

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

In the Matter of the Application of)	
Missouri-American Water Company for an)	Case No. WU-2017-0351
Accounting Authority Order related to Property)	
Taxes in St. Louis County and Platte County)	

**RESPONSE IN OPPOSITION TO MISSOURI-AMERICAN WATER COMPANY'S
REQUEST FOR WAIVER**

COMES NOW the Missouri Industrial Energy Consumers ("MIEC") and for its Response in Opposition to Missouri-American Water Company's Request for Waiver respectfully states as follows:

1. On June 29, 2017, Missouri American Water Company ("MAWC") filed a request for an Accounting Authority Order along with a request that the Commission waive the 60-day notice requirement established by 4 CSR 240-4.020(2). On June 30, the Commission issued an order setting August 1 as the deadline for responses to MAWC's request for waiver. MIEC files this response pursuant to that order

2. The 60-day notice requirement can be waived by the Commission for "good cause." This waiver provision existed in the Commission's rules as they were effective when MAWC filed its request, and it remains in the currently effective rules. Notably, a waiver is not to be granted without good cause. While the previously effective rules did not specify what constitutes good cause, the new rules do. The specific examples in the new rules do not reflect a change of procedure; they simply illustrate the same types of good cause that would have sufficed under the old rules. The examples are:

a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case or that circumstances

prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.

3. MAWC vaguely suggests that discussions with the counties prevented it from filing a 60-day notice. But a 60-day notice is not binding; as soon as MAWC saw that it might be filing a request for an AAO, it should have filed the notice. MAWC cannot simply make an affirmative decision to not file a 60-day notice at its earliest opportunity and then claim that this decision constitutes good cause for a waiver. Although MAWC's waiver request is not entirely clear on this point, it appears that MAWC chose not to file a 60-day notice while it was in discussion with the counties. It does not allege that it could not have timely filed the notice, but rather that it chose not to.

4. Moreover, MAWC makes no representation that "it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case[.]" Even if no such communications have occurred, MAWC has not demonstrated good cause for a waiver. But if such communications have occurred, a waiver would be even less appropriate.

5. In addition, there is no way that MAWC could have legitimately believed that its request would be uncontested. MAWC is a member of the Missouri Energy Development Association ("MEDA"). There have been a number of attempts in recent years by MEDA member companies seeking to track or defer increases in property taxes, and all have been hotly contested.

6. Finally, MAWC does not allege, much less prove, that it will be harmed by delaying this proceeding while it belatedly follows the rules and submits a 60-day notice. In fact, because MAWC chose not to file the notice in the first place, if there is some harm, MAWC has only itself to blame.

7. As a sophisticated entity that regularly participates in Commission proceedings represented by experienced counsel, MAWC was well aware of the 60-day notice requirement. If the Commission does not routinely enforce its rules, they have little meaning. Indeed, the Commission has just demonstrated that the 60-day notice provisions are a critical part of its procedures. Although it significantly altered much of Chapter 4, it kept -- even strengthened -- the 60-day notice requirement. The rule should not be waived on the basis of the vague generalities offered by MAWC in what amounts to little more than a token gesture at demonstrating good cause.

WHEREFORE, the MIEC respectfully requests that the Commission reject MAWC's request for waiver of 4 CSR 240-4.020(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 1st day of August, 2017, to all parties on the Commission's service list in this case.

/s/ Lewis R. Mills