

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427

DEAN L. COOPER  
MARK G. ANDERSON  
TIMOTHY T. STEWART  
GREGORY C. MITCHELL  
RACHEL M. CRAIG  
BRIAN T. McCARTNEY  
DALE T. SMITH

OF COUNSEL  
RICHARD T. CIOTTONE

March 22, 2000

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

**FILED**<sup>3</sup>

MAR 23 2000

Missouri Public  
Service Commission

**Re: Case No. WR-2000-281**  
**Case No. SR-2000-282**

Dear Mr. Roberts:

Enclosed for filing in the referenced case on behalf of Missouri-American Water Company, please find an original and fourteen copies of MAWC's Response to OPC's Suggestions in Opposition to MAWC's Motion for AAO and for Reconsideration of Order Concerning AAO. Also enclosed is a receipt copy which I ask that you stamp "Filed" and return to me.

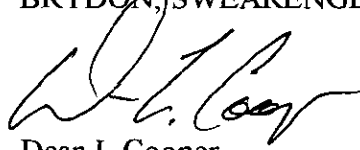
Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

  
Dean L Cooper

DLC/lar  
Enclosure  
cc: All Parties of Record

**RECEIVED**

MAR 22 2000

Records  
Public Service Commission

RECEIVED

MAR 22 2000

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED<sup>3</sup>

MAR 23 2000

Records  
Public Service Commission

In the Matter of Missouri-American )  
Water Company's Tariff Sheets Designed )  
to Implement General Rate Increases for )  
Water and Sewer Service provided to )  
Customers in the Missouri Service Area )  
of the Company. )

Case No. WR-2000-281

Case No. SR-2000-282

Missouri Public  
Service Commission

**MAWC'S RESPONSE TO OPC'S SUGGESTIONS IN OPPOSITION  
TO MAWC'S MOTION FOR AAO AND  
FOR RECONSIDERATION OF ORDER CONCERNING AAO**

COMES NOW Missouri-American Water Company ("MAWC" or "Company") and, as its response to the Office of the Public Counsel's ("OPC") Suggestions in Opposition to MAWC's Motion for Accounting Authority Order ("AAO") and for Reconsideration of Order Concerning AAO, states as follows to the Missouri Public Service Commission ("Commission"):

1. On November 19, 1999, MAWC filed its Motion for Accounting Authority Order ("Motion") in which MAWC requested an AAO authorizing it to continue the capitalization of Allowance for Funds Used During Construction and to defer depreciation on certain capital expenditures for the St. Joseph treatment plant and related facilities. This AAO was requested to begin with the in service date and continue until the effective date of a Commission rate order which includes the St. Joseph treatment plant and related facilities in MAWC's rate base and includes depreciation expense in MAWC's operating expenses.

2. On February 1, 2000, after considering MAWC's Motion, as well as other pleadings concerning the requested AAO, the Commission issued its Order Concerning Test Year, True Up, Accounting Authority Order, and Local Public Hearings. The Commission, among other things, ordered:

That the Commission will defer decision on Missouri-American Water Company's

1057

Motion for an Accounting Authority Order until it issues its Report and Order in this case. The parties will thoroughly advise the Commission on this issue in testimony and briefing. Any party that wishes to supplement its already-filed testimony to include this issue may do so.

3. On February 10, 2000, MAWC filed its Motion for Reconsideration of Order Concerning AAO. Thereafter, on February 23, 2000, MAWC, Staff and the OPC filed a Stipulation and Agreement concerning the disposition of this case.

4. On March 3, 2000, in its Order Denying Rehearing and Concerning AAO, the Commission determined that it would convene an evidentiary hearing to address both MAWC's Motion for Reconsideration of Order Concerning AAO and the Stipulation and Agreement.

**MAWC HAS NOT, AND NEED NOT, ABANDON  
ITS REQUEST FOR AN AAO AT THIS POINT IN TIME**

5. The OPC states that "having joined in a Stipulation and Agreement to resolve the timing issues involved with this case, MAWC is bound to honor its contractual agreement unless . . . the Commission rejects the Stipulation and Agreement."<sup>1</sup> The OPC further alleges that MAWC "has an obligation not to seek an AAO from the Commission."

6. MAWC disagrees with the OPC, not as to the potential ultimate effect of the Stipulation and Agreement on MAWC's request for an AAO, but rather as to the timing of MAWC's obligation. The OPC seems to indicate that MAWC has an obligation upon entering into the Stipulation and Agreement. This is not when the obligation arises. The terms of the Stipulation and Agreement expressly state that the Stipulation and Agreement is not binding upon the parties until

---

<sup>1</sup> The Intervenors make a similar argument in their Application for Rehearing of Order of March 3, 2000 ("given prior determinations by the Commission that the significance of a joint recommendation proffered by some, but not all parties to a case, imply amounts to no more than an amendment of the signatory parties' prior pleadings or positions before the Commission, [MAWC's] earlier Motion for [AAO] should be considered withdrawn *de jure*.")

it has been approved by the Commission.

6. Specific examples of the timing provisions, as they have been made in the Stipulation and Agreement, are as follows:

- a) *“If the Commission issues an order adopting the terms and conditions of this Stipulation and Agreement in its entirety, MAWC will then withdraw its pending revised tariff sheets, which are the subject of Commission Case Nos. WR-2000-281 and SR-2000-282, and file new, revised water and sewer tariff sheets no later than May 31, 2000, in order to initiate new permanent rate cases.”* para. 6 (emphasis added);
- b) *“This Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of Case Nos. WR-2000-281 and SR-2000-282. None of the parties to this Stipulation and Agreement shall be prejudiced or bound by the terms of this Stipulation and Agreement in any future proceeding, or in this proceeding, in the event that the Commission does not approve this Stipulation and Agreement in its entirety.”* para. 12 (emphasis added); and,
- c) *“In the event the Commission does not approve and adopt this Stipulation and Agreement in its entirety, then, under those circumstances, the parties agree that this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.”* para. 15 (emphasis added).

7. Thus, the Stipulation and Agreement very clearly indicates that the parties' obligations do not arise until the Commission has approved the Stipulation and Agreement. On the other hand, if the Stipulation and Agreement is not approved by the Commission, it is void and the parties are not to be prejudiced by the Stipulation and Agreement. Accordingly, MAWC has not

abandoned its request for AAO merely by being a signatory to the Stipulation and Agreement and is not required to do so by the terms of the Stipulation and Agreement at this point in time. MAWC will not abandon its request for AAO unless the Stipulation and Agreement is approved by the Commission.

**GRANTING AN AAO WILL MERELY PRESERVE THIS ISSUE FOR HEARING**

8. MAWC will not respond to OPC statements concerning the substantive merits of MAWC's AAO request as this has been addressed in detail in previous pleadings and can be addressed in the upcoming hearing. However, MAWC will respond to the following OPC allegations as to the effect of an AAO:

- a. "Granting the AAO sought by MAWC would place ratepayers at great risk of having to pay millions of dollars . . .";
- b. "If the Commission grants the AAO, any regulatory lag associated with the St. Joseph treatment plant investment will be eliminated"; and,
- c. "The obligation of the ratepayers, created by the Commission, would be in excess of \$2,000,000."

9. As MAWC has stated before in this case, these statements are refuted by the current state of the case law concerning AAOs as found in *Missouri Gas Energy v. Public Service Commission*, 978 S.W.2d 434 (Mo.App. 1998). In *Missouri Gas Energy*, the Missouri Court of Appeals stated as follows:

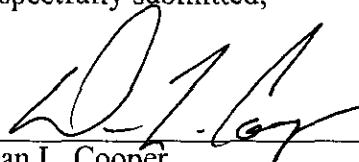
. . . AAOs are not the same as ratemaking decisions, and . . . AAOs create no expectation that deferral terms within them will be incorporated or followed in rate application proceedings. . . . The whole idea of AAOs is to defer a final decision on current extraordinary costs until a rate case is in order.

Id.

10. Thus, a granting of MAWC's request for an AAO will not have the consequences alleged by the OPC. The requested AAO would instead maintain the status quo as to the accounting treatment for the requested expenses so that MAWC would not suffer an immediate detrimental impact as of the "in service" date of the St. Joseph treatment plant and facilities and allow MAWC the opportunity to present the post-in-service AFUDC and deferred depreciation expenses to the Commission for decision within the context of this rate case.

WHEREFORE, MAWC respectfully requests that the Commission convene a hearing to address both MAWC's Motion for Reconsideration of Order Concerning AAO and the Stipulation and Agreement, in accordance with its Order Denying Rehearing and Concerning AAO issued March 3, 2000, and grant such further relief as the Commission deems appropriate in the circumstances.

Respectfully submitted,



---

Dean L. Cooper MBE#36592  
William R. England, III MBE#23975  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
573/635-7166 (phone)  
573/635-0427 (facsimile)

ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 22<sup>nd</sup> day of March, 2000, to the following:

Mr. Keith Krueger  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Ms. Shannon Cook  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Mr. Joseph W. Moreland  
Blake & Uhlig, P.A.  
2500 Holmes Road  
Kansas City, Missouri 64108

Mr. Louis J. Leonatti  
Leonatti & Baker, P.C.  
P.O. Box 758  
Mexico, Missouri 65265

Mr. Charles Brent Stewart  
Stewart & Keevil, L.L.C.  
1001 Cherry Street, Suite 302  
Columbia, Missouri 65201

Mr. Stuart W. Conrad  
Finnegan, Conrad & Peterson, L.C.  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, Missouri 64111

Mr. James M. Fischer  
Attorney at Law  
101 West McCarty, Suite 215  
Jefferson City, Missouri 65101

Mr. James B. Duetsch  
Riezman & Blitz PC  
308 E. High, Suite 301  
Jefferson City, MO 65101

Ms. Diana M. Vuylsteke  
Bryan Cave LLP  
One Metropolitan Sqr., Suite 3600  
211 N/ Broadway  
St. Louis, MO 63102-2750

Mr. Leland B. Curtis  
Curtis, Oetting, et al.  
130 S. Berniston, Suite 200  
Clayton, Missouri 63105

Ms. Lisa M. Robertson  
City Hall - Room 307  
1100 Frederick Avenue  
St. Joseph, Missouri 64501

Mr. Karl Zobrist  
Blackwell Sanders  
P. O. Box 419777  
Kansas City, MO 64141-6777

