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January 8, 2003

Secretary
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

JAN 08 2003

RE: Case No. WO-2002-273

Missouri Public
Service Commission

Dear Sir:

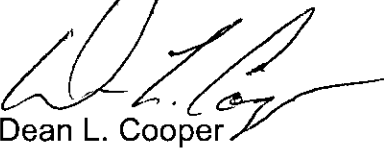
Enclosed for filing in the above-referenced proceeding please find an original and eight copies of the Response to Suggestions in Support of St. Joseph Industrial Intervenors' Motion for Rehearing filed on behalf of Missouri-American Water Company. Please stamp the enclosed extra copy of each "filed" and return same to me.

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

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

DLC/tli

Enclosures

cc: Keith Krueger
Ruth O'Neill
Stuart Conrad
James B. Deutsch
Jeremiah Finnegan

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JAN 08 2003

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.)

Missouri Public
Service Commission

Case No. WO-2002-273

**RESPONSE TO SUGGESTIONS IN SUPPORT
OF ST. JOSEPH INDUSTRIAL INTERVENORS' MOTION FOR REHEARING**

COMES NOW Missouri-American Water Company ("MAWC" or the "Company")¹
and, in reply to the Office of the Public Counsel's ("OPC") Suggestions in Support of St.
Joseph Industrial Intervenor's Motion for Rehearing and Request for Leave to File
Suggestions Out of Time ("Suggestions"), states the following to the Missouri Public
Service Commission ("Commission"):

1. On January 3, 2003, the OPC filed its Suggestions in this case
purportedly in support of the Application for Rehearing filed by the St. Joseph Industrial
Intervenor on December 19, 2002.

2. In reality, the Suggestions attempt to do two things: 1) bring to the
Commission's attention a decision of the California Public Utilities Commission ("PUC");
and, 2) restate the OPC's denied application for rehearing.

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.

3. The California PUC decision, while issued after the hearing in this matter, is not anything new in concept. The OPC's initial brief in this case discussed the decisions of various state utility commissions in regard to the security costs incurred by American Water Works subsidiaries. These included states where security costs were addressed within the context of ongoing rate cases (Indiana and Ohio)² and a state where an accounting authority order type mechanism was granted (West Virginia).

4. However, the significance of these decisions from other states, as well as the California PUC decision, is minimal. The OPC itself stated in its Initial Brief that the "Missouri Commission is not bound by the decisions of other state commissions, and this Commission should focus on the needs of the Missouri-regulated utility in deciding whether to grant a request for an AAO" (OPC In. Brf., p. 13). MAWC generally concurred in this sentiment, and further pointed out in reply that it had "not . . . relied upon any proceedings from other states in relation to the Commission's decision in this matter" (MAWC Rep. Brf., p. 18). More importantly, the Commission did not appear to rely upon any of these decisions in issuing its Report and Order in this matter. Thus, this first aspect of the OPC's Suggestions does not provide anything new for the Commission's consideration.

5. The remainder of the OPC's Suggestions appears to be identical to the OPC's Application for Rehearing or, in the Alternative, Motion for Reconsideration which was rejected by the Commission by Order dated December 23, 2002. The OPC makes no attempt to "support," or even reference, the St. Joseph Industrial Intervenors'

² This was also the case in Iowa, which was not discussed by the OPC.

application.

6. The OPC's primary complaint in these two documents appears to be the perceived "change" in the Commission's AAO "standard." However a reading of the Report and Order appears to not identify a "change" in the standard so much as a decision regarding an aspect of Account 186 that has not been previously addressed by the Commission.

7. In this case it seems to be significant to remember that the uniform system of accounts ("USOA") for gas and electric companies is produced by a completely different organization (FERC) from that which produces the USOA for water companies (NARUC). As a result, while these documents are similar, they are not identical.

8. The "traditional criteria," as it was referred to in this case, was initially derived from the language associated with the gas and electric uniform system of accounts that allowed for the deferral of expenses which are "unusual or extraordinary." The gas and electric USOA adopted by the Commission, and recited in the "Sibley case," *In the Matter of Missouri Public Service*, 1 Mo.P.S.C. 3d 200, 203 (1991), describes Account 186 for electric companies as follows:

. . . all debits not elsewhere provided for, such as miscellaneous work in progress, and unusual and extraordinary expenses, not included in other accounts, which are in process of amortization and items the proper final disposition of which is uncertain.

9. The version of the USOA applicable to water companies as the result of 4 CSR 240-50.020(1) describes Account 186 for water companies as follows:

. . . all debits not elsewhere provided for, such as miscellaneous work in progress, losses on disposition of property, net of income taxes, *deferred*

by authorization of the Commission, and unusual or extraordinary expenses, not included in other accounts, which are in the process of amortization, and items the proper final disposition of which is uncertain.

(Emphasis added).

10. The Commission states in its Report and Order that expenses “deferred by authorization of the Commission” are a separate category of Account 186 deferrals from “unusual or extraordinary expenses.” (Report and Order, p. 25 (“This definition unmistakably lists items ‘deferred by authorization of the Commission’ as merely one of several categories of debits properly to be recorded in Account 186; another is ‘unusual and extraordinary expenses.’”)). Therefore, this is a situation that is unique to the water USOA. The past Commission cases cited by the OPC certainly focus on the unusual or extraordinary expenses category. However, almost all of those are electric and gas cases and do not fall under the same USOA. In the water case that is cited, this alternative category of deferral available to water companies -- expenses deferred by authorization of the Commission – was not addressed or foreclosed by the Commission.

11. OPC broadly states that MAWC “failed to meet its burden of proving that the costs it incurred were the result of an extraordinary event, and that the costs were extraordinary, unusual, unique and non-recurring” (OPC Suggestions, p. 6). MAWC respectfully disagrees with this statement. Reading prior cases and the evidence found in this case, MAWC believes the Commission “could have” granted an AAO utilizing the “traditional criteria.” In fact, going back to the primary case cited by the OPC, *State ex rel. Missouri Office of the Public Counsel v. Public Service Commission*, 858, S.W.2d 806, 810 (Mo.App. 1993 (affirming the Commission decision in the Sibley case), reveals

that OPC's statement of the "traditional criteria" may not be completely in line with the appellate court's original take on the subject.

12. In the *Missouri Office of the Public Counsel* case, the Western District stated, in part, as follows:

- "The Commission's decision to grant authority to defer the costs associated with the Sibley reconstruction and coal conversion projects by recording the costs in Account No. 186 was the result of the Commission's determination that the construction *projects* were unusual and nonrecurring, and therefore, extraordinary" (858 S.W.2d at 811) (emphasis added);
- ". . . only an extraordinary *event*, should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period" (Id.) (emphasis added); and,
- "The *projects* for which the substantial funds were expended and for which deferral is sought were unusual and not recurring. Extending the life of the Sibley generating station plants by at least twenty years and converting of the station to burn low-sulphur coal in compliance with federal environmental law are extraordinary *events*" (Id.) (emphasis added).

13. Thus, in applying the test, to rebuild costs for which the Commission granted an accounting authority order, the Court focused on the unusual, extraordinary and non-recurring nature of the "event" and "project," not the underlying expenses, as

does the OPC statement. This approach makes sense in that if costs result from an extraordinary event, those costs by definition should be extraordinary.

14. Similarly, in denying Missouri Public Service the right to defer the costs of certain purchase power contracts in the underlying Sibley decision issued by the Commission, the Commission focus was on the "event," not the costs, in applying the test. The Commission stated as follows:

As the Commission has discussed earlier, only costs associated with extraordinary, nonrecurring *events* should be deferred since they are not part of the normal operating expenses of a company. Power purchases of this nature are not extraordinary *events*.

In the Matter of Missouri Public Service, 1 Mo.P.S.C. 3d 200, 211 (1991) (emphasis added).

15. Going back to the language of the Sibley Case, the Commission's findings of fact included in the sections "Why Missouri-American Upgraded its Security" and "Particular Steps Taken By Missouri-American" (Report and Order, p. 11-16) would have been sufficient to support a conclusion that:

The comprehensive review of security measures and the subsequent substantial investment in security made by MAWC in an extremely short period of time in response to the events of September 11, 2001 was unusual and not recurring. Assessing the security status of the ten MAWC operating districts, which provide service to over 400,000 Missouri customers and then expending significant funds in a relatively short period of time is an extraordinary, unusual, unique and non-recurring *event*.

16. It appears, however, that the Commission has chosen to allow deferral of the subject costs based upon a mechanism available specifically to the water industry. Nothing contained in the OPC's Suggestions establish sufficient reason to grant the St. Joseph Industrial Intervenors' application for rehearing and, therefore, the application

should be denied.

WHEREFORE, MAWC respectfully requests the Commission deny the St,
Joseph Industrial Intervenors' Application for Rehearing

Respectfully submitted,



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ATTORNEYS FOR
MISSOURI-AMERICAN WATER COMPANY

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 8th day of January, 2002, to the
following: 3

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