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November 24, 1999

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

FILED²
NOV 29 1999
Missouri Public
Service Commission

RE: Missouri-American Water Company - Consolidated Case Nos. WM-2000-281
WM-2000-282
SR-

Dear Mr. Roberts:

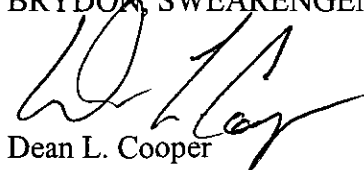
Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of MAWC's Opposition to the St. Joseph Building & Construction Trades Council's Application for Leave to Intervene, and MAWC's Opposition to Public Water Supply District No. 2 of St. Charles County's Application to Intervene. 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 very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

DLC/rhg

Enclosures

cc: Office of the Public Counsel
Mr. Keith Krueger
Ms. Shannon Cook
Mr. Louis Leonatti
Mr. Jim Fischer
Mr. Leland Curtis
Mr. Brent Stewart
Mr. Chuck Brown

Mr. Joseph Moreland
Mr. Stu Conrad

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

FILED²

NOV 29 1999

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

Case No. SR-2000-282

**MAWC'S OPPOSITION TO
PUBLIC WATER SUPPLY DISTRICT NO. 2 OF ST. CHARLES COUNTY'S
APPLICATION TO INTERVENE**

COMES NOW Missouri-American Water Company ("MAWC" or "Company") and, in opposition to the Application to Intervene filed by Public Water Supply District No. 2 of St. Charles County ("St. Charles Water District"), states as follows to the Missouri Public Service Commission ("Commission"):

1. On or about November 16, 1999, Public Water Supply District No. 2 of St. Charles County, Missouri ("PWSD"), filed an Application for Intervention.

2. The St. Charles Water District is fundamentally different from the parties which commonly seek rate intervention in that it is not a customer of MAWC or relies upon MAWC as a source of supply. Its operations are completely separate from those of MAWC. Likewise, it does not represent customers of MAWC. None of the St. Charles Water District's rates or charges will be changed by this rate case.

3. In describing its "interest" in this proceeding, the St. Charles Water District instead states the following:

Moreover, the District is specifically interested in this proceeding because the District presently provides water service in and around Missouri-American Water Company's ("MAWC") certificated service areas in St. Charles and Warren Counties and because the District *directly competes* with MAWC for customers in these areas. The rates, rate design – and perhaps other tariff issues – addressed and ruled upon in

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this case will have financial and competitive consequences for the District and its customers. The District has a continuing duty to its customers to monitor all developments relating to MAWC's operations which might affect MAWC's service in and around the District service area.

(Emphasis added).

4. This statement of interest is important as there is no right to intervene in a Commission proceeding. Commission Rule 4 CSR 240-2.075(4) states as follows:

The commission *may* permit intervention on a showing that –
(A) The applicant has an interest in the proceeding which is different from that of the general public;
(B) The applicant is a municipality or other political subdivision;
(C) Granting the proposed intervention would serve the public interest; or
(D) Application to intervene filed after the intervention date set by the commission maybe granted upon a showing of good cause.

(Emphasis added).

5. Thus, while the Commission has the discretion to grant intervention, it is not required to do so. MAWC believes that in the case of the St. Charles Water District, there is no justification for allowing intervention and that the St. Charles Water District's Application to Intervene should therefore be denied.

6. While the St. Charles Water District has made statements about its interest in MAWC's rates and rate design because its service area, in some instances, overlaps that of MAWC, it is unclear that where this interest in the operations of an investor owned public utility arises. Chapter 247 of the Revised Statutes of Missouri, which the St. Charles Water District cites as its operating authority, describes the purpose of water districts as follows:

Sections 247.010 to 247.220 are intended to make possible, through public corporations, conveniences in the use of water, ample in quantity for all needful purposes and pure and wholesome in quality, furnished from common sources of supply *to many inhabitants of our state now denied such privileges; and thereby promote public health and sanitation, make available convenience not otherwise*

possible, and for the general public welfare.

(Emphasis added).

7. Therefore, the purpose of a water district, and the issue in which it should have an overriding interest, is ensuring that pure and wholesome water, provided from common sources of supply is available to those inhabitants of the State of Missouri who otherwise would be denied such privileges. There are no such issues in this case. It also can be said that to the extent there were such allegations, St. Charles Water District's legitimate statutory interest is no different from that of the general public and that interest is appropriately protected by the Office of the Public Counsel.

8. Likewise, granting the proposed intervention would not be in the "public interest." The St. Charles Water District has indicated very clearly that it is in direct competition with MAWC and that its interest is in the competitive consequences that this proceeding may have. This is not a purpose contemplated by the statutes which created the Commission, nor is it an interest which the Commission should further.

9. The Commission's purpose has been described as follows:

"(T)he Public Service Commission Law of our own state has been uniformly held and recognized by this court to be a remedial statute, which is bottomed on, and is referable to, the police power of the state, and under well-settled legal principles, as well as by reason of the precise language of the Public Service Commission Act itself, is to be 'liberally construed with a view to the public welfare, efficient facilities and substantial justice *between patrons and public utilities.*' *State ex rel. Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 34 S.W.2d 37, 42--3(2, 3) (Mo.1931). "In its broadest aspects, the general purpose of such regulatory legislation is to substitute regulated monopoly for destructive competition. But the dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental." *State ex rel. Electric Company of Missouri v. Atkinson, et al.*, 275 Mo. 325, 204 S.W. 897; *State ex rel. Pitcairn v. Public Service Commission*, 232 Mo.App. 535, 111 S.W.2d 222. *State ex rel. Crown Coach Company v. Public Service Commission*, 238 Mo.App. 287, 179 S.W.2d 123, 126(5, 6) (1944).

10. First, as indicated previously, the St. Charles Water District has no interest in

MAWC's facilities or the interaction between MAWC and its patrons. Second, to the extent that a clear and direct competitor is allowed to intervene and contest a public utilities' regulatory ratemaking proceeding, the purpose of Commission regulation is thwarted. If the St. Charles Water District is allowed to intervene the Commission proceedings become a tool of competition, rather than a substitute for competition.

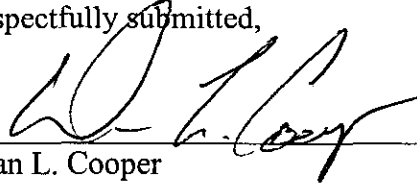
11. Allowing the St. Charles Water District to intervene in this process creates a competitive advantage for the St. Charles Water District. No similar opportunity is available to MAWC. There are limited standards which apply to the setting of the St. Charles Water District's rates and MAWC is not allowed to participate in any fashion in the setting of such rates. Intervention by a direct, unregulated competitor in this proceeding offends the theory behind the ratemaking process and is not in the public interest.

12. The St. Charles Water District is therefore left with the fact that it is an "other political subdivision" as its sole qualification for intervention in this proceeding. An "other political subdivision" with no interest in the proceedings is not of benefit to the Commission process and decision making and should not be granted intervention in this proceeding. Consequently, the Commission should use its discretion to deny the St. Charles Water District's application to intervene.

WHEREFORE, MAWC respectfully requests the Commission to issue its order denying the Application to Intervene filed by Public Water Supply District No. 2 of St. Charles County,

Missouri, and granting such further relief as is reasonable in the circumstances.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN
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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 24th day of November, 1999, to the following:

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