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May 20, 2002

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Missouri-American Water Company - Case No. WO-2002-273

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of MAWC's Statement of Position on Contested Issues. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions concerning this matter, then please do not hesitate to contact me.
Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/rhg
Enclosures

cc: Mr. Keith Krueger, PSC
Ms. Ruth O'Neill, OPC
Mr. David Abernathy
Mr. Jeremiah Finnegan
Mr. Stu Conrad
Mr. James Deutsch
Ms. Jan Bond

**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.)	

**MAWC'S STATEMENT OF POSITION
ON CONTESTED ISSUES**

COMES NOW Missouri-American Water Company ("MAWC" or the "Company")¹, and states to the Missouri Public Service Commission ("Commission") its positions on the list of issues to be heard at the evidentiary hearing in this case:

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

Company position: No. The four criteria would not be beneficial to the Commission's performance of its duties. As the Commission has stated in the past, the first criteria, the 5% rule, should not be case dispositive. It is not good policy for the Commission to eliminate its discretion in exchange for a rule where 5.00% qualifies for an AAO, but 4.9999% does not. The second criteria, whether the utility is earning its authorized rate of return, is more appropriate for a rate case where the Commission

¹ This case was initially filed by Missouri-American Water Company, St. Louis County Water Company d/b/a Missouri-American Water Company and Jefferson City Water Works Company d/b/a Missouri-American Water Company. Effective December 31, 2001, St. Louis County Water Company and Jefferson City Water Works Company were merged into Missouri-American Water Company. Thus, Missouri-American Water Company is the remaining applicant.

considers whether recovery of the deferred amounts is appropriate. Adding this question to an Accounting Authority Order application will make this process unwieldy and cumbersome. The third criteria, requiring that Accounting Authority Order applications fit into one of two narrow categories again attempts to narrow the discretion the Commission might otherwise use in assessing an AAO. There is no reason to change the Commission's prior standard that the event be "extraordinary, unusual, unique, and non-recurring." Lastly, the fourth condition, wherein Staff seeks to eliminate all utilities but those under a rate moratorium, would, as a practical matter, eliminate the Accounting Authority Order process -- a process authorized by the uniform system of accounts. Accounting Authority Orders provide a means of stabilizing a utility's financial picture after it has been upset by an extraordinary, unique and non-recurring event. The Commission would not be well served by taking such a drastic step.

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

Company position: Yes. Section 536.010(4), RSMo defines "rule" as an "agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure or practice requirements of any agency." The Missouri Supreme Court has stated that "[f]ailure to follow rule making procedures renders void purported changes in statewide policy." *NME Hospitals, Inc. v. Department of Social Services*, 850 S.W.2d 71, 74 (Mo. banc 1993). In the Rebuttal Testimony of Janis E. Fischer (p. 9), the Commission Staff has announced a change in statewide policy and statement of general applicability in recommending that the Commission "expand its

traditional criteria for the approval of deferred cost recognition under an AAO.” The statutorily established rule making procedures have not been followed. The criteria are thus void.

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?**

Company Position: Yes. Use of current security data reveals that the costs to be incurred exceed 5% of MAWC's regulated Missouri income.

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

- (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)?**

Company Position: This cannot be derived from the evidence because it is an extremely difficult issue to quantify outside the bounds of an AAO case.

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

- (3) Did the expenses result either 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?

Company Position: Yes. MAWC satisfies both prongs of this criteria. As to the first prong, many of the security expenses are "extraordinary capital additions" "required to insure the continuation of safe and adequate service." The unique condition is that rather than a large individual project, the project is actually a series of projects that are impossible to time with a rate case filing. As to the second prong, the events and the resulting consequences of September 11, 2001, which drove these projects, are certainly "beyond the control of the utility's management."

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

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

Company Position: Yes. While MAWC is not under a rate moratorium, the costs which MAWC seeks to defer cannot be recovered in a rate case, as a rate case provides relief on a prospective basis only.

- 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 non-recurring"?

Company Position: Yes. The terrorist attack on the United States which took place on September 11, 2001, and resulted in great loss of lives and property, and the threat resulting therefrom, had a profound impact on the security environment across the entire country and in the State of Missouri. MAWC had no choice but to increase its security measures immediately in light of the actions of the state government, the Public Service Commission and emergency management agencies, and the security warnings it received. Events which bring about the necessity of taking such significant actions immediately are certainly extraordinary, unusual, unique and nonrecurring.²

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, D.C.?

Company Position: Yes. The Commission should grant MAWC an Accounting Authority Order in this case.

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

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

Company Position: No conditions should be placed on the grant of an Accounting Authority Order in this case. However, if the Commission seeks to require MAWC to file a rate case in a time certain, the Commission should allow MAWC up to two years. A ninety (90) day period, as suggested as an alternative by the Staff is unreasonably short

²"Nonrecurring" is derived from the uniform system of accounts' statement that the event should be "infrequently recurring." Thus, it does not require a one-time event.

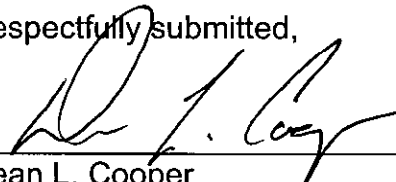
and drastic change from the 1-3 year periods utilized in prior Commission orders granting Accounting Authority Orders.

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

Company Position: Yes. MAWC asks that the Commission express its support for the public security efforts it has undertaken by stating that it is the Commission's intention that the rates established in MAWC's next general rate case will include, among other things, treatment of MAWC's prudently incurred costs pertaining to security of water plant, and, if amortized, an amortization of MAWC's prudently incurred costs deferred pursuant to this AAO, over a period of time from three to five years after rates become effective in MAWC's next rate case.

WHEREFORE, MAWC respectfully requests that the Commission consider the above positions in preparation for the hearing of this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand delivered, on this 20th day of May, 2002, to the following:

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