STATE OF MISSOURI
BEFORE THE PUBLIC SERVICE COMMISSION

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 Jefferson City Water Works Company d/b/a Missouri-American Water Company for an accounting authority order relating to security costs.

WO-2002-273

STATEMENT OF POSITION
OF ST. JOSEPH INDUSTRIAL INTERVENORS

MOTION FOR LEAVE TO LATE FILE BY ONE DAY

COME NOW Ag Processing Inc. a Cooperative, Friskies Petcare Division of Nestle' Inc., and Wire Rope Corporation of America, Inc. ("St. Joseph Industrial Intervenors") and for their Statement of Position herein state:

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

Industrial Intervenors' Position: Yes. The four criteria that are proposed by Staff are a helpful clarification of existing Commission decisions and provide a useful analytic framework to decide this and other cases involving requests for AAOs.

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

Industrial Intervenors' Position: **No.** Under Section 386.310, the Commission may act in individual cases to resolve

relevant legal issues or by a rulemaking proceeding. Advance rulemaking is not required. Often utilities attempt to whipsaw the Commission by arguing in rate cases that the question is "generic" and requires rulemaking treatment so that the particular utility is not "singled out," then in rulemaking cases argue that the Commission should take no action to make a generic rule because each utility faces "unique" circumstances. This is a ploy that the Commission should not abide.

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?

Industrial Intervenors' Position: No. Based on the evidence adduced in this proceeding, the costs that are claimed do not meet the 5% criterion, even assuming that they are other wise unique, extraordinary and non-recurring costs. Missouri-American has not met its burden of proof to satisfy this criterion.

(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)?**

Industrial Intervenors' Position: No. No evidence has been presented that suggests that the costs associated with upgraded security will prevent or hinder Missouri-American from a reasonable opportunity to achieve its allowed rate of return. In the past case, more than adequate revenues (in these parties'

view -- excessive revenues) were allowed the utility and there is no demonstration of such peril by the utility. Moreover, under the law, a utility is provided an opportunity to achieve its return, not a guarantee.

(3) Did the expenses result 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?**

Industrial Intervenors' Position: The expenses do not meet either of these criteria.

(a) In this case, no damage to Missouri rate base property has occurred and all of the expenditures are the result of decisions of Missouri-American management. They do not result from conditions beyond the control of that management. An analogy to an electric utility and an ice storm may be made. While an electric utility might be impelled to seek special accounting treatment for expenses incurred in repairing the damage caused by an ice storm, the same electric utility would not be permitted to seek special treatment for tree-trimming expenses or ongoing right-of-way maintenance. The first case involves the extraordinary expenses associating with repair of damage; the second involves the typical prudent maintenance expenses that any electric utility should bear and that are properly part of its test year modeled expenses.

(b) No facilities of this utility were damaged on September 11, 2001 and Missouri-American management made the decisions regarding what increased security measures were appropriate in response.

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

Industrial Intervenors' Position: No. Missouri-American is not prohibited from filing a rate case at the present time. Were such a rate case filed so that the expenses involved in this proceeding were properly included in a test year period, those expenses, if otherwise prudent, could be recovered.

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 31, 2001, "extraordinary, unusual, unique and nonrecurring?"

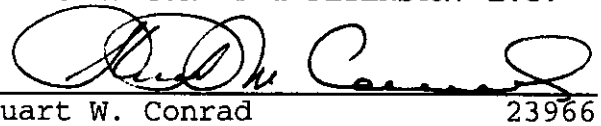
Industrial Intervenors' Position: No. Under the same analysis as noted above, these expenses do not qualify for recovery through any special accounting procedures or rules.

ISSUE 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 attrib uted to increased security needs after the terrorist attacks of September 11, 2001 in New York City and Washington, DC?

Industrial Intervenors' Position: No. As analyzed above, these expenditures do not meet the established tests for special accounting treatment without regard to the criteria proposed by the Staff.

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

FINNEGAN, CONRAD & PETERSON, L.C.



Stuart W. Conrad 23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816)756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR ST. JOSEPH INDUSTRIAL INTERVENORS

Stuart W. Conrad, Esq.