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August 20, 2002

Mr. Dale H. Roberts  
Secretary/Chief Regulatory Law Judge  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED<sup>4</sup>**

AUG 20 2002

Missouri Public  
Service Commission

Re: AquaSource, Inc.

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of the **Motion to Open a Docket to Investigate and Review the Proposed Acquisition of AquaSource, Inc. by Philadelphia Suburban Corporation**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Ruth O'Neill".

M. Ruth O'Neill  
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

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

**FILED<sup>4</sup>**  
AUG 20 2002

Missouri Public  
Service Commission

In the Matter of the proposed )  
acquisition of AquaSource, Inc. ) Case No. \_\_\_\_\_  
by Philadelphia Suburban )  
Corporation. )

**MOTION TO OPEN A DOCKET TO INVESTIGATE AND REVIEW THE  
PROPOSED ACQUISITION OF AQUASOURCE, INC. BY PHILADELPHIA  
SUBURBAN CORPORATION**

COMES NOW, the Office of the Public Counsel (Public Counsel), and respectfully moves the Missouri Public Service Commission (Commission) to open a docket to investigate and review the proposed acquisition of AquaSource, Inc. by Philadelphia Suburban Corporation. Specifically, Public Counsel requests that the Commission conduct a review to determine whether the proposed acquisition would be detrimental to the public interest of the citizens of the State of Missouri, and if so, whether there are any conditions which may be imposed to alleviate such detriment. This motion is made pursuant to a number of provisions of Missouri law, including §§386.250.3, 386.330, 393.130, 393.140, and 393.190 RSMo (2000). In support of this motion, Public Counsel states as follows:

1. AquaSource, Inc., is the water and wastewater subsidiary of DQE, which has headquarters in Pittsburgh, PA. AquaSource, Inc., is the owner of AquaSource/CU, AquaSource/RU and AquaSource Development Co. (together, AquaSource), all of which are Missouri corporations. AquaSource is authorized to do business in Missouri, under Section 386.020, RSMo (2000), as a "water corporation" and "public utility."

2. Philadelphia Suburban Corporation (Philadelphia) is the nation's second largest investor-owned water utility holding company. According to the news release attached to this motion, DQE is selling AquaSource's investor-owned utilities to Philadelphia for approximately \$205 million in cash. This sale represents approximately 85 percent of AquaSource, Inc.'s 2001 total assets.

3. As a utility company subject to the Commission's jurisdiction, AquaSource may not sell, lease or otherwise transfer assets without the approval of the Commission. Sec. 393.190(1) RSMo.

4. Public Counsel suggests that the Commission has jurisdiction pursuant to §§386.250.3, 386.330, 393.140, and 393.190 RSMo (2000). Section 386.250.3 grants the Commission jurisdiction over "all water corporations, and to the land, property, dams, water supplies or power stations thereof and the operation of the same within this state."

5. Section 393.140 RSMo authorizes the Commission to exercise supervisory authority over water corporations. Section 393.140.12 RSMo requires the Commission to ascertain that when any water corporation conducts business outside the jurisdiction of the Commission, that such business be conducted so "that its operations are kept substantially separate and apart" from the business's regulated operations. This section further authorizes the Commission to "inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses to be borne by the ownership of the ...water corporation...as distinguished from such other business." AquaSource currently operates as a group of small water companies in Missouri. As such, allocation of

common costs is performed on a much less formal basis for ratemaking purposes for this company than for larger companies, because AquaSource qualifies for the small company ratemaking procedures of 4 CSR 240-2.200. Generally, small companies receive a lesser degree of scrutiny from this Commission than larger companies, unless specific problems emerge which require closer Commission inspection.

6. Pursuant to Sec. 393.190 RSMo, all regulated utility companies in Missouri are required by law to seek Commission approval of a sale or other transfer of assets such as the transfer of assets proposed between AWK and RWE AG. Sec. 393.190(1) provides that “no...water corporation...shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it to do so.”

7. Public Counsel submits that under Sec. 386.610 RSMo and case law, Chapter 386 should be construed broadly with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities. The Commission should take whatever steps are necessary to assure itself that, if the acquisition goes forward, Philadelphia will operate AquaSource in the manner of a “good corporate citizen.”

8. The Commission has jurisdiction over the proposed transaction pursuant to §§386.250 and 393.190 RSMo (2000). The Commission's authority to regulate the sale, transfer, or disposition of a utility's system or assets is broad. State ex rel. Marigney Creek v. PSC, 537 S.W.2d 388 (Mo. banc 1988). In addition, section 386.250 RSMo provides the Commission with jurisdiction and supervision over "all public utility corporations and persons whatsoever subject to the provisions of this chapter." §386.250(5). Section 386.250(1) RSMo grants the Commission jurisdiction over the "manufacture, sale or distribution of ... electricity for light, heat or power, within the state, and to persons or corporations owning, leasing, operating or controlling the same..."

9. Holding companies that acquire control of public utility companies that do business in Missouri under a certificate issued by the Commission should not be able to structure the corporate form of ownership in such a way as to defeat the Commission's jurisdiction. In Re: Central Vermont Public Service Corporation, 84 PUR 4<sup>th</sup> 213 (FERC 1987), *the* Commission rejected the form of the transaction over the substance of the transaction to find jurisdiction:

"the purposes behind the FPA may be frustrated were we to adhere to corporate form in reviewing the instant. . . transactions. In a recent proceeding involving a corporate merger and reorganization, we indicated that we are not bound to examine such transactions as they are presented and, furthermore, that our jurisdiction may not necessarily be avoided by [the] structuring [of] a transaction. . . ."

10. The FERC found it had jurisdiction in Re: Central Vermont Public Service Corporation, 84 PUR 4<sup>th</sup> 213 (FERC 1987) where 100% of the stock in the electric public utility was transferred to a newly created holding company. It

reasoned that as a wholly-owned subsidiary of a holding company, the direct control of the public utility passed from the shareholders to the board of directors of the holding company. FERC will not have jurisdiction to review the acquisition of AquaSource by Philadelphia, because this transaction concerns water companies, and FERC does not regulate water companies. Therefore, if this Commission does not review this transaction there will be no regulatory body which can review the proposed transaction to ensure that the change in ownership will not be detrimental to the public interest of the Company's Missouri customers.

11. In Joint Application of Gateway Pipeline Company, et al., GM-2001-585 (2001), this Commission accepted jurisdiction over the proposed acquisition of two intrastate pipelines by an out of state company. At the time that the Commission accepted jurisdiction in that case, it noted that it would determine "whether the transaction is not detrimental to the public interest prior to its authorization pursuant to 4 CSR 240-2.060." (GM-2001-585, Order Accepting Jurisdiction, dated 5/24/2001.) Public Counsel suggests that this Commission should come to the same decision in this case.

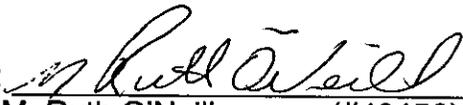
12. The Commission Staff and Public Counsel are currently in the process of conducting a review of AquaSource's Missouri operations because the Company has requested a rate increase pursuant to the procedures of 4 CSR 240-2.200. A significant number of the Company's customers have responded to the proposed rate increase, opposing the increase, and citing a number of service-related problems, which are currently under investigation.

Public Counsel will be advocating for improvements in these service areas as a condition of any rate increase which may be recommended. Opening a docket to investigate the proposed acquisition will allow the Commission to adequately determine whether these problems are likely to persist, or whether conditions can be imposed which will allow the problems to be corrected, if the acquisition is allowed to go forward.

WHEREFORE, Public Counsel respectfully requests that this Commission open an docket to investigation whether the proposed sale of AquaSource to Philadelphia Suburban will be detrimental to the public interest of AquaSource's Missouri customers.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 20<sup>th</sup> day of August 2002:

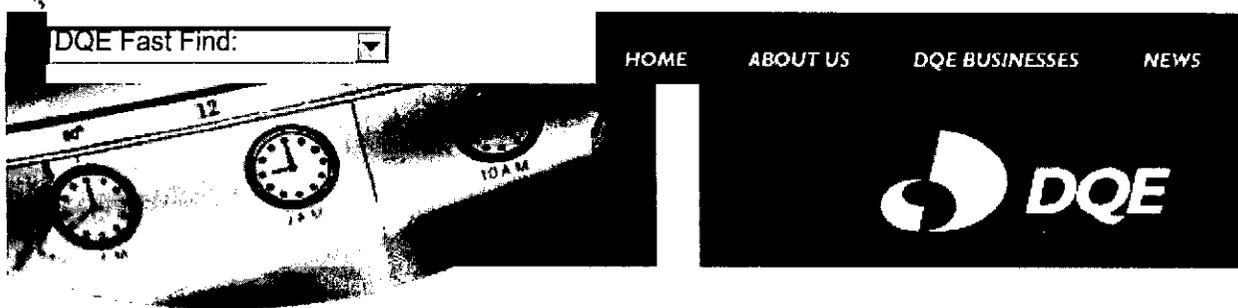
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**July 30, 2002**

### **DQE ANNOUNCES SALE OF AQUASOURCE BUSINESSES**

PITTSBURGH – DQE (NYSE: DQE) today announced the sale of AquaSource, Inc.'s investor-owned utilities to Philadelphia Suburban Corporation (NYSE: PSC), the nation's second largest investor-owned water utility holding company, for approximately \$205 million in cash. In addition, PSC is acquiring selected operating and maintenance contract operations in seven states that are closely integrated with the investor-owned water utilities being acquired. The businesses being acquired represent approximately 85 percent of AquaSource's 2001 total assets.

The final purchase price could vary from \$180 to \$215 million, as various purchase price adjustments are applied. These adjustments relate to the achievement of specific operating performance metrics during the interim period until closing, involving revenue, rate base and customer connections. DQE is evaluating proposals for some or all of AquaSource's remaining operations, and announcements will occur to the extent that definitive agreements are completed. Lehman Brothers is acting as an advisor to DQE and AquaSource.

The sale of AquaSource is part of DQE's Back-to-Basics business strategy, which features a more concentrated focus on the company's electric utility operations and its complementary businesses. The closing is expected to occur in the second half of 2003, contingent upon regulatory approvals. DQE expects to use the proceeds to enhance its financial flexibility in order to fund future growth opportunities identified as part of its Back-to-Basics plan. Based on a full year of estimated earnings contributions from AquaSource in 2003 of \$11 million to \$12 million, and depending on a number of factors, DQE does not expect the sale to have a significant impact on its forecasted 2003 earnings. DQE estimates that its second quarter 2002 financial statements will reflect an after-tax charge in the range of approximately \$190 million to \$210 million related to its investment in AquaSource.

AquaSource, a water and wastewater utility services company and a subsidiary of DQE, is the largest privately owned water and wastewater service provider in Texas and one of the 10 largest in the United States. AquaSource's investor-owned utilities account for approximately 130,000 customer accounts, with an additional 40,000 customers being served by the integrated operations and maintenance contracts. The vast majority of its customers are located in Texas, Indiana, Florida, Virginia, North Carolina, New Jersey and Missouri, with a smaller number of customers in five other states. Formed in 1997, AquaSource has acquired growth-oriented operations in targeted areas, with a strategy of developing economies of scale in both operations and management.

PSC currently is the second largest investor-owned water utility in the country, serving approximately two million residents in six states: Pennsylvania, Ohio, Illinois, New Jersey, North Carolina and Maine.

PSC Chairman Nicholas DeBenedictis said: "This transaction presents a unique opportunity for us to expand our quality service to customers in new areas of the country. Many of the new, larger states in which we will be doing business — Texas, Florida, Indiana and Virginia in particular — have fast-growing populations."

DQE Executive Vice President and President of AquaSource Frank Hoffmann said: "We are pleased to have the bulk of our water and wastewater utility operations and customers entrusted to one of the best managed water utilities in the country — PSC. I am confident that our customers, employees and communities will be well served by this water utility, which has a history of more than 115 years of excellence in water utility operations."

Headquartered in Pittsburgh, DQE delivers essential products and related services. Its principal subsidiary, Duquesne Light Company, is a leader in the transmission and distribution of electric energy, offering technological innovation and superior customer service and reliability to more than a half million direct customers throughout southwestern Pennsylvania.

*The foregoing contains forward-looking statements, the results of which may materially differ from those implied due to known and unknown risks and uncertainties as discussed below. The impact of the sale of AquaSource on DQE's 2003 earnings will depend on the timing of the sale's closing, the use of proceeds from the sale, and the accounting treatment of the disposition and the retained assets. AquaSource's earnings will also be affected by the outcome of its pending rate filings, which will depend on the determinations made by the appropriate public utility commissions. Projected DQE cash flow, net income, earnings, earnings growth, capitalization, dividends and dividend payout ratio will depend on the performance of its subsidiaries (including but not limited to AquaSource), on the effectiveness of the divestiture of non-core businesses, the implementation of DQE's growth plan, and board policy. Demand for and pricing of water, electric and telecommunications utility services and landfill gas, changing market conditions and weather conditions, could affect income and earnings levels at DQE and each subsidiary. Duquesne Light's earnings will be affected by the number of customers who choose to receive electric generation through the provider-of-last-resort arrangement and by final PUC approval of its post-2004 provider-of-last-resort plan. Customer energy demand, fuel costs and plant operations will affect DQE Energy Services' earnings. The outcome of the shareholder litigation initiated against each of DQE and AquaSource may affect DQE's performance. Market and business conditions, demand for services, and stock market volatility may affect DQE's ability to monetize its non-core propane assets and energy technology investments. The events of September 11, 2001 have created broad uncertainty in the global economy, and DQE continues to assess the impact on its businesses, including but not limited to DQE Financial. Overall performance by DQE and its affiliates could be affected by economic, competitive, regulatory, governmental and technological factors affecting operations, markets, products, services and prices, as well as the factors discussed in DQE's SEC filings made to date.*