

PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

ROB LEE,	)	
	)	
Complainant,	)	
vs.	)	Case No. WC-2009-0277
	)	
MISSOURI-AMERICAN WATER CO.,	)	
	)	
Respondent.	)	

**MOTION TO RECONSIDER OR IN THE ALTERNATIVE**  
**MOTION TO CLARIFY COMMISSION'S MAY 29, 2009 ORDER AND**  
**RESPONSE TO THE COMMISSION'S JUNE 1, 2009 ORDER**

COMES NOW, Respondent, Missouri-American Water Company, by and through its counsel, HeplerBroom LLC, and for its Motion to Reconsider or in the alternative Motion to Clarify May 29, 2009 Order and its Response to the Commission's June 1, 2009 Order, states as follows:

1. In his several Complaints and Amendments thereto, Complainant alleges that there are current, ongoing leaks in Respondent's infrastructure at specific addresses located throughout his neighborhood. For instance in his initial Complaint filed on January 27, 2009, Complainant alleges that "[t]here is water running out of the ground and driveway in front of 11334 Larimore Avenue." The relief sought by Complainant in each of his Complaints (and Amendments) is for Respondent to repair the "leaks" in his neighborhood.

2. Therefore, the sole issue before this Commission is whether there are **current** leaks at the several addresses listed in the Complaints and Amendments.

3. Evidence of prior leaks, complaints and repairs made by Respondent to its infrastructure in Complainant's neighborhood in the past is wholly irrelevant to the issue of whether current leaks exists. Complainant has further failed to provide any explanation that supports how such requests are reasonably calculated to lead to the discovery of admissible evidence as to such issue.

4. As such, Respondent prays the Commission reconsider its Order requiring the production of the records requested in Request Number 1 of the First Data Requests (i.e. prior repair records) and Request Number 3 of the Second Data Requests (i.e. prior complaints).

5. In the alternative, if the Commission deems said records to be discoverable, then Respondent requests the Commission clarify a few issues regarding its May 29, 2009 Order.

#### **Request Number 1 of First Data Requests**

6. The Order is unclear whether the Commission limited Request Number 1 of the First Data Requests to a ten (10) year time period. The Commission seems to do so on page 9 of the Order ("Insofar as MAWC deems that ten-year period a reasonable time limitation, the Commission will adopt it."); however, the Order makes no mention of such limitation later in its final order on page 11.

7. Respondent is prepared to produce its repair records over the past ten (10) years within a quarter (1/4) mile radius as it has previously done so in Complainant's civil lawsuit pending in St. Louis County. See MAWC's Responses to Plaintiff's Request to Produce (attached as "Exhibit A"); MAWC's Responses to Plaintiff's [sic]

Scnd Request to Produce (attached as “Exhibit B”) and MAWC’s Responses to Plaintiff’s [sic] Third Request to Produce (attached as “Exhibit C”).

8. However, if Respondent is required to include repair records going back nineteen (19) years, then it will need additional time in that such task requires Respondent to manually inspect numerous file cabinets of records as such records are not stored electronically.

#### **Request Number 2 of Second Data Requests**

9. Respondent also asks that limitations be placed on Request Number 2 of the Second Data Requests.

10. In order to properly respond to this request, Respondent must research individually each address located within a quarter (1/4) mile radius of Complainant’s house in its system to determine what, if any, “leak testing” has been performed at each address. Respondent estimates that there are well over one hundred (100) addresses located within that radius. Respondent would then be forced to manually inspect numerous boxes of records and file cabinets to determine if investigation tickets were generated for each “leak test” performed as such records are not all stored electronically.

11. Respondent does state that it can produce all “leak testing” performed on its infrastructure within a quarter (1/4) mile radius since the date of Complainant’s initial Complaint and will do so by the end of the day.

12. If Respondent is required to provide prior “leak testing” that pre-dates the initial Complaint, Respondent would ask that the Court limit said request to those addresses listed in the Complaints and Amendments, and that said request be subject to a seven (7) year time period as Respondent’s electronic filing system only contains logs of

entries over that time period. Further, Complainant's request for records over a seventy (70) year time period is clearly excessive and unduly burdensome.

### **Request Number 3 of Second Data Requests**

13. Respondent faces a similar challenge with regards to Complainant's request for all "complaints" made over the past nineteen (19) years within a quarter (1/4) mile radius of his home as requested in Request Number 3 of the Second Data Requests.

14. Again, Respondent would be required to research each address within a quarter (1/4) mile radius individually in its system to determine what, if any, "complaints" have been made over the specified time period at each address. Respondent would then be forced to manually inspect numerous boxes and file cabinets of records to determine if investigation tickets were generated for each "complaint," as such records also are not stored electronically.

15. Further, Respondent is unsure what Complainant is referring to by his use of the term "complaints." Does "complaints" include disputes regarding water shut-offs, reports of no hot water, other plumbing issues, disputes regarding bills, etc.? Each of these types of disputes are coded differently in Respondent's system and would require multiple searches for each address.

16. Respondent asks that this Court limit said request to complaints of possible water main leaks made at those addresses listed in the Complaints and Amendments over the past seven (7) years as Respondent's electronic system only contains records for such time period.

### **RESPONSE TO JUNE 1, 2009 ORDER**

17. Finally, Respondent is at a loss as to how it will be able to comply with the Commission's May 29, 2009 Order by June 5, 2009 as set forth therein without the limitations discussed in this Motion, much less by midnight of June 2, 2009 as requested by Complainant in his Motion filed on June 1, 2009.

18. If Respondent is required to respond in full to the May 29, 2009 Order with none of the limitations discussed herein, then Respondent would need at a minimum thirty (30) additional days to produce those additional records not previously produced in the civil suit which would in turn require a continuance of the evidentiary hearing set for June 9, 2009.

19. If Complainant's requests are limited as set forth below, then Respondent would be able comply with the May 29, 2009 Order and deliver said records to Complainant by the June 5, 2009 deadline:

- a. **Request Number 1 of First Data Requests**—limited to repair records for a quarter (1/4) mile radius of Complainant's home over past ten (10) years;
- b. **Request Number 2 of Second Data Requests**—limited to leak testing conducted at the addresses listed in the Complaints and Amendments over the past seven (7) years; and
- c. **Request Number 3 of Second Data Requests**—limited to complaints of possible water main leaks at the addresses listed in the Complaints and Amendments over the past seven (7) years.

20. Further, Respondent will deliver a copy of a map of its water mains in accordance with the June 1, 2009 Order.

WHEREFORE, Respondent prays the Commission either issue an Order granting its Motion to Reconsider and sustaining Respondent's previously-filed objections as to Request Number 1 of the First Data Requests and Request Number 3 of the Second Data Requests, or in the alternative, issue an Order limiting Complainant's Request Number 1 of the First Data Requests and Request Numbers 2 and 3 of the Second Data Requests as set forth in this Motion and for any other relief this Commission deems just and proper.

HEPLERBROOM, LLC

By: /s/ Matthew H. Noce

KURT A. HENTZ #33817

MATTHEW H. NOCE #57883

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Attorneys for Respondent

### **PROOF OF SERVICE**

I hereby certify that I electronically filed on this 2<sup>nd</sup> day of June, 2009, the foregoing with the Missouri Public Service Commission using the ESIF system which will send notification of such filing to the following:

- Missouri Public Service Commission General Counsel Office (GenCounsel@psc.mo.gov)
- Office of the Public Counsel Mills Lewis (opcservice@ded.mo.gov)
- Missouri Public Service Commission Ritchie Samuel (Samuel.Ritchie@psc.mo.gov)
- Rob Lee (energyhealingarts@gmail.com)

HEPLERBROOM, LLC

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Attorneys for Respondent

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

ROBERT LEE,	)	
	)	
Plaintiff,	)	
	)	Cause No. 08SL-CC01242
vs.	)	
	)	Division No. 15
MISSOURI-AMERICAN WATER	)	
COMPANY,	)	
	)	
Defendant.	)	

**RESPONSE TO PLAINTIFF'S REQUEST TO PRODUCE DIRECTED TO**  
**DEFENDANT MISSOURI-AMERICAN WATER COMPANY**

COMES NOW Defendant, Missouri-American Water Company, by and through counsel,  
and for its Response to Plaintiff's Request to Produce states as follows:

1. All documents pertaining to the maintenance of the water lines within 500 feet of plaintiff's residence, including any and all complaints from customers, any maintenance documents, and any records regarding the maintenance of those water lines, for the period 2000 through 2007.

**RESPONSE:** Defendant objects to said request as it seeks information which is wholly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects in that said request is overly broad and unduly burdensome. Further, Defendant states that it does not have any reports of breaks on the water lines within 500 feet of Plaintiff's residence from 2000 through 2007. Subject to said objections and without waiving same, Defendant states: see Attachment #1 which are records related to reports of leaks in the water lines located in the general vicinity of Plaintiff's residence from 2000 to 2007.



HEPLER, BROOM, MacDONALD,  
HEBRANK, TRUE & NOCE, LLC

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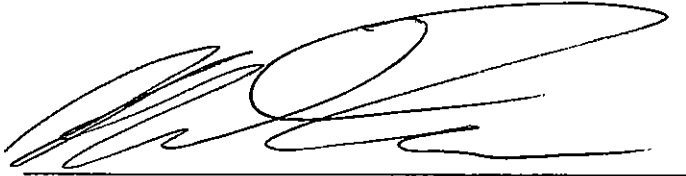
(314) 241-6116 – Facsimile

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was mailed via first class mail, postage prepaid, this 2<sup>nd</sup> day of June, 2008, to:

David C. Knieriem, Esq.  
Law Offices of David C. Knieriem  
7711 Bonhomme, Suite 850  
Clayton, MO 63105  
**Attorneys for Plaintiff**





IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

ROBERT LEE,	)	
	)	
Plaintiff,	)	
	)	Cause No. 08SL-CC01242
vs.	)	
	)	Division No. 15
MISSOURI-AMERICAN WATER	)	
COMPANY,	)	
	)	
Defendant.	)	

**RESPONSE TO PLAINTIFF'S SCOND [sic] REQUEST TO PRODUCE**  
**DIRECTED TO MISSOURI-AMERICAN WATER COMPANY**

COMES NOW Defendant, Missouri-American Water Company, by and through counsel, and  
for its Response to Plaintiff's Second (Sic) Request to Produce states as follows:

**REQUESTS**

1. All documents pertaining to the maintenance or replacement of the water lines for the  
following streets for the previous ten years:

McQuay

Lydia

Carl

Larimore between and including Coal Bank and Aspen Woods

Aspen Woods

Red River Drive

Taos Drive

Coal Bank Road west of Lilac



By "maintenance," Plaintiff means the repair or replacement, or indication of a break or leak, of any pipe maintained by Defendant.

**RESPONSE:** Defendant objects to this interrogatory as overly broad and unduly burdensome. Defendant further objects in that this interrogatory is wholly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objections, and without waiving same, Defendant states see attached.

HEPLER, BROOM, MacDONALD,  
HEBRANK, TRUE & NOCE, LLC

By: 

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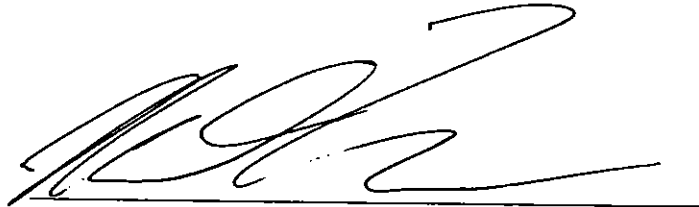
(314) 241-6116 – Facsimile

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was mailed via first class mail, postage prepaid, this 16<sup>th</sup> day of January, 2009, to:

David C. Knieriem, Esq.  
Law Offices of David C. Knieriem  
7711 Bonhomme, Suite 850  
Clayton, MO 63105  
**Attorneys for Plaintiff**



IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

ROBERT LEE,

Plaintiff,

vs.

MISSOURI-AMERICAN WATER  
COMPANY,

Defendant.

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Cause No. 08SL-CC01242

Division No. 15

**DEFENDANT'S RESPONSES TO PLAINTIFF'S**  
**[sic] THIRD REQUEST TO PRODUCE**

Comes now Defendant, Missouri-American Water Company, by and through its counsel, HeplerBroom LLC, and for its Responses to Plaintiff's [sic] Third Request to Produce, states as follows:

**REQUESTS**

1. All "leak reports" – whether a leak was found or not – for the following streets for the previous ten years:

McQuay

Lydia

Carl

Larimore between and including Coal Bank and Aspen Woods

Aspen Woods

Red River Drive

Taos Drive

Coal Bank Road west of Lilac

**RESPONSE:** Defendant objects to this request in that it seeks information which is wholly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request in that it is overly broad and unduly burdensome. Subject to said objection, and without waiving same, Defendant states see Attachment #1. Defendant reserves the right to seasonably



**supplement as its investigation is ongoing.**

2. Any documents relating to the repair or replacement of any privately owned water line that was generated by Defendant for the following streets for the previous ten years:

McQuay  
Lydia  
Carl  
Larimore between and including Coal Bank and Aspen Woods  
Aspen Woods  
Red River Drive  
Taos Drive  
Coal Bank Road west of Lilac

**RESPONSE:** Defendant objects to this request in that it seeks information which is wholly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objection, and without waiving same, Defendant states see Attachment #2.

3. The Weston study

**RESPONSE:** Defendant objects to this request in that it seeks information which is wholly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objection, and without waiving same, Defendant states see Attachment #3.

4. Any manuals, operating manuals, or documents showing the efficacy or efficiency of any electronic correlator leak detector used by Defendant for the previous ten years.

**RESPONSE:** See Attachment #4.

HEPLERBROOM LLC

By: 

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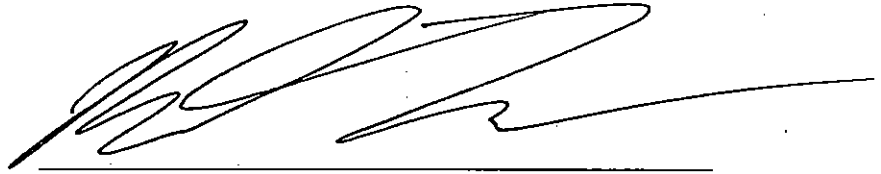
(314) 241-6160 – Telephone

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was mailed via first class mail, postage prepaid, this 31<sup>st</sup> day of March, 2009, to:

David C. Knieriem, Esq.  
Law Offices of David C. Knieriem  
7711 Bonhomme, Suite 850  
Clayton, MO 63105  
**Attorneys for Plaintiff**

A handwritten signature in black ink, appearing to read 'D. Knieriem', is written over a horizontal line.