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March 22, 2002

FILED³

MAR 22 2002

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

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


Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of MAWC's Reply to the Utility Workers Union of America Local 335, AFL-CIO's Opposition. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions concerning this matter, then please do not hesitate to contact me.
Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: 
Dean L. Cooper

DLC/rhg
Enclosures

cc: Mr. Keith Krueger, PSC
Ms. Ruth O'Neill, OPC
Mr. Stuart Conrad
Mr. Jeremiah Finnegan
Mr. James Deutsch
Ms. Jan Bond

FILED³

MAR 22 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

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 an accounting authority order relating)
to security costs.)

Case No. WO-2002-273

**MAWC'S REPLY TO THE UTILITY WORKERS UNION OF AMERICA
LOCAL 335, AFL-CIO'S OPPOSITION**

COMES NOW Missouri-American Water Company ("MAWC" or the "Company")¹,
and, in reply to the Utility Workers Union of America Local 335, AFL-CIO's ("Local 335")
Opposition to MAWC's Objection to Application for Intervention of Local 335 ("Opposition"),
states the following to the Missouri Public Service Commission ("Commission"):

SUMMARY

Local 335's Opposition requests the Commission to become involved in the
interpretation and adjudication of its collective bargaining agreement with MAWC. This is
not within the Commission's jurisdiction, nor should the Commission accept this invitation
to become directly involved such potential disputes. This Commission's resulting Report
and Order will direct whether or not certain costs can be accounted for in a way in which
MAWC will have the opportunity to present them to the Commission for possible recovery

¹ This case was initially filed by 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. Effective
December 31, 2001, St. Louis County Water Company and Jefferson City Water Works
Company were merged into Missouri-American Water Company. Thus, Missouri-
American Water Company is the remaining applicant.

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in MAWC's next rate case. It will not directly assess, change or fund MAWC's security efforts.

BACKGROUND

1. Local 335 filed its Opposition on or about March 18, 2002, in response to MAWC's objection to Local 335's application to intervene in this case. MAWC alleged that Local 335's application had not identified "an interest which is different from that of the general public *and which may be adversely affected by a final order arising from the case.*" Commission Rule 4 CSR 240-2.075(4)(A) (Emphasis added).

2. In its Opposition, Local 335 attempts to identify such an interest stating that it has evidence indicating that some of the security actions might have been taken without the events of September 11, 2001, that the Commission's decision might further impact Local 335's collective bargaining agreement with MAWC and that it wants to conduct discovery concerning discovery practices. MAWC will respond to these assertions in the following paragraphs.

3. First, as an example of the special information it can bring to this case, Local 335 indicates that it has reason to believe that some of the security work performed concerns matters that is "clearly bargaining unit work but simply has low priority prior to September 11." (Opposition, p. 3). As an initial matter, it is unclear that an accounting authority order ("AAO") is any more or less appropriate because it is or is not related to "bargaining unit work." However, even if it is, MAWC would remind the Commission that it has previously filed the Direct Testimony of Frank L. Kartmann which stated in part that:

Because MAWC has always had an obligation to provide safe and adequate service, the American System has been assessing security needs of its plant and facilities for some time. However, as a result of the events of September

11, 2001, MAWC, and others believed it was necessary to adopt new procedures, update existing procedures, and install facilities to further safeguard its water plant and systems with a sense of urgency and in an extremely short period of time, rather than slowly make these changes and the required investments over a much more extended period of time.

(Kartmann Dir., p. 4). Thus, MAWC agrees with Local 335's assertion that there was a higher priority placed on security measures in light of the events of September 11, 2001. There is no need to grant intervention in order establish this fact.

4. Second, Local 335 goes on to explain that it believes a Commission decision on the AAO application will have an adverse impact on its position in future litigation it may pursue based upon its collective bargaining agreement. This is simply not a subject that is within the jurisdiction of the Commission. In fact, in another context, the Commission has been expressly directed by the legislature to take a "hands off" approach to collective bargaining agreements.²

5. The provision of the collective bargaining agreement cited by Local 335 does not refer to Commission AAO's, nor use the language of a Commission AAO. Speculation as to what positions may be taken in future union negotiations does not constitute an interest that may be "*adversely affected by a final order arising from the case.*"

6. Third, Local 335 states that it wants to intervene so it can find out which of the security measures which enhance the safety of the Union's membership will be

² "In establishing public utility rates, the commission shall not reduce or otherwise change any wage rate, benefit, working condition, or other term of employment that is the subject of a collective bargaining agreement between the public utility and a labor organization." Section 386.315, RSMo 2000.

temporary and non-recurring.³ A desire to have the right to conduct discovery is not a sufficient reason for the grant of intervention. A party must have an interest in a final order of the Commission. The Commission's order in regard to this AAO application will not impact the safety of Local 335's union members.

7. As stated in MAWC's previous pleading, this case addresses financial and accounting recording matters. The Commission will determine whether MAWC will be allowed to book its security costs in the manner requested, or in some other manner, so that it has the opportunity to present those costs to the Commission for possible recovery in its next rate case. The Commission's resulting Report and Order in this case will not directly assess, change or fund MAWC's security efforts.

CONCLUSION

8. Local 335 indicates its intent to litigate before the Commission the meaning of its collective bargaining agreement, if it is granted intervention in this case. The Commission has no jurisdiction over such matters and its resulting final order will not "adversely affect" Local 335. The application to intervene should be denied.

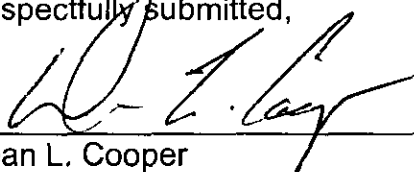
WHEREFORE, MAWC respectfully requests that the Commission:

- (a) deny Local 335's Application to Intervene; and,

³ In the context of an AAO, "non-recurring" appears to mean "not expected to recur frequently." See *In the Matter of Missouri Public Service*, 1 Mo.P.S.C.3d 200 (December 20, 1991).

(b) grant such further relief as the Commission deems appropriate.

Respectfully submitted,



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MISSOURI-AMERICAN WATER COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand delivered, on this 22nd day of March, 2002, to the following:

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