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November 30, 1999

FILED

NOV 30 1999

Missouri Public
Service Commission

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

Re: Case No. WR-2000-281 (as consolidated)
Missouri-American Water Company

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and fourteen copies of Public Water Supply District No. 2 of St. Charles County, Missouri's Reply To Missouri-American Water Company's Opposition To Application to Intervene. Copies have been sent to counsel for all parties of record. Thank you.

Sincerely,

Brent Stewart
Brent Stewart

CBS/bt

Enclosure

cc: Dean L. Cooper
Office of the Public Counsel
Mark Piontek

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water)
Company's Tariff Sheets Designed to Implement)
a General Rate Increase for Water Service)
Provided to Customers in the Missouri Service)
Area of the Company.)

Case No. WR-2000-281

In the Matter of Missouri-American Water)
Company's Tariff Sheets Designed to Implement)
a General Rate Increase for Sewer Service)
Provided to Customers in the Missouri Service)
Area of the Company.)

Case No. SR-2000-282

FILED
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Missouri Public
Service Commission

REPLY TO MAWC'S OPPOSITION TO APPLICATION TO INTERVENE

Comes now Public Water Supply District No. 2 of St. Charles County, Missouri ("District"), by and through counsel and pursuant to 4 CSR 240-2.080(12), and for its Reply to Missouri-American Water Company's ("MAWC's") Opposition To Public Water Supply District No. 2 of St. Charles County's Application To Intervene filed on or about November 24, 1999, respectfully states as follows:

1. MAWC at least admits in paragraph 5 of its pleading that the Commission has the authority to grant the District's request for intervention under the Commission's rule. The District in its Application To Intervene already provided the Commission with more than sufficient grounds for granting the District's intervention request and those grounds need not be repeated. MAWC's pleading, however, raises several additional issues which require a response.

2. MAWC's allegation that the District's interests are "appropriately protected by the Office of the Public Counsel" ("OPC") is ludicrous on its face. The OPC represents the interests of MAWC's residential ratepayers; MAWC correctly notes in paragraph 2 of its

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pleading that the District is not a customer of MAWC, let alone a residential ratepayer. That the OPC somehow represents the broader interests of "the general public" in this or any other proceeding can be debated, but the Commission's own records clearly reflect that the OPC's and the District's interests were *not* at all the same in Case Nos. WA-97-45, WO-97-492, and WC-96-441. The same argument holds true in terms of representation by the Staff.

3. The Commission as a matter of fundamental due process should permit the District to represent itself in this proceeding and not force it to rely on representation by the OPC or any other party. This includes other public water supply districts which may or may not be granted intervention in this case. Even MAWC admits in paragraph 2 of its pleading that the specific interests of other public water supply districts differ from that of the St. Charles County District, and elsewhere, that MAWC does in fact compete with the District. Presumably, MAWC also would have the Commission deny the intervention request of St. Charles County since the county is not a customer and since the County's interests can be "appropriately represented" by the OPC. MAWC's approach flies in the face of past Commission practice regarding intervention requests and makes the Commission's initial Notice issued in this case perfunctory, if not virtually meaningless.

4. MAWC's argument that allowing the District's requested intervention somehow thwarts the purpose of Commission regulation generally and somehow creates a competitive disadvantage for MAWC is wholly without merit. By well established law the Commission is required to consider "all relevant factors" and the overall public interest when it conducts any general rate proceeding. It is not at all uncommon for numerous "non-rate" issues to arise in the course of and therefore be addressed in general rate proceedings and the same thing could

and should reasonably be expected in this case. Such matters might include prudence of supply procurement in light of other available options, utility line extension policies, quality of service, and marketing or even inappropriate promotional practices against competitors (among other things). These are just a few examples of legitimate issues which can have a direct and immediate impact on a competitor such as the District.

Whether these issues, or others, will arise in the course of this particular proceeding is at this time unknown, but it is clear that this is a major rate proceeding for the largest investor-owned water utility in the state and the Commission's ultimate decisions in this case are likely to be far reaching. If, as alleged by MAWC, the nature of the District's specific interest in this proceeding is in fact "unclear" at this early stage, it is only because at this point no one knows exactly what issues might arise during the course of the case. For the District to wait to seek intervention at some later date after all issues become known would violate the Commission's original Notice, would be out of time, and would likely create procedural problems for all involved. If it turns out that no issues of particular interest to the District arise, then the District will obviously limit its participation in the case accordingly. However, to deny the District at the very outset even the opportunity to make this assessment for itself only serves the competitive interests of MAWC, not the broader public interest.

Moreover, by opposing the District's intervention request, MAWC seeks at the outset to limit the information available to the Commission. In exploring all relevant factors relating to MAWC's rate increase request, the Commission should welcome any evidence and arguments the District may wish to offer and err on the side of having as complete a record as possible. Permitting the District's intervention actually furthers, not thwarts, the regulatory

process and aids the Commission's consideration of all relevant factors as it determines the overall public interest.

The Public Service Commission Law, cited by MAWC, provides a comprehensive framework for the regulation of investor-owned utilities by the Commission, not some sort of shield against competitors or others who might have an interest (competitive or otherwise) in an investor-owned utility's operations. Rate case proceedings before the Commission are the *only* way interested parties such as the District are permitted any opportunity to review and assess the actions and rate requests of regulated investor-owned utilities such as MAWC. The Commission's own rule on intervention recognize this fundamental principle. For MAWC to boldly suggest that no "clear and direct competitor" should *ever* be permitted to intervene in a rate case is a direct attack on the Commission's discretion embodied in the rule and on the Commission's ability to properly control and manage its own proceedings.

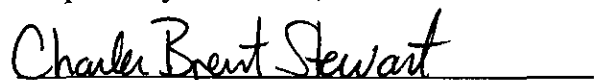
Finally, unlike the publicly-owned District, whose meetings, management, and operations are conducted publicly and which are governed by the state's "Sunshine Law" of Chapter 610 RSMo, MAWC's operations and management remain closed from all public view and scrutiny, at least until such time as the Commission conducts a public examination in the context of a Commission rate case proceeding. Even though it is subject to Commission oversight, MAWC can, for the most part, operate in private. Board meetings and its financial records are closed. It has control over when and if its operations are ever subjected to public scrutiny since the timing of rate case filings are totally within its discretion. The activities of its parent and affiliate companies are, for the most part, completely outside Commission jurisdiction. On the other hand, virtually every aspect of the District's operations are required

by law to be available for public inspection. Nothing is prohibiting MAWC representatives from attending District board meetings, examining the District's records, or otherwise voicing MAWC's views with regard to the setting of the District's rates or other matters regarding the District's operations. If anything, MAWC has a competitive advantage over the District.

The Commission should reject MAWC's twisted and self-serving interpretation of the Public Service Commission Law and dismiss MAWC's objections as without merit. The Commission's own rate case procedures and processes will provide sufficient "safeguards" for MAWC's legitimate interests. The only way Commission proceedings will become a "tool of competition" is if competitors are locked out of what should be the one truly public aspect of a regulated utility's operations.

WHEREFORE, for all the foregoing reasons, Public Water Supply District No. 2 of St. Charles County, Missouri respectfully requests that the Commission reject MAWC's arguments and grant the District's Application To Intervene as a party in this case.

Respectfully submitted,



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ATTORNEY FOR PUBLIC WATER
SUPPLY DISTRICT NO. 2 OF ST.
CHARLES COUNTY, MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel for Missouri-American Water Company and the Office of the Public Counsel this 30th day of November, 1999 by depositing same in the U.S. Mail or by hand-delivery.

Charles Brent Stewart