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March 25, 2002

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

RE: Case No. WR-2000-281

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S RESPONSE TO ST. JOSEPH INDUSTRIAL INTERVENORS' MOTION FOR REHEARING.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Robert V. Franson
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RVF:ccl
Enclosure
cc: Counsel of Record

FILED²
MAR 25 2002
Missouri Public
Service Commission

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

FILED²
MAR 25 2002
Missouri 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

**STAFF'S RESPONSE TO ST. JOSEPH INDUSTRIAL INTERVENORS' MOTION FOR
REHEARING**

COMES NOW the Staff of the Missouri Public Service Commission, and for its response to the pleading filed by Ag Processing Inc., Friskies Petcare, A Division of Nestle USA and Wire Rope Corporation of America Inc., Gilster Mary-Lee and City of Riverside, Missouri ("St. Joseph Industrial Intervenor") states to the Missouri Public Service Commission as follows:

1. On March 7, 2002, the Commission issued its Order Setting Prehearing Conference and Directing Filing ("the Order").

2. On March 18, 2002, St. Joseph Industrial Intervenor filed their pleading advocating that the Order is unlawful, and must be set aside, voided or otherwise ruled to be of no force or effect. They rely upon a very broad reading of Section 536.083, RSMo 2000, to conclude that the Regulatory Law Judge had no authority to enter the Order.

3. Section 536.083 RSMo 2000 provides as follows:

Notwithstanding any other provision of law to the contrary, in any administrative hearing conducted under the procedures established in this chapter, and in any other administrative hearing conducted under authority granted any state agency, no person who acted as a hearing officer or who otherwise conducted the first

administrative hearing involving any single issue shall conduct any subsequent administrative rehearing or appeal involving the same issue and same parties.

4. St. Joseph Industrial Intervenors do not even address the question of whether Section 536.083 RSMo 2000 applies to proceedings before the Commission. It is questionable whether Section 536.083 RSMo 2000 applies to the Commission, because the Commission has its own applicable administrative procedural statutes in Chapter 386, and Chapter 536 only fills in the gaps. *State ex rel. Noranda Aluminum, Inc. v. Public Service Commission*, 24 S.W.3d 243, 244 [1] (Mo. App. W.D. 2000). However, assuming *arguendo* that Section 536.083 RSMo 2000 does apply to proceedings before the Commission, then Staff submits that it does not govern the assignment of the Regulatory Law Judge in the current situation.

5. In the present situation, St. Joseph Industrial Intervenors argue that because Regulatory Law Judge Kevin Thompson presided over the first hearing in this case, then he is barred from taking any further action in this case. This is an overbroad reading of the statute.

6. But what Section 536.083 RSMo 2000 actually provides is that any person who acted as a hearing officer in the first administrative hearing shall not conduct *any subsequent administrative rehearing* or appeal *involving the same issue* and same parties.

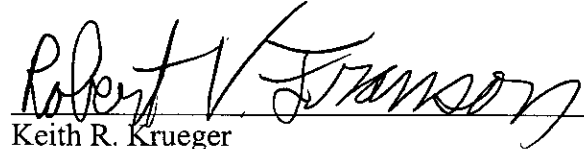
7. As the Staff understands the Order, the proceedings that will take place this week do not amount to an administrative rehearing, for the Commission will not hear any evidence, and they certainly are not an appeal. The principal action that the Commission will take as a result of this week's proceedings is to determine whether there is even a *need* for a rehearing. If there is no need for a rehearing, then Section 536.083 does not come into play, and there is no reason why Judge Thompson cannot continue in this matter.

8. Furthermore, the issue that is now before the Commission is not the same as any issue that has been presented to the Commission in this case. The issue now before the Commission is whether there should be a rehearing. That issue has never been presented in this case before, and it is not the *same issue* that Judge Thompson has previously confronted.

WHEREFORE, Staff respectfully submits that the Motion for Rehearing filed by St. Joseph Industrial Intervenors should be overruled.

Respectfully submitted,

DANA K. JOYCE
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 25th day of March, 2002.



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Case No. WR-2000-281
March 25, 2002 (ccl)**

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