

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

In the Matter of the Joint Application of	)	
Missouri-American Water Company and both	)	
Osage Water Company and Environmental	)	
Utilities, L.L.C. for Authority for Missouri-	)	
American Water Company to acquire the water	)	Case No. WO-2005-0086
and sewer assets of both entities, and for the	)	Case No. SO-2005-0087
transfer to Missouri-American Water Company of	)	
Certificates of Convenience and Necessity to	)	
continue operation of such assets as Water and	)	
Sewer Corporations regulated by the Missouri	)	
Public Service Commission.	)	

**MAWC’S RESPONSE TO MOTION FOR LOCAL PUBLIC HEARING**

COMES NOW Missouri-American Water Company (MAWC or the Company), and, in response to the Office of the Public Counsel’s (Public Counsel) Motion for Local Public Hearing and Request Not to Close Record Until After Testimony at the Local Public Hearing Has Been Received (Motion), states as follows to the Missouri Public Service Commission (Commission):

**SUMMARY**

MAWC disputes any implication in Public Counsel’s Motion that a local public hearing is required in this matter. This having been said, MAWC does believe that holding such a hearing is within the Commission’s discretion. MAWC does not object to a discretionary exercise of the Commission’s authority to hold such a hearing. However, it would be most appropriate to hold any local public hearing before the evidentiary hearing so that the parties will have the opportunity to respond to any issues that might be raised by the customers.

**RESPONSE**

1. On January 14, 2005, the Public Counsel filed its Motion asking the Commission to

set a local public hearing for the purpose of taking testimony concerning initial rates proposed to be charged by MAWC for service related to the assets that are the subject of this case.

2. The Motion implies that such a local public hearing may be required by statute or regulation. In fact, none of the statutes or regulations cited in the Motion support such a finding. Neither the cited general rate case sections, nor the small company rate case sections, cited by the Public Counsel require a local public hearing. Additionally, the Supreme Court has indicated that utility customers have no vested rights in any fixed utility rates and thus no property interest in existing rates that is protected by constitutional due process. *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31-32 (Mo.banc 1975); *State ex rel. Laclede Gas Company v. Public Service Commission*, 535 S.W.2d 561, 567 (Mo. App. 1976).

3. While there is no requirement that the Commission hold a local public hearing in this matter, MAWC believes that it is within the Commission's discretion to do so and MAWC has no objection to the Commission exercising its discretion to hold such a hearing. However, MAWC would ask that any such local public hearing be held prior to the evidentiary hearing in this matter. Holding the local public hearing first would allow MAWC, and other parties, the opportunity to respond to issues that might be raised by the public. It is for this reason that local public hearings are more commonly held prior to the evidentiary hearing.

4. Because the hearing is currently set for January 24, 2005, MAWC would suggest that if the Commission desires to hold a local public hearing, it continue the evidentiary hearing until after such local public hearing has been held.

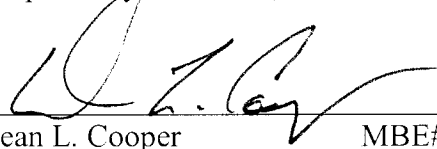
5. The Public Counsel further expresses concern as to what it refers to as the "failure of Missouri American to comply with minimum filing requirements for rate cases." Mot., p. 2. It

is unclear what rate case filing Public Counsel would have MAWC make. MAWC does not own or operate, nor is it even scheduled to close on, the subject assets. The Public Counsel has previously argued that a rate case *cannot* be filed or maintained by a public utility for a system that it may not own. *In the Matter of Aquila, Inc.*, Case No. ER-2004-0034 (“Public Counsel’s Suggestions in Support of Ag Processing, Inc.’s Motion to Dismiss” (Filed February 4, 2004)).

6. What is being proposed in this case is that the rates to be charged by MAWC on a going forward basis, if and when it closes on the assets, be set by the Commission. No special process is identified in Commission regulations for this situation. However, it commonly happens in the case of initial certificates of convenience and necessity. The process used in those cases is necessarily different from a traditional “general rate case.” This does not make it unlawful or improper.

WHEREFORE, MAWC requests the Commission consider this response.

Respectfully submitted,



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ATTORNEYS FOR  
MISSOURI-AMERICAN WATER COMPANY

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by U.S. Mail, postage prepaid, or electronic mail, on January 19, 2005, to the following:

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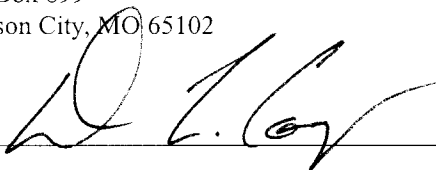
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