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December 12, 2001

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

FILED²

DEC 12 2001

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 **Office of the Public Counsel's Response to Application for an Accounting Authority Order requested to be Issued prior to January 4, 2002 and Response to Motion for Expedited Treatment**. 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, reading "M. Ruth O'Neill".

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

FILED²

DEC 12 2001

Missouri Public
Service Commission

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

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 Company d/b/a)
Missouri-American Water Company for)
and Accounting Authority Order relating)
to security costs.)

Case No. WO-2002-273

**OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO APPLICATION FOR
AN ACCOUNTING AUTHORITY ORDER REQUESTED TO BE ISSUED PRIOR
TO JANUARY 4, 2002 AND
RESPONSE TO MOTION FOR EXPEDITED TREATMENT**

COMES NOW, the Office of the Public Counsel (Public Counsel) and responds to the Application of the Missouri-regulated subsidiaries of American Water Works Company (AWK): Missouri-American Water Company, St. Louis County Water Company and Jefferson City Water Works Company. (Because the subsidiaries are in the process of merging their Missouri operations into a single company, they will be referred to collectively in this response as the Applicants or MAWC). Public Counsel, while generally opposed to the use of Accounting Authority Orders (AAOs), currently lacks sufficient information on which to take a position in this matter, because the issue of the safety of the water supply is of paramount importance to both Public Counsel and the customers of MAWC. However, the 25 days between the date the Application was filed and the date by which MAWC wants the Commission to act is insufficient time in which to conduct such investigation.

A

SUGGESTIONS IN SUPPORT OF PUBLIC COUNSEL'S RESPONSE

1. The Applicants' duty to provide safe service is at the core of the obligations assumed when they obtained certificates of convenience and necessity for their various service territories. Certainly, Public Counsel is concerned about the safety of the public's drinking water supply. Public Counsel firmly believes that MAWC has a continuing duty to take all reasonable and prudent steps necessary to ensure that their water plant and systems provide safe water to customers. MAWC incurred this duty long before September 11, 2001.

2. In fact, concern about the safety of the drinking water supply is a factor listed in Public Counsel's request, currently before the Commission in Case No. WO-2002-206, that this Commission assert jurisdiction over the proposed acquisition of American Water Works (AWK) by the German corporate conglomerate, RWE AG. Because of the serious nature of this safety concern, Public Counsel believes that it would be appropriate to suspend action on the Applicants' request, and to establish a procedural schedule so that Public Counsel, the Commission's staff, and any other interested parties may conduct discovery. Public Counsel respectfully requests that the procedural schedule provide for adequate time to complete an investigation and conduct a hearing into whether or not an AAO is warranted in this case. In order to provide adequate time for investigation, the Commission should deny the Applicants' request for expedited treatment.

A. Expedited Treatment is Not Warranted

3. Public Counsel objects to the Applicants' request for expedited treatment of this matter. The Commission has discretion over whether or not to grant expedited treatment. In this case, the Applicants have failed to set forth sufficient information on

which to base the request for expedited treatment. The Commission's rules require that a request to expedite treatment include (A) the date by which the party desires the Commission to act, (B) the harm that will be avoided, or the benefit that will accrue, *including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the Commission acts by the date desired*, and (C) that the pleading was filed as soon as it could have been or an explanation of why it was not. 4 CSR 240-2.080(17)(emphasis added). Although the requested date is included, along with a bald assertion that the motion "is being filed as soon as it reasonably could have been", there is an insufficient recitation of the requirements of 4 CSR 240-2.080(17)(B). In the pleading, MAWC fails to indicate how this expedited treatment request will affect its customers or the general public.

4. Public Counsel submits that the Company has failed to set forth sufficient information to justify granting expedited treatment in its pleadings. The pleading contains no information concerning the expenses allegedly incurred which would be deferred under the requested AAO. It is blatantly unreasonable for MAWC to request an AAO without providing any detail regarding (1) the amount of expense it wishes to defer, (2) verification that the expenses have been incurred, (3) identification of the plant or service additions which caused the expense, and (4) an explanation of why these expenses are extraordinary, unusual and non-recurring. MAWC's filing deficiency means that this information will have to be obtained through the discovery process. The request for expedited treatment of this AAO request should be denied.

B. The Applicants have failed to set forth sufficient facts at this time which would justify the relief being sought.

5. An AAO is an order of the Commission "authorizing an accounting treatment for a transaction or group of transactions other than that prescribed by the USOA [Uniform System of Accounts]. It is an accounting mechanism that is generally used to permit deferral of costs from one period to another." In the Matter of the Consideration of an Accounting Authority Order Designed to Accrue Infrastructure Replacement Costs for St. Louis County Water Company, Mo. PSC Case No. WO-98-223, Slip Op. at p. 12 (Feb. 13, 2001). "AAOs should be used sparingly because they can permit ratemaking consideration of items from outside the test year." Id.

6. In order to qualify for such a deferral, the transaction at issue must be extraordinary, unusual and non-recurring. The "extraordinary" prong of this test includes consideration of the magnitude of the expense incurred. The Uniform System of Accounts defines "extraordinary items" as

"those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company Accordingly, they will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary." (from State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, 810 (ellipses in original).)

However, is it not sufficient for an applicant to meet only one prong of the test for an AAO. Even if the expenses here meet the USOA definition of "extraordinary," an

AAO is not appropriate if the circumstances "are recurring, not nonrecurring." WO-98-223, Slip Op., at p. 21.

7. MAWC failed to provide any information in this filing to support the claim that special accounting treatment, in the form of an AAO, is necessary in order to ensure the safety of the water supplied to MAWC's customers. The Application, as filed, contains no information which Commission could consider in deciding whether to allow the Applicants to defer these alleged expenses, nor does the application provide any indication of what those expenses are. Rather, the Application vaguely alleges that MAWC has "adopted new procedures, updated existing procedures, and installed facilities to further safeguard their water plant and systems in light of the events of September 11, 2001." (Application, at pp. 3-4.) This regulated monopoly should not be allowed to use the tragic events which took place on September 11 as an opportunistic excuse to maximize profits. The mere fact that MAWC lists a handful of government agencies with which it has had contact does nothing to establish the actions taken, the expenses incurred, and the nature of those charges as recurring or non-recurring. MAWC must give the Commission the opportunity to decide this application based upon a review of the facts, not mere assertions by MAWC, when deciding whether it will grant an AAO.

8. Prior to September 11, 2001, MAWC had an obligation to safeguard its water plant and systems as a condition of its certificates of convenience and necessity. It is possible, in light of growing awareness that future acts of unprovoked violence may occur in our society, that it has become reasonable and prudent for MAWC to take additional measures to ensure customer safety. This is part of MAWC's ongoing

obligation to provide safe and adequate service to its customers at just and reasonable rates.

9. Given that MAWC may soon be swallowed up by an international conglomerate with interests in a number of developing nations, including Chile, Indonesia, Malaysia, Thailand, Turkey, and Croatia, additional security measures may also become necessary if the merger between AWK and RWE is consummated. If costs were to be deferred pursuant to an AAO in this case, those costs should be limited to those extraordinary, unusual and non-recurring costs legitimately caused by events unrelated to the proposed merger. However, if increases in security-related costs of service are due to the merger of the parent company, MAWC customers should be held harmless for those increased costs, and an AAO would not be appropriate.

10. MAWC's statement that it has consulted several government agencies about these safety issues may be an attempt to avoid disclosing the amount of the expenditures and the precise nature of the improvements that MAWC allegedly has or will make. However, this Commission, as the government body responsible for regulating the Applicants' utility operations, has an independent obligation to review these expenses. While a prudence review should be conducted in a rate case, not an AAO case, the Company should not be rewarded with special accounting treatment for elaborate or unnecessary expenses. If the Company believes revealing information about alleged improvements and the amounts it seeks to defer under an AAO would pose a security risk, it can request a protective order from this Commission for such information. Public Counsel strongly objects to any suggestion

that this Commission "pre-approve" expenditures which the Company seeks to defer through an AAO, or to determine in advance how those expenditures may be treated in a future rate case.

11. An ancient Chinese curse states, "May you live in interesting times." It is entirely possible that, upon investigation and review, and after a hearing on the merits, this Commission might grant an AAO. Merely living in interesting times is not, however, sufficient justification for the Company to defer unknown expenses attributed to unknown actions allegedly designed to further safety. "The Commission's principle purpose is to serve and protect ratepayers." State ex. rel. Capital City Water Co. v. PSC, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993). (Citing State ex rel. Crown Coach Co. v. Public Service Commission, 179 S.W.2d 123 (1944).) The Commission must ensure that the water supply is safe and adequate, without sacrificing the requirement that customers pay no more for that service than is "just and reasonable." In order to come to an informed decision regarding MAWC's request for an AAO, the Commission needs more information. In order to provide more information to the Commission, the parties need more than 25 days, especially when two of those days (December 25 and January 1) are national holidays.

CONCLUSION


We cannot know, on the basis of the current filing, whether the Company has or will incur extraordinary expenses related to safety improvements. We cannot know, on the basis of the current filing, whether these safety improvements are

reasonably related to heightened security concerns stemming from the events of September 11, or whether they are improvements which would have been made under other circumstances as well. We cannot know, on the basis of the current filing, whether the alleged expenses are recurring or non-recurring. We do not even know what the expenses are. However, rather than dismiss possibly legitimate safety concerns out of hand, it would be more appropriate for the Commission to provide the Company, the Staff, Public Counsel and such other interested parties as may seek to intervene, adequate time to investigate this request, and present the results of that investigation to the Commission at a hearing on the merits of the application.

WHEREFORE, it is respectfully moved that this Commission DENY the request for expedited treatment, SUSPEND any decision on the merits of the application, and ESTABLISH a reasonable procedural schedule which will enable the parties to investigate the AAO request and present their findings to the Commission at a hearing.

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 12th day of December 2001:

GENERAL COUNSEL

Missouri Public Service Commission
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Jefferson City MO 65102

DEAN L COOPER

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A handwritten signature in cursive script, appearing to read "Ruth O'Neill", is written over a horizontal line.