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February 4, 2002

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

FILED²
FEB 04 2002
Missouri Public
Service Commission

**Re: Missouri-American Water Company
Case No. WO-2002-273**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Motion to Dismiss**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

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

FILED²

FEB 04 2002

In the Matter of the Joint Application of Missouri-)
American Water Company, St. Louis County Water)
Company, d/b/a Missouri-American Water Company,)
and Jefferson City Water Works, d/b/a Missouri-)
American Water Company, for an Accounting)
Authority Order Relating To Security Costs.)

Missouri Public
Service Commission

Case No. WO-2002-273

MOTION TO DISMISS

COMES NOW, the Office of the Public Counsel, and respectfully moves the Missouri Public Service Commission to dismiss Missouri-American Water Company's (MAWC'S)¹ request for an Accounting Authority Order (AAO). This motion is made pursuant to §386.430 RSMo (2000), for the reason that MAWC has failed to file sufficient evidence in its direct testimony which would establish its claim for relief. Under §386.430 RSMo, MAWC has the burden of proof and persuasion in this case, and must "show, by clear and satisfactory evidence" that it is entitled to the relief sought (in this case, an AAO). Public Counsel refers the Commission to 4 CSR 240-2.130.7(A), which provides that a party filing prepared direct testimony in a case before the Commission "shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief."

MAWC failed to present sufficient evidence in its prepared direct testimony, and attachments thereto, that it is entitled to the relief it seeks. Nothing in the pre-filed testimony, including the portions of testimony marked "highly confidential", provides sufficient factual information on which this Commission may reasonable rely in making

¹ The Joint Applicants completed their merger into a single entity, Missouri-American Water Company, on Dec. 31, 2001.

any findings of fact or conclusions of law in support of the requested AAO. In fact, other than a few numbers, for which MAWC has failed to provide evidentiary support, the pre-filed testimony consists primarily of reasons why MAWC chose not to provide information on which the Commission could rely in making a reasoned and appropriate determination in this case. MAWC chose not to produce reliable, verifiable evidence that it has or will make expenditures which meet the Commission's requirements for granting special accounting treatment. Therefore, the Commission should deny MAWC's request for an AAO.

WHEREFORE, it is respectfully moved that the Commission dismiss this case, vacate the remainder of the procedural schedule, and deny relief, due to MAWC's failure to present sufficient evidence on which relief could be granted.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 4th day of February 2002:

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