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October 11, 2001

Missouri Public Service Commission
Attn: Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
200 Madison Street, Suite 100
P. O. Box 360
Jefferson City, MO 65102-0360

FILED²

OCT 15 2001

Missouri Public
Service Commission

Re: Case No. WC-2002-146

Dear Secretary Roberts:

Enclosed for filing please find an Original and eight copies of the ANSWER TO COMPLAINT of St. Louis County Water Company, d/b/a Missouri-American Water Company in the above styled complaint. Will you please bring this matter to the attention of the Commission at your earliest convenience.

Thank you for your assistance and cooperation in this matter.

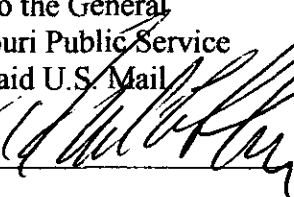
Very truly yours,



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Certificate of Service

Copies of this transmittal and its attachments have on the date below indicated been sent to the Office of Public Counsel and to the General Counsel to the Missouri Public Service Commission by prepaid U.S. Mail

10/11/01 

FILED²

OCT 15 2001

Missouri Public Service Commission

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

Staff of the Missouri Public Service Commission,
Complainant,
vs.
St. Louis County Water Company,
d/b/a Missouri-American Water Company,
Respondent.

Case No. WC-2002-146

ANSWER TO COMPLAINT

Comes now St. Louis County Water Company, d/b/a Missouri-American Water Company (Respondent), and for its Answer to the Staff's above-styled Complaint, states:

Section I
Statement of Position

Respondent's position in this matter is, and always has been, that it is not committed to any particular methodology for collection of Water Service Line Repair Fees (hereinafter the "WSLR fees"). The fees are a pass-through. They serve to benefit customers and have no financial impact on the Company.

Because many aspects of designing a methodology for collecting the WSLR fees required the exercise of interpretations and judgments, the tariff at issue (P.S.C.MO No. 6 Original Revised SHEET No. RT 17.0, hereinafter the "Approved Tariff" or "Exhibit B") was filed to verify those judgments before the collection process began. The Approved Tariff, in whatever form the Commission chose to ultimately approve, would thereafter insulate the Company from being punished for making those well-intentioned judgments.

The Company is now willing, as it was when the Approved Tariff was initially filed, to revise the terms of the tariff prospectively in any way that is deemed to be fair and reasonable to the Commission. The real party in interest with respect to what the

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ultimate tariff should state is the recipient of the fees collected, the government of St. Louis County, Missouri.

Section II
Responses to Specific Allegations by Paragraph Number

Responding to the allegations of the following specifically numbered paragraphs of Staff's Complaint, Respondent states:

1 –10. Respondent admits the allegations in paragraphs 1 through 10 of Staff's Complaint.

11. Respondent unequivocally denies that it agreed to withdraw the tariff sheet referred to in paragraph 11 of the Complaint.

There were indeed discussions with Staff about withdrawal of both the Approved Tariff and another tariff that had been filed at approximately that same time. Respondent had also filed a "Rate G" tariff for Consolidated Public Water Supply District No. C-1, the content of which was expressed to be a concern of Staff. Respondent agreed to withdraw this tariff, and did so.

Respondent's recollection of discussions with Staff about the Approved Tariff are that Staff at no time expressed concern about the contents of the tariff sheet. Staff rather was insisting that the tariff should be withdrawn because a tariff was unnecessary to permit the Respondent to legally collect the WSLR fee. Respondent, through counsel, explained to Staff its reasons for insisting upon a tariff for the WSLR fee. The most primary of those reasons was the insulation that an approved tariff would afford against after-the-fact challenges referred to in Section I herein, and which are more specifically described in Section III herein. Respondent admits that it did not withdraw the tariff sheet but states that such inaction was deliberate, was not the result of any alleged failure and that no representation to the contrary was ever made to the Staff.

12. Respondent denies that the words "*a fee upon water service lines*" must be or should be interpreted to effectively mean instead "*a fee upon owners of water service lines.*" To the contrary, the fee was intended to be collected from customers who are directly dependent on the safety and adequacy of facilities delivering water to them. These customers must support the safety and adequacy of the system through the payment of their service charges in much the same way that such customers pay fire hydrant charges with their water service bill. Furthermore, there is precedent for this concept in the application of sewer lateral repair charges. Such charges are typically collected from occupants by cities along with trash collection charges.

13. Admits.

14. Respondent denies that the Approved Tariff is inconsistent with the terms of the statute and the ordinance and denies that the Contract and the Approved Tariff are unlawful.

Furthermore, Respondent denies that the statute and ordinance specify that fees may only be collected from and after July 1, 2001. The statute contains no such date, and the date in the ordinance is intended to be the date after which benefits may be claimed, not the date on which charges may be imposed. The obvious and purposeful intention of the Contract with the County authorizing collection commencing Mary 1, 2001 was to generate revenues in advance of the obligation to pay plumbers for repair work. The Contract is not unlawful because it is in compliance with the statute and the ordinance, and the tariff is not unlawful because it has the legal validation of the Missouri Public Service Commission.

15. Respondent admits that it withholds no administration costs from fees collected but denies that this constitutes an imprudent use of ratepayer-supplied funds.

16. Respondent denies the Approved Tariff is misleading and confusing to ratepayers in the respects alleged, to wit:

- a) "Availability" is a ritual term in most if not all of Respondent's tariffs, but its use in this context is neither critical nor of any concern to Respondent or its customers.

- b) The Contract by its terms, states that: "...this Contract shall be submitted to the Missouri Public Service Commission for its information, and if deemed necessary by such Commission, for its approval. This Contract shall at all times be subject to the actions of such Commission." The Contract was provided to the Secretary of the Commission, and whether or not this constitutes an effective approval, the terms of the agreement permit the Commission to effectively change the terms of the agreement by declaration of tariff language, as it may do in this case prospectively.

- c) The Approved Tariff is intended to allow a reduction of the fee by action of the County without the necessity for action by the Commission on a new tariff. If this intended convenience is unacceptable, the Commission may effectively change these terms of the tariff prospectively.

17. Respondent admits the Approved Tariff went into effect by operation of law. Respondent denies the remaining allegations of paragraph 17.

The insinuation that Respondent would deliberately make a misrepresentation to the Staff to obtain approval of this tariff is illogical. The Approved Tariff is indeed lawful and in effect; but it may now be changed prospectively just as it could have been changed when Respondent initially filed it, had Staff simply been willing to negotiate changes or request a suspension and hearings. The Company had little stake in the terms expressed in the Approved Tariff, and certainly would not have made any representation to the Staff and then not followed through on that representation.

18. Company admits that it will not withdraw the Approved Tariff. To do so would make it vulnerable to the punitive sanctions Staff seeks to impose against it in this Complaint, which such sanctions are inappropriate, undeserved and legally unobtainable by the Staff in the situation of an existing approved tariff. The Company will entertain prospective changes to any aspect of the Approved Tariff, but many of Staff's suggestions are unworkable, counterproductive and deserving of the input of St. Louis County prior to any resolution of appropriate language.

Section III **Further Responses**

Further answering, Respondent states the following with respect to the Approved Tariff, to wit:

When Respondent first filed the tariff which is now the subject of this Complaint, Staff's position was that a tariff was unnecessary and that Respondent already had the necessary authority to collect the WSLR fees without another Commission approved tariff. Respondent was and is committed to the need for a tariff for the following reasons, all of which are being proven by this Complaint to have been prophetic:

1. The principle that prohibits retroactive rate making effectively prohibits claims for refunds of any charges made pursuant to an approved tariff. This includes claims that:
 - a) The timing of the initiation of the fee imposition should have been different.
 - b) Administration charges should have been deducted by the Company. (This would now be a rate design issue, and would have to be addressed in overall cost-of-service allocations, thus prohibiting the traditional allocation charge against a company's bottom line.)
 - c) The timing of the individual fee assessments should be different; i.e. "in-arrears vs. in-advance."
 - d) The application of the fee to all users rather just to property owners should have been resolved differently.

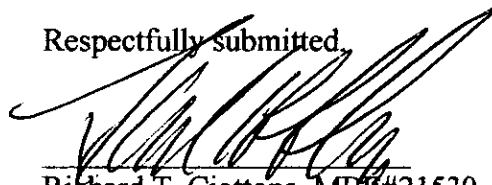
2. The existence of an approved tariff makes payment of the charge a "condition of service" thus eliminating uncertainty regarding collection; i.e. service may be discontinued, and Chapter 13 of 4 CSR 240 applies.

3. Jurisdiction of all challenges against the Company for any reason would be before the Commission rather than the Courts, under the principle of "primary and exclusive jurisdiction."

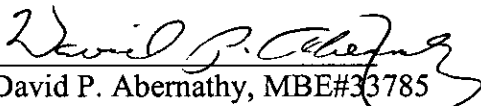
4. Other similar charges are tariff items for the same reasons; e.g. P.S.C.MO.No. 6 Third Revised SHEET No. RT 16.0 which specifies a per-meter-reading charge for the providing of meter reading data to The Metropolitan St. Louis Sewer District. This was done to certify the propriety of the charge to MSD and to make certain that any allegations of impropriety will be prospective only and will be addressed by over-all cost-of-service allocations.

WHEREFORE, Respondent prays that the Commission order the mandatory intervention of St. Louis County, Missouri as a necessary party to these proceedings and that the Commission thereafter proceed to prescribe the prospective terms and conditions under which Respondent should collect the Water Service Line Repair fees authorized Statute and St. Louis County ordinance.

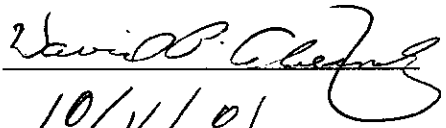
Respectfully submitted,



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Copies of the foregoing have on
the date below written been provided
to the Office of Public Counsel and
to the General Counsel of the
Missouri Public Service Commission
by either hand delivery or first
class prepaid U.S. Mail.


10/11/01