



Missouri Public Service Commission

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August 24, 2001

FILED²

AUG 24 2001 *ms*

Missouri Public
Service Commission

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

RE: Case No. WM-2001-309

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S POSITION STATEMENT ON DISPUTED ISSUES**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cliff E. Snodgrass
Senior Counsel
(573) 751-3966
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CES:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 24 2001

Missouri Public
Service Commission

In the Matter of the Joint Application of)
Missouri-American Water Company, St.)
Louis County Water Company d/b/a)
Missouri-American Water Company and)
Jefferson City Water Works Company)
d/b/a Missouri-American Water Company)
for Authority to Merge St. Louis County)
Water Company and Jefferson City Water)
Company with and into Missouri-)
American Water Company, and, in)
Connection therewith Certain Other)
Related Transactions.)

Case No. WM-2001-309

STAFF'S POSITION STATEMENT ON DISPUTED ISSUES

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through one of its attorneys, and herein states its position on the disputed issues presented in this case.

ISSUES

Are the proposed merger transactions with MAWC as the surviving entity not detrimental to the public interest?

No. Staff takes the position that this merger transaction is detrimental unless conditions are imposed to protect the public interest. In the alternative, Staff contends conditions are necessary to ensure that any potential harm to Missouri citizens connected to this transaction is avoided or minimized.

Staff would contend that the “public interest” is the threshold area of inquiry in cases of this nature. The Missouri courts have said that property interests in utilities can be altered unless shown to be “detrimental to the public.” See State ex rel. City of St. Louis v. Public Service Commission, 73 S.W. 2d 393, 399, 400 (Mo. banc 1934) and also see State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W. 2d 466, 468 (Mo. App. 1980). Lastly, Staff would note that 4 CSR 240-060(8)(1)(D) mirrors the caselaw cited above, by requiring that applications for authority to merge contain the reasons why the merger is not detrimental to the public interest.

Are conditions necessary to ensure that the public interest is not harmed by these proposed transactions? If so, what conditions proposed by the Staff and OPC should be implemented by the Commission to ensure that the public interest in Missouri is protected?

Yes. Staff’s position is that conditions should be imposed by the Commission in connection with this transaction. Since the “whole purpose” of the Public Service Commission Act is to protect the public, see State ex rel. City of St. Louis v. Public Service Commission above, the Commission has authority to impose conditions that are necessary and proper to protect that interest, see State ex rel. and to Use of the Public Service Commission v. Padberg, 145 S.W. 2d 150, 151, 346 Mo. 1133 (1941).

Staff’s position is that **all** the conditions listed in its testimony should be imposed by the Commission to both eliminate and avoid the detriment to the public posed by this transaction. Specifically Staff’s conditions relating to reporting data from the Company’s new call center, financial surveillance reporting requirements, collection of billing information, record keeping, deferred income taxes, and capital investment should be implemented by the Commission in this case.

With one exception concerning the allocation of common MAWC costs, which Staff believes is being addressed adequately in rate cases, Staff generally agrees with OPC's condition relating to the implementation of a Cost Allocation Manual (CAM) for a post-merger MAWC and its business dealings with its corporate parent. Staff also supports OPC on issues relating to water quality. Staff agrees with OPC that a post-merger MAWC needs to make sufficient capital investment expenditure to ensure that safe and adequate service is being provided. Staff believes, however, that ordering MAWC to make capital investments equal to a pre-determined amount is not the appropriate way to achieve such a result and has suggested an alternative method in its testimony.

Respectfully submitted,
DANA K. JOYCE
General Counsel



Cliff Snodgrass
Senior Counsel
Missouri Bar No. 52302

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 24th day of August, 2001.

A handwritten signature in cursive script, reading "Cliff Snodgrass", written over a horizontal line.

**Service List for
Case No. WM-2001-309
Revised: August 24, 2001 (SW)**

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