of the above and foregoing were sent to each of the following persons via electronic mail, on this 21st day of October, 2008:

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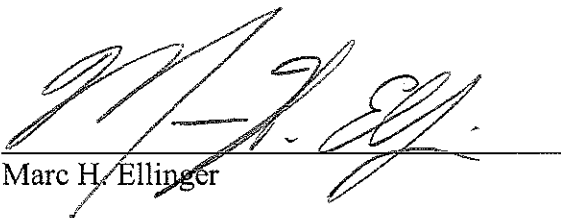
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Marc H. Ellinger

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 and Sewer)
Service Provided in Missouri Service Areas) Case No. WR-2008-0311

ORDER REGARDING TRUE-UP DATE AND SETTING
TRUE-UP PROCEDURAL SCHEDULE

Issue Date October 20, 2008

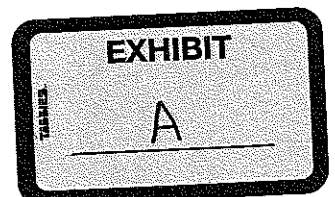
Effective Date: October 20, 2008

Background

On April 15, 2008, Missouri-American Water Company requested that the test year in this matter be comprised of the 12 months ending December 31, 2007. Already scheduled to be updated for known and measurable changes through March 31, 2008, MAWC requested a true-up through September 30, 2008. In response, the Staff of the Commission did not take a position on the company's request for true-up because the hearing dates, at that time, were reserved for September 17 through October 17, 2008. The hearing is now set to begin on October 30. The Office of the Public Counsel, in its response, questioned the necessity of a true-up and opposed the request because it had not performed an independent audit or analysis.

All of the other parties responding to the request took no position. Specifically, the City of Joplin stated that it took no position as to the necessity for a true-up.

On June 30, the Commission issued an order adopting a procedural schedule. In that order, the Commission noted that:



[T]he parties do not agree on a date up to which known and measurable changes in the test year might be accounted for. Staff and the Office of the Public Counsel suggest that this date be March 31, 2008. Missouri-American suggests that it be September 30.

continued . .

[B]ecause all of the parties do not agree on the date up to which known and measurable change should be accounted for the Commission will issue a subsequent order resolving this issue.

In response to the Commission's order, MAWC points out that there may be less disagreement with regard to the true-up than the Commission's order suggests and, in a subsequent pleading, recommends the following procedural schedule:

November 18, 2008	–	Simultaneous Direct True-Up Testimony
December 2, 2008	–	Simultaneous Rebuttal True-Up Testimony
December 8-9, 2008	–	True-Up Hearing

Thereupon, the City of Joplin filed a response. Pointing out that it had not taken a position on this issue until after the parties filed direct testimony, Joplin now opposes the proposed true-up period. For its relief, Joplin asked that the Commission stay any action on this issue until all rebuttal testimony was filed.

After rebuttal testimony was filed, Staff requested, on October 7, that the Commission expedite its determination regarding true-up. Staff pointed out that at the time of its filing, it had begun receiving information from MAWC for a true-up audit of plant placed in service between March 31 and September 30, 2008. The Commission immediately issued an order shortening the time for responses to Staff's request. In that order, the Commission directed that any objections to Staff's pleading be filed by October 9. On October 9, Joplin filed a pleading opposing true-up or, in the alternative, extending true-up only through June 30, 2008. On October 10, MAWC filed a reply to Joplin's response.

Discussion

In its April 15 pleading, MAWC anticipated that approximately \$125 million of plant would be placed into service between January 1, 2008 and September 30, 2008. The company set this out in direct testimony and gave an example that approximately \$31.8 million of investment related to the Joplin production facilities would be placed into service by the end of September 2008. Also, \$34.6 million of plant improvements, main replacement and main relocations would be in service in St. Louis. The company also stated that it planned to complete a debt issuance of \$70,000,000 and an equity infusion of \$35,000,000 during the true-up period.

Joplin's first concern is that there will be insufficient time, prior to the start of the hearing, on October 30, to review information concerning the additional plant in service through September 30. As pointed out by MAWC, this concern is unfounded. The hearing for the true-up has been set for December 8-9, 2008. Further, MAWC has proposed that direct and rebuttal testimony be filed beginning on November 18 and December 2. Joplin will therefore have until November 18 to review the information. Joplin does not argue whether it will have sufficient time to review prior to November. However, the premise upon which Joplin rests its conclusion, that it has until the start of the hearing on October 30 to review the information, is incorrect. The argument therefore fails.

Also in this regard, MAWC filed a Recommendation Concerning Test Year and Request for True-Up Audit and Hearing on April 15. In that pleading, MAWC set out certain costs it expected to incur between January and September of 2008, and requested that true-up be through September of 2008. Joplin has therefore been aware of this request since it was granted intervention on May 2, 2008.

Joplin also argues that the use of *any* true-up is questionable. Joplin cites a case¹ to support its position. This case includes a discussion of whether Construction Work in Progress should be included in rate base or whether the company should recover its costs through capitalization. As pointed out by MAWC, this case is not on point.

Finally, MAWC highlights a portion of a Commission case on this issue:

The purpose of using a test year is to create or construct a reasonable expected level of earnings, expenses and investments during the future period in which the rates, to be determined herein, will be in effect. All of the aspects of the test year operations may be adjusted upward or downward to exclude unusual or unreasonable items, or include unusual items, by amortization or otherwise, in order to arrive at a proper allowable level of all of the elements of the Company's operations. The Commission has generally attempted to establish those levels at a time as close as possible to the period when the rates in question will be in effect.²

As pointed out by MAWC through its pleadings on this issue, a true-up through September 30, 2008 will be five months prior to the operation of law date. No party objects to the true-up period extending up to five months prior to this date.

Decision

Joplin has not shown that a true-up through September 2008, is illegal or unfair and no other party opposes the request. The Commission finds MAWC's arguments persuasive and will therefore set a true-up period through September 30, 2008, and set a procedural schedule to facilitate the true-up hearing.

THE COMMISSION ORDERS THAT:

1. The true-up period shall be through September 30, 2008.

¹ *State ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri*, 645 S.W.2d 44 (Mo. App. W.D. 1982)

² *In re Kansas City Power & Light Company*, 26 Mo.P.S.C. (N.S.) 104, 109 (1983).

2. The following procedural schedule is established in order to facilitate a true-up hearing:

November 18, 2008: Simultaneous Direct True-Up Testimony

December 2, 2008: Simultaneous Rebuttal True-Up Testimony

December 8-9, 2008: True-Up Hearing

3. This order shall become effective upon issuance.

BY THE COMMISSION



Colleen M. Dale
Secretary

(SEAL)

Kennard L. Jones, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 20th day of October, 2008.

Exhibit No.:
Issue: Cost Allocation, Rate Design & Related Matters
Witness: Michael J. Ileo
Party: City of Joplin, MO
Type of Exhibit: Rebuttal Testimony

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

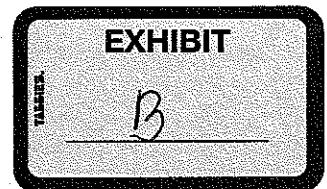
IN THE MATTER OF MISSOURI-AMERICAN)
WATER COMPANY FOR AUTHORITY TO)
FILE TARIFFS REFLECTING INCREASED)
RATES FOR WATER AND SEWER SERVICE)
_____)

CASE NO. WR-2008-0311
CASE NO. SR-2008-0312

**REBUTTAL TESTIMONY AND SCHEDULES
OF MICHAEL J. ILEO, PH.D.**

**ON BEHALF OF
THE CITY OF JOPLIN, MISSOURI**

SEPTEMBER 30, 2008



Technical Associates, Inc.

1 Q. WILL YOU ILLUSTRATE THE INABILITY TO CONDUCT MEANINGFUL
2 ANALYSES?

3 A. Yes. In the first instance, the undetailed true-up estimate of \$4.015 million for
4 Joplin serves to transform an aggregate 9.24% revenue decrease (i.e., -\$1.223/\$13.320)
5 into an aggregate 20.96% revenue increase (i.e., \$2.792/\$13.320). If the true-up estimate
6 is inaccurate by $\pm 25\%$, then such a projection error could mean that Commission Staff
7 will have actually proposed a revenue increase for Joplin of nearly 29%; i.e.,
8 $[(1.25 \times \$4.015) - \$1.223] / \$13.320$.

9 Further, the distribution of the true-up amount among USOA may have a material
10 impact on Joplin residential rates. Under the $\pm 25\%$ estimation error scenario, for
11 example, the proposed flat commodity rate in the CCOSS of Commission Staff for Joplin
12 could rise from \$2.5504 to \$4.2448 per 1,000 gallons if all of the true-up amount
13 pertained to USOA excluded from Commission Staff's calculations of customer costs.
14 The derivation of the \$4.2448 is based on data in Commission Staff CCOSS Schedule 1-1
15 and 2-SJOP as presented in Schedule MJJ-2 to my testimony.

16 Given present residential prices of MAWC in Joplin as reported earlier in my
17 testimony, a commodity rate rise to \$4.2448 would be of substantial concern. However,
18 this and many other potential outcomes are shrouded in great uncertainty, which is
19 removable only upon necessary full documentation from Commission Staff regarding its
20 true-up estimates.

21
22 **3.0 FULLY-ADJUSTED TEST YEAR**

23
24 Q. IS THERE AN ALTERNATIVE TO REQUIRING COMMISSION STAFF TO
25 DOCUMENT ITS TRUE-UP ESTIMATES?

26 A. Yes. A more effective solution to the uncertainties posed by the current true-up
27 process is to replace it with a procedure that far better comports with the goals of sound
28 regulatory practice. More specifically, I recommend that the Commission adopt for
29 ratemaking in the future a fully-adjusted test year, where all adjustments would be limited
30 to anticipated experience within the period extending six months beyond the close of the
31 per books test year.

1 If the indicated fully-adjusted test year were in place for this proceeding, none of
2 the uncertainties and burdens described earlier in my testimony would prevail. All
3 parties would focus on the 2007 test year of the Company, including its proposed
4 adjustments for expected events through June 30, 2008. No true-up at some point in the
5 future on a retrospective basis would be required, such that additional testimony and
6 hearings would become unnecessary. Put otherwise, the Commission would render its
7 decision based on the best available information through June 30, 2008, evaluated solely
8 within the present context of this case without some future and unknown true-up process.
9 And it follows, accordingly, that the true-up estimates of Commission Staff would also
10 become unnecessary.

11
12 **Q. WHAT IS THE BASIS OF YOUR RECOMMENDATION?**

13 A. As I read the August 18, 2008 Cost of Service Report of Commission Staff,
14 specifically at Pages 2 and 3, no statute, rule, or precedence governs the true-up process.
15 Thus, a host of uncertainties arise at the outset. The referenced discussion of
16 Commission Staff also notes that "true-ups involve the filing of additional sets of
17 testimony and the scheduling of additional evidentiary hearings," which creates further
18 obstacles to and burdens for a meaningful rate case participation by a party such as
19 Joplin.

20 Based on the referenced discussion, moreover, the need for a true-up process
21 appears to be rooted in MAWC's request for a fully-adjusted test year through September
22 30, 2008, largely involving plant that it expects to place in service between December 31,
23 2008 and that date. Commission Staff, on the other hand, has applied an update period
24 beyond the 2007 test year of March 31, 2008 in its revenue requirement determinations,
25 albeit coupled with highly tentative true-up estimates presumably as a means of filling
26 the void for the period of April 1, 2007 through September 30, 2008. These tentative and
27 undocumented estimates are indicative of Commission Staff's position that "it would not
28 be able to perform a true-up audit" within the confines of this case given its initial
29 procedural scheduling. Commission Staff's concerns were addressed by a June 30, 2008
30 Order of the Commission, "which rescheduled the evidentiary hearing and true-up

1 hearing dates." Thus, with the layering of future evidence and hearings on top of present
2 uncertainties, the burdens for Joplin (undue in my judgment) have mounted.

3 While not so stated in its Cost of Service Report, Commission Staff's position
4 appears to rest on the view that a retrospective audit is essential if a test year is to be
5 fully-adjusted for anticipated events extending as far as nine months beyond the close of
6 the per books period. While I share the concerns of Commission Staff, I also submit that
7 the adoption of my recommendation will address this concern in a balanced manner that
8 obviates the need for retrospective true-up audits, new testimony and protracted hearings,
9 and related events that effectively serve to bar meaningful rate case participation.

10
11 **Q. WHEN YOU SAY, DR. ILEO, THAT YOU SHARE COMMISSION STAFF'S**
12 **CONCERNS, TO WHAT DO YOU REFER?**

13 A. Regulated utilities are afforded an opportunity rarely enjoyed by competitive
14 firms; i.e., the ability to begin recovering with near certainty the investment costs of new
15 plant and equipment, including allowances for funds used during construction. Sound
16 regulatory practice necessitates, therefore, considerable assurance that this new
17 investment meets such standards as prudently incurred, used and useful, and honest and
18 efficient management. The longer the period between the close of the per books test year
19 and the end of the fully-adjusted test year, the greater is the scrutiny required to ensure
20 that these regulatory standards have been fulfilled with respect to projected new plant and
21 equipment. Retrospective true-up audits serve to address these matters, but they also
22 impose a significant and unnecessary burden on the regulatory process.

23
24 **Q. WHY DO YOU CHARACTERIZE RETROSPECTIVE TRUE-UP AUDITS AS**
25 **IMPOSING AN UNNECESSARY BURDEN ON THE REGULATORY PROCESS?**

26 A. The need for retrospective true-up audits should not arise in the context of a rate
27 case, as the responsibility of demonstrating that projected new investment costs meet the
28 standards referenced in my previous answer should rest solely with the applicant utility.
29 If this demonstration is found to be highly speculative or otherwise unreasonable, then
30 the forecasted new investment should not be allowed in determining revenue
31 requirements within the context of the rate case at issue. Relative to what occurs in

1 competitive markets, a strict adherence to the indicated decision-making framework is
2 fully consistent with sound regulatory practice.

3 Recall, again, that unregulated businesses bear great risk when undertaking new
4 investment projects. To illustrate, when General Motors retools a manufacturing plant,
5 considerable uncertainty exists as to how and when corresponding investment costs are to
6 be recovered. Automobile, truck, and related market conditions over an extended period
7 of time will ultimately determine these outcomes.

8 Regulated utilities, on the other hand, are nearly certain that they will be able to
9 recover new investment costs assuming prudence and other regulatory standards have
10 been fulfilled. This recovery, moreover, will occur in a known and measurable manner;
11 i.e., annual depreciation over a given time period plus a fair return on the undepreciated
12 portion of the investment. Recovery also will begin shortly after the new investment is
13 placed into service. The only uncertainty confronted by a regulated utility is precisely
14 when recovery will start, which will depend on its ability to demonstrate reasonableness.
15 An initial failure in this regard, moreover, is easily rectified in a subsequent rate case.

16 Against this backdrop, I submit that retrospective true-up audits are unwarranted,
17 inconsistent with sound regulatory practice, and impose an undue burden on a participant
18 such as Joplin. Adoption of the fully adjusted test year procedure without true-ups that I
19 propose will remedy present circumstances. Further in this regard, if Commission Staff
20 concludes that the only way to meet reasonableness standards is by way of a true-up, then
21 the corresponding projected new plant and equipment should be disallowed for
22 ratemaking within the context of the proceeding in question.

23
24 **Q. PLEASE DESCRIBE THE UNDUE BURDEN PLACED ON JOPLIN.**

25 **A.** The undue burden attributable to retrospective true-up audits is of twofold nature.
26 First, until the true-up phase of this case begins, and despite the present large volume of
27 materials that have required consideration, Joplin is unable to gauge the comparative
28 revenue and rate impacts that it will confront under the proposals of the Company relative
29 to those of Commission Staff. Second, in order to reach the point in time when such
30 comparative analyses can be meaningfully performed and addressed, an expenditure of
31 considerable resources is required.

1 **Q. WHY WAS SIX MONTHS AFTER THE CLOSE OF THE PER BOOKS TEST**
2 **YEAR SELECTED IN YOUR FULLY-ADJUSTED TEST YEAR PROPOSAL?**

3 A. In my professional experience, such a six-month timeframe is frequently utilized
4 by regulatory authorities. Moreover, it strikes a balance between the March 31, 2008
5 update period currently employed by Commission Staff and the September 30, 2008
6 projection period proposed by the Company.

7
8 **Q. SHOULD THE COMMISSION DECIDE TO CONTINUE WITH A TRUE-UP**
9 **PROCEDURE, ARE THERE OTHER MEANS OF EASING RATE CASE**
10 **PARTICIPATION BURDENS?**

11 A. Yes. Along with the adoption of the presentation and documentation methods
12 recommended in my Direct Testimony, the implementation of a bifurcated proceeding
13 would ease the burdens of participating in a rate case involving MAWC should the
14 Commission wish to continue with the true-up process. Phase I would be directed at
15 establishing overall and District revenue requirements for the Company, while Phase II
16 would address customer class cost of service and rate design issues. Thus, an intervenor
17 such as Joplin with limited resources would be able to tailor its rate case participation in
18 Phases I and II to matters of primary interest without confronting the considerable
19 uncertainty that currently exists.

20 With a bifurcated proceeding, for example, the difficulties encountered in meeting
21 current rebuttal stage requirements would be substantially lessened. Presently, only
22 roughly a 30 to 45 day period has been available to address the direct case filings of
23 parties other than MAWC depending on whether August 18 or September 3, 2008 is
24 considered. Normally, such a period of time would be adequate if coupled with an
25 expeditious response timeframe; e.g., 7 to 10 days. However, given the complexities and
26 expansiveness of the revenue requirement, cost allocation, and rate design issues at hand
27 (as exhibited in the submissions of Commission Staff), as well as that an expeditious
28 discovery response period has not been adopted, 30 to 45 days for the preparation of
29 rebuttal testimony has been insufficient -- especially with the uncertainties of the true-up
30 procedure. A separation of issues into Phase I and II would greatly ameliorate these
31 difficulties.

1 **Q. WOULD A BIFURCATED PROCEEDING TAKE LONGER TO PROCESS?**

2 A. Yes, at least in overall terms and if a nine-month timeframe is utilized as the true-
3 up standard. But at the same time, revenue requirement findings by the Commission will
4 be both made and put into effect sooner, such that regulatory lag will be shortened from a
5 revenue requirement perspective. On the other hand, MAWC's customers will confront
6 two sets of rate changes; i.e., Phase I findings implemented at presently authorized rate
7 structures in an across-the-board manner, and Phase II findings that institute new rate
8 designs.

9 For reasons suggested, a fully-adjusted test year using a six-month adjustment
10 period without a true-up is preferable to a bifurcated proceeding. Relative to present
11 circumstances, however, both types of regulatory procedures will better accommodate
12 rate case participation by parties representing vital public interests such as Joplin.

13
14 **4.0 RATE INCREASE PHASE-INS**

15
16 **Q. WHY DO YOU REQUEST THAT THE COMMISSION PERMIT A PHASING-IN**
17 **OF THE RATE INCREASES THAT MAY RESULT FROM THIS CASE?**

18 A. My proposal is largely directed at Joplin, although it may be equally applicable to
19 other MAWC Districts; e.g., the Company proposes revenue increases of about 20% or
20 more for each of its three Sewer Districts and six of its ten present Water Districts as
21 reported in Appendix A of its Minimum Filing Requirements attached to Mr. Petry's
22 March 31, 2008 Direct Testimony.

23 With particular respect to Joplin, I noted in my Direct Testimony (Page 6) that it
24 sustained roughly a 62% increase in aggregate rates less than a year ago. Further given
25 the evidence to date in this proceeding, a significant probability exists that Joplin will
26 confront another substantial (double-digit percent) rate hike. MAWC requests, for
27 example, that Joplin revenues be increased by nearly 39%. Albeit that the final position
28 of Commission Staff in this regard remains unknown, the revenue increase implicit in its
29 current true-up estimate for Joplin is about 21%, and 29% if this estimate is subject to a
30 +25% projection error.

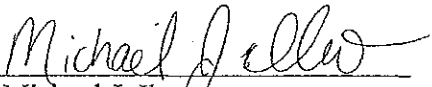
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

IN THE MATTER OF MISSOURI-AMERICAN
WATER COMPANY FOR AUTHORITY TO
FILE TARIFFS REFLECTING INCREASED
RATES FOR WATER AND SEWER SERVICE

CASE NO. WR-2008-0311
CASE NO. SR-2008-0312

AFFIDAVIT OF MICHAEL J. ILEO

Michael J. Ileo, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Rebuttal Testimony and Schedules of Michael J. Ileo"; that said testimony and schedules were prepared by him and/or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge.


Michael J. Ileo

State of Virginia
City of Richmond
SUBSCRIBED and sworn to
Before me this 30th day of September 2008.


Notary Public

My commission expires: 3/31/10
Registration No.: 270986