

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-3847

E-MAIL: DCOOPER@BRYDONLAW.COM

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONI

December 4, 2003

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

RE: Case No. WM-2004-0122

Dear Sir:

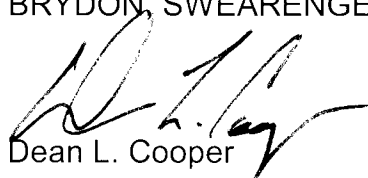
Provided in electronic format for filing in the above-referenced proceeding, please find a Motion for Clarification filed on behalf of Missouri-American Water Company.

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/jar
Enclosure
cc: Ruth O'Neill
Keith Krueger
Paul DeFord

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

In the Matter of the Joint Application of)
Missouri-American Water Company and Warren)
County Water & Sewer Company for Authority)
for Missouri-American Water Company to) Case No. WM-2004-0122
Acquire Certain Assets of Warren County Water)
& Sewer Company and, in Connection Therewith,)
Certain Other Related Transactions.)

MOTION FOR CLARIFICATION

COMES NOW Missouri-American Water Company (“MAWC” or the “Company”), and for its Motion for Clarification, requests that the Missouri Public Service Commission (“Commission”) clarify its Report and Order issued in the above-captioned matters on November 20, 2003, to become effective on December 5, 2003¹ (the “Report and Order”), for the following reasons:

1. This case, as the Commission is well aware, concerns the Joint Application of MAWC and Warren County Water & Sewer Company (“Warren County”) for authority for MAWC to purchase certain Warren County assets. As a part of the Joint Application, MAWC requested that the Commission determine that “the assets that are the subject of this application will be valued for ratemaking purposes at the purchase price contained in the Agreement.”

2. The situation for the Warren County customers is currently untenable and deserves a solution. As evidenced by the Agreement that is before the Commission, MAWC does have an interest in purchasing these assets and believes it can greatly improve the service received by the Warren Customers. This having been said, MAWC believes it must seek clarification of the

¹ The Report and Order was originally to be effective on December 2, 2003. However, on November 26, 2003, the Commission issued its Order of Correction and Extending Effective Date of Order wherein the effective date was extended to December 5, 2003.

Commission's Report and Order so that MAWC can make an informed decision as to whether to purchase the Warren County assets.

3. MAWC understands the Report and Order to indicate that the Commission has found that the rate base of the Warren County system may be anywhere between the \$53,150.00 suggested by the Staff to the proposed purchase price of \$335,000.00, depending upon what evidence may or may not be available at the time of the next rate case. This leaves open the question of whether an acquisition premium exists or not. The Commission further stated the following:

The Commission does not have sufficient evidence before it to finally determine if an acquisition premium exists. The Commission does, however, have enough facts to consider the effects on the ratepayers if Missouri-American's request is ultimately granted. Because of the severe problems with the current system, the Commission finds that even if the Commission ultimately determines that rate base should be set at the purchase price, the probable increase in rates would not be detrimental to these ratepayers under the circumstances.

(Report and Order, p. 14-16) (emphasis added).

4. If by this statement the Commission is indicating that, in this circumstance, it will grant MAWC recovery of an acquisition premium if, and to the extent, one is found to exist,² MAWC is prepared to proceed with the purchase of Warren County. If, however, the Commission is indicating something less than that, MAWC needs for this to be better defined (to include what standard will be applied to the possible recovery of an acquisition premium), so that MAWC can make an informed decision as to whether or not to proceed with this purchase. Without such express guidance, MAWC must bear the risk of the identified record keeping deficiencies, or, in the alternative, decline to purchase the subject assets. The former would require MAWC to put at risk

² In other words, that the Commission will allow recovery of the \$335,000.00 purchase price either through rate base treatment or a combination of rate base and acquisition premium, as necessary.

approximately \$280,000, for which MAWC has no indication if, or under what circumstances, recovery would be allowed.

5. As the Commission is aware, the Missouri Supreme Court has indicated that the Commission is not prohibited from making decisions concerning rate making elements outside a rate case. *State ex rel. AG Processing, Inc. v. Public Service Commission*, Case No. SC85352 (Mo. banc 2003) (“The PSC also maintains that considering recoupment of the \$92,000,000 acquisition premium while considering approval of the merger amounts to prejudging a ratemaking factor outside a ratemaking case. The fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger.”). The Supreme Court further stated in *AG Processing, Inc.* that the “PSC erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp’s being allowed to recoup the acquisition premium.” *Id.*

6. As a result of the *AG Processing* case, it appears that the Commission has the power to clarify its Report and Order in the manner requested by MAWC herein. MAWC asks that the Commission do so in a way that will allow MAWC to move forward with a purchase of the Warren County properties and, thereafter, to address the deficiencies being experienced by the Warren County customers.

WHEREFORE, the Company respectfully requests the Commission to clarify its Report

and Order issued on November 20, 2003.

Respectfully submitted,



Deah L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
dcooper@brydonlaw.com

ATTORNEYS FOR
MISSOURI-AMERICAN WATER COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by U.S. Mail, postage prepaid, on December 4, 2003, to the following:

Mr. Keith Krueger
Office of the General Counsel
Governor Office Building, 8th Floor
Jefferson City, Mo 65101

Ms. Ruth O'Neill
Office of the Public Counsel
Governor Office Building, 6th Floor
Jefferson City, MO 65101

Mr. Paul S. DeFord
Lathrop & Gage, L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108

