

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

Reed Kline,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2006-0106
)	
Missouri-American Water Company,)	
)	
Respondent.)	

**MAWC’S REPLY TO
RESPONSES CONCERNING ORDER DIRECTING FILING**

COMES NOW Missouri-American Water Company (MAWC or Company), by and through its counsel, and, in reply to the Response of City of St. Joseph to Order Directing Filing and the Response of Complainant to Order Directing Filing, states as follows to the Missouri Public Service Commission (Commission):

1. On October 21, 2005, the Commission issued its Order Directing Filing wherein, among other things, it granted Complainant’s motion for an extension of time to respond to MAWC’s Motion to Dismiss and directed Complainant to respond to that Motion by November 2, 2005.¹ The Order also directed the Complainant, the other parties and the intervention-applicant to respond to MAWC’s Request for Mediation by November 2, 2005.

2. On October 28, 2005, the City of St. Joseph, Missouri (St. Joseph) filed its response to the Order Directing Filing. Therein, St. Joseph indicated its willingness to participate in mediation (if granted status as a party in the case) subject to several “conditions.” St. Joseph also made several requests related to the status of this case.

¹ MAWC’s Motion to Dismiss was filed on October 3, 2005. Complainant’s response to this motion would have been due on October 13, 2005. On October 13, 2005, Complaint filed a motion asking for an extension of time to respond to the Motion to Dismiss.

3. On November 2, 2005, Complainant filed his response to the Order Directing Filing. Therein, Complainant suggested that he would agree to mediation subject to the same "conditions" proposed by St. Joseph. He also asked that he not have to respond to the Motion to Dismiss until after mediation and, if the Commission does not allow him to so delay his response, adopted the arguments made by St. Joseph in regard to the Motion to Dismiss.

4. MAWC believes that it would further this litigation for MAWC to state its position as to the mediation conditions and other requests made by Complainant and St. Joseph.

MEDIATION CONDITIONS

5. The following conditions on mediation were proposed by Complainant and St. Joseph:

- a) That the Commission appoint one of its regulatory law judges (RLJ) as mediator in the matter;
- b) That St. Joseph be allowed to fully participate in the mediation;
- c) That legal counsel be allowed to participate in the mediation; and,
- d) That MAWC be required to answer St. Joseph's First Set of Data Requests prior to the mediation.

6. **RLJ as Mediator.** MAWC would note that in the past, the Commission has utilized the mediation services of the University of Missouri – School of Law, Center for the Study of Dispute Resolution.² While the persons providing these mediation services may not have “a high-level of expertise in PSC laws, regulations, tariffs and procedures,” as desired by St. Joseph (St. Joseph Response, p. 3), they do have expertise in the mediation process that might be of assistance in this matter.

² The Center reports that *U.S. News and World Report* has ranked the dispute resolution program at the MU School of Law as the number one program in five of the past six years.

7. This being said, MAWC does not have an objection to the use of a Commission RLJ as a mediator. If an RLJ is used, MAWC believes that the RLJ appointed should be someone that will not hear this case. Additionally, he or she should be directed to not share the information or perceptions gathered in that process with anyone that might ultimately hear the case, if mediation is unsuccessful.

8. **St. Joseph and Legal Counsel Participation in Mediation.** MAWC has no objection to the participation of either St. Joseph or parties' legal counsel in a mediation.

9. **Answers to St. Joseph Data Requests.** St. Joseph served its First Set of Data Requests on MAWC on October 28, 2005. MAWC does not object to providing responses or objections, where appropriate, prior to a mediation.

10. The Commission should note, however, that Commission Rule 4 CSR 240-2.090(2) states in part that "*parties* may use data requests as a means for discovery" (emphasis added). Because St. Joseph is not yet a party, MAWC believes that its time to object and/or answer these data requests has not yet begun to run. MAWC would propose that it discuss this matter with counsel for St. Joseph and determine acceptable dates for MAWC to object and/or provide responses sufficiently prior to a mediation that the information can be addressed in such mediation.

OTHER REQUESTS

11. St. Joseph has also asked the Commission to "indefinitely stay" consideration of MAWC's Motion to Dismiss and to "indefinitely stay" the requirement that Complainant file a response to MAWC's Motion to Dismiss.

12. MAWC does not object to St. Joseph's request that consideration of the Motion to Dismiss be stayed until after an attempt at mediation. While MAWC continues to believe that

there is no justiciable controversy between it and the Complainant and that this matter is not ripe for Commission complaint, it also believes that there are issues that can be discussed in a mediation and possibly resolved to the benefit of all involved.

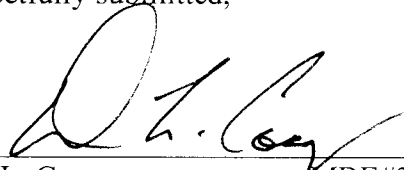
13. MAWC does, however, object to the request that the requirement to file a response be stayed. As stated above, the November 2 response date was already an extension of the prior deadline of October 13, 2005. November 2nd has since passed and both Complainant and St. Joseph have made filings concerning MAWC's Motion. Accordingly, MAWC believes that there is no basis for a further extension.

ADDITIONAL ALLEGATIONS

14. St. Joseph's response proceeds to make a variety of allegations concerning MAWC's operations and conduct in regard to line extensions. MAWC does not see a benefit or requirement that it respond to those allegations at this time. MAWC believes that these subjects would be more appropriately discussed at a mediation of this matter.

WHEREFORE, MAWC prays the Commission direct the parties to pursue mediation in a manner that is consistent with the statements contained herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on November 7, 2005, to the following:

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