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March 14, 2000

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

FILED²
MAR 15 2000
Missouri Public
Service Commission

**RE: Missouri American Water Company
Case No. WR-2000-281, et al.**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of the **Office of the Public Counsel's Suggestions in Opposition to Missouri American Water Company's Motions for Accounting Authority Order and for Reconsideration of Order Concerning 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,

Shannon E. Cook
Assistant Public Counsel

Enclosure

cc: Counsel of Record

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

FILED²

MAR 15 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, et al.

**OFFICE OF THE PUBLIC COUNSEL'S SUGGESTIONS IN OPPOSITION TO
MISSOURI AMERICAN WATER COMPANY'S MOTIONS FOR ACCOUNTING
AUTHORITY ORDER AND FOR RECONSIDERATION OF ORDER
CONCERNING ACCOUNTING AUTHORITY ORDER**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its
Suggestions in Opposition to Missouri American Water Company's (MAWC) Motion for
Accounting Authority Order and Motion for Reconsideration of Order Concerning
Accounting Authority Order herein, states as follows:

1. On November 19, 1999, MAWC filed a Motion for Accounting Authority Order (AAO), requesting the extraordinary remedy of a deferral of depreciation expense for the new St. Joseph water treatment plant and related facilities for the time between an expected in-service date and the effective date of a Commission rate order in this case. Further, the Motion requested that the Commission authorize a rate of 7.22% for the capitalization of Allowance for Funds Used During Construction (AFUDC).
2. Public Counsel, the Commission Staff (Staff) and Ag Processing, Inc., Friskies Petcare and Wire Rope Corporation of America (Industrial Intervenors) filed responses opposing MAWC's request for an accounting authority order.
3. On February 1, 2000, the Commission issued its Order which, among other things, determined that the AAO issue need not be decided now and that the

Commission would take this issue with the case; also, it directed the parties to present the issue in testimony and briefs.

4. On February 10, 2000, MAWC submitted its Motion for Reconsideration of Order Concerning Accounting Authority Order, requesting that the Commission reconsider the portion of its February 1 Order concerning the deferral of the AAO issue. However, on February 23, 2000, MAWC, Staff and Public Counsel filed a Stipulation and Agreement which makes a joint recommendation regarding the procedural disposition of this matter.

5. Public Counsel urges the Commission to **deny** MAWC's request for an AAO and opposes both MAWC's Motion for Accounting Authority Order and its Motion for Reconsideration on several grounds, including the following:

Missouri's ratepayers will experience far greater detriment if the Commission grants MAWC the AAO than they would if the Commission approves the Stipulation and Agreement on file in this case.

6. Public Counsel anticipates that the prudence of the amount MAWC spent on the new St. Joseph water treatment plant, as well as the decision to construct the new plant, will be major issues in the case. Substantial questions exist about prudence, whether the new capacity is used and useful, and what the appropriate regulatory treatment should be. If the Commission grants the AAO, it will be creating a "regulatory asset." Any such asset represents value created by Commission approval, value that can only be realized by receiving monies from the ratepayers. Granting the AAO sought by MAWC would place ratepayers at great risk of having to pay millions of dollars for a plant which Public Counsel believes was, to a large extent, a bad business decision by MAWC.

7. If the Commission grants the AAO, any regulatory lag associated with the St. Joseph treatment plant investment will be eliminated. The AAO would cause the ratepayers to incur an obligation to MAWC approximately 3.5 months earlier than would the Stipulation and Agreement filed in this case. The obligation of the ratepayers, created by the Commission, would be **in excess of \$2,000,000** even before considering the substantial carrying costs that would occur during the amortization period, which will be determined later. **The Stipulation and Agreement, on the other hand, would eliminate all carrying costs during both the deferral period and any subsequent amortization period, thus relieving the ratepayers of any related future obligation.**

8. The Stipulation & Agreement provides that the level of revenue deferred is totally dependent on the final Commission determination of the total revenue requirement as of April 30, 2000 instead of on a single cost of service component addressed by the AAO. The Stipulation & Agreement requires the level of deferred revenue to be adjusted based on the specific Commission findings regarding all cost of service components. The AAO does not address all cost of service components.

MAWC, by entering into a Stipulation and Agreement with the Staff and Public Counsel, has an obligation not to seek an AAO from the Commission.

8. Having joined in a Stipulation and Agreement to resolve the timing issues involved with this case, MAWC is bound to honor its contractual agreement unless, after the hearing now required pursuant to 4 CSR 240-2.115(2), the Commission rejects the Stipulation and Agreement. Under its own rules, the Commission must now resolve the Stipulation and Agreement before it addresses any outstanding issue regarding the AAO request.

MAWC admits in its testimony filed March 1, 2000 that if the Nonunanimous Stipulation and Agreement that has been filed in this case is approved, it has no need for an AAO.

8. Mr. James Jenkins, in his Direct Testimony in Support of the Stipulation and Agreement on behalf of MAWC, writes the following:

- Q. If the agreement is approved by the Commission, does MAWC believe there is still a need for an AAO or an interim rate increase?
- A. No. The Agreement will ensure that **the financial stability of the Company will be maintained without the use of an AAO** or interim rate increase (emphasis added; page 7, lines 14-18).

The circumstances of this case do not meet the Commission's standard for the granting of an AAO.

9. The deferral of costs from one accounting period to another period for the development of a revenue requirement violates the traditional method of setting utility rates. In the Matter of Missouri Public Service, 1 MPSC 3d 200, 202 (1991). However, this Commission has determined that on a case-by-case basis, regulated utilities may be allowed to request an AAO. The issuance of AAO's however, has been tied to the occurrence of extraordinary events that are, by their very nature, unusual, infrequent and unpredictable. In Re St. Louis County Water Co., Case No. WR-95-145, September 19, 1995, Report and Order, pp. 6-7. See also In Re St. Louis County Water Co., Case No. WR-96-263, December 31, 1997, Report and Order, pp. 12-13.


10. The construction of the new St. Joseph water treatment plant, which has been planned for several years, hardly falls within the category of expenses for which AAO's are intended and granted. MAWC's management had complete control over the design and timing of this project and the timing of this rate case, in addition to their complete control over whether to choose the option of constructing an entirely new plant

at all. The company and its shareholders should be the ones bearing the risk of American Water Works and MAWC's business decisions, **not** the Missouri ratepayers who happen to be located in MAWC's service territory.

WHEREFORE, Public Counsel respectfully requests that the Commission deny MAWC's Motion for Accounting Authority Order, as well as its Motion for Reconsideration of Order Concerning Accounting Authority Order, or, in the alternative, continue to "take the issue with the case" if and only if the Stipulation and Agreement is rejected.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing document have been faxed, mailed, or hand-delivered to all counsel of record as shown on the attached service list this 14 day of March, 00.

