

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

In the Matter of the Assessment Against)	
the Public Utilities in the State of)	
Missouri for the Expenses of the)	Case No. AO-2004-0610
Commission for the Fiscal Year)	
Commencing July 1, 2004.)	

APPLICATION FOR REHEARING AND STAY

COMES NOW Missouri-American Water Company (hereinafter, "Applicant"), by and through counsel, pursuant to RSMo. §386.500 and 4 CSR 240-2.160, and respectfully applies to the Missouri Public Service Commission (the "Commission") that it grant rehearing and hold a hearing with respect to its June 24, 2004, *Assessment Order for Fiscal Year 2005* (the "Assessment Order") issued in the above-captioned case.

A. Background Information

1. Applicant is a Missouri corporation with its principal office and place of business at 535 N. New Ballas Road, St. Louis, Missouri, 63141. Applicant is a Missouri corporation in good standing. A Certificate of Good Standing from the Office of the Missouri Secretary of State was filed in Commission Case No. WM-2001-309 and is hereby incorporated by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G).

2. Applicant currently provides water service to the public in and around the cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville, Riverside, Jefferson City, and parts of St. Charles and Platte Counties Missouri, and most all of St. Louis County, Missouri. Applicant currently provides water service to approximately 445,000 customers. Applicant provides sewer service to approximately 100 customers near Parkville, Missouri. Applicant is a "water corporation," a "sewer corporation" and a "public utility" as those terms are defined in RSMo. §386.020, and is subject to the jurisdiction and supervision of the Commission as provided by law.

3. Applicant currently has a general rate case pending appeal (WR-2000-281). Applicant has no other pending action or final unsatisfied judgment or decision against it from any state or federal agency or court involving customer service or rates and having occurred within three years of the date hereof. Applicant has no overdue Commission annual reports or assessment fees.

B. Application for Rehearing

For the reasons stated herein, the Assessment Order (and Missouri-American Water Company's notice of assessment) is unlawful, unjust, unreasonable, arbitrary, capricious, involves an abuse of discretion, is unsupported by competent and substantial evidence upon the whole record, is in excess of statutory authority, and is unconstitutional in all material matters of fact and law, in the particulars hereinafter stated for the following reasons and in the following respects:

4. On June 24, 2004, the Commission issued its Assessment Order in the captioned case pursuant to which it estimated the amounts of expenses directly attributable to all groups of utilities and, also, the amounts of expenses not directly attributable to any such group. The stated purpose of the Assessment Order is to make the public utility assessments provided for in §386.370 RSMo. Supp. 2003, for the Commission's fiscal year commencing July 1, 2004 (hereinafter "the 2005 fiscal year"). The Assessment Order provides no detail or explanation with respect to the manner in which the assessment was derived; however, certain information is available on the Commission's web site.

5. Because no assessment case for the 2005 fiscal year existed prior to June 24, 2004, and because of the short time between the issuance of the Assessment Order and its effective date, Applicant has only had a limited opportunity to review the Commission's Assessment Order and the information posted on the Commission's website. Consequently, Applicant desires an opportunity to discuss the assessment process with the appropriate parties.

6. Unfortunately, because an Application for Rehearing must be made at this time, Applicant will proceed to make the allegations of error found herein. Additionally, there may be issues of concern other than those stated herein, including the allocation of Commissioners' salaries according to the time sheets of the Administrative Law Judges.

7. For the last three fiscal years, the total assessed amounts paid (or to be paid) by the regulated utilities, net estimated unexpended Fund balance and other credits, have decreased as follows:

Fiscal Year 2003	\$16,540,051
Fiscal Year 2004	\$15,867,383
Fiscal Year 2005	\$15,525,475

Applicant's assessments for the same fiscal years have substantially increased as follows:

Fiscal Year 2003	\$ 682,631.85
Fiscal Year 2004	\$ 974,579
Fiscal Year 2005	\$1,187,381.65

8. The amount of Applicant's assessment for fiscal year 2005 is \$1,183,336.98 for water and \$4,044.67 for sewer. This total amount of \$1,187,381.65 is over two hundred and twelve thousand dollars (\$212,000) more than Applicant's assessment for the immediately preceding fiscal year of 2004. This represents more than a twenty-one percent (21%) increase from the year prior. A rehearing is required in order to give Applicant an opportunity to explore the reason or reasons for the dramatic increase in its assessment from the immediately preceding fiscal year.

9. The magnitude of the increase in Applicant's assessment is astonishingly high and presumptively excessive. This is especially true given that Applicant's assessment increased by more than forty-two percent (42%) the prior year.

10. Furthermore, Applicant believes that its industry's receipt of approximately twelve percent (12%) of the directly allocated Commission costs is so out of line with its approximately two percent (2%) of intrastate operating revenues as to be presumptively excessive. A rehearing is necessary in order to give Applicant an opportunity to explore the reason or reasons for this direct allocation.

11. It is also Applicant's understanding that the Commission assessment for fiscal year 2005 includes amounts associated with an assessment made by the Department of Economic Development and the Office of Administration on the Commission for certain government support services from these organizations and other state agencies. Applicant submits that a rehearing is necessary and appropriate to explore the appropriateness of allocation of these government costs to determine whether they are in fact reasonable and "reasonably attributable to the regulation of public utilities." *See*, RSMo. §386.370.1.

12. Applicant is aware that the assessments for government support services may be a factor external to the Commission's customary budgetary considerations and is, therefore, the result of circumstances not entirely of the Commission's making and, consequently, not entirely within the Commission's control. Nevertheless, Applicant believes that it, like the Commission, has an obligation to identify and challenge items that are not eligible to be included in the calculation of the Commission's assessment.

13. The use of the Public Service Commission Fund (the "Fund") for any purpose other than to pay the Commission's cost of regulating utilities subject to its jurisdiction is a serious matter and one worthy of serious and thoughtful inquiry. Pursuant to RSMo. §386.370.4, the Fund "shall be devoted solely to the payment of expenditures actually incurred by the commission and attributable to the regulation of such public utilities . . ." Granting this Application for Rehearing would facilitate an examination and dialogue regarding whether the assessment for government support services is lawful.

14. The depletion of the Fund for any purpose other than is authorized by law adversely impacts Applicant and its customers because any reserve left in the Fund at the end of a particular fiscal year is carried over into the next year and reduces the following year's assessment. RSMo. §386.370.4. It logically follows that a reduction in the reserve in the fund to facilitate unauthorized costs can result in higher assessments in the following years than would otherwise be the case.


C. Request for Stay

15. Applicant contends that the Commission should stay the effectiveness and enforcement of the Assessment Order as to this Applicant beyond the current effective date of July 1, 2004, so as to give all interested parties a reasonable opportunity to better understand the method of and basis for the Commission's assessment to particular industries and, more particularly, particular companies.

WHEREFORE, Missouri-American Water Company respectfully requests the Commission to stay the effectiveness and enforcement of its *Assessment Order for Fiscal Year 2005* as to Missouri-American Water Company, grant a rehearing and enter upon a hearing concerning the propriety of its public utility assessment and other matters related thereto, and, upon reconsideration, issue a new order setting aside its June 24, 2004, *Assessment Order for Fiscal Year 2005*, which new order is consistent with the evidence and applicable law as more fully set forth above in this pleading.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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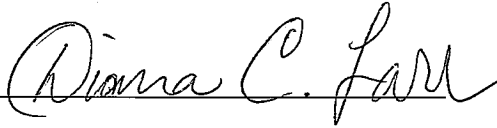
ATTORNEYS FOR MISSOURI-AMERICAN
WATER COMPANY

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, hand-delivered, or sent by electronic transmission on this 30th day of June, 2004, to:

General Counsel's Office
Missouri Public Service Commission
Governor Office Bldg., 200 Madison St.
Suite 100
Jefferson City, MO 65101

Office of the Public Counsel
Governor Office Bldg., 200 Madison St.
Suite 650
Jefferson City, MO 65101



AFFIDAVIT

State of Missouri)

County of St. Louis

) ss
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I, David P. Albemarle having been duly sworn upon my oath, state that I am the
Vice President of Missouri-American Water Company, that I am duly authorized to make this affidavit on
behalf of Missouri-American Water Company, that the matters and things stated in the foregoing Application for
Rehearing are true and correct to the best of my information, knowledge and belief.

David P. Albemarle

Subscribed and sworn before me this 30th day of June, 2004.

Staci A. Olsen

Notary Public

