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February 8, 2002

Missouri Public Service Commission
Attn: Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
200 Madison Street, Suite 100
P. O. Box 360
Jefferson City, MO 65102-0360

FILED³

FEB 08 2002

Missouri Public
Service Commission

Re: Case No. WC-2002-146

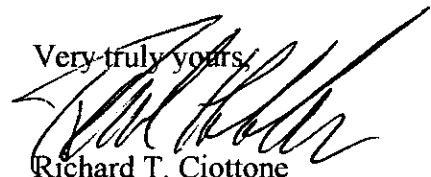
VIA EXPRESS MAIL

Dear Secretary Roberts:

Enclosed for filing please find an Original and eight copies of RESPONDENT'S POSITION STATEMENT, WITNESS LIST AND ORDER OF CROSS EXAMINATION in the above styled complaint. Will you please bring this matter to the attention of the Commission at your earliest convenience.

Thank you for your assistance and cooperation in this matter.

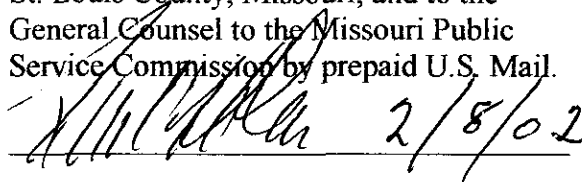
Very truly yours,



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Certificate of Service

Copies of this transmittal and its attachments have on the date below indicated been sent to the Office of Public Counsel, to the attorney for St. Louis County, Missouri, and to the General Counsel to the Missouri Public Service Commission by prepaid U.S. Mail.



FILED³

FEB 08 2002

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

Missouri Public
Service Commission

Staff of the Missouri Public Service
Commission,

Complainant,

vs.

St. Louis County Water Company,
d/b/a Missouri-American Water Company,

Respondent.

Case No. WC-2002-146

**RESPONDENT'S POSITION STATEMENT,
WITNESS LIST AND ORDER OF CROSS-EXAMINATION**

Comes now Respondent Missouri-American Water Company (successor to St. Louis County Water Company, d/b/a Missouri-American Water Company), and for its Statement of Position, the filing of which was directed by the Commission's Order Adopting Procedural Schedule dated November 8, 2001, states as follows:

Position Statement

Issue No. 1: Is the Company's tariff sheet (the "Tariff") P.S.C.MO No. 6 Original Revised SHEET No. RT 17.0 unjust, unreasonable, or more than allowed by law or by order or decision of the Commission, and, if so, what changes to the tariff would be proper.

Company's position is that the Tariff has been filed with and effectively approved by the Commission, and Respondent's collections of fees pursuant thereto, unless and until the Tariff is changed by Order of the Commission, are thus lawful. State ex rel. Louis County Gas Co. v. Public Service Commission, 286 S.W. 82 (Mo. Sup. 1926). Complainant cannot meet its burden of proof to show by clear and satisfactory evidence that the Tariff is unreasonable or unlawful as the case may be, Section 386.430 RSMo, and thus no prospective change is warranted. The Tariff is just and reasonable because the tariff is consistent with the permissive statutory provisions of Section 66.405 RSMo and the legislative intent of that statute, is consistent with public policy for the funding of

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service line repairs by all customers regardless of ownership as actively promoted by Complainant itself, and is otherwise in the best interest of all, as explained by the testimony of Senator Wayne Goode and James M. Jenkins.

Issue No. 2: Does Commission approval of a tariff also constitute approval of a contract that is filed with the tariff and on which the tariff is based.

Company's position is that this issue is not material to this Complaint, and is not appropriate in this proceeding. In response to Complainant's attempt to seek a declaratory judgment on this technical question of protocol, Respondent's Answer, paragraph 16b states:

The Contract by its terms, states that: "...this Contract shall be submitted to the Missouri Public Service Commission for its information, and if deemed necessary by such Commission, for its approval. This Contract shall at all times be subject to the actions of such Commission." The Contract was provided to the Secretary of the Commission, and *whether or not* this constitutes an effective approval, the terms of the agreement permit the Commission to effectively change the terms of the agreement by declaration of tariff language, as it may do in this case prospectively. (emphasis added).

Therefore, no party in this proceeding is claiming that this Contract has been "approved" in the sense of the term as apparently used by Complainant, namely that it is purported to be immune from prospective change by literal or de facto action of the Commission in this proceeding, in future rate proceedings or in any Commission proceeding.

Witness list

James M. Jenkins has been assigned to New Jersey, but will be made available at any time on Friday, February 22, 2002 at the convenience of the Commission or any party.

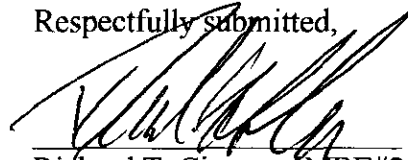
Senator Wayne Goode is unavailable during normal hearing hours due to the press of his obligations in the General Assembly. He can be available between 8 and 8:30 a.m. on Thursday, but he realizes that this time may be unsuitable. It will be necessary for the Commission and the other parties to either waive cross-examination or take such other

action with respect to his filed testimony as may be deemed appropriate. It should be noted, however, that Complainant's only witness states the following with respect to Senator Goode's filed testimony : "Senator Goode discusses his participation in the development of the Statute. I have no reason to doubt any of the statements he makes in his testimony." (Surrebuttal Testimony of Wendell R. Hubbs, page 18, lines 18-20).

Order of Cross-examination

Respondent has no preference with respect to the order of cross-examination and will defer to the preferences of the Commission.

Respectfully submitted,



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Copies of the foregoing have on the date below written been provided to the Office of Public Counsel, to the General Counsel of the Missouri Public Service Commission and to the attorney for St. Louis County, Missouri, by electronic transmission and by first class prepaid U.S. Mail.

