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***ALSO ADMITTED IN
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February 17, 2000

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
301 West High R530
Jefferson City, Missouri 65102

FILED²
FEB 18 2000
Missouri Public
Service Commission

Re: **Missouri-American Water Company**
Missouri PSC Case No. WR-2000-281 et al.

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) conformed copies of a pleading, which please file in the above matter and call to the attention of the Commission.

An additional copy of the **INITIAL PAGE** 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

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STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

FILED²

FEB 18 2000

Missouri Public
Service Commission

In the Matter of Missouri-American)
Water Company's Tariff Sheets De-)
signed to Implement General Rate)
Increases for Water and Sewer Ser-)
vice provided to Customers in the)
Missouri Service Area of the Compa-)
ny)

WR-2000-281
SR-2000-282
(Consolidated)

RESPONSE IN OPPOSITION TO MISSOURI-AMERICAN'S
MOTION FOR RECONSIDERATION OF
ORDER CONCERNING ACCOUNTING AUTHORITY ORDER

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 in
opposition to Missouri-American Water Company Motion for Recon-
sideration of the Order Concerning Accounting Authority Order as
follows:

1. There are at least six good reasons why Missouri-
American Water Company's Motion for Reconsideration of the Order
Concerning Accounting Authority Order should be denied.

a. The amount of the plant that would ultimately
be placed in rate base is and will be in dispute in the impending
rate case. That rate case is the proper forum to consider that
matter **and on a record to be developed in that rate case**. To do
otherwise risks charging ratepayers with costs that are not and
never will be justified and arguably denies the ratepayers due
process by prejudging a critical issue in this rate case.

b. The prudence of inclusion of any portion of the plant in rate base is and will be in dispute in the rate case. It certainly has not been shown by any evidence in this proceeding. As stated above, the rate case is the proper forum to consider this matter. Neither the Commission nor ratepayers are required to rescue the utility from the result of its own imprudence.

c. No need for the plant has been shown, nor is it likely to be shown. There certainly is no competent and substantial evidence to support such an order. The proposed expenditure is represented as necessary to "replace" a plant that Missouri-American Water Company witnesses have testified is currently providing safe and adequate water service to the community of St. Joseph, Missouri. Permitting the inclusion of costs in the form of an accounting authority order (AAO) prejudices the interests of ratepayers by deciding questions well in advance of a development of any record supporting such inclusions in rates.

d. While asserting that its business is subject to risk and seeking a rate of return on equity that reflects a purported risk, Missouri-American Water Company would inveigle the Commission to remove risk from its business. Regulatory delay or "lag" is part of that risk, and a 4 1/2 month delay in inclusion (even assuming for the purpose of argument that it is prudent and needed) is neither unusual nor unprecedented. In any event, regulatory delay is a function of the timing of a rate

case, a matter solely within the control of the utility, as is the construction schedule.^{1/}

e. An AAO is inappropriately used to allow inclusion and subsequent charge to ratepayers of costs associated with utility plant that is neither used nor useful to them, whether in St. Joseph or in other separate, unconnected districts. An AAO does not produce water, nor does it provide fire protection. When plant becomes used and useful, it is booked to the plant accounts. Before then, accounting conventions allow AFUDC to be accrued. The utility controls not only the timing of its rate cases, but also the timing of its construction program. Lack of synchronization between two schedules does not justify charges to ratepayers when the utility controls the timing of both.

f. Missouri-American Water Company wants this Commission to permit it to establish a "regulatory asset" on which it can then try to seek automatic recovery. This is not permitted. *State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 811-12 (Mo. App. 1993). Regardless, one Missouri utility, Missouri Gas Energy, only recently attempted to convert an innocuous and innocent-appearing

^{1/}In its Motion, Missouri-American Water Company notes that the Uniform System of Accounts "contemplates" -- note the careful choice of words: **does not require** -- and then even notes that the Commission may order otherwise. All the utility does is confirm that it, and it alone, determines when the plant is "placed in service."

accounting authority order into a means to frustrate the Commission's regulatory jurisdiction, even in the face of an explicit reservation in the very order that neither rate nor regulatory determinations were being made. Indeed, Missouri Gas Energy even went so far as to argue that issuance of an AAO constituted a binding "contract" between them and the Commission the terms of which the Commission may not thereafter change without the utility's consent, never mind the customers. See, *Missouri Gas Energy v. Public Service Commission*, 978 S.W.2d 434 (Mo. App. 1998).^{2/} Ratepayers and the Commission are wisely suspicious of arguments that all that is sought is to "**merely** preserve the issue for hearing" (Motion, p. 4 (emphasis added)) or "preserve to decide as a part of its eventual Report and Order." (Motion, p. 2). The Commission should not fall again into this utility-set trap.

2. Missouri-American Water Company complains that with denial of the "for this five month period" it would receive less than two percent of its "reasonable earnings." First of all, "reasonable earnings" on an imprudent plant investment?

^{2/}Missouri Gas Energy's Point II, as quoted by the Court of Appeals, was:

II. The Commission was "contractually bound" to its prior [accounting authority order] of 10.54%.

Id., at 437. That utility's efforts were finally frustrated, but only after a great deal of effort on the part of Commission Counsel, Public Counsel and other concerned intervenors.

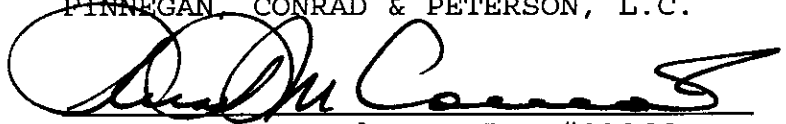
There can be no such thing. Second, booking numbers into a different account, which is all the AAO addresses, creates not one dime of revenue or earnings, reasonable or otherwise. It is only the expectation of a recovery for a plant that has not been determined to be either prudent or necessary that drives this controversy. Thus, the Commission must look through the shell game of the AAO to discern what the utility really seeks. If it were not for the utility's desire to "lock" the Commission into predetermining a recovery on a plant investment that may very well be imprudent, there would be no need for an AAO at all, nor would issuance of an AAO address a single revenue or earnings issue for this utility.

3. Taking the issue with the case as the Commission has done not only allows Commission evaluation of the above evidence in the light of cross-examination, but preserves (rather than prejudices) the Commission's discretion regarding the amount of this plant to include in rate base (if any) and the amount to charge to the ratepayers (if any), and with respect to which service district.

WHEREFORE the Motion for Reconsideration of the Order
Concerning Accounting Authority Order should be denied.

Respectfully submitted,

PINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", is written over a horizontal line.

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ATTORNEYS FOR AG PROCESSING INC.,
FRISKIES PETCARE, A DIVISION OF
NESTLE USA and WIRE ROPE CORPORA-
TION OF AMERICA, INC.

Dated: February 17, 2000.

CERTIFICATE OF SERVICE

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

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