



Martha S. Hogerty  
Public Counsel

State of Missouri

Mel Carnahan  
Governor

**Office of the Public Counsel**  
Harry S Truman Building - Ste. 250  
P.O. Box 7800  
Jefferson City, Missouri 65102

Telephone: 573-751-4857  
Facsimile: 573-751-5562  
Web: <http://www.mo-opc.org>  
Relay Missouri  
1-800-735-2966 TDD  
1-800-735-2466 Voice

November 29, 1999

Mr. Dale H. Roberts  
Secretary/Chief Regulatory Law Judge  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

FILED<sup>3</sup>

NOV 29 1999

**RE: Missouri-American Water Company**  
**Case Nos. WR-2000-281 et al.**

Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of **Public Counsel's Response to Missouri-American Water Company's Motion for Accounting Authority Order**. Please "file" stamp the extra enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Cook".

Shannon Cook  
Assistant Public Counsel

SC:mm

Enclosure

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

NOV 29 1999

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 et al.

**Public Counsel's Response to Missouri-American Water Company's  
Motion for Accounting Authority Order**

Comes now, the Office of the Public Counsel (Public Counsel) and for its Response to Missouri-American Water Company's Motion for Accounting Authority Order states as follows:

1. On November 19, 1999, Missouri-American Water Company (Company) filed a Motion for Accounting Authority Order (AAO), requesting the extraordinary remedy of a deferral of depreciation expense for the new St. Joseph treatment plant and related facilities for the duration from an expected in-service date until the effective date of a Commission rate order in this case. Further, the Motion requested the Commission to authorize a rate of 7.22% for the capitalization of Allowance for Funds Used During Construction (AFUDC).

2. An AAO refers to an Account 186 deferral. The Commission has granted such deferrals when it believes the facts warrant such special treatment, but has done so only on a limited basis. Typically, an AAO deferral involves capitalizing certain costs that would normally be charged to expense, allowing for skewed ratemaking, benefiting shareholders at the expense of ratepayers. The standard that the Commission has typically used in judging an application for an AAO focuses on whether the costs are the result of an event that is extraordinary, unusual and unique, and nonrecurring. The construction of the new St. Joseph

Water Treatment Plant is certainly not an extraordinary event that would fall within the Commission standard.

3. The construction of the St. Joseph Water Treatment Plant and related facilities was an event that was completely within the control of Company's management, a decision which could be the subject of a prudence review in this case. Although the size of this project is extremely large and could result in a dramatic impact on rates, it is simply a construction project, and as such, involves the most typical categories of investment and expense that any water company experiences. In the recent Application of United Water Missouri for an Accounting Authority Order, Case No. WA-98-187, the Commission stated, "It is not appropriate for a utility to defer normal, ongoing expense items." Ibid., Report and Order, page 6. In that case, the Commission denied an AAO to United Water Missouri Inc. because the FAS 106 costs involved in that application were incurred as a result of management decisions, not an extraordinary event. Id. at 9.

4. On pages 3-4 of Company's Motion for Accounting Authority Order (Company's Motion), a 1995 St. Louis County Water Company case was cited in support of Company's AAO request. In a subsequent St. Louis County Water Company case, the Commission emphasized that AAO's most properly address "unpredictable" events. Case No. WR-96-263, Report and Order, pages 12-13, issued on December 31, 1997. The construction of Company's new St. Joseph Water Treatment Plant is hardly an unpredictable event. Not only has there been plenty of forewarning about the construction of this facility, Company had complete control over the design and timing of this project as well as complete control over the timing of the filing of this rate case. There is no reason that ratepayers should be exposed to an extraordinary, additional

rate impact simply because of the regulatory lag that may occur as a result of the timing of events completely within the control of Company's management.

5. On pages 4-5 of Company's Motion, Company implies that the extreme low water conditions of 1989 and the Great Flood of 1993 contributed in part to the decision to construct the new St. Joseph Water Treatment facility. Although a creative way for Company to argue its case, Public Counsel does not believe that those past "Acts of God" are the proximate causes of construction timing that is at issue here and do not justify the requested AAO deferral. Furthermore, ratepayers are already paying for improvements that have been made to the current St. Joseph Treatment Plant intended to prevent any water outages as a result of equivalent weather conditions future five-hundred-year flood. The intake valves have been extended into the river since 1989 and numerous improvements were made at the current water treatment plant to protect it from any outages as a result of any future five-hundred-year flood. Therefore, those past weather anomalies, as well as the threat of any future equivalent weather conditions did not justify the construction of the current St. Joseph Water Treatment Plant or the related expenses for which Company is requesting an AAO deferral.

6. Essentially what Company is requesting is that its customers be required to insulate it from "regulatory lag." Regulatory lag is a normal component of the regulatory process. The concept of regulatory lag has a theoretical basis and has been recognized by the judicial system. The Court of Appeals recognized that regulatory lag is an inherent part of the regulatory process when it reviewed an appeal regarding a Commission decision in a request for a rate increase by Laclede Gas Company. State ex rel. Laclede Gas Company v. P.S.C., 535 S.W.2d 561, 570 (Mo.App.1976).

7. The Commission ruled that is unreasonable to provide protection to shareholders for the effects of regulatory lag in Case Nos. EO-91-358 and EO-91-360:

Lessening the effect of regulatory lag by deferring costs is beneficial to a company but not particularly beneficial to ratepayers. Companies do not propose to defer profits to defer costs. Regulatory lag is a part of the regulatory process and can be a benefit as well as a detriment. Lessening regulatory lag by deferring costs is not a reasonable goal unless the costs are associated with an extraordinary event.

Maintaining the financial integrity of a utility is also a reasonable goal. The deferral of costs to maintain current financial integrity, though, is of questionable benefit. If a utility's financial integrity is threatened by high costs so that its ability to provide service is threatened, then it should seek interim rate relief. If maintaining financial integrity means sustaining a specific return on equity, this is not the purpose of regulation. It is not reasonable to defer costs to insulate shareholders from any risks.


Ibid., Report and Order, pp. 10-11.

8. Deferred accounting treatment for regulatory lag should only be available upon a finding that a utility's financial integrity would be jeopardized, if during the "regulatory lag" period it incurred costs that have the likelihood of causing the Company's current financial integrity to be so fragile that it would not have access to the capital markets on reasonable terms, without such relief. Because regulatory lag is ordinarily an element of risk associated with investment in a utility, it should be alleviated only if necessary to ensure that the Company's return is sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital.

WHEREFORE, Public Counsel respectfully requests that the Commission deny Company's request for an AAO deferral for the capitalization of AFUDC and depreciation on the new St. Joseph Water Treatment Plant because such expenses are part of the normal and ongoing business of a water company and the facts of this matter do not justify such extraordinary ratemaking treatment.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:   
Shannon E. Cook (#50169)  
Assistant Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102  
(573) 751-1304  
(573) 751-5562 FAX

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 29th day of November, 1999:

Keith Krueger  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Louis J. Leonatti  
Leonatti & Baker  
P.O. Box 758  
Mexico, MO 65265

Charles B. Stewart  
Stewart & Keevil  
1001 Cherry St., Suite 302  
Columbia, MO 65201

Leland B. Curtis  
Curtis, Oetting, et al.  
130 S. Berniston, Suite 200  
Clayton, MO 63105

Chuck D. Brown  
303 E. Third St.  
P.O. Box 1355  
Joplin, MO 64802-1355

Joseph W. Moreland  
Blake & Uhlig  
2500 Holmes Rd.  
Kansas City, MO 64108

Stuart W. Conrad  
Finnegan, Conrad & Peterson  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, MO 64111

James M. Fischer  
101 W. McCarty, Suite 215  
Jefferson City, MO 65101

Dean L. Cooper  
William R. England, III  
Brydon, Swearngen & England  
P.O. Box 456  
Jefferson City, MO 65102

  
\_\_\_\_\_