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ORIGINAL

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November 26, 2003

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

Re: AC-2003-0526
City of Springfield, Missouri

FILED

NOV 20 2003

Missouri Public
Service Commission

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies of the *Supplemental Response To Fourth Order Directing Filing* filed on behalf of the City of Springfield through the Board of Public Utilities.

A copy of this filing has been sent this date to counsel for all parties of record.

Sincerely,


Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record
Howard Wright
Andy Dalton
Ken McClure

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Springfield City Utilities')
Surcharges On Nonresidents of)
Springfield, Missouri.)

Case No. AC-2003-0526

FILED

NOV 26 2003

SUPPLEMENTAL RESPONSE TO
FOURTH ORDER DIRECTING FILING

Missouri Public
Service Commission

COMES NOW the City of Springfield, Missouri, through the Board of Public Utilities ("Respondent"), by and through counsel, and pursuant to the Commission's *Fourth Order Directing Filing* and its subsequent *Order Granting Extension of Time*, for its Supplemental Response respectfully states as follows:

I. INTRODUCTION

1. On November 7, 2003 the Commission directed Respondent and the Commission Staff to file supplemental pleadings by 9:00 a.m. November 12, 2003 regarding the factual question of "whether Respondent has a combined waterworks and sewerage system." The Commission further directed that in the event that Respondent did not have a combined waterworks and sewerage system that "Respondent and Staff should still analyze Section 250.190, RSMo, and address whether it otherwise applies to Respondent". The Commission further requested factual information relating to whether or not Respondent had adopted an ordinance as provided for in Section 250.030 RSMo 2000, and if so, directed Respondent to file a certified copy of said ordinance.

2. On November 12, 2003 the Staff filed its *Pleading Regarding Public Service Commission Jurisdiction* and Respondent filed its *Response To Orders Directing Filing*, wherein *inter alia*, Respondent requested additional time to November 26, 2003 within

which to respond to the Commission's order. On November 24, 2003 the Commission issued its *Order Granting Extension of Time*.

II. WHETHER RESPONDENT HAS A "COMBINED WATERWORKS AND SEWERAGE SYSTEM"

3. As indicated in its first *Response To Order Directing Filing* filed on September 12, 2003, the City of Springfield, Missouri consistent with the provisions of its City Charter provides both water and sewer service to its residents and to non-residents outside the City's corporate limits, with water service provided by and through the City's Board of Public Utilities and with sewer service provided through the City's Department of Public Works. Accordingly, the two systems are physically and operationally separate systems.

The two systems are managed and operated by different management arms of the City government, are attended to and operated on a daily basis by different City personnel, are financed when necessary by separate revenue bond issues, and financially are accounted for in separate City bookkeeping accounts. For example, a customer might see City Utilities personnel and a City Utilities truck servicing the customer's water lines or reading a water meter while seeing City Public Works personnel and a Public Works truck servicing the customer's sewer system connection. Customer rates for water service are established by the Board of Public Utilities then set and approved by the City Council, while rates for sewer service do not pass through the Board of Public Utilities but rather are a function of the Department of Public Works and ultimately the City Council. Historically the City has not attempted to issue revenue bonds which combine both systems and a search of City records reveals that the City has never proposed or

adopted any ordinance relating to a “combined waterworks and sewerage system”. Therefore, while customers do in fact receive both services from the City of Springfield and while the City owns both systems, the City does not provide such services via a “combined waterworks and sewerage system” as that term appears to be used in Chapter 250 RSMo 2000.

A. Applicable Water System Ordinances

A search of City ordinance records revealed a 1957 Resolution adopted by the City Council wherein the City first acquired the water system of the former Springfield City Water Company (an investor-owned utility) and first set a 10% rate additive for water service provided outside the City’s corporate boundaries. A copy of said Resolution is attached hereto as Appendix A. This 10% rate additive has continued since that time through subsequent ordinances duly adopted by the City Council up through and including the latest ordinance passed on September 17, 2001. A copy of the City’s most recent water rate ordinance is attached hereto as Appendix B.

Not only has the water rate additive for nonresidents existed since 1957, even a cursory review of the current rates charged by the City--including the 10% additive--reveals that the City’s overall water rates compare favorably with the rates currently set by the Commission for its regulated investor-owned water utilities. Moreover, on its face the rate additive reflects the fundamental ratemaking principle, accepted in most every jurisdiction by the courts,¹ that municipalities may charge more to nonresidents than it does to residents due to a variety of the higher cost factors involved in providing service

¹ For a survey and discussion of the law relating to the acceptability of rate additives charge by municipal utilities to nonresidents the Commission is directed to the ALR and Am.Jur.2d citations contained in *Forest City v. City of Oregon*, 569 S.W.2d 330, 334 (Mo. App. WD 1978). See also, McQuillian Mun Corp Section 35.37.50 (3rd Ed).

outside a city's corporate boundaries. Lower customer density per mile of line, increased service call costs, and even acquisition costs relating to the purchase of an existing system are examples of some of these typical cost factors. The Commission's own district-specific pricing ratemaking treatment--as opposed to single tariff pricing--ordered for the various Missouri-American Water Company districts reflects this basic, fundamental ratemaking concept, namely that the physical location of a customer or a customer class is directly related to the cost to serve that particular customer or customer class and sometimes a system-wide or averaged rate is not justified.

III. ANALYSIS AND APPLICABILITY OF SECTION 250.190 RSMo 2000 TO THE CITY OF SPRINGFIELD

4. The fact that Respondent has chosen to operate its water and sewer operations separately in no way diminishes or alters any of the many grounds previously urged by Respondent in support of Respondent's still pending Motion To Dismiss. In fact, the provisions of Chapter 250 RSMo lend additional support for the Commission to dismiss the Petition, if for no other grounds than for the failure of Petitioners to state a claim upon which the requested relief can be granted.

Missouri's rather complex statutory and constitutional municipal classification scheme make an easy analysis Chapter 250 RSMo somewhat difficult. However, it is clear that some statutes by their terms apply to *all* municipalities (including larger constitutional charter cities such as the City of Springfield) while others apply only to cities of a certain size or of a certain classification (i.e. first, second, third or fourth class cities). It is this distinction that Staff has correctly noted in its November 12, 2003 pleading with regard to certain sections of Chapter 250 RSMo 2000. So there is no

confusion, the City of Springfield is the third largest municipality in the state, it has operated under a home rule, constitutional charter city form of government for decades, and like the Commission itself, it is a governmental public body, not a private, for-profit entity (like the many investor-owned utilities that the Commission regulates), with the City's Board of Public Utilities functioning at the local level in substantially the same role as the Commission functions (i.e. ratemaking) at the state level.

5. For purposes of analyzing the Commission's particular question regarding the applicability of Section 250.190 RSMo to the City of Springfield, it is important to begin with the most fundamental law applicable to constitutional charter cities. **The general "Dillon" rule that municipalities as "creatures of the state" must have specific, enumerated statutory grants of authority before they can lawfully act *does not apply to Constitutional Charter Cities such as the City of Springfield.*** From their inception, constitutional charter cities have been considered to be *sui generis*. While Article VI, Section 15 of the Missouri Constitution provides for legislative classification of cities and towns so that all municipal corporations of the same class will possess the same powers and restrictions, these legislative classifications have consistently been held inapplicable to constitutional charter cities. I Mo. Local Government Law Section 1.2 (MoBar 3rd ed. 2002).

6. Constitutional charter cities inherently possess *all* powers which the general assembly has the authority to confer upon any city, they need not have a *specific statutory* grant of power in order to act, and they may freely exercise any and all powers not directly in conflict with the Missouri Constitution, state statute, or the City's own charter.

Missouri Constitution, Article VI, Section 19(a); *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208 (Mo. Banc 1986).

For many years there was great confusion in Missouri municipal law over the powers of constitutional charter cities and there are many older cases which attempted to make distinctions between whether a charter city was operating in a “governmental” or a “proprietary” capacity, or whether charters were documents of “grant” or documents of “limitation” in terms of the powers conferred. Much if not all of this confusion was resolved by the passage of an amendment to the Missouri Constitution in 1971:

“By reason of the adoption of the new amendment [Article VI, Section 19(a)], Missouri charters became instruments of limitation. A Missouri constitutional charter city now has all powers which are not limited or denied by the state constitution, the state statutes, or the charter itself. One way of describing the change is to point out that municipal powers now come directly to the city from the constitution unless the charter rejects the powers or limits them in some way.”

J. Westbrook, *Charter Drafting Under the New Municipal Home Rule Provisions*, Missouri Municipal Review, pp. 18-19 (March 1973).²

This means, simply, that the issue is not whether the City of Springfield has been specifically granted the statutory authority to exercise the powers delineated in Chapter 250 RSMo 2000 but rather whether the exercise of such powers by the City of Springfield--to the extent it might choose to exercise such powers--in some way conflicts with the Missouri Constitution, state statutes, or the City’s charter itself. There is no constitutional prohibition and the City of Springfield’s City Charter itself clearly allows the City to provide electric, gas, water and sewer services outside the City’s corporate boundaries and to charge more for such services to nonresidents than it does to residents.

² James Westbrook, then a University of Missouri Law School professor, was the principal drafter of the 1971 Constitutional amendment, currently Missouri Constitution Article VI, Section 19(a).

The question therefore becomes whether some statutory *prohibition* exists in Section 250.190 RSMo 2000 (or elsewhere) and whether Section 250.190 RSMo 2000 instead of prohibiting actually goes one step further by statutorily recognizing and approving of such action.

7. Section 250.190 RSMo 2000 states:

“Any such city, town or village or sewer district [**including the City of Springfield, see Section 250.010.1 RSMo 2000**] operating a sewerage system [**which the City does**] or a combined waterworks and sewerage system [**which the City does not**] under this chapter shall have power to supply water services or sewerage services or both such services to premises situated outside its corporate boundaries and for that purpose to extend and improve its sewerage system or its combined waterworks and sewerage system. *Rates charged for sewerage services or water services to premises outside the corporate boundaries may exceed those charged for such services to premises within the corporate limits.* (Emphasis and comments supplied).

The first sentence of Section 250.190 RSMo 2000 does not prohibit, and in fact permits, the City of Springfield (and other cities) to operate separate or combined waterworks and sewerage systems outside its corporate boundaries. There is absolutely no statutory prohibition anywhere in Chapter 250 RSMo 2000--or elsewhere--that prohibits any city which has *either* a sewerage system *or* a combined waterworks system to charge more for service outside the city boundaries than it does inside the city boundaries for *either* service. The second sentence of Section 250.190 RSMo 2000 specifically and affirmatively states, *without limitation*, that *any* municipality may charge more for its water *or* sewer services outside its corporate boundaries than it does for water *or* sewer services inside its corporate boundaries. Section 250.190 RSMo, therefore, in no way conflicts with the City's Charter or in any way *limits* the City of Springfield in any way with respect to its current provision of water and sewer services,

and in fact, statutorily affirms the City's current practice of charging more for water service provided outside its corporate boundaries.

This interpretation is squarely in accord with what the General Assembly has declared to be the purposes Chapter 250 and how the Chapter is to be interpreted. Section 250.240 and Section 250.250 RSMo 2000 clearly state that the powers granted by the Chapter are *in addition* to existing city powers, that the Chapter is to be liberally construed, and that the Chapter shall not be construed to repeal or modify any power granted by the Constitution or by a constitutional charter. Section 250.240 RSMo 2000 states:

“It is the purpose of this chapter to enable cities, towns and villages and sewer districts to protect the public health and welfare by preventing or abating pollution of water and creating means for supplying wholesome water, and to these ends every such municipality and sewer district shall have the power to do all things necessary or convenient to carry out such purpose, in addition to the powers conferred in this chapter. This chapter is remedial in nature and the powers hereby granted shall be liberally construed.”

Section 250.250 RSMo 2000 states:

“This chapter shall be construed as a cumulative and additional grant of powers to cities, towns and villages and shall not be construed to repeal or modify any other act or statute nor shall it be construed to repeal or modify any power granted by the Constitution or statutes of the state of Missouri or by any special charter or constitutional charter. This chapter, without reference to any other chapter, shall be deemed sufficient authority for the exercise of any powers granted herein, and all powers necessary to effectuate the purposes of this chapter shall be deemed to be granted hereby.”

Even if the second sentence of Section 250.190 RSMo 2000 somehow could be construed as *not* applying to the City of Springfield, or even if this statutory sentence did not exist at all, the City of Springfield by virtue of it being a constitutional charter city could still lawfully collect a rate additive for water service outside its corporate

boundaries since the practice is not otherwise prohibited anywhere by the Constitution, by other statutes, or by the City's Charter itself.

8. Petitioner's have **not** alleged that the water rates charged by the City of Springfield to nonresidents are "unreasonable"³ (which even a cursory review reveals they are not) but rather that the Commission should somehow take the unprecedented step of asserting subject matter jurisdiction to in some way prohibit what the City's charter, its duly adopted City ordinances, and state statutes clearly do not prohibit, and moreover, on their very face clearly permit. In addition to lack of subject matter jurisdiction, the Petition should be dismissed for failure to state a claim upon which the requested relief can be granted given the specific language of the Western District Court of Appeals, never since overturned, which in 1978 wrote:

"However, the Supreme Court subsequently ruled that the statutory grant of power to the Commission to regulate municipally owned public utilities was unconstitutional....Notwithstanding the 1949 revisions just mentioned, Section 386.250(7) was left on the books intact. Two administrative legal opinions have been rendered, both concurring in the opinion that Section 386.250(7) is not effective alone to confer any power upon the Commission to regulate municipal utility rates, even with respect to water sold beyond the corporate limits....Where, as is the situation here, no administrative body has jurisdiction of the rate regulation, the courts do have an equitable jurisdiction to prevent a municipality from enforcing public utility charges which are clearly, palpably and grossly unreasonable. That principle, however, applies only when the city is acting in the nature of a public utility. A considerable line of cases hold that a city does so only to the extent that it supplies the utility service to its own inhabitants, and that as to nonresidents, the municipality owes no duty of services, sells in purely private capacity on a purely contractual basis, and cannot be regulated as to the rates charged. The philosophy of those cases has been adopted by the Missouri Legislature with respect to the sale of water by a municipality to nonresidents. Section 91.050 provides that any city may supply water from its waterworks to other municipal corporations for their own use and the use of their inhabitants and 'also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefore, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties.'...By these statutory provisions, the Missouri

³ Petitioners also make no claim that the quality of the services being provided are in any way inadequate.

General Assembly has left the sale of water by a city to nonresidents as a matter of voluntary contract, free from regulation. Even aside from that, a rate does not become unreasonable or discriminatory simply because a municipality charges more to nonresidents than it does to its own inhabitants.” Forest City, at 334, citations omitted, emphasis supplied.

IV. ADDITIONAL FACTUAL INFORMATION

9. A question was raised at a recent Commission agenda meeting as to the number of residential customers residing inside the City of Springfield and the number of residential customers served outside the City’s corporate boundaries. While total numbers change monthly, as of November 21, 2003, nonresident customers constituted approximately 19% of the total residential customers served, with the actual breakdown as follows:

	<u>Inside the City</u>	<u>Outside the City</u>	<u>Total</u>
Electric	60,595	14,631	75,226
Gas	49,670	13,480	63,150
Water	48,848	11,227	60,075
Sewer	47,314	9,977	57,291

Pursuant to the City of Springfield’s City Charter, by a vote of the people, two out of the total of eleven members (or just over 18%) of the City’s Board of Public Utilities must be nonresident customers of City Utilities. The Board of Public Utilities, *like the Commission itself*, is an appointed body, consisting of local citizens who are charged with the responsibility of setting just and reasonable rates. Also like the Commission, the Board of Public Utilities is supported by a technical staff of experts who assist the Board in addressing sometimes complex ratemaking issues as part of an open, public and frankly a sophisticated process. While it is true that nonresidents obviously are not

allowed to vote for the elected members of the Springfield City Council, it is not the City Council but the Board of Public Utilities that actually engages in ratemaking⁴, and the electoral “accountability” of the appointed Board members frankly is no less (and in some respects more since it occurs at the local rather than the state level) than the electoral accountability of the five appointed members of the Commission to customers of the state’s investor-owned utilities.

Moreover, any City Utilities customer, *whether a resident or a nonresident*, has the right to participate in the required local public hearings during the ratemaking process, and if somehow is aggrieved by the resulting rates, to file an appeal with the circuit court. Unlike customers of Commission-regulated investor-owned utilities, who must participate in and prosecute rate case appeals through the Office of the Public Counsel⁵, resident *and nonresident* City Utilities customers may participate directly in the ratemaking process and appeal decisions to the courts, either individually or even collectively, if they so choose.

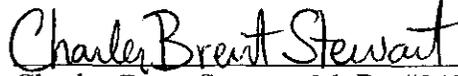
Accordingly, the proper forum for Petitioner’s perceived grievances lies not with the Commission but with the courts as a matter of law, and to the extent the Petitioners are dissatisfied with the fact that current Missouri law does not grant the Commission subject matter jurisdiction over the City of Springfield, such complaint properly is a matter for the elected members of the Missouri General Assembly, not a regulatory agency of the Executive Branch of state government.

⁴ Pursuant to the City Charter, the City Council either accepts or rejects, but cannot modify, the ratemaking actions of the Board of Public Utilities.

⁵ The Office of the Public Counsel has not urged the Commission to attempt to assert regulatory jurisdiction over the City of Springfield in this or in any other proceeding. The Commission’s own Staff and its General Counsel’s office have concluded that the Commission lacks subject matter jurisdiction in this proceeding.

WHEREFORE, having fully responded to the Commission's *Fourth Order Directing Filing*, the City of Springfield through the Board of Public Utilities again renews its Motion To Dismiss.

Respectfully submitted,



Charles Brent Stewart, MoBar#34885

STEWART & KEEVIL, L.L.C.

4603 John Garry Drive, Suite 11

Columbia, Missouri 65203

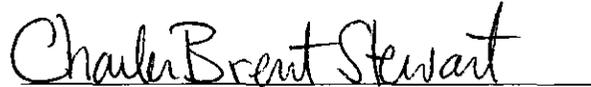
(573) 499-0635

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Stewart499@aol.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to counsel for all parties of record in Case No. AC-2003-0526 by depositing same in the U.S. Mail, first class postage prepaid or by hand-delivery, this 26th day of November, 2003.



APPENDIX A
1957 RESOLUTION

1 certified copy to Comptroller
1 conformed copy placed in corres. file
1 certified copy and 14 conformed copies
to Geo. Donegan for City Council

R E S O L U T I O N 4 certified copies to City Clerk
for bond transcript.

WHEREAS, a contract has been entered into by and between the City of Springfield, Missouri, and the Springfield City Water Company, dated February 19, 1957, whereby said Company has agreed to sell to the City and the City has agreed to purchase from said Company the waterworks property of the Company serving the City on December 30, 1957, and

WHEREAS, under and by virtue of Article XVI of the Charter of the City of Springfield, Missouri, the Board of Public Utilities of the City of Springfield, Missouri, hereinafter sometimes called "The Board", is vested with the power and authority to fix the rates to be charged for services and facilities furnished by such public utilities, subject to approval of the City Council of the City of Springfield.

NOW, THEREFORE, BE IT RESOLVED that rates for the sale and furnishing of water to customers in the following classes be adopted and upon approval of the City Council of the City of Springfield, Missouri, in accordance with Section 16.13 of the Charter of the City of Springfield, Missouri, that same shall become effective on all billings rendered on or after December 30, 1957, to-wit:

GENERAL WATER SERVICE RATE

Availability

Available within the corporate limits of the City of Springfield, Missouri, and the adjacent territory served by City Utilities, for all water uses, where adequate capacity is available from City Utilities' water distribution system to serve such water requirements.

Rate

For water used as determined by meter per month or multiplied by 3 on quarterly basis:

For the first	400 cu. ft. or less per month ...	\$2.83
For the next	12,900 cu. ft. per month .....	.59 per 100 cu. ft.
For the next	13,300 cu. ft. per month .....	.48 per 100 cu. ft.
For the next	13,400 cu. ft. per month .....	.39 per 100 cu. ft.
For all additional	cu. ft. per month .....	.19 per 100 cu. ft.

Superseded by General Water Service Rate
Schedule WS - effective with all billings
rendered for service furnished on and after
8-31-60 - approved by Board Resolution 7-28-60
and Council Resolution 3377 passed 8-22-60.

Minimum Charge

The following minimum charges per quarter or per month must be paid whether or not consumption to that amount is registered by the meter:

5/8 in. meter	\$ 8.49 per quarter or	2.83 per mo.
3/4 in. meter	17.40 per quarter or	5.80 per mo.
1 in. meter	34.83 per quarter or	11.61 per mo.
1 1/2 in. meter	69.66 per quarter or	23.22 per mo.
2 in. meter	130.59 per quarter or	43.53 per mo.
3 in. meter	174.12 per quarter or	58.04 per mo.
4 in. meter	261.18 per quarter or	87.06 per mo.
6 in. meter	870.66 per quarter or	290.22 per mo.
8 in. meter	1,523.64 per quarter or	507.88 per mo.

Special Rules

1. All water rates outside the City Limits (other than large industrial plants) shall be ten per cent per service more than rates hereinbefore specified.
2. No free water supplied for any private use.
3. Any consumer having a private water supply and using the City Utilities' service for emergency or breakdown service shall pay double the regular schedule of rates.
4. Service under this rate schedule shall be subject to City Utilities' water service rules and regulations and to the general terms and conditions as established and modified from time to time by the Board of Public Utilities.
5. Service is furnished for the sole use of the customer on premises described in service application, and there shall be no resale or sub-metering of water. A separate billing shall be rendered for each point of service, and water metered to the same customer through two or more points of service shall not be added or cumulated for billing purposes, except where necessary, in the opinion of the General Manager, for the convenience of City Utilities.

PRIVATE FIRE PROTECTION

Availability

Available within the corporate limits of the City of Springfield, Missouri, and the adjacent territory served by City Utilities, for private fire protection facilities only, where adequate capacity is available from City Utilities' water distribution system to serve such water requirements. Available under special agreement containing such terms and conditions (other than with respect to rates) as may, from time to time, be adopted and promulgated by City Utilities.

Rate

Private Fire Hydrants, per annum each	.....	\$ 62.50
2 inch connection for standpipes, per annum	....	36.50
3 inch connection for standpipes, per annum	....	51.00
4 inch connection for standpipes, per annum	....	72.50
6 inch connection for standpipes, per annum	...	109.00

Automatic Sprinkler System, \$.07 for each sprinkler head with a minimum charge of \$72.50 per annum.

Superseded by General Water Service Rate, Schedule WS, and Private Fire Protection Rate, Schedule FP - effective on all billings rendered for the February 1973 billing cycle - approved by Board Resolution January 3, 1973 and Council Resolution 5589 passed February 5, 1973.

APPENDIX B
CURRENT WATER ORDINANCE

Pub. Imp. _____
Govt. Grnt. _____
Emer. _____
P. Hrings. _____
Filed 8-28-01
Pages 10

Sponsored By: CARLSON

First Reading: September 4, 2001

SUBSTITUTE COUNCIL BILL NO.: 2001-201

Second Reading: September 17, 2001

GENERAL ORDINANCE NO.: 24090

AN ORDINANCE

TO APPROVE establishing water rates and repealing previously established water rates.

WHEREAS, the Board of Public Utilities did, on the 26th day of July, 2001, by resolution, establish water rates referred to therein as "General Water Service Rate" and "Conservation Water Service Rate," and;

WHEREAS, said resolution has been on file with the City Clerk of the City of Springfield, Missouri, for two weeks.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Springfield, Missouri, as follows:

Section 1 - That the rate sheets set out in the resolution adopted by the Board of Public Utilities on July 26, 2001, as "General Water Service Rate" and "Conservation Water Service Rate," and now on file for public inspection with the City Clerk of the City of Springfield, Missouri, should be and are hereby approved.

Section 2 - Said water rate sheets shall become effective and shall supersede previously established "General Water Service Rate" and "Conservation Water Service Rate," for all bills prepared with the first regular billing cycle for December, 2001, or the day following approval by City Council, whichever is later.

Passed at meeting: September 17, 2001

Thomas Carlson
Mayor

Attest:
Paul M. Calk City Clerk

Approved as to form:
[Signature] City Attorney

Approved for Council action

City Manager

RESOLUTION

WHEREAS, the Board of Public Utilities of the City of Springfield, Missouri, (the Board), through its Long Range Planning process, has identified the need for additional water revenues throughout the five year planning horizon; and

WHEREAS, the peak day demand for water is increasing rapidly, necessitating the expansion of water treatment capacity, raw water capacity to the treatment plant and storage capacity; and

WHEREAS, the overall operating and maintenance costs for the Water Utility have increased significantly since 1992, when water rates were last adjusted; and

WHEREAS, inflation, as measured by the Consumer Price Index (CPI), has increased 24% over the nine years since the last water rate adjustment; and

WHEREAS, raw water pumping costs from Stockton Lake to Fellows Lake are now included in the costs of operating the Water Utility since completion of the Nuccitelli Pipeline; and

WHEREAS, at the request of City Council, the Board agreed to make voluntary payments, beginning in April 1999, from revenues of the Water Utility to the general revenue fund of the City each month in lieu of taxes, increasing the operating costs of the Water Utility; and

WHEREAS, the Board, on April 26, 1990, did fix and adopt rate sheets for the sale of water referred to therein as "General Water Service Rate" and "Conservation Water Service Rate"; and

WHEREAS, the Board, on May 31, 2001, did adopt revised rate sheets for the sale of water and filed said rate sheets with the City Clerk of the City of Springfield, which rate sheets were subsequently tabled by the City Council; and

WHEREAS, at the request of the City Council, the Board has agreed to consider alternative rate designs and a program of rate changes to be implemented from December 2001 through December 2005; and

WHEREAS, this program of rate changes provides less revenue over the five-year period than called for in the 2002 Long Range Plan; and

WHEREAS, the Board, after careful consideration, has determined that substitute water rate sheets should now be adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, that the new rates should be fixed and adopted in the form attached hereto and incorporated herein by reference to be known as "General Water Service Rate" and "Conservation Water Service Rate"; and

BE IT FURTHER RESOLVED that upon approval by the City Council of the City of Springfield, Missouri, said water rate sheets shall become effective for all bills prepared with the first regular billing cycle for December, 2001, or the day following approval by City Council, whichever is later; and

BE IT FURTHER RESOLVED that the Board hereby reserves the right to repeal, change, amend, or supplement the schedule at any time and from time to time thereafter, subject to approval by the City Council in accordance with provisions of the Springfield City Charter; and

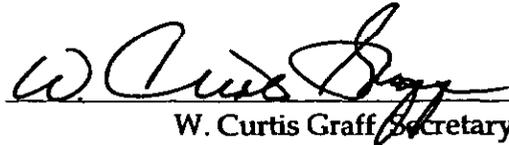
BE IT FURTHER RESOLVED that upon the effective date of the rate sheets set out in this Resolution, all prior resolutions or motions, or parts thereof, if any, which may be in conflict with this Resolution, are repealed; and

BE IT FURTHER RESOLVED that the appropriate personnel are directed to file a copy of this Resolution with the City Clerk of the City of Springfield, Missouri, and to take such actions as are required and appropriate to obtain approval and enactment by the City Council of the City of Springfield.

CERTIFICATE

The undersigned, W. Curtis Graff, Secretary of the Board of Public Utilities of the City of Springfield, Missouri, does hereby certify under his hand and seal of said Board of Public Utilities, that the above and foregoing is a true and correct copy of a resolution adopted by the Board of Public Utilities of the City of Springfield, Missouri, at its regular meeting held on the 26th day of July, 2001, pursuant to notice of time and place duly given to all members of said Board, at which meeting a quorum was present and voted throughout.

Dated this 26th day of July, 2001.


W. Curtis Graff, Secretary

**CITY UTILITIES OF SPRINGFIELD, MISSOURI
 GENERAL WATER SERVICE RATE**

Availability

Available within the corporate limits of the City of Springfield, Missouri, and the adjacent territory served by City Utilities, for all water uses where adequate capacity is available from City Utilities' water distribution system to serve such water requirements. Availability is subject to the General Terms and Conditions Governing Water Service and the Utility Service Rules and Regulations.

Monthly Charges

The following charges are applicable to bills prepared during the months shown:

	Until 12/2002	Until 12/2003	Until 12/2004	Until 12/2005	Thereafter
Customer Charge					
Per month	\$8.00	\$8.25	\$8.50	\$8.75	\$9.00
Commodity Charge					
Charge per CCF for the first 5 CCF	\$0.77	\$0.79	\$0.81	\$0.84	\$0.87
Charge per CCF for the next 295 CCF	\$1.81	\$1.86	\$1.92	\$1.98	\$2.04
Charge per CCF for all additional CCF	\$0.66	\$0.69	\$0.71	\$0.73	\$0.75

Minimum Charge

The following Minimum Charges per month must be paid if greater than the above charges:

1-inch meter	\$ 33.00	\$ 34.00	\$ 35.00	\$ 36.00	\$ 37.00
1 1/2-inch meter	\$ 65.00	\$ 67.00	\$ 69.00	\$ 71.00	\$ 73.00
2-inch meter	\$ 125.00	\$ 129.00	\$ 132.00	\$ 136.00	\$ 140.00
3-inch meter	\$ 160.00	\$ 165.00	\$ 170.00	\$ 175.00	\$ 180.00
4-inch meter	\$ 275.00	\$ 283.00	\$ 290.00	\$ 295.00	\$ 300.00
6-inch meter	\$ 850.00	\$ 860.00	\$ 870.00	\$ 880.00	\$ 890.00
8-inch meter	\$1,470.00	\$1,480.00	\$1,490.00	\$1,500.00	\$1,500.00
10-inch meter	\$1,680.00	\$1,700.00	\$1,725.00	\$1,750.00	\$1,750.00

Outside City Charge

All charges shall be ten percent (10%) more per service outside the corporate limits of the City of Springfield, Missouri.

APPROVED BY CITY COUNCIL 9/17/01
 EFFECTIVE Cycle 1, December, 2001

APPROVED BY BOARD OF PUBLIC UTILITIES
 OF SPRINGFIELD, MO July 26, 2001

Supersedes rate schedule effective Cycle 1, December, 1991.

**CITY UTILITIES OF SPRINGFIELD, MISSOURI
CONSERVATION WATER SERVICE RATE**

This rate is applicable during Stages One, Two, and Three of the Water Conservation Plan, of which this document is a part.

Section A. Availability

Available within the corporate limits of the City of Springfield, Missouri, and the adjacent territory served by City Utilities, for all water uses, where adequate capacity is available from City Utilities' water distribution system to serve such water requirements. Availability is subject to the General Terms and Conditions Governing Water Service and the Utility Service Rules and Regulations.

Section B. New Customers

During the period of applicability of Section D., hereof:

- (a) Residential customers receiving service at locations having less than one year of water service will not be assessed the excessive use surcharge provided that, during Stage Two usage does not exceed eighty percent (80%) of the system-wide average individual residential class usage per billing period in the year previous to implementation of Stages One, Two, or Three of the Plan; or that, during Stage Three, usage does not exceed seventy percent (70%) of the system-wide average individual residential class usage per billing period in the year previous to implementation of Stages One, Two, or Three of the Plan. During Stage Two, all usage in excess of eighty percent (80%) of the system-wide average individual residential class usage per billing period will be assessed the excessive use surcharge. During Stage Three, all usage in excess of seventy percent (70%) of the system-wide average individual residential class usage per billing period will be assessed the excessive use surcharge.
- (b) Non-residential customers receiving service at locations having less than one year of water service and who are not required to file an individual conservation plan pursuant to Section 34-77 of the Plan shall not be assessed the surcharge provided that, during Stage Two the monthly usage does not exceed eighty percent (80%) of the average monthly usage for the period of time water service has been provided; or that, during Stage Three the monthly usage does not exceed seventy percent (70%) of the average monthly usage for the period of time water service has been provided. Such users who have no prior service shall present an estimate of total water usage of the enterprise. Such estimate shall be subject to approval and revision by City Utilities, taking into account the usage of similar enterprises or establishments which are existing customers of City Utilities.

APPROVED BY CITY COUNCIL 9/17/01 APPROVED BY BOARD OF PUBLIC UTILITIES
EFFECTIVE Cycle 1, December, 2001 OF SPRINGFIELD, MO July 26, 2001

Supersedes rate schedule effective Cycle 1, October, 1991.

**CITY UTILITIES OF SPRINGFIELD, MISSOURI
 CONSERVATION WATER SERVICE RATE**

Section C. Monthly Charges

The following charges are applicable to bills prepared during the months that any of Stages One, Two, or Three of the Water Conservation Plan, of which this document is part, are in effect:

	Until 12/2002	Until 12/2003	Until 12/2004	Until 12/2005	Thereafter
Customer Charge	\$8.00	\$8.25	\$8.50	\$8.75	\$9.00
Charge per CCF for the first 5 CCF	\$0.856	\$0.876	\$0.900	\$0.933	\$0.967
Charge per CCF for the next 295 CCF	\$2.011	\$2.067	\$2.133	\$2.200	\$2.267
Charge per CCF for all additional CCF	\$0.733	\$0.767	\$0.789	\$0.811	\$0.833

Section D. Surcharge for Excessive Use of Water

In addition to the charges in Section C., there shall be applied to each monthly account a surcharge for excessive use of water.

At the effective date of Stage Two, excessive use of water shall be defined as: monthly use in excess of eighty percent (80%) of the actual, adjusted, or assumed usage for the same billing period in the year previous to implementation of Stages One, Two, or Three of the Plan. At the effective date of Stage Three of the Plan, excessive use of water shall be defined as: monthly use in excess of seventy percent (70%) of the actual, adjusted, or assumed usage for the same billing period in the year previous to implementation of Stages One, Two, or Three of the Plan.

Customers using four hundred cubic feet (4 CCF) or less during Stage Two, or three hundred cubic feet (3 CCF) or less during Stage Three, shall not be considered to have excessive use.

The surcharge for excessive use shall be four (4) times the otherwise applicable rate per hundred cubic feet.

Section E. Minimum Charge

During Stages One, Two, and Three, the minimum charges per month included in the General Water Service Rate will apply. The minimum charge must be paid if greater than the commodity charge and any surcharge for excessive use of water.

Section F. Outside City Charge

All charges except the surcharge for excessive use of water shall be ten percent (10%) more per service outside the corporate limits of the City of Springfield, Missouri.

APPROVED BY CITY COUNCIL 9/17/01
 EFFECTIVE Cycle 1, December, 2001

APPROVED BY BOARD OF PUBLIC UTILITIES
 OF SPRINGFIELD, MO July 26, 2001

Supersedes rate schedule effective Cycle 1, October, 1991.

Aff. Agcy. Noticed _____
 Emergency Required _____
 Public Hrngs. Required _____
 Fiscal Note Required _____
 Board Rec. Required _____

EXPLANATION TO SUBSTITUTE COUNCIL BILL NO. 2001-201

ORIGINATING AGENCY: City Utilities of Springfield, Missouri

PURPOSE: To establish water rates and repeal previously established water rates.

COMMENTS:

Summary of Change

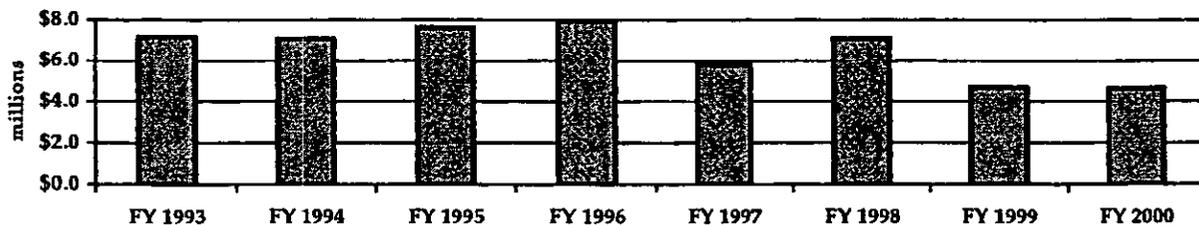
The water rates proposed in this Substitute Council Bill increase water revenues by approximately 7% in December 2001, 3% in December 2002, 3% in December 2003, 3% in December 2004, and 3% in December 2005. The rate structure has not been modified.

Reason for Change

The Water Utility is a separate financial entity from the Electric, Gas and Transit Systems and must maintain adequate operating income and cash flow to fund principal and interest payments on the Water Utility debt and fund capital improvements for the Water Utility. The Water Utility has a greater percentage of debt and is more capital intensive than the Electric, Gas and Transit Systems.

Operating income for the Water Utility has fallen below adequate levels to meet those needs.

Water System Operating Income



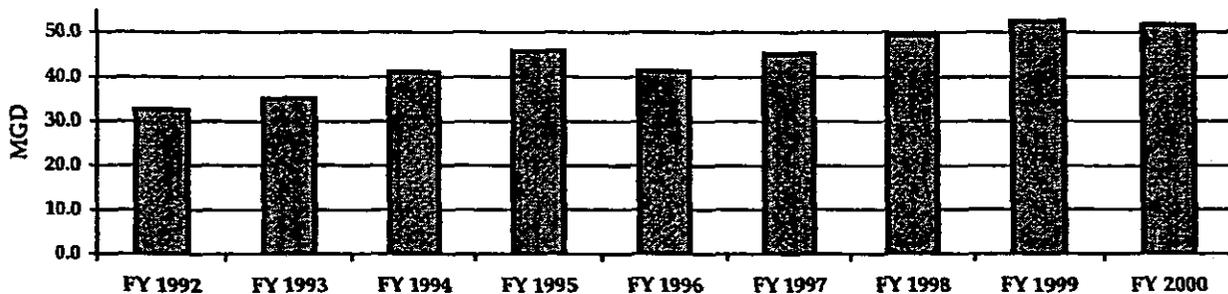
There are three primary reasons for the decrease in operating income:

- Inflation, as measured by the CPI, has increased 24% over the nine years since City Utilities' last water rate increase (1992). As a result, City Utilities' operating and maintenance expenses have also increased.

- Pumping expenses have escalated. Since completion of the Nuccitelli Pipeline, raw water pumping costs from Stockton Lake to Fellows Lake are included in the costs of operating the Water Utility. It costs approximately \$1,000 per day per pump to move water from Stockton Lake to Fellows Lake, and the electric bill, paid to Empire District Electric, is projected to be about \$500,000 for Fiscal Year 2002.
- At the request of City Council, the Board agreed to make voluntary payments from revenues of the Water Utility to the general revenue fund of the City each month in lieu of taxes beginning in April 1999. Currently this payment is 2.25% of the Water Utility's operating revenues and this percentage will grow to 4% in April 2003. Cash payments to the general revenue fund of the City by the Water Utility are projected to be \$671,000 for fiscal year 2002, \$921,000 for fiscal year 2003, \$1,163,000 for fiscal year 2004, \$1,277,000 for fiscal year 2005, and \$1,305,000 for fiscal year 2006.

Adequate operating income is especially critical to fund the capital projects identified in the 2002 Long Range Plan. Of these required capital improvements for the Water Utility, a significant number are required to meet the ever-increasing peak day use. Peak day use has increased nearly 60% since 1992. The projects include increasing water treatment capacity, increasing raw water deliveries to the water treatment plant and increased storage.

Water System Peak Day Use



Blackman Water Treatment Plant went into service in 1981, and more than doubled the peak day capacity of the Water Utility. In 2000, the first increment of increased capacity at Blackman was completed with the upgrade of two filters. The remaining 6 filters will be upgraded at Blackman over the next twelve years at a total cost of \$2.7 million. These projects will increase treatment capacity from the current 55.2 million gallons per day to 77.7 million gallons per day. The filter upgrades will be phased in to correspond with the increase in peak day use. A \$5.6 million clearwell has been identified for 2007, which will provide both operational benefits and regulatory compliance associated with the filter upgrades; it will also serve to increase storage capacity.

It would do no good to increase treatment plant capacity without providing an adequate supply of raw water to the treatment plant. The current pumping capacity from Fellows Lake to Blackman is 31.8 million gallons per day, just under the current capacity of Blackman (33.2 MGD). Projects include increased pumping capacity and a new 48-inch pipeline to parallel the existing Fellows to Blackman pipeline. Like the filter upgrades, the pipeline will be phased in to correspond with the increase in peak day use at a total cost of \$10 million.

In order to ensure adequate water pressure on peak days, additional water storage is required. A \$1.4 million, 500,000-gallon elevated water storage tank is planned for 2003 and a \$2 million, 4 million-gallon ground storage tank is planned for around 2010.

City Utilities' 2002 Long Range Plan included increases in water revenues in Fiscal Years 2002, 2004, and 2005 in order to meet critical operating ratios and to end the period with working capital cash equivalent to 45 days of operating expenses and debt service. The Plan included a 7% increase in 2002, an 8.7% increase in 2004, and a 7.8% increase in 2005. This proposal will generate approximately \$3.2 million less revenues for the Water Utility during the five-year planning period. City Utilities is committed to finding ways to reduce projected water operating expenses and capital improvements to total the \$3.2 million shortfall during the five-year period.

Impact on Customers

The proposed increases have been applied "across-the-board" and the impact to all customers represents a 7% increase in December 2001, a 3% increase in December 2002, a 3% increase in December 2003, a 3% increase in December 2004, and a 3% increase in December 2005. Monthly bills for various levels of water usage are shown below:

- 5 CCF per month

Current	\$11.10
12/2001	\$11.85
12/2002	\$12.20
12/2003	\$12.55
12/2004	\$12.95
12/2005	\$13.35

- 8 CCF per month – Residential Average Use

Current	\$16.17
12/2001	\$17.28
12/2002	\$17.78
12/2003	\$18.31
12/2004	\$18.89
12/2005	\$19.47

- 12 CCF per month

Current	\$22.93
12/2001	\$24.52
12/2002	\$25.22
12/2003	\$25.99
12/2004	\$26.81
12/2005	\$27.63

- 25 CCF per month

Current	\$44.90
12/2001	\$48.05
12/2002	\$49.40
12/2003	\$50.95
12/2004	\$52.55
12/2005	\$54.15

- 100 CCF per month

Current	\$171.65
12/2001	\$183.80
12/2002	\$188.90
12/2003	\$194.95
12/2004	\$201.05
12/2005	\$207.15

Effective Date of Change

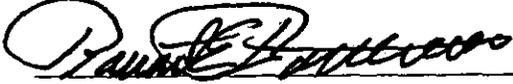
Upon City Council approval of this ordinance, the water rates will become effective December 2001. The rates will not be prorated, but will be fully effective for the first regular billing cycle of the month.

Submitted by:



Cathleen F. Meyer
Senior Manager - Pricing

Approved by:



Robert E. Roundtree
General Manager