

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

In the Matter of the Joint Appli-)	
cation of Missouri-American Water)	
Company, St. Louis County Water)	
Company d/b/a Missouri-American)	WO-2002-273
Water Company and Jefferson City)	
Water Works Company d/b/a Missouri-)	
American Water Company for an ac-)	
counting authority order relating		
to security costs.		

APPLICATION FOR REHEARING

COME NOW AG PROCESSING INC, A COOPERATIVE ("AGP"), FRISKIES PETCARE, A DIVISION OF NESTLE USA ("Friskies") and WIRE ROPE CORPORATION OF AMERICA INC. ("Wire Rope") (hereinafter collectively "St. Joseph Industrial Intervenors"), CITY OF RIVERSIDE, MISSOURI ("Riverside"), pursuant to Section 386.500 RSMo. 2000 and apply for rehearing of the Commission's December 10, 2002 Report and Order (Order) herein on the following grounds:

1. The Order is unlawful, unjust and unreasonable in that the Commission has once again failed to provide adequate findings of fact related to the record as required by law thereby making it impossible for these intervenors to specify with particularity the factual errors that are contained in such Order. Labelling recitations of evidence and testimony as findings of fact when they are nothing more than descriptions of what one or the other parties contended do not substitute for findings of fact as has repeatedly been ruled as insufficient by Missouri courts. Accordingly, the Order violates these Intervenors' rights to due

process as guaranteed by the United State and Missouri Constitutions by attempting to deny them access to the courts and should be set aside as unlawful and unconstitutional forthwith.

2. The Order is unlawful, unjust, unreasonable and unconstitutional in that it completely fails to specify conclusions of law that are drawn from findings of fact.

3. The Order is unlawful, unjust, unreasonable and unconstitutional in that it is not supported by competent and substantial evidence upon the whole record and is contrary to the substantial and competent evidence of record.

4. The Order is unlawful, unjust, unreasonable, unconstitutional and is without precedent in that it fails to require that MAWC have sustained any damage to its own facilities in Missouri as a condition of obtaining extraordinary accounting treatment.

5. The Order is unlawful, unjust, unreasonable, unconstitutional and is without precedent in that it fails to recognize that any expenditures herein made were made as a result of management's decisions rather than expenditures forced upon MAWC by any external force or forces beyond the control of MAWC management.

6. The Order is unlawful, unjust, unreasonable and unconstitutional in that it permits ordinary and customary business to be given special accounting treatment when no such treatment is justified or supported.

7. The Order is arbitrary. On November 14, 2002 the Commission issued a Report and Order in Case No. GO-2002-175 in which it **denied** an Accounting Authority Order (AAO) for UtiliCorp Inc. for its bad debt expenses as a consequence of the "extraordinary" cold weather during the winter of 2000-01. There the Commission stated:

The test that the Commission has used, and continues to use here, for determining whether or not to grant an AAO is whether the expense to be deferred is extraordinary and not recurring.

. . . .

Aquila's main point is . . . that the level of uncollectibles was caused by events that are extraordinary.

. . . .

The combination [of high gas prices and cold weather] was extraordinary from the perspective of customers who had large arrearages and faced potentially life-threatening disconnection. ***It is not extraordinary from the perspective of a natural gas distribution company whose main business is buying gas on the market, reselling it to customers, and collecting money from those customers. Furthermore, the company has completely failed to establish a causal link between cold weather and high gas costs on the one hand, and bad debts on the other.*** (Emphasis added)

Thus, less than three weeks prior the Commission concluded for another applicant utility that to qualify for an AAO, the utility must show a causal relationship between the extraordinary event claimed and the accounting entries sought to be deferred. The evidence in this proceeding was that no damage was inflicted on MAWC property, nor was any Missouri water utility threatened with

such damage. Arbitrary decisions are decisions that are not factually based on evidence, reveal capriciousness and the unsupported and varying whims of the decision-maker. This decision is completely arbitrary in that the same result should have been reached as in the UtiliCorp case. Further, there are no findings of fact or conclusions of law that distinguish this case from the UtiliCorp case as regards justification for the issuance of an Accounting Authority Order.

8. The Order is unlawful, unjust, unreasonable and unconstitutional in that it permits the specialized accounting treatment preparatory to recovery from ratepayers of recurring expenses of a public utility that is otherwise required to maintain its books and records in accordance with the uniform system of accounts as ordered by the Commission.

9. The Order is unlawful, unjust, unreasonable and unconstitutional in that it purports to make a conclusion of law that the test of whether an AAO should be issued is whether deferral is "reasonable" under all the circumstances. Among other things, this approach is arbitrary and inconsistent with prior Commission precedent and would shield exercise of capricious judgments to permit specialized accounting treatment based upon uncertain, undefined, unidentified and unspecified factors. As such it is itself capricious and arbitrary.

10. The Order is unlawful, unjust, unreasonable and unconstitutional in that it confuses the standard of judicial review with justification for arbitrary decision-making. The Commission

is required to articulate findings of fact and conclusions of law drawn therefrom so that its decisions can be adjudicated for their support by evidence. Here no such findings are provided nor are such findings possible because to enter such findings would demonstrate that the Commission's Order is not supported by competent and substantial evidence of record.

11. The Order is unlawful, unjust, unreasonable and unconstitutional in that it confuses "reasonableness" as a concept with the standard of judicial review. Missouri Courts have repeatedly held that a decision of the Commission is "reasonable" when -- and only when -- that decision is supported by competent and substantial evidence on the whole record.

12. The Order is unlawful, unjust, unreasonable and unconstitutional in that it attempts to assert that the opposing parties misapprehend the standards of an AAO. Making an *ad hominem* argument^{1/} as a means to avoid the logical force of opposing arguments is not only inappropriate, but fails to provide the requisite evidentiary or analytical standards that make an order just and reasonable. The combined years of practice (over 60) before this Commission by undersigned counsel including their participation in the majority of the AAO cases heard by this Commission suggests that it is not they who have misunderstood the tests of an Accounting Authority Order but, rather the writer of the Order who has been involved with this

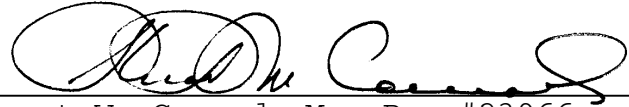
^{1/} An *ad hominem* argument is an irrelevant, personal, derogatory attack.

Commission and its jurisprudence only since 1999.^{2/} In fact, decisions from the Commission that are separated by less than a month, that are completely at odds with each other suggests the very essence of administrative arbitrariness.

WHEREFORE Rehearing of the Order should be ordered and a new Order consistent with governing law, commission precedent and the evidence herein should be issued denying the requested Accounting Authority Order.

Respectfully submitted,

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^{2/} Responding to an *ad hominem* argument is not itself an *ad hominem* because the response is no longer irrelevant, having been made relevant by the original fallacious *ad hominem*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to the parties of record or their representatives as disclosed by the Commission's records in this proceeding.

Dated: December 19, 2002



Stuart W. Conrad