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January 2, 2002

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

FILED²
JAN 02 2002
**Missouri Public
Service Commission**

Re: **Missouri-American Water Company, et al.**
PSC Case No. WO-2002-273

Dear Mr. Roberts:

Enclosed are the original and eight (8) conformed copies of a pleading, which please file in the above matter and call to the attention of appropriate Commission personnel.

An additional copy of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By:


Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 02 2002

Missouri Public
Service Commission

Case No. WO-2002-273

In the Matter of the Joint Applica-)
tion 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 ac-)
counting authority order relating)
to security costs)

RESPONSE TO STAFF PROPOSED PROCEDURAL SCHEDULE
BY AG PROCESSING INC, A COOPERATIVE,
FRISKIES PETCARE, A DIVISION OF NESTLE USA, AND
WIRE ROPE CORPORATION OF AMERICA, INC.

Come now AG PROCESSING INC, A COOPERATIVE ("AGP"),
FRISKIES PETCARE, A DIVISION OF NESTLE USA ("Friskies") and WIRE
ROPE CORPORATION OF AMERICA INC. ("Wire Rope") and respond to the
procedural schedule proposed by the Staff on December 28, 2001.

1. Company originally proposed a procedural schedule
on December 21. Staff, Public Counsel and these intervenors also
proposed procedural schedules. These schedules were, it is
understood, based upon available hearing dates on the
Commission's calendar.

2. The appears that Staff and Public Counsel are in
agreement that Applicant should make the initial filing of direct
testimony.

3. Staff has proposed the following schedule and we
sense that Public Counsel is in general agreement.

Proposed Date	Intervening Days	Action
1/31/02		Applicants File Direct Testimony
	28	
2/28/02		Rebuttal Testimony (all others wishing to file)
	21	
3/21/02		Surrebuttal and Cross-Surrebuttal Testimony
	7	
3/28/02		Statement of Issues
	7	
4/4/02		Statements of Positions
	35	
5/9-10/02		Hearing
	17	
5/27/02		Initial Briefs
	14	
6/10/02		Reply Briefs

4. There are several problems with this proposed schedule.

a. There is an unusual (and potentially unnecessary) 35-day gap between filing position statements and the hearing. While we certainly are agreeable to separating the filing of issue statements from position statements and agree that the statement of issues should precede the statement of positions, 35 intervening days before the hearing are arguably not needed and might better be distributed through the foregoing schedule to provide more adequate time for data requests on the current 20-day turnaround.

b. The proposed schedule makes no allowance for the time needed to prepare and distribute the transcript, much less review it. More typically, at the conclusion of a hearing,

a briefing schedule is discussed to be implemented only **after** the transcript has been prepared and delivered to the parties. In practice, as much as two weeks is needed for the transcript to be prepared and received by the parties. Were that the case here, only three days would be allowed for preparation of an initial brief (which actually becomes two days for out-of town parties, since they would need to overnight their brief for filing one day ahead of in-town parties). Nor should it be required that other parties incur the expense of expedited transcript preparation in order to have access to the transcript to prepare a brief, and even an expedited transcript preparation might still consume three or four days. The Commission should reasonably expect parties to brief the case based on the hearing with citations to the transcript and exhibits. In fact, failure to do so deprives the Commissioners of a decisional option. Section 536.080 RSMo requires that the Commissioners either hear all the evidence, read the full record with the evidence, or "personally consider the portions of the record cited or referred to in the arguments or briefs." Three days following receipt of the transcript is plainly insufficient to prepare such material.

c. No provision has been made for Commission or hearing officer decision time. While this is not our direct concern, it is clearly a consideration for the Commission. It *is* our concern that Commission decisions be based on the record in the case and on facts found from that record and only reached after review of the briefs that the parties have assembled to

argue and support their respective positions from the record.^{1/} What Staff's proposed schedule does, however, demonstrate, is that the Company's original suggested schedule is plainly unworkable.

5. Any procedural schedule adopted should consider these practical and logistical concerns.

WHEREFORE, AGP, Friskies and Wire Rope respectfully support the suggestion of a two-day hearing schedule but respectfully recommend that sufficient time be provided between testimony filing dates such that all parties may have adequate time to propound and receive data requests and prepare responsive testimony and that any briefing schedule proposed at this time be

^{1/}Missouri courts would seem to agree that adequate findings of fact are a requirement for issuance of a lawful and judicially reviewable report and order. See, *Monsanto Co. v. Public Serv. Comm'n*, 716 S.W.2d 791, 795 (Mo. banc 1986); *St. Louis County Water Co. v. State Highway Comm'n*, 386 S.W.2d 119, 125 (Mo. 1964); *AT&T Communications of the Southwest, Inc. et al. v. Public Service Commission*, Case Nos. WD59277, WD59336, WD59369, WD59371 and WD59393, 2001 Mo. App. LEXIS 1943, (October 30, 2001); *State ex rel. Noranda Aluminum, Inc. v. Public Service Commission*, 24 S.W.3d 243 (Mo. App. W.D. 2000).

sufficient to allow preparation of the transcript followed by adequate briefing time for the parties.

Respectfully submitted,

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NESTLE USA and WIRE ROPE CORPORA-
TION OF AMERICA, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by electronic, by hand delivery, or by U.S. mail, postage prepaid addressed to the following persons:

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Dated: January 2, 2002



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TION OF AMERICA, INC.