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

In the Matter of an Investigation into the	)
Operations and Conditions of Tri-States Utility, Inc.	File No. WO-2013-0403

# RESPONSE OF TRI-STATES UTILITY, INC. IN OPPOSITION TO APPLICATION TO INTERVENE

COMES NOW Tri-States Utility, Inc. ("Tri-States"), pursuant to Commission Rule 4 CSR 240-2.080(13), and for its Response in Opposition to the *Application To Intervene/Participate As An Interested Entity By Missouri-American Water Company* ("MAWC Application") filed in this matter on March 18, 2013, respectfully states as follows:

- 1. This matter was opened by Commission Order dated March 6, 2013, with said Order expressly stating that "[t]his is only an investigative case and is not a contested case," and further ordering that "[t]he Commission's Staff shall undertake an investigation into the operations and conditions of Tri-States Utility, Inc." The Order also notes that "Public Counsel is a party to this case and may participate in the case as appropriate."
- 2. The Commission's Order references that Tri-States recently filed a Chapter 11 bankruptcy case in federal court in Kansas, and Tri-States continues to operate as a Debtor in Possession under the jurisdiction of the United States Bankruptcy Court for the District of Kansas.

٤ Id.

<sup>&</sup>lt;sup>1</sup> Order Opening An Investigation Into The Operations And Conditions Of Tri-States Utility, Inc., March 6, 2013, page 2.

- 3. The MAWC Application "asks that the Commission grant this Application for Intervention/participation, and hereby entitle said Applicant to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by counsel on the argument, and in all other respects to be made a party to this proceeding." (MAWC Application, page 2). Contrary to its assertions, granting MAWC's intervention in this matter will not serve the public interest. Attempting to turn this proceeding into a contested matter and ostensibly cloaking itself with discovery rights/opportunities seeking confidential information, MAWC would use this investigatory docket as a subterfuge to further its parochial interests.<sup>3</sup>
- 4. In its Order, this Commission contemplated that the creation of an investigative case would assist its Staff in working with the company and other interested entities. In its Application, MAWC alleges that it "may be in a position to provide information that will assist the Staff and Office of the Public Counsel with their investigation and to provide potential solutions for any issues related to Tri-States' operation." As the state's largest, regulated investor-owned water corporation, MAWC does not require status as a party to this proceeding in order for the Staff to seek any purported information/input that it may deem relevant or appropriate.

WHEREFORE, Tri-States Utility, Inc. respectfully requests that the Commission deny Missouri-American Water Company's application to intervene/participate in this investigatory docket.

<sup>&</sup>lt;sup>3</sup> "MAWC has been in prior discussions to acquire Tri-States' assets." MAWC Application, page 2.

### Respectfully submitted,

#### /s/ Larry W. Dority\_

James M. Fischer MBN 27543 Larry W. Dority MBN 25617 Fischer & Dority, P.C. 101 Madison, Suite 400 Jefferson City, Missouri 6501

Tel: (573) 636-6758 Fax: (573) 636-0383

E-mail: <a href="mailto:lwdority@sprintmail.com">lwdority@sprintmail.com</a>

Attorneys for Tri-States Utility, Inc.

#### **CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the above and foregoing document were sent by electronic mail, or hand-delivered, on this 26<sup>th</sup> day of March, 2013, to:

General Counsel
Kevin Thompson, Chief Staff Counsel
Missouri Public Service Commission
Governor Office Building, 8<sup>th</sup> Floor
P.O. Box 360
Jefferson City, MO 65102
kevin.thompson@psc.mo.gov
staffcounselservice@psc.mo.gov

Office of the Public Counsel
Christina L. Baker, Deputy Public Counsel
Governor Office Building, 6<sup>th</sup> Floor
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov
christina.baker@ded.mo.gov

Timothy W. Luft
Missouri-American Water Company
727 Craig Road
St. Louis, MO 63141
timothy.luft@amwater.com

/s/ Larry W. Dority
Larry W. Dority