

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)	Case No. WO-2002-273
Jefferson City Water Works Company)	
d/b/a Missouri-American Water Company)	
for an accounting authority order relating)	
to security costs.)	

POSITION STATEMENT OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW, the Office of the Public Counsel, and respectfully submits to the Commission its Statement of Position on the contested issues in this case.

ISSUE 1 : Should the Commission expressly adopt the four criteria proposed by the Staff for this Accounting Authority Order application?

Public Counsel's position: Yes, the criteria should be adopted as *guidelines* to assist the Commission in determining, on a case by case basis, whether it would be appropriate to grant an application for an AAO. The criteria proposed by the Staff are relevant to determining the legal issue of whether it is appropriate to grant relief to an applicant in a given case, because the criteria will be helpful to the Commission in determining whether the costs for which the Company seeks relief were incurred are extraordinary, unusual, unique and non-recurring, and which directly affected the Company.

A. Do the Staffs proposed criteria constitute an unlawful change in statewide policy because such change would not be made through a rule-making proceeding?

Public Counsel's position: No. The Commission does not need to enact rules to determine how it will review legal questions before it. The Commission has the power to decide issues presented in cases involving utility companies that it regulates through a report and order deciding a case, as well as by enacting rules. See, Sec. 386.310 RSMo (2000). Legal guidelines may be adopted in either manner under Missouri law. The Commission does not currently have a specific rule regarding applications for AAOs.

B. If the Commission adopts the Staff's four criteria, then:

(1) Are the costs incurred and which are sought to be deferred in this proceeding at least 5% of MAWC's regulated Missouri income computed before extraordinary items?

Public Counsel's position: No. Assuming, for the sake of argument, that some of the costs which the Company seeks to defer are of the type of unusual, unique, extraordinary and non-recurring costs on which the Commission could base the granting of an AAO, those costs do not meet this 5% criteria. The Company, which has the burden of proof in this matter, has failed to present sufficient competent evidence which would satisfy this criterion.

(2) Are MAWC's current rates inadequate to cover the event (i.e., are MAWC's existing rates sufficient to cover the extraordinary cost and still provide MAWC with a reasonable expectation of earning its authorized rate of return)?

Public Counsel's position: No. In setting rates, the Commission allows for adequate revenues to allow the company to maintain its system and make necessary repairs. Most of the proposed physical improvements could be funded under those allowances. The Company has presented no evidence which would

suggest that making the proposed and implemented changes to its security systems and procedures will prevent it from having a reasonable opportunity to earn a reasonable rate of return. A Company is never guaranteed that it will earn the rate of return allowed by a Commission decision in a rate case.

(3) Did the expenses result from:

(a) an extraordinary capital addition that is required to insure the continuation of safe and adequate service in which unique conditions preclude recovery of these costs through a rate case filing, or

(b) an extraordinary event that is beyond the control of the utility's management?

Public Counsel's position: No, the expenses meet neither of these criteria.

(a) All of the expenditures relied on by the Company as a basis for granting this AAO were undertaken pursuant to decisions made by the Company's management. No actual damage occurred to any Missouri property. No legal action by any governmental entity required the Company to incur any of these costs. No specific threats have been made to any of MAWC's Missouri properties. Most of the changes that the Company proposes to include in an AAO required small investments. Many of these small investments involve costs which could have been expected to be incurred by the Company as it complied with its ongoing duty to provide safe and adequate service. As such, many of the changes which have been implemented may be appropriately considered to be a part of the ongoing cost of providing service. Some of the proposed changes

may not be necessary to providing safe and adequate service. All expenditures will be scrutinized for prudence in the company's next rate case.

(b) Although the Company had no control over the persons who chose to fly commercial airliners into the World Trade Center and the Pentagon, the Company has had full control over its management decisions regarding what changes to implement in its Missouri facilities following that tragedy. No facilities used to provide regulated water service to Missouri customers were damaged during the tragic events of September 11. No regulation or statute required the Company to implement these changes.

(4) Is there a sufficient reason why MAWC cannot recover the costs resulting from these expenditures through the normal rate process?

Public Counsel's position: No. There is no legal prohibition against the Company filing a general rate case immediately, or from filing a rate case as soon as all proposed improvements and additions are used and useful in the service of the Company's customers. The Commission has procedures for filing for emergency rate relief, if necessary. The Company has failed to identify a cost expenditure which is unusual, extraordinary, unique or nonrecurring.

C. If the Commission does not adopt Staff's four criteria as requirements to granting an AAO, are the costs incurred by MAWC to increase security measures subsequent to the events of September 11, 2001, "extraordinary, unusual, unique and nonrecurring?"

Public Counsel's position: No. As stated above, these remain the criteria for granting an AAO, whether or not the Commission expressly adopts the guidelines proposed by the Staff for evaluating whether the Company has met the threshold for obtaining an AAO. Again, although the Company's

management made a decision to reevaluate its security plant and procedures in light of an unusual event which we all hope will not recur, the costs were not caused by that event.

ISSUE 2: In light of the above, should the Commission grant to MAWC an Accounting Authority Order to defer recognition of the costs it incurred and attributed to increased security needs after the terrorist attacks of September 11, 2001 in New York City and Washington, DC?

Public Counsel's position: No. The expenditures for which the Company seeks special treatment pursuant to the AAO application do not meet the criteria for granting an AAO, whether or not the Commission is guided in evaluating that criteria as proposed by the Staff.

ISSUE 3: If the Commission grants MAWC an Accounting Authority Order:

A. What conditions, if any, should be reflected in the Commission's order?

Public Counsel's position: The Company should be ordered to immediately begin to amortize the costs incurred. Expenditures should be amortized over a period of 20 years.

B. Should the Commission make any indications regarding future rate making treatment of deferred expenditures in the Commission's order? If yes, what indications should the Commission make?

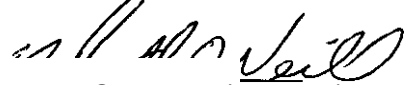
Public Counsel's position: No. Pursuant to the Commission's usual practice, the Commission should expressly decline to make any indication or commitment regarding how any deferred expenditures will be treated in any future rate case. Rather, the parties should be free to make a recommendation on whether to allow portions of these expenditures, and what expenditures to

allow, into rates at the time of the next rate case, when the Commission can properly evaluate these expenditures in light of all relevant factors.

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CERTIFICATE OF SERVICE

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