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March 26, 2002

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102

FILED

MAR 26 2002

**Missouri Public
Service Commission**

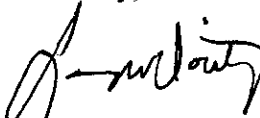
RE: *Missouri-American Water Company*
Case No. WR-2000-281

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of St. Joseph Area Public Water Supply Districts' Suggestions in Response to the Commission's Order of March 7, 2002. A copy of the foregoing document has been hand-delivered or mailed this date to each counsel of record.

Thank you for your attention to this matter.

Sincerely,



Larry W. DORITY

Enclosures

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

MAR 26 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

ST. JOSEPH AREA PUBLIC WATER SUPPLY DISTRICTS'
SUGGESTIONS IN RESPONSE TO THE
COMMISSION'S ORDER OF MARCH 7, 2002

COME NOW Intervenors Public Water Supply District No. 1 of Andrew County, Public Water Supply District No. 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County (collectively referred to herein as "St. Joseph Area Public Water Supply Districts" or "Water Districts") and, in response to the Missouri Public Service Commission's ("Commission") Order Setting Prehearing Conference and Directing Filing ("March 7 Order") issued March 7, 2002, in the above-captioned case, respectfully state as follows:

1. The Commission's March 7 Order directs the parties "to file their pleadings setting out their suggestions as to the course of action the Commission should now follow with respect to the remanded issues." And while the Order directs that the parties' pleadings "shall be divided into sections corresponding to the issues in question and should indicate, with respect to each such issue, whether or not the existing record is sufficient to support the necessary findings of fact," the Water Districts respectfully suggest that fundamental legal questions first must be addressed, and they look forward to actively participating and addressing such issues at the Prehearing Conference scheduled for March 28, 2002, herein.

2. Some of the parties to this proceeding, Ag Processing, *et al.*, have filed an Application for Rehearing of the March 7 Order, alleging that the Commission's Order itself is unlawful and void in violation of Section 536.083, RSMo 2000. Indeed, other parties in pending Commission remand proceedings have raised similar allegations concerning the apparent requirement for a new law judge, and it would appear that this threshold issue must first be addressed in this proceeding.

3. The Commission's Report and Order in this proceeding has been reversed and remanded by the Cole County Circuit Court. In addition to the various elements of the rate design portion of the Report and Order, as specifically referenced in the Commission's March 7 Order, the Court also reversed and remanded one of the revenue requirement issues, to-wit: the issue of premature retirement. Accordingly, it would appear that additional hearings and briefing on these issues will be required. Should the Commission determine that a new, increased revenue requirement is appropriate, new and additional evidence regarding rate design and the resulting impacts on the company's ratepayers will be necessary. As the Commission itself noted at page 57 of its original Report and Order: "[I]t is not the methodology or theory but the impact of the rate order which counts in determining whether rates are just, reasonable, lawful, and non-discriminating." *State ex rel. Associated Natural Gas Co. v. Public Service Commission of Missouri*, 706 S.W. 2d 870, 879 (Mo. App., W.D. 1985)." As the Water Districts consistently have pointed out, however, the only discussion of rate impacts in this proceeding is contained in the two extensive dissents of Commissioners Murray and Drainer. In addition, Missouri cases consistently have held that a remand for failure to issue findings of fact and conclusions of law in conjunction with a decision requires the agency to consider all relevant factors in the record. (See, *Meadowbrook Country Club v. State Tax Comm'n*, 538 S.W.2d 310 (Mo. banc 1976)).

4. The Court's reversal and remand regarding the issue of the proper treatment of costs associated with large transmission mains underscores the legal error and unlawful nature of the Report and Order adopted by the majority of the Commission concerning the allocation of rate increases in each district across customer classes. The majority misconstrued (or simply ignored) the positions of the parties on the issue of class cost of service, and devised a specific rate design that was not presented by any of the parties, and that produces unreasonable and unlawful results. As noted by the Commission's Staff, the specific rate design chosen by the Commission was not presented by any of the parties and the record does not contain specific evidence relating to it. And while the Staff offered to speculate about possible scenarios, they rightfully pointed out that "neither the foregoing scenario nor any of the other possible scenarios are in the record in this case."¹ (Emphasis added).

Recognizing the significant rate increases and resulting rate shock that would result to many districts given any movement from single tariff pricing to district specific pricing, no party to this proceeding, including Staff, recommended that class cost of service revenue shifts be implemented on a flash-cut basis on top of the adoption of DSP.² (Municipal and Industrial Intervenors Initial Brief, p. 53; Water Districts Initial Brief, pp. 10-11).

¹Staff Motion, p. 5, par.12.

²Staff erroneously suggested that a five-year phase-in period keeps the effect of the move to DSP within the bounds of gradualism. (Hubbs Surrebuttal, Ex. 43, pp. 4-5; Staff Reply Brief, p. 24). However, Staff's comfort-level with a phase-in proposal was clearly misplaced when, after the record was closed and Staff offered its Late-filed exhibit reflecting rate impacts, the parties and the Commission were finally informed of the devastating impacts carrying costs added to the Staff's projections (e.g., St. Joseph Area Water Districts would see a 490+% cumulative increase in year 5).

As the Court specifically held:

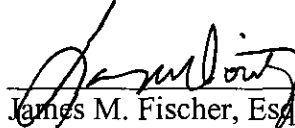
It is clear on this record that the issue of the proper application of the BXC class cost allocation method was a litigated issue before the Commission. While the Commission appeared to have directed a shift in costs between classes of customers, it provided no decision on this issue and provided this Court with no findings of fact on which the basis of that decision may be examined and reviewed.

(October 3, 2001 Judgment, p. 17). Again, supplemental hearings will be required for the Commission to issue a lawful decision regarding this issue.

5. Another complicating factor in the reversal and remand of the subject Report and Order is the fact that only two members of the voting majority remain on the Commission at this time. New Commissioners must certify that they have either (a) "read the full record including all of the evidence," or (b) "personally consider[ed] the portions of the record cited or referred to in the arguments of briefs" before issuing a new Report and Order. (*See*, Section 536.080 RSMo 2000; *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 30[8] (Mo. banc 1975)).

WHEREFORE, the St. Joseph Area Public Water Supply Districts respectfully submit the above suggestions in response to the Commission's March 7 Order, and request that these matters be addressed at the Prehearing Conference now scheduled for March 28, 2002.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading has been hand-delivered or mailed, First Class mail, postage prepaid, this 26th day of March, 2002, to:

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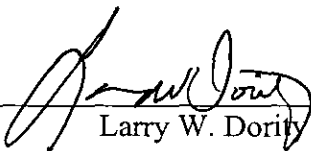
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