

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

In the Matter of Missouri-American)
Water Company's Request for Authority to)
Implement a General Rate Increase for)
Water and Sewer Service Provided in)
Missouri Service Areas.)

Case No. WR-2008-0311

**OFFICE OF THE PUBLIC COUNSEL'S RESPONSE AND OBJECTION TO THE
STIPULATION AND AGREEMENT BETWEEN MAWC AND MSD**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response and Objection to the Stipulation and Agreement between MAWC and MSD states as follows:

1. On September 17, 2008, Missouri-American Water Company (MAWC) and Metropolitan St. Louis Sewer District (MSD) filed an agreement whereby MAWC and MSD agree that MAWC will provide water usage meter reading data and customer billing information and related services to MSD and, in return, MSD will pay MAWC \$29,166 per month (\$350,000 annually) for such information and services. MAWC and MSD requested an Order from the Missouri Public Service Commission (Commission) approving all of the specific terms and conditions of this non-unanimous Stipulation and Agreement.

2. On September 23, 2008, Public Counsel requested that the Commission postpone action on the Stipulation and Agreement between MAWC and MSD at this time, and asked that this issue be taken up in the Commission's final Report & Order on rate design in this case.

3. The request for approval of the Stipulation and Agreement between MAWC and MSD was made prior to the end of the true-up period proposed in this case. MAWC previously proposed that a true-up audit and hearing be conducted for certain specified items of revenue,

expense and investment through September 30, 2008. A true-up hearing has been scheduled for December 8-9, 2008. Therefore, until the true-up audit information is received for the period ending September 30, 2008, Public Counsel does not have enough information available to it to determine whether it has an objection to the Stipulation and Agreement between MAWC and MSD.

4. In recognition of the possibility that Public Counsel might have an objection to the Stipulation and Agreement between MAWC and MSD once the true-up numbers have been received and in order to save the Commission time and promote efficiency, Public Counsel chose to ask that the Commission postpone action on the Stipulation and Agreement between MAWC and MSD at this time, and asked that this issue be taken up in the Commission's final Report & Order on rate design in this case.

5. Public Counsel did not explicitly object pursuant to 4 CSR 240-2.115 because it did not, at that time, know whether it would have any objection. Similarly, Public Counsel did not explicitly ask for a waiver of the seven-day deadline provided in that rule because such a waiver would only have been necessary if Public Counsel later found the non-unanimous stipulation and agreement objectionable on the basis of subsequently-provided information. Implicit in Public Counsel's request that the Commission delay ruling was the possibility that Public Counsel would later file an objection – if it found one to be warranted based on subsequently-provided information – and request waiver of the seven-day requirement.

6. If Public Counsel had filed a "place-holder" objection within seven days of the filing, the stipulating parties (and perhaps other parties) would have doubtless felt compelled to file a response requesting that Public Counsel be more specific about exactly what was being objected to. Public Counsel would then have likely needed to file a reply reiterating that a

determination of whether it had a specific objection could only be made once the true-up numbers are received. And thus, the cycle would likely repeat. Therefore, Public Counsel chose to request a delay in a Commission ruling rather than lodging a formal objection when it was not sure that it would actually object to the agreement once the relevant information was available.

7. Public Counsel took the course that it did not out of any desire to confuse the Commission or the parties, but out of a desire to proceed in the most efficient manner. If it is the Commission's wish that objections always be filed whenever there is a possibility that an objection will be appropriate, Public Counsel will certainly follow that course.

8. In the expectation that this is the Commission's wish in this case, Public Counsel expresses its objection to the Stipulation and Agreement between MAWC and MSD at this time, and requests a waiver pursuant to 4 CSR 240-2.015 of the seven-day requirement in 4 CSR 240-2.115(2)(B). As good cause for such waiver, Public Counsel asserts that (until Agenda discussion on October 9, 2008) it acted in good faith on the belief that the time and effort of the Commission and the parties would be better spent simply waiting until it became clear whether an objection would lie and then filing an objection and request for waiver rather than filing an objection before knowing whether it actually objected to the agreement.

WHEREFORE, Public Counsel objects to the Stipulation and Agreement filed on September 17, 2008 and respectfully requests that the Commission waive for good cause the seven-day filing requirement in 4 CSR 240-2.115(2)(C).

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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By:_____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 10th day of October 2008:

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