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March 13, 2000

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FILED²

MAR 13 2000

Missouri Public
Service Commission

RE: Case No. WR-2000-281

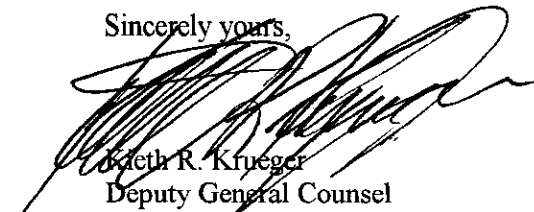
Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **JOINT SUGGESTIONS OF PUBLIC COUNSEL, MISSOURI-AMERICAN WATER COMPANY AND STAFF IN OPPOSITION TO APPLICATION FOR REHEARING OF ORDER OF MARCH 3, 2000, AND IN OPPOSITION TO JOINT RESPONSE IN PARTIAL OPPOSITION TO JOINT MOTION TO MODIFY PROCEDURAL SCHEDULE** .

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,


Keith R. Krueger
Deputy General Counsel
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Enclosure
cc: Counsel of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAR 13 2000

Missouri Public
Service Commission

In the Matter of Missouri-American Water)
Company's Tariff Sheets Designed to)
Implement General Rate Increases for)
Water and Sewer Service provided to)
Customers in the Missouri Service Area of)
the Company)

Case No. WR-2000-281

**JOINT SUGGESTIONS OF
PUBLIC COUNSEL, MISSOURI-AMERICAN WATER COMPANY AND STAFF
IN OPPOSITION TO
APPLICATION FOR REHEARING OF ORDER OF MARCH 3, 2000,
AND IN OPPOSITION TO JOINT RESPONSE IN PARTIAL OPPOSITION
TO JOINT MOTION TO MODIFY PROCEDURAL SCHEDULE**

COME NOW the Office of the Public Counsel ("OPC"), Missouri-American Water Company ("MAWC" or "Company"), and the Staff of the Missouri Public Service Commission ("Staff"), and for their Joint Suggestions in Opposition to Application for Rehearing of Order of March 3, 2000, and in Opposition to Joint Response in Partial Opposition to Joint Motion to Modify Procedural Schedule, state to the Missouri Public Service Commission ("Commission") as follows:

Procedural Background

1. On February 23, 2000, OPC, the Company, and the Staff filed a Joint Stipulation and Agreement ("Stipulation"). The Stipulation provided, among other things, that the Company would be authorized to defer revenues at an annual rate of not more than \$12,772,000 per year, commencing August 1, 2000, that the Company would dismiss the instant cases, that both the Company and St. Louis County Water Company ("County Water") would file new tariff sheets no later than May 31, 2000, and that MAWC and County Water would file a joint application for the approval of the merger of the two companies no later than the date on which MAWC and

County Water file tariff sheets to initiate their respective permanent rate cases. If the Commission approves the Stipulation, it would not result in any change in the rates charged or the revenue received by the Company, nor any change in the design of the Company's rates, and it would require the Company to file new proposed tariff sheets initiating new cases.

2. On February 24, 2000, the Company, OPC and the Staff filed a Joint Motion to Modify Procedural Schedule. In the said Joint Motion, the movants requested that the Commission establish an expedited procedural schedule to consider the Stipulation, and they further requested that the Commission modify the procedural schedule for these cases by extending for two weeks the time by which the Staff, OPC and intervenors in this case must file their direct testimony.

3. On March 3, 2000, the Commission issued its Order Denying Rehearing and Concerning Accounting Authority Order, in which it stated that it would hold "the hearing mandated by Rule 4 CSR 240-2.115(2) on the non-unanimous Stipulation and Agreement filed herein," at a date to be determined later.

4. On March 7, 2000, certain intervenors in these cases ("Intervenors") filed their Application for Rehearing of Order of March 3, 2000. On the same date, these Intervenors also filed their Joint Response in Partial Opposition to Joint Motion to Modify Procedural Schedule, in which the Intervenors oppose the Joint Motion, except with respect to the request to extend the deadline for the filing of direct testimony, provided that corresponding extensions are granted for the filing of rebuttal testimony. Both of the said pleadings rely heavily upon the decision by the Western District of the Missouri Court of Appeals in *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39 (Mo. App. 1982) *cert. denied*, 464 U.S. 819, 104 S.Ct. 81, 78 L.Ed. 2d 91 (1983), and the arguments in the two pleadings are similar. Accordingly, for the

convenience of the Commission, the Company, OPC and the Staff are filing one set of Joint Suggestions to address the issues raised in both of the said pleadings.

Summary of Argument

5. Contrary to the claims asserted by the Intervenors, the particular nature of the Stipulation filed in this case permits the Commission, under its rules, to hold a hearing that is limited to the procedural requests of the Stipulation, and does not require a hearing at this time on all issues in the case. The Western District's decision in *Fischer* is not contrary to this procedure, under the circumstances of this case. This is primarily because the requested hearing would not deny the Intervenors due process and an opportunity to be heard. Even if the Commission approves the Stipulation, the rates that the Company charges its customers would not change, nor would the rate design or any of the tariff sheets; no substantive rights of any of the Intervenors would be affected. In fact, the terms of the Stipulation would require a proceeding wherein these issues would be addressed. Furthermore, it is crucial that the Commission issue a prompt decision on the Stipulation, so that the Company and County Water can either file their new rate cases and their new merger case prior to May 31, 2000 (if the Stipulation is approved), or, in the alternative, that the parties can fully present their evidence and the Commission can have adequate time to render a decision prior to the September 14, 2000 effective date of the pending tariff sheets (if the Stipulation is rejected).

Commission Rules Regarding Nonunanimous Stipulations

6. The Intervenors argue that Rule 4 CSR 240-2.115 ("the Rule") requires the Commission to conduct a hearing "on the issues for which the hearing was requested," and that since they requested a hearing on all issues in the case, the hearing pursuant to the Rule cannot be confined to the approval of the Stipulation. Such is not the case. The language of the Rule

plainly applies only to the presentation of nonunanimous stipulations and agreements to the Commission for approval or rejection. For example, the title of the Rule is “Nonunanimous Stipulations and Agreements,” and the “Purpose” states that the Rule “prescribes the proceeding which results when a nonunanimous stipulation and agreement is presented to the commission.” There is no language anywhere in the Rule that states the “hearing” is to address all issues in the case, or that states the one requesting a hearing may specify what issues are to be addressed. Rather, the text of the rule pertains *exclusively* to nonunanimous stipulations and agreements. Similarly, contrary to the Intervenors’ suggestion (as they did in the first sentence of Paragraph 3 of their Application for Rehearing), 4 CSR 240-2.115(1) does not allow them to request issues to be addressed in the hearing.

Fischer Does Not Require Hearing On All Issues

7. While *Fischer* is certainly an important decision, it is not implicated by the Stipulation in this case. *Fischer* requires that “parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner.” *Fischer* at 43. The Stipulation in *Fischer* would have allowed for rate increases and a specific rate design. Also, if approved, the stipulated rate increase and rate design would have gone into effect with no further hearing. Only if the Commission “rejected” the Agreement, could there “be a full and contested hearing, at which time each of the parties would address all the merits and issues of the case.” *Fischer* at 43. Unlike the *Fischer* case, the Stipulation in these cases, if approved, will not result in a substantive disposition of the issues. If the Stipulation is approved, there is no rate increase, no decision on rate design, and no loss of the ability to be heard on these issues. The Intervenors would still be free to contest any substantive matters, such as revenue requirements, prudence of

expenditures, rate increases and single tariff pricing, in the new cases that the Stipulation requires the Company and County Water to file by no later than May 31, 2000.

8. In this case, no matter whether the Stipulation is approved or rejected, Intervenors will get a meaningful hearing ("full and contested hearing" which will "address all the merits and issues of the case") at a meaningful time (before the Commission makes a substantive decision on the issues). This is all that is required by *Fischer*. Intervenors do not have a right to be heard when they want to be heard. They must only be heard prior to the Commission issuing a substantive decision on the merits. The Stipulation would merely result in the dismissal of the present cases and the filing of new cases. It would bring to a close the present case, but guarantee that all of the underlying issues will be left open for a subsequent hearing. Because the Company would be obliged to file the new cases by no later than May 31, 2000, an opportunity for a hearing on all of the revenue requirement and rate design issues would be available in the new cases (approximately January 2001). The approval of the Stipulation would therefore not deny Intervenors a meaningful opportunity to be heard, but would only affect the time at which the rate case issues are heard. This short delay in the procedural schedule does not amount to a denial of due process, especially since no substantive rights would be affected thereby.

9. In the *Fischer* case, the Commission approved a nonunanimous stipulation and agreement which resolved all revenue requirement and rate design issues in a Laclede Gas Company rate case without granting Public Counsel the opportunity for a full hearing on those ratemaking issues. The Stipulation currently before the Commission would not resolve any revenue requirement or rate design issues, but would, in fact, assure that an opportunity for a full hearing on all issues will be available in the new cases.

10. Because the revenue deferral that is proposed in the Stipulation would not bear interest, but would be amortized without interest over a five-year period beginning with the effective date of the new rate cases that the Company will file, the ratepayers would, in effect, have the benefit of an interest-free loan from the Company from the date the new facilities go into service until the effective date of the tariffs in the new cases, and for a period of five years thereafter. The Stipulation also provides for Commission review regarding the appropriate level of revenue deferral based on the record to be developed in the subsequent case. The revenue deferral amount in the Stipulation is a cap on the deferral, not a predetermined level.

11. The Intervenors, OPC, Staff and other parties would also gain additional time to evaluate the prudence of the new St. Joseph water treatment plant, merger synergies between the Company and County Water, and other substantive issues, and to prepare testimony and prepare for hearing thereon, without an increase in their rates until approximately April 2001.

12. The revenue deferral that is proposed in the Stipulation would not result in an increase in rates, but would only allow the Company to book deferred revenue. The Intervenors along with Staff, Public Counsel and other parties would be free to challenge the amount of the revenue deferral in the subsequent cases.

Request For Expedited Decision On Procedural Schedule

13. It is important that the Commission promptly issue an order regarding the procedural schedule in these cases. In order to move quickly to the substantive decisions, the parties have provided in the Stipulation that MAWC and County Water will withdraw the tariffs currently on file and file new revised tariffs to start new cases by May 31, 2000. If the Stipulation is approved, the Company will be required to file new rate cases by no later than May 31, 2000. If the Stipulation is approved, the Company requests that the approval of the Stipulation become

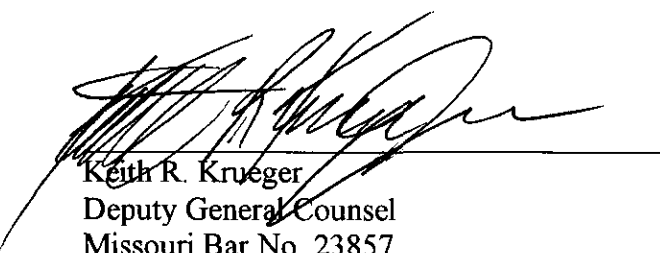
effective no later than April 30, 2000, so that these new cases can be prepared for filing. In order to issue such an order, the hearing on the Stipulation should occur by no later than the early part of April 2000. To give the parties adequate time to prepare and file rebuttal and surrebuttal testimony concerning the Stipulation, the Company, OPC and the Staff request that an order regarding the procedural schedule be issued by no later than March 17, 2000.

14. Accordingly, the Company, OPC and the Staff also respectfully request a prompt decision regarding the filing of direct testimony in the main case. All parties other than the Company are currently required to file direct testimony on March 20, 2000, one week from today, and on March 23, 2000.

WHEREFORE, the OPC, the Company and the Staff respectfully request the Commission deny the March 3, 2000 Application for Rehearing and grant the February 24, 2000 Joint Motion to Modify Procedural Schedule.

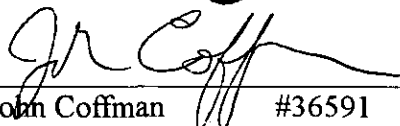
Respectfully submitted,

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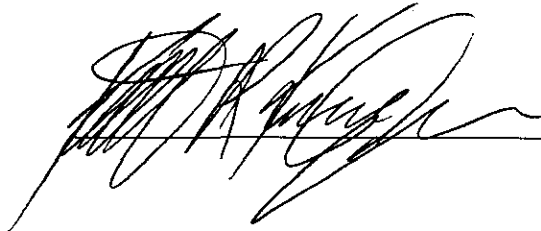
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 13th day of March, 2000.



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March 13, 2000**

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