

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

In the Matter of a Proposed Rule	)	
to Establish Procedures for Water	)	Case No. WX-2004-0093
Utilities to Establish an Infrastructure	)	
System Replacement Surcharge.	)	

APPLICATION FOR RECONSIDERATION AND REHEARING

COMES NOW Missouri-American Water Company (“MAWC” or “Company”), in accordance with Section 386.500, RSMo (2000), and 4 CSR 240-2.160, and, for its Application for Reconsideration and Rehearing, respectfully requests that the Missouri Public Service Commission (“Commission”) reconsider and rehear its Order issued in the above-captioned matters on February 24, 2004:

BACKGROUND

The Missouri Supreme Court addressed the appellate procedure for challenging rules promulgated by the Commission recently in *State ex rel. Atmos Energy Corporation v. Public Service Commission*, 103 S.W.3d 753, 758 (Mo. 2003). The Court quoted *Union Electric Company v. Clark*, 511 S.W.2d 822, 825 (Mo. 1974) in indicating that the special statutory procedure found in Sections 386.500 and 386.510, RSMo for “review of an ‘original order or decision’ of the Commission . . . is exclusive and jurisdictional.” *Id.* The Court further quoted *Clark*’s finding that the Commission’s promulgation of a rule “whether it be called a rule or an order, is clearly within the term ‘original order or decision’ as used in [section] 386.510.” *Id.* Therefore, MAWC is filing an application for rehearing in order to preserve the opportunity for review provided by Sections 386.500 and 386.510, RSMo.

REHEARING

For the reasons stated herein, the Order, is unlawful, unjust, unreasonable, arbitrary, capricious, involves an abuse of discretion, is unsupported by competent and substantial evidence upon the whole record and is unconstitutional in the particulars hereinafter stated for the following reasons:

1. **4 CSR 240-3.650(1)(A)1** - In its Order of Rulemaking (p. 6), the Commission agrees with a comment made by the Public Counsel to the effect that the Water ISRS Rule should be consistent with the Gas ISRS Rule, to the extent appropriate for the different industries. MAWC would suggest that an ideal opportunity to provide this consistency is found in 4 CSR 240-3.650(1)(A)1. This section of the Water ISRS Rule contains a definition of “appropriate pretax revenues” that differs from the definition found in the Gas ISRS Rule (4 CSR 240-3.265(1)(A)1). MAWC would suggest that after reconsideration or rehearing the Water ISRS Rule be amended to utilize the language found in the Gas ISRS Rule. An adoption of this language for the Water ISRS Rule would read as follows:

1. Produce net operating income equal to the water utility’s weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements that are included in a currently effective infrastructure system replacement surcharge (ISRS);

Because the water and gas provisions interpret identical statutory language, it would be logical for the rules to be identical. MAWC believes that the provision currently found in the proposed Gas ISRS Rule is a more clear and accurate statement of how the statute has been applied

in Commission Cases Nos. WO-2004-0116 and GO-2004-0242, than is the provision found in the Water ISRS Rule.

2. **4 CSR 240-3.650(19)(G)** - MAWC believes that 4 CSR 240-3.650(19)(G) should also be amended to align with a similar provision found in the Gas ISRS Rule (4 CSR 240-3.265(20)(K)) concerning costs eligible for recovery. These two provisions of the water and gas interpret identical statutory language and it would seem logical that the interpretation would be consistent as to the Water and Gas ISRS Rules. MAWC would, therefore, propose that 4 CSR 240-3.650(19)(G) be amended as follows to use the language found in the Gas ISRS Rule:

For each project for which recovery is sought, the net original cost of the infrastructure system replacements (original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS), the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacements for each:

3. **4 CSR 240-3.650(20)(B) and (C)** - MAWC believes certain of the Water ISRS Rule requirements go beyond what is permitted by RSMo. §393.1006.2(2), and are, therefore, in violation of §393.1006.10 (“The commission shall have authority to promulgate rules for the implementation of sections 393.1000 to 393.1006, but only to the extent such rules are consistent with, and do not delay the implementation of, the provisions of sections 393.1000 to 393.1006.”). Further, the

requirements do not seem to add substance or value to the rule or the application process. The unnecessary requirements could, however, add to the complexity of the application and the costs associated with the application process. Specifically, MAWC objects for these reasons to 4 CSR 240-3.650(20)(B) (financing arrangements) and (C) (an explanation of how long facilities had been in service).

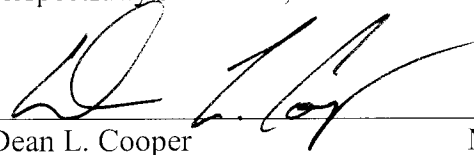
4 CSR 240-3.650(20)(B) has no purpose because Section 393.1006.4 specifically identifies the information which may be used to determine appropriate pretax revenues. The requested financing information is not on that list and, therefore, is not relevant to the application. Additionally, the underlying premise of this request for information is erroneous. That is, it assumes that dollars in the Company's capital structure can be traced dollar for dollar. This provision should be eliminated from the rule.

4 CSR 240-3.650(2)(C) also goes beyond the information requested by the underlying statute and, therefore, is unnecessary to the application process. It further requests information that in many cases will not be available to the utility. The use of mass property accounts for mains and other lines makes it very difficult, if not impossible, to determine how long a specific facility or piece of pipe may have been in service. This is complicated by the fact that lines are replaced over time in different lengths. Thus, a replaced line may have gone into service at any number of different dates in the past. This provision should be eliminated from the rule.

WHEREFORE, MAWC respectfully requests the Commission reconsider or rehear its Order issued on February 24, 2004, and, thereafter, issue a new order and rule that is consistent with this

pleading.

Respectfully submitted,



Dean L. Cooper MBE#36592
William R. England, III MBE#23975
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
573/635-7166 (phone)
573/635-0427 (facsimile)
dcooper@brydonlaw.com

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 25th day of March, 2004, to the following:

Mr. Keith Krueger
Missouri Public Service Commission
Governor State Office Building, 8th Floor
Jefferson City, MO 65101

Ms. Ruth O'Neill
Office of the Public Counsel
Governor State Office Building, 6th Floor
Jefferson City, MO 65101

