

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-0427

Email: PAULB@BRYDONLAW.COM

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

DEAN COOPER  
MARK G. ANDERSON  
TIMOTHY T. STEWART  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
DALE T. SMITH  
BRIAN K. BOGARD

OF COUNSEL  
RICHARD T. CIOTTONE

December 4, 2001

**FILED<sup>3</sup>**

**DEC 4 2001**

**Missouri Public  
Service Commission**

Mr. Dale Hardy Roberts, Secretary  
Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, MO 65102-0360

**Re: In the Matter of the Proposed Acquisition of American Water Works Company  
Case No. WO-2002-206**

Dear Mr. Roberts:

On behalf of Missouri-American Water Company, American Water Works Company, Inc. and RWE AG, enclosed for filing in the above-referenced case please find an original and eight (8) copies of Joint Response to the Reply of the Office of Public Counsel to Joint Suggestions of Missouri-American Water Company, American Water Works Company and RWE AG. A copy has also been hand-delivered to the Office of the Public Counsel this date.

Thank you for your assistance with this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

  
Paul A. Boudreau

PAB/aw  
Enclosures

cc: M. Ruth O'Neill  
Cliff Snodgrass  
James Mauze

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
DEC 4 2001

In the Matter of the Proposed Acquisition )  
of American Water Works Company by ) Case No. WO-2002-206  
the German Corporation RWE AG. )

Missouri Public  
Service Commission

**JOINT RESPONSE TO THE REPLY OF THE  
OFFICE OF PUBLIC COUNSEL TO JOINT SUGGESTIONS  
OF MISSOURI-AMERICAN WATER COMPANY,  
AMERICAN WATER WORKS COMPANY AND RWE AG**

COME NOW Missouri-American Water Company ("MAWC"), American Water Works Company, Inc. ("AWW") and RWE AG ("RWE") and offer the following response to the Reply to Joint Suggestions in Opposition to the Motion of the Office of Public Counsel ("OPC") to review the proposed acquisition of AWW by RWE (the "Reply").

1. There is nothing in OPC's Reply that presents a compelling factual or legal basis upon which the Commission may rely to assert jurisdiction over the acquisition by RWE of all of the outstanding shares of AWW (the "Transaction"). OPC's Reply offers no rebuttal to the Commission's prior decisions in Case Nos. WM-99-224<sup>1</sup>, TM-99-76<sup>2</sup> or WM-2000-318<sup>3</sup>, other than a passing reference that these cases have "a limited amount of precedent." (Reply, ¶ 1) Moreover, the principal case upon which OPC relies actually reinforces the arguments contained in the Joint Suggestions of MAWC, AWW and RWE (the "Joint Suggestions"). Finally, OPC's Reply is an attempt to mislead the Commission about what transpired in Case No. WR-2000-844<sup>4</sup> and the facts presented in this case.

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<sup>1</sup> In the Matter of the Merger of American Water Works Company with National Enterprises, Inc. and the Indirect Acquisition by American Water Works Company of the Total Capital Stock of St. Louis County Water Company.

<sup>2</sup> In the Matter of the Merger of SBC Communications, Inc. and Ameritech Corporation.

<sup>3</sup> In the Matter of the Application of United Water Missouri, Inc., for Authority for Lyonnaise American Holding, Inc., to Acquire the Common Stock of United Water Resources, Inc., and, in Connection Therewith, to Enter into Certain Other Related Transactions.

<sup>4</sup> In the Matter of St. Louis County Water Company for Authority to File Tariffs Reflecting Increased Rates for Water Service.

2. In paragraph 2 of its Reply, OPC makes reference to the Commission's recent decision in Case No. TM-2001-669<sup>5</sup>. OPC's reliance on this decision is erroneous. Although the Commission approved the Application in that case, it nevertheless concluded that the unregulated parent of Claricom Networks, Inc. (a certificated telecommunications company) was *not* a telecommunications company, was *not* regulated by the Commission and did *not* do business in the State of Missouri. (Order, at p. 3) This is the same argument made in the Joint Suggestions; i.e., that AWW and RWE are *not* "water corporations", are *not* doing business in the State of Missouri and, therefore, are *not* subject to the jurisdiction of the Commission. Unlike the *Claricom* case, however, no Application submitting to jurisdiction has been filed with the Commission by MAWC, AWW or RWE, so there is nothing before the Commission for which approval is being sought.

3. OPC contends that Missouri law requires that the Commission determine whether the acquisition of AWW by RWE would be detrimental to the public interest. (Reply, ¶ 3 and 4) This standard of approval, however, is only relevant in those cases in which the Commission has jurisdiction over the subject matter of the transaction. In other words, the Commission's jurisdiction does not exist because of its charge to "protect the public" but, rather, by virtue of there being specific enabling legislation conferring jurisdiction. In this case, OPC cannot cite to any such enabling legislation. As observed by the Commission in its recent *Claricom* decision, a peril to the public interest "can only exist if a corporation is actually doing business in Missouri." (Order, at p. 4) As previously noted in the Joint Suggestions, neither AWW nor RWE are doing business in the State of Missouri. Certainly,

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<sup>5</sup> Joint Application of Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, for Approval of the Transfer of Stock in Claricom Holdings, Inc. to Stacom Holdings, Inc.

OPC has not offered any public record evidencing that AWW is authorized by the Missouri Secretary of State to do business in this state.

4. In paragraph 6 of its Reply, OPC suggests that MAWC misled the Commission in Case No. WM-99-224<sup>6</sup> by subsequently seeking authority to implement a shared savings plan in Case No. WR-2000-844<sup>7</sup>. Nothing could be further from the truth. MAWC never represented to the Commission that it would not seek recovery of a fair share of net merger savings associated with AWW's acquisition of NEI in a subsequent rate case. In fact, the Commission has already decided that the prospect of a future request for recovery of acquisition premium is no basis for the denial of a merger or acquisition. To the contrary, the Commission has stated that such an issue is an appropriate one to be addressed in a subsequent rate case. *See, Report and Order* in Case No. WM-2000-222, a copy of which is attached hereto and marked Appendix 6. OPC's allegation that MAWC somehow misled the Commission in Case No. WM-99-224 is even more egregious given that MAWC, AWW and RWE have stated in writing to OPC on November 19, 2001, that no acquisition premium associated with the Transaction will be sought to be recovered in any future Missouri rate case. *See, Response to OPC Data Request No. 7*, attached hereto as Appendix 7.

5. Contrary to OPC's assertion in paragraph 8, there will not be additional layers of unregulated corporations between MAWC and its parent AWW. When the Transaction is closed, MAWC will exist exactly as it does today and will remain a wholly-owned subsidiary of AWW. Exactly the same entity will continue to provide water service to its customers. This Transaction will have no effect or impact on the Commission's authority or ability to supervise

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<sup>6</sup> See, footnote #1.

<sup>7</sup> See, footnote #4.

or regulate the rates, services or other affirmative obligations of the Commission to which MAWC is currently subject.

6. OPC's reliance on the Commission's Report and Order in Case No. EM-2001-464<sup>8</sup> likewise provides no support for its claim that the Commission has jurisdiction over the acquisition by RWE of AWW. (Reply, ¶ 9) The *Kansas City Power & Light* ("KCPL") case did not involve a corporate acquisition. Rather, it was an effort by KCPL to reorganize its corporate structure. KCPL is a regulated electrical corporation and the Commission clearly had jurisdiction over the subject matter of that proposal. See, §393.250 RSMo. 2000. To reiterate, the Commission has no such jurisdiction over AWW or RWE.

WHEREFORE, MAWC, AWW and RWE renew their request that they be permitted to present oral argument on the matters raised in their Joint Suggestions at the Commission's earliest convenience and/or that the Commission deny OPC's motion to review the Transaction and dismiss this case on the basis that the Commission lacks jurisdiction for the reasons stated in the Joint Suggestions and as elaborated upon herein.

Respectfully submitted,

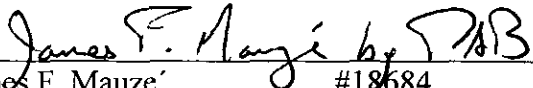


W.R. England, III #23975  
Paul A. Boudreau #33155  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
Telephone: (573) 635-7166  
Facsimile: (573) 635-0427  
E-Mail: PaulB@brydonlaw.com

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<sup>8</sup> In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Structure.

Attorneys for Missouri-American Water  
Company and American Water Works Company,  
Inc.

  
James F. Mauze #18684  
Thomas E. Pulliam #31036  
Ottsen, Mauze, Leggat & Belz  
112 South Hanley  
Second Floor  
St. Louis, MO 63105  
Telephone: (314) 726-2800  
Facsimile: (314) 863-3821  
E-Mail: jfmauze@msn.com


Attorneys for RWE AG

Certificate of Service

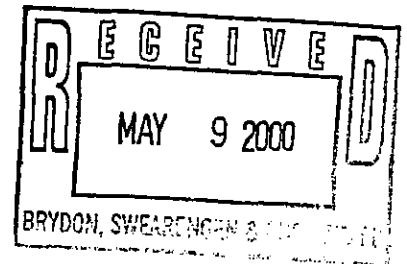
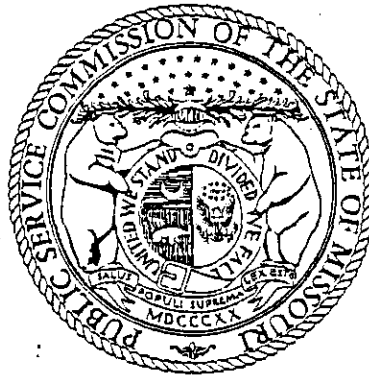
I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 4<sup>th</sup> day of December, 2001, to:

Mr. Cliff Snodgrass  
Deputy General Counsel  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65102

Ms. M. Ruth O'Neill  
Office of the Public Counsel  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65102

  
Paul A. Boudreau

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI



In the Matter of the Joint Application of )  
Missouri-American Water Company and United )  
Water Missouri, Inc., for Authority for )  
Missouri-American Water Company to Acquire )  
the Common Stock of United Water Missouri, )  
Inc., and, in connection therewith, Certain )  
Other Related Transactions. )

Case No. WM-2000-222

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REPORT AND ORDER

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Issue Date: March 16, 2000

Effective Date: March 26, 2000

# BEFORE THE PUBLIC SERVICE COMMISSION

## OF THE STATE OF MISSOURI

13931  
In the Matter of the Joint Application of )  
Missouri-American Water Company and United )  
Water Missouri, Inc., for Authority for )  
Missouri-American Water Company to Acquire ) Case No. WM-2000-222  
the Common Stock of United Water Missouri, )  
Inc., and, in connection therewith, Certain )  
Other Related Transactions. )

### APPEARANCES

Dean L. Cooper, Brydon, Swearingen & England, P.O. Box 456, Jefferson City, Missouri 65102, for Missouri-American Water Company and United Water Missouri, Inc.

Shannon E. Cook, Assistant Public Counsel, and John Coffman, Assistant Public Counsel, Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Cliff E. Snodgrass, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Kevin A. Thompson, Deputy Chief.

### REPORT AND ORDER

#### Procedural History

On September 8, 1999, Missouri-American Water Company (MAWC) and United Water Missouri, Inc. (UWM), filed their Joint Application for authority for MAWC to acquire the common stock of UWM. Simultaneously, the Applicants also filed a Motion for a Protective Order, seeking protection for proprietary and highly confidential information concerning the proposed transaction. On September 10, 1999, the Commission by order adopted its

standard protective order. On September 20, 1999, the Applicants filed their Stock Purchase Agreement, a highly confidential (HC) document under the terms of the protective order.

On September 21, 1999, the Commission granted Applicants' request, contained in their Application, for expedited treatment and directed the Staff of the Missouri Public Service Commission (Staff) to file its memorandum and recommendation concerning the proposed transaction not later than 30 days following the Applicants' filing of their Stock Purchase Agreement. On October 20, 1999, Staff filed a Motion to Compel Answers to Data Requests. Also on October 20, 1999, Staff and the Office of the Public Counsel (Public Counsel) filed a Joint Motion seeking an extension of the deadline for Staff's memorandum and recommendation. On October 22, 1999, taking notice of the increasingly adversarial nature of the case, the Commission by order suspended Staff's obligation to file a memorandum and recommendation.

On October 25, 1999, Staff supplemented and renewed its motion to compel discovery. On October 29, 1999, the Applicants replied to Staff's motion to compel and to the joint motion of Staff and Public Counsel for an extension of time. Simultaneously, Applicants filed a motion for a procedural schedule. On November 5, 1999, the Commission sustained Staff's motion to compel, set a prehearing conference for November 18, 1999, and directed that a proposed procedural schedule be filed on or before November 24, 1999. Staff and Public Counsel jointly responded to Applicants' motion for a procedural schedule on November 5, 1999.

The Commission convened a prehearing conference on November 18, 1999. Thereafter, on November 24, 1999, the parties jointly submitted a proposed procedural schedule. The Commission adopted the proposed procedural schedule by order issued on November 30, 1999.

On December 6, 1999, the Commission issued its Order Directing Notice, setting an intervention deadline of January 5, 2000. No applications to intervene were filed.

On December 29, 1999, a second prehearing conference was held. On December 30, 1999, the parties filed their proposed list of issues as required by the procedural schedule. On January 4, 2000, the parties filed their position statements.

The Commission held an evidentiary hearing on January 10, 2000. All parties were represented at the evidentiary hearing. At the request of the parties, a portion of the hearing was held in camera and that portion of the transcript designated HC. On January 20, 2000, the Commission by order adopted a briefing schedule, which was corrected in part by a notice issued on January 25, 2000. All parties filed initial briefs on February 4, 2000, and reply briefs were filed by February 14, 2000.

At the hearing, the Applicants agreed to supply certain additional information in response to specific requests. Some of this information was supplied in a pleading, filed on January 24, 2000. The rest was supplied in three late-filed exhibits, Exhibit Nos. 6, 9 and 11. Of these, Exhibit 9 is designated HC. No party made any objection to the receipt of

these exhibits, either at the hearing or afterwards, and they are received and made a part of the record of this matter.

### Discussion

The Applicants are both public utilities engaged in providing public water services to the public in the State of Missouri, subject to the jurisdiction of this Commission. MAWC provides such services in several service areas in the state. UWM provides public drinking water services in Jefferson City, Missouri.

MAWC seeks authority to acquire 100 percent of the stock of UWM. If the transaction is approved and goes forward, UWM will become a subsidiary of MAWC and will likely merge into MAWC at some point in the future.

MAWC cannot lawfully acquire the common stock of UWM without Commission approval. Section 393.190.2, RSMo 1994.<sup>1</sup> Pursuant to Commission Rule 4 CSR 240-2.060(9)(C), the Applicants must show why the proposed acquisition is not detrimental to the public interest. In considering this application, the Commission is mindful that the right to sell property is an important incident of the ownership thereof and that "[a] property owner should be allowed to sell his property unless it would be detrimental to the public." State ex rel. City of St. Louis v. Public Service Commission, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934). "The obvious purpose of [Section 393.190] is to ensure the continuation of adequate service to the public served by the utility." State ex rel. Fee Fee Trunk Sewer, Inc.

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<sup>1</sup>Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri (RSMo), revision of 1994.

v. Litz, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980). To that end, the Commission has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset safely and efficiently. See In the Matter of the Joint Application of Missouri Gas Energy et al., Case No. GM-94-252 (Report and Order, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.

The Applicants contend that the proposed transaction will promote the public interest rather than detract from it. MAWC is, the Applicants note, an experienced operator of public water systems. The rates and rules of UWM will not change by reason of the proposed transaction and will continue to be in force. The affiliation of UWM with MAWC will, in the Applicants' view, improve UWM's ability to attract needed capital. Economies of scale may reduce costs, perhaps leading to lower rates.

Staff recommends that the Commission approve the proposed acquisition, with one proviso: that MAWC not be permitted to seek recovery of the acquisition premium in a future rate proceeding. With respect to the standard governing the Commission's consideration of this transaction, Staff characterizes the possible future recovery by MAWC of the acquisition premium from ratepayers as a present detriment to the public. Staff opposes the inclusion of any acquisition premium in customer rates.

Public Counsel agrees with Staff that the Commission must condition its approval of the transaction upon the disallowance of the acquisition premium. Public Counsel suggests that judicial economy would

be best served by disposing of this issue now rather than in a future rate case. Public Counsel also contends that the Commission should view the proposed transaction as a merger and that it must, consequently, deny the requested authorization because the parties have not provided sufficient information to support a merger application.

The information Public Counsel refers to is the "four standards" announced by the Commission in its decision, In the Matter of the Application of UtiliCorp United, Inc., and Colorado Transfer Company (CTC) for Authority for UtiliCorp to Acquire All of the Issued and Outstanding Shares of Stock of CTC and Then to Merge CTC With and into UtiliCorp, and to Acquire Certain Debt Obligations of Centel Corporation, Case No. EM-91-290 (Order Approving Merger, issued September 13, 1991). These need not detain us for they are not standards at all; rather, they are a laundry list of items that the Commission stated it would require in future cases to ensure that the Missouri jurisdictional effects of a proposed transaction are highlighted and considered. The entities involved in that case were multi-jurisdictional and the Commission was concerned that the documentation provided to it did not permit it to readily ascertain the likely effects of the proposed transaction on Missouri customers. The transaction now before the Commission is not multi-jurisdictional.

The proposed transaction now before the Commission is also not a merger. By the terms of the Commission's Order in Case No. EM-91-290, the four conditions announced therein apply only to "future merger applications." The proper time for the Commission to consider a merger of MAWC and UWM is if, and when, such an application is actually filed. The

Commission will not view this proposed acquisition as a merger and will not apply the four conditions announced in Case No. EM-91-290.

The matter of the acquisition adjustment is also not properly before the Commission in this case. That is a matter for a rate case, as the Applicants point out. This is not a rate case. Therefore, the Commission will not address the matter of the acquisition premium in this case. See In the Matter of the Application of Missouri-American Water Company for Approval of its Acquisition of the Common Stock of Missouri Cities Water Company, Case No. WM-93-255 (Report and Order, issued July 30, 1993) at 8 and 10.

The only purported public detriment that any party has identified is the possibility of a future attempt to recover the acquisition premium from ratepayers. The Commission reads State ex rel. City of St. Louis v. Public Service Commission, *supra*, 335 Mo. at 459, 73 S.W.2d at 400, to require a direct and present public detriment. The acquisition premium, which MAWC may seek to recover from ratepayers in a rate case yet to be filed, is not a present detriment. "[T]he Commission is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record tending to show that a public detriment will occur." In the Matter of the Joint Application of Missouri Gas Company et al., Case No. GM-94-252, *supra*, 3 Mo. P.S.C. 3rd at 221. There is no such compelling evidence in this record.

## Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

MAWC is a Missouri corporation, headquartered at St. Joseph, Missouri, and a wholly owned subsidiary of American Water Works Company, Inc. (AWW), a Delaware corporation and the nation's largest investor-owned water utility. MAWC provides residential, commercial, industrial, and municipal water service to approximately 90,000 customers in Missouri, located in seven noncontiguous service areas. MAWC is the 13th largest of AWW's 23 subsidiary operating corporations, which together serve more than seven million persons in 879 communities throughout the United States.

UWM is a Missouri corporation, headquartered at Jefferson City, Missouri, and a wholly owned subsidiary of United Waterworks, Inc. (UWI), a subsidiary of United Water Resources, Inc. UWM provides water service to approximately 10,400 customers in Jefferson City, Missouri.

MAWC and UWI entered into a stock purchase agreement on July 12, 1999, whereby MAWC will purchase from UWI 100 percent of the common stock of UWM for approximately \$9.2 million. The proposed transaction may be cancelled by either party if not consummated by March 31, 2000. MAWC

proposes to finance the acquisition with a short-term line of credit, to be eventually replaced with equity by the sale of stock to AWW and with new long-term debt.

MAWC asserts that it will continue to provide safe, reliable and adequate water service to UWM's customers, utilizing UWM's existing tariffs until such time as this Commission authorizes a change thereof. MAWC asserts that it is fully qualified to operate UWM's water system.

The purchase price of approximately \$9.2 million includes an acquisition premium of approximately \$550,000 above UWM's equity balance of \$8.65 million as of the end of 1998, a figure amounting to six percent.

MAWC has shown, and the Commission finds, that it has extensive experience in the water utility industry. The record does not show that MAWC has any history of service difficulties. No party has challenged MAWC's general financial health or its ability to absorb the proposed transaction. The Commission finds that MAWC is able to operate UWM's water system safely and efficiently and that approval of the proposed acquisition will not result in any discontinuation of service to UWM's customers.

### Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

MAWC and UWM are each a "water corporation" and a "public utility" within the intendments of Section 386.020, RSMo Supp. 1999. Consequently, the Missouri Public Service Commission has jurisdiction over the services, activities, and rates of MAWC and UWM pursuant to Section 386.250 and Chapter 393.

Section 393.190.2 provides that no water corporation "shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business . . . unless . . . authorized to do so by the commission." By Commission Rule, a water corporation seeking such authorization must show "why the proposed acquisition of the stock of the public utility is not detrimental to the public interest." 4 CSR 240-2.060(9)(C). Based on the findings of fact made herein, the Commission concludes that the acquisition of 100 percent of UWM's common stock by MAWC is not detrimental to the public interest and should be approved.

**IT IS THEREFORE ORDERED:**

1. That Late-filed Exhibits 6, 9 (HC), and 11 are received and made part of the record herein.

2. That Missouri-American Water Company is hereby authorized to acquire 100 percent of the common stock of United Water Missouri, Inc., as proposed in the joint application filed on September 8, 1999, and in the stock purchase agreement filed on September 20, 1999. The parties are further authorized to take such lawful actions as may be necessary to consummate the acquisition herein authorized.

3. That Missouri-American Water Company shall supplement its monthly surveillance report with information as to employee numbers and allocated costs as described in Late-filed Exhibit 11, starting with the first full calendar month which is 90 days following the acquisition herein authorized and continuing until either a merger of Missouri-American Water

Company and United Water Missouri, Inc., is consummated or the Commission by order permits its discontinuance.

4. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties, transactions or expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.

5. That Missouri American Water Company shall file a pleading in this case within ten (10) days of the consummation of the acquisition herein authorized, so advising the Commission.

6. That this Report and Order shall become effective on March 26, 2000.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Lumpe, Ch., concurs, with separate concurring opinion attached; Crumpton, Drainer, Murray, and Schemenauer, CC., concur; and certify compliance with the provisions of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 16th day of March, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Joint Application of )  
Missouri-American Water Company and United )  
Water Missouri, Inc., for Authority for )  
Missouri-American Water Company to Acquire ) Case No. WM-2000-222  
the Common Stock of United Water Missouri, )  
Inc., and, in connection therewith, Certain )  
Other Related Transactions. )

CONCURRING OPINION OF CHAIR SHEILA LUMPE

I write because, while I concur in the result reached in this case, I believe that the Staff of the Commission and the Office of the Public Counsel appropriately identified the acquisition premium as a potential detriment to the ratepayers. It seems to me that the "not detrimental" standard requires one either to prove a negative or to predict the future. An officer of Missouri-American Water Company has testified that the company anticipates that it will seek recovery of the acquisition premium in its next rate case. I believe that that statement renders this potential future event certain enough to amount to a possible present detriment.

Respectfully submitted,



Sheila Lumpe, Chair

Dated at Jefferson City, Missouri,  
on this 16th day of March, 2000.

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

I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 9<sup>th</sup> day of May 2000.

*Dale Hardy Roberts*

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**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

**Public Counsel Data Request to Missouri-American Water and American Water Works Company – No. 7****In the Matter of the Proposed Acquisition of American Water Works Company  
by a German Corporation RWE AG.  
Case No. WO-2002-206**

Requested By: M. Ruth O'Neill and Russell W. Trippensee

Requested From: William R. England, III

Date of Request: October 29, 2001

Information Requested: Will MAWC or successor corporation seek, or be required to seek, recognition in rates, either directly or indirectly, the cost of all or a portion of the acquisition premium resulting from this transaction? Or conversely will MAWC or successor corporation agree not to seek recognition in rates, either directly or indirectly, the cost of all or a portion of the acquisition premium resulting from this transaction?

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No. However, to the extent that any parties seek the imposition of conditions such as rate concessions or allegations of synergy savings, we reserve the right defensively to argue that such conditions are inappropriate because of the considerable costs associated with this transaction that are not being recovered.