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March 7, 2000

**VIA HAND DELIVERY**

Mr. Dale Hardy Roberts  
Executive Secretary  
Missouri Public Service Commission  
Truman State Office Building, Room 530  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED<sup>2</sup>**  
MAR 07 2000  
Missouri Public  
Service Commission

RE: Missouri-American Water Company  
PSC Case No.: WR-2000-281, et al.

Dear Mr. Roberts:

Enclosed please find the original and fourteen (14) conformed copies of (1) Application for Rehearing of Order of March 3, 2000 and (2) Joint Response in Partial Opposition to Joint Motion to Modify Procedural Schedule to be filed in the above case. Additional copies of these pleadings are enclosed which I request you please mark as filed and return to me.

Sincerely,

*James B. Deutsch*  
James B. Deutsch

JBD:krw

Enclosures

STATE OF MISSOURI  
MISSOURI PUBLIC SERVICE COMMISSION

FILED<sup>2</sup>

MAR 07 2000

Missouri Public  
Service Commission

In the Matter of Missouri-American )  
Water Company's Tariff Sheets De- )  
signed to Implement General Rate )  
Increases for Water and Sewer Ser- )  
vice provided to Customers in the )  
Missouri Service Area of the Compa- )  
ny )

WR-2000-281  
SR-2000-282  
(Consolidated)

APPLICATION FOR REHEARING  
OF ORDER OF MARCH 3, 2000

COME NOW INTERVENORS AG PROCESSING INC, A COOPERATIVE ("AGP"), FRISKIES PETCARE, A DIVISION OF NESTLE USA ("Friskies") and WIRE ROPE CORPORATION OF AMERICA INC. ("Wire Rope"), ST. CHARLES COUNTY, MISSOURI ("St. Charles County"), the CITY OF ST. PETERS, MISSOURI ("St. Peters"), the CITY OF WARRENSBURG, MISSOURI ("Warrensburg"), HAWKER ENERGY PRODUCTS, INC., ("Hawker"), HARMON INDUSTRIES INC. ("Harmon"), STAHL SPECIALTY COMPANY ("Stahl"), SWISHER MOWER AND MACHINE CO. ("Swisher"), CENTRAL MISSOURI STATE UNIVERSITY ("CMSU"), the CITY OF O'FALLON, MISSOURI ("O'Fallon"), the CITY OF WELDON SPRING, MISSOURI ("Weldon Spring"), and the CITY OF JOPLIN, MISSOURI ("Joplin"), all by their respective counsel of record in this proceeding, and pursuant to Section 386.500 RSMo. 1994 request rehearing or correction of the portions of the Commission's Order of March 3, 2000 as indicated below and with respect thereto state:

1. The Commission's statement on page 1 of said Order incorrectly states that "on March 1, 2000, several intervenors

filed a request for a hearing on the non-unanimous Stipulation and Agreement . . . ." While correct as to the date of such filing, these intervenors did not request a hearing that is limited to the non-unanimous Stipulation and Agreement. Rather, undersigned these intervenors explicitly requested a hearing on all issues in the case. Their Objection and Request for Hearing explicitly stated:

. . . pursuant to 4 CSR 240-2.115(1), (2) and (3) [they] do hereby *REQUEST A HEARING ON ALL ISSUES IN THE CASE*, all PURSUANT TO THE PRO-CEDURAL SCHEDULE PREVIOUSLY ORDERED BY THE COMMISSION IN THIS PROCEEDING.

Objection and Request for Hearing, March 1, 2000, p. 1-2 (italicized emphasis added). The Commission's statement in its March 3, 2000 Order is a mistake of fact and should be corrected.

2. The Order of March 3 further states that "a hearing on the non-unanimous stipulation and agreement" is to be scheduled at a later time. Without regard to the date of such hearing, the Commission's order is incorrect and unlawful in seeking to predetermine the scope of the hearing that was lawfully requested by these parties.

3. Pursuant to 4 CSR 240-2.115, the hearing is not to be "on the stipulation and agreement," but rather on the issues for which the hearing was requested. 4 CSR 240-2.115(1). Further, Rule 4 CSR 240-2,115(2) states that where a hearing has been requested, "the commission will grant the hearing and will conduct the hearing in accordance with its rules of procedure." (Emphasis added). In this case, that hearing has been requested

on all issues in the case and, pursuant to the Commission's own rules, the hearing is to be granted on all issues in the case, not just on the proposed settlement stipulation. The March 3 Order has misstated and misapplied the Commission's own rules.

4. Further, a hearing "on the stipulation and agreement" does not constitute the full and contested hearing on all issues in the case that has been requested by these parties. By holding a "hearing on the non-unanimous stipulation and agreement," the Commission violates the admonition of the Missouri Court in *State ex rel. Fischer v. Public Service Commission*, 645 S.W. 39 (Mo.App. 1982) cert. denied, 464 U.S. 819, 104 S.Ct. 81, 78 L.Ed.2d 91 (1983). A full and fair hearing must be held on all issues requested and at a meaningful time and in a meaningful manner and a limited hearing procedure focused on a non-unanimous stipulation and agreement does not meet that test. *Fischer*, supra, at 43. Absent unanimous agreement or acquiescence to the proposed stipulation, the proffered stipulation becomes no more than a joint recommendation of the signatory parties and a current representation of their position. See, *State ex rel. Kansas Power & Light Co. v. Public Service Commission*, 770 S.W.2d 740, 742 (Mo.App. 1989); *In re Missouri Public Service*, 2 MoPSC 3rd 221, 223 (1993); *In re Application of Empire District Electric Co.*, 1999 MoPSC Lexis 173, 179 (1999) (non-unanimous stipulation merely considered to be an amendment of the applicants' application; "If [the legal requirements for a certificate] have not been met, then no certificates will be granted, no matter

what some of the parties may have agreed upon in the non-unanimous stipulation and agreement."); *In re ALLTEL Communications, Inc.*, 1999 Mo. PSC Lexis 84, 86 (1999) ("Because the non-unanimous stipulation and agreement was opposed by SWBT, the matter proceeded to a hearing on the merits as required by 4 C.S.R. 240-2.115(2)." (emphasis added)).<sup>1/</sup>

5. Given prior determinations by the Commission that the significance of a joint recommendation proffered by some, but not all, parties to a case, simply amounts to no more than an amendment of the signatory parties' prior pleadings or positions before the Commission, Missouri-American Water Company's earlier Motion for an Accounting Authority Order should be considered as withdrawn *de jure*. See, e.g., *In re Application of Empire District Electric Co.*, 1999 MoPSC Lexis 173, 179 (1999) (non-unanimous stipulation merely considered to be an amendment of the applicants' application). The non-unanimous stipulation proposes a revenue deferral with a means, apparently satisfactory to the signatories thereto, to attempt to verify that deferral, coupled with an amortization of a recovery over a five-year period. Since this approach is obviously inconsistent with and mutually exclusive to an accounting authority order, Missouri-American

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<sup>1/</sup>To put a finer point on it, these intervenors obviously oppose the non-unanimous stipulation and just as obviously question what possible rationale could support a resolution of the case on the basis proposed by the non-unanimous stipulation. Their March 1, 2000 Objection and Request for Hearing goes well beyond a mere request for a hearing on the non-unanimous stipulation and is a subsumption of their broader request for a hearing on *all issues in the case*.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to the following persons:

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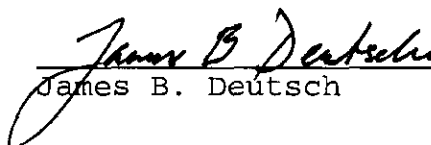
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