

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

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**JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
C. EDWARD PETERSON***

***ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS**

December 24, 1999

FEDERAL EXPRESS

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
301 West High R530
Jefferson City, Missouri 65102

FILED

DEC 27 1999

**Missouri Public
Service Commission**

Re: **Missouri-American Water Company
Missouri PSC Case No. WR-2000-281 et al.**

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) conformed copies of a pleading, which please file in the above matter and call to the attention of the Commission.

An additional copy of the **INITIAL PAGE** of the material to be filed is enclosed, which kindly mark as received and return to me in the enclosed envelope as proof of filing.

Thank you for your attention to this important matter. If you have any questions, please call.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties

F:\DOCS\SWC\19344.1

FILED

DEC 27 1999

STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

Missouri Public
Service Commission

In the Matter of Missouri-American)
Water Company's Tariff Sheets De-)
signed to Implement General Rate)
Increases for Water and Sewer Ser-)
vice provided to Customers in the)
Missouri Service Area of the Compa-)
ny)

WR-2000-281
SR-2000-282
(Consolidated)

INDUSTRIAL INTERVENORS' MOTION TO COMPEL
RESPONSE TO DATA REQUEST
AND
REQUEST FOR EXPEDITED TREATMENT

COME NOW AG PROCESSING INC, A COOPERATIVE ("AGP"),
FRISKIES PETCARE, A DIVISION OF NESTLE USA ("Friskies") and WIRE
ROPE CORPORATION OF AMERICA INC. ("Wire Rope") (collectively
"Industrial Intervenors") and move for a Commission Order compel-
ling Missouri-American Water Company ("MAWC") to respond to a
data request and in support thereof state:

Factual Background for Motion

1. Industrial Intervenors are active intervenors,
having been granted such status by Commission order dated Decem-
ber 1, 1999.
2. Commission rules provide for data requests to be
propounded between active parties to the case. 4 CSR. 240-2.090.

3. Pursuant to 4 CSR 240-2.090(1) Industrial Intervenor propounded the following data request to MAWC on December 15, 1999.

Please provide a copy of your response to each data request, whether formal or informal, from any party to this proceeding other than these intervenors.

This is a continuing request and should be updated as often as is necessary throughout the course of this proceeding. If you are unwilling to so regard this request, please advise counsel for the requesting party.

A copy of the data request transmitted to MAWC is attached hereto as Exhibit A. A copy of the transmittal letter to MAWC counsel of record is attached hereto as Exhibit B. Confirmation of receipt of the facsimile transmittal is attached as Exhibit C.

4. On December 20, 1999, counsel for Industrial Intervenor received an objection from MAWC by facsimile. In relevant part, the objection states:

MAWC objects to this data request on the basis that it is not a proper data request and also over broad and oppressive and creates undue burden and expense in that there are likely to be hundreds, if not thousands, of data requests and responses in this case. In particular, in the case of Staff and OPC data requests, it is over broad in that these parties have been said to have a statutory right to certain materials that may exceed those items which are relevant to this inquiry. AGP, Friskies and Wire Rope have no such statutory basis for discovery.

A copy of the objection as received by counsel for Industrial Intervenor is attached hereto as Exhibit D.

5. In a good faith attempt to resolve the dispute short of this motion, to attempt to avoid expenditure of Commission resources, and in advance of filing this motion, counsel for Industrial Intervenors responded to the objection with a letter also dated December 20, 1999. In so doing, counsel for Industrial Intervenors suggested a possible mitigation of a portion of the request to accommodate indicated concerns of MAWC. A copy of that letter, together with the electronically generated facsimile receipt therefor, is attached hereto as Exhibit E.

6. Industrial Intervenors' counsel subsequently received an e-mail from one of MAWC's counsel regarding the December 20, 1999 letter, a copy of which e-mail is attached hereto as Exhibit F. That e-mail indicated that no response would be provided within the requested time period. Time being a critical commodity in these proceedings, counsel for Industrial Intervenors responded with an e-mail (Exhibit G) indicating that it would be necessary for us to proceed with this motion.

7. No other response, affirmative or negative, has been received by counsel for Industrial Intervenors. Accordingly, this motion to compel is submitted.

Argument

8. The thrust of Industrial Intervenors' Data Request No. 1, as quoted above (and attached as Exhibit A), is simply to request that a copy of responses that are provided by MAWC in response to the data requests of other parties be provided to

Industrial Intervenors' technical representative for analysis. As is noted on Exhibit B, Industrial Intervenors did not even request that a duplicate copy of such responses be provided to Industrial Intervenors' counsel (even though such request would have been entirely proper), but rather to minimize burden to the utility, sought only that a single copy of the responses be provided to Industrial Intervenors' principal technical consultant.

9. MAWC first objected on the grounds that Industrial Intervenors' Data Request No. 1 is "not a proper data request." No indication in MAWC's objection was given why this request, one of several transmitted to MAWC on the same date, is not proper. Other requests have not been the subject of objections. **The request seeks nothing more than a copy of responses made by MAWC to other parties' data requests.** If those requests are not in proper form or for some other reason response thereto is avoided or deferred, response to this data request is, by definition, also avoided or deferred.

10. MAWC next objected on the grounds that the request is "broad and oppressive." The data request seeks only a **single copy of responses that MAWC may make to the data requests of other parties.** It does not require MAWC to compile **any additional information**, it does not require MAWC to conduct **any additional studies**, nor does it require MAWC to do **anything other than make one additional copy of the response they are providing to**

the other party. If compliance with the data request of the **other party** would be "oppressive," and was objectionable on that basis, presumably MAWC would make such objection and no response with respect to that party's data request or Industrial Intervenors' Data Request No. 1 would be due unless and until that objection was withdrawn, resolved, or the other party's data request modified. If the other party's data request is **not** subject to objection, and a response is supplied, all that is required by this request is to furnish one copy of the material that **is** supplied.

11. Moreover, in the event that a response to a data request would call for the production of voluminous material that, pursuant to the Protective Order that was earlier issued in this proceeding at the request of MAWC, would be appropriate to provide by allowing the other party access to the materials at some designated location, the response to both the other party's data request would most likely be a **single sheet of paper so indicating that designation** and indicating the location and time at which access to the voluminous materials would be provided. Thus, the response to this data request would be a copy of the same sheet of paper. To argue that this would be "oppressive" is ludicrous.

12. MAWC next objected on the grounds that the request "creates undue burden and expense in that there are **likely** to be hundreds, if not **thousands**, of data requests and responses in

this case." (Emphasis added). This is simply not a meaningful basis of objection in a rate case. A claimed burden of "hundreds" or "thousands" of data requests is entirely hypothetical and in any event has nothing whatever to do with making one additional copy of responses that MAWC has already determined to produce or will be producing in response to other parties' data requests.

a. Further, MAWC is the applicant and the initiating party in this proceeding. It is not a defendant. It is seeking to increase its rates in all its service territories by over 50% and by over 65% for large users. MAWC is fully able to supply information when it suits its interest so to do. The proper response to this objection should be: "oh, you poor thing!"

b. Moreover, MAWC is the sole source of a large portion of the information that will be necessary to try this case. It would be an abject denial of due process to permit MAWC to simultaneously seek a massive rate increase while at the same time restricting access to data that is solely in its possession and control. MAWC is still, after all, a **public** utility.

13. Given that Industrial Intervenors would be entirely entitled to obtain from each individual party copies of their individual data requests to MAWC, cause them to be retyped, and submit **each of them again** to MAWC, simply requesting an additional copy of responses to data requests of other parties **reduces**

rather than increases the number of data requests that the utility must respond to and track. In recognition of the economies of this procedure, several jurisdictions have **rules that require** that a party's data request responses be circulated to all other parties that request such copies^{1/} so that the overall burden to the utility in tracking and responding to what would likely be multiple requests for the same information is **reduced**. Indeed, some jurisdictions even require that the data requests themselves be distributed to all parties.^{2/}

14. The mechanism of simply requesting copies of responses to data requests propounded by others is not only common in many jurisdictions (as noted in some by rule), but is intentionally designed to limit the burden on the responding utility by reducing the necessity for essentially similar requests, avoiding needless duplication and separate responses to multiple parties that are seeking virtually the same information. It would appear, however, that MAWC wants to **create** a self-

^{1/}See, e.g., 18 C.F.R. §385.406(b)(4) which provides:

- (4) Responses to discovery requests are required to be served only on the participant requesting the information, Commission trial staff, and any other participant that specifically requests service.

^{2/}See, e.g., 18 C.F.R. §385.406(b)(2), providing:

- (2) Unless provided otherwise by the presiding officer, copies of any discovery request must be served upon the presiding officer and on all participants to the proceeding. (Emphasis added).

fulfilling prophecy of "hundreds" or "thousands" of data requests in this proceeding. Requiring parties to submit multiple requests so that each may obtain access to the same data **will** certainly significantly multiply the number of requests propounded to the utility. Giving credence to utility complaints about the volume of data requests it receives while it simultaneously resists procedures designed to limit their number would be like listening to a man who continuously hits himself in the head with a hammer while complaining that he suffers from severe headaches.

15. MAWC also objects to the request as "over broad" because "[Staff and Public Counsel] have been said to have a statutory right to certain materials that may exceed those items which are relevant to this inquiry." (Emphasis added). Analysis of this basis reveals its lack of merit.

a. First, the standard of relevance is not whether "items are relevant to this inquiry," but rather whether the discovery sought is reasonably calculated to lead to the discovery of admissible evidence. Mo. R. Civ. Proc. 56.01(b). Moreover, if the other party's data request is properly objected to as beyond the permissible scope of discovery and that objection is upheld or the request withdrawn or modified, **by definition** no response to this data request is required or is required only to the extent information is supplied to the other party.

b. Second, this basis of objection fails to identify who it is that has "said" that there are special, "super

parties" in these proceedings that are entitled to discovery and rights of due process that other parties lack, but we doubt that any authority can be cited for this proposition. Staff in this case is nothing more than another litigant before the Commission, as is Public Counsel, and they are entitled to the same due process -- not less -- not more -- than other parties.

c. Third, this is a contested case under Section 393.150 RSMo. We reject **out of hand** the proposition that there are "super parties" in this proceeding that can see things that no one else can see, can write "secret memos" that no other parties can see, or obtain access to material in the context of this case through data requests that no other parties can view. It will be recalled that, in WO-98-204, both Staff and MAWC asserted a joint position regarding intra-district cost allocation and rate design that was opposed by Industrial Intervenors and several others. If the past is any indicator, similar positioning, or some "Solomonic" positioning for Staff may be expected here. As regards Public Counsel, typically there have been areas of dispute between industrial parties and Public Counsel. If these parties are to be given discriminatory "super" rights, "super" discovery and "super" due process in this proceeding that other parties do not have, Industrial Intervenors would like the Commission to clearly make such a declaration **now** so that judicial review of such a decision and any statutory and Constitutional basis therefor may be promptly obtained.

d. Finally, as to this sub-point, again what is sought in this request is nothing more than an additional copy of material that is produced or supplied **pursuant to a data request in this proceeding**. Staff/Public Counsel may have responsibilities **apart from this rate case** such as safety, health or other compliance concerns, or specific customer-related service complaints that require investigation in inquiry by either or both entities. Such activities go on continually **separate and apart from this rate case**. To assert that such activities would be conducted through a response to a data request in this rate case is, to say the least, naive. To assert the existence of such supervisory responsibility on the part of the Commission as a means to avoid discovery in a **rate case** is, at the minimum, disingenuous.

e. Fourth, a Protective Order has been issued in this case, and Industrial Intervenors' technical consultant has already submitted the required Non-disclosure Agreement. Should other persons be engaged, they also will submit such non-disclosure agreements or will not be permitted access to any materials that are properly designated by any party as "Highly Confidential" or "Proprietary" pursuant to that Protective Order. Existence of that Protective Order vitiates any such thinly-disguised "confidentiality" objection.

f. It is again recalled that all this request seeks is **a copy of a response to a data request** that is being provided to another party.

g. Fifth, Industrial Intervenors are not competitors with MAWC. We do not represent competitors of MAWC. We are customers who are confronted with a 67% increase in their water rates from this monopolist. As far as is known to Industrial Intervenors, this monopoly utility **has no competitors** in any of its service territories in this state.

h. Sixth, Industrial Intervenors decline to presuppose what is "relevant" to this "inquiry" and what is not. This is, after all, a rate case in which the applicant utility has the burden of proving that its proposed rates are just and reasonable and that its expenditures are prudent. Section 393.150.1 RSMo. Under Missouri law, a rate case is intended to be a broad and comprehensive inquiry into all aspects of the utility's operations. See, *Section 393.270.4 RSMo and State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704 (Mo. 1957).

i. Seventh, as regards a "statutory basis" for the data request, Industrial Intervenors' statutory basis for discovery is found, among other places, in the Commission's rules (4 CSR 240-2.090) which are authorized by statute (Section 386.410 RSMo) and in the statutory status given Industrial

Intervenors by their intervention in this proceeding (Section 386.420 RSMo).

16. As regards the aspect of the data request that sought copies of "informal" requests, Industrial Intervenors proposed a possible solution that would provide Industrial Intervenors with equal access to the materials and information obtained by others without requiring the utility to perform an "impossible task." We remain willing to discuss this aspect of the data request with MAWC, apparently, however, that suggested solution was not satisfactory to MAWC.

17. Industrial Intervenors are actual ratepayer customers of this *public utility* that has sought a rather substantial increase in the rates it charges for its services. Industrial Intervenors are attempting to defend their interest, not only against the proposal of the company but against the expected position of Commission Staff as well and potentially the rate design proposals of other parties. Therefore, it is not only reasonable, but efficient to require the *public utility* company to provide us with **one additional copy** of material that it is providing to others. To do so is neither burdensome or oppressive to the utility, but in fact is a highly efficient procedure often employed at this Commission and others to facilitate the discovery and data request process.

Request for Expedited Treatment

18. Industrial Intervenors incorporate by reference paragraphs 1 through 7 and 8 through 17 of this pleading, inclusive.

19. This rate case involves a significant request for revenue relief predicated upon inclusion of roughly an \$80 million new water treatment plant in Andrew County, Missouri. The costs associated with that plant are significant and work must begin immediately to analyze data made available and to determine if other data is needed with respect to such issues.

20. The Commission has established a hearing in early June of next year and has before it a proposed procedural schedule that suggests an accelerated intervening testimony schedule.

21. In addition to reviewing plant costs, Industrial Intervenors must also develop information and analysis to provide appropriate class cost of service studies for multiple districts, which work MAWC has failed or refused to provide. Prompt access to data is necessary to fulfill these tasks.

22. MAWC is the sole source of data needed to analyze the bulk of the issues in this case.

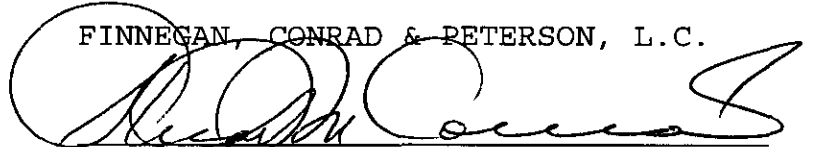
23. There is only a limited time for the Commission to act in this case, hence, the parties are under time constraints to provide their testimony by a date certain. Thus, time is of the essence and Industrial Intervenors respectfully request that the Commission rule on this motion on an expedited basis.

24. Wherefore expeditious consideration of this motion to compel should be given so as to expedite the discovery process hereafter and avoid delays in the procedural schedule.

WHEREFORE, for the foregoing reasons, the Commission should direct Missouri-American Water Company to comply with Industrial Intervenors' Data Request No. 1 and should rule on this motion on an expedited basis.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



Stuart W. Conrad Mo. Bar #23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR AG PROCESSING INC.,
FRISKIES PETCARE, A DIVISION OF
NESTLE USA and WIRE ROPE CORPORA-
TION OF AMERICA, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application to Intervene by U.S. mail, postage prepaid addressed to the following persons:

Mr. John Coffman
Assistant Public Counsel
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Mr. Dean Cooper
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456

Mr. James B. Deutsch
Attorney
Reizman & Blitz, P.C.
308 East High Street
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Jefferson City, MO 65101

Mr. James M. Fischer
Law Offices of Jim Fischer
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Assistant Public Counsel
Office of the Public Counsel
P. O. Box 7800
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Mr. Lee Curtis
Attorney
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Clayton, MO 63105

Mr. William R. England
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456


Mr. Keith Krueger
Assistant General Counsel
Missouri Public Service Commission
Truman Office Building - R530
P. O. Box 360
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Columbia, MO 65201

Martin W. Walter
Attorney
Blake & Uhlig, P.A.
2500 Holmes Road
Kansas City, MO 64108

Dated: December 24, 1999



Stuart W. Conrad

MISSOURI-AMERICAN WATER COMPANY
WR-2000-281
Data Request
of
Ag Processing Inc, Friskies, Inc. and
Wire Rope Corporation of America, Inc.
to
Missouri-American Water Company

December 15, 1999

<u>Item No.</u>	<u>Description</u>
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- | | |
|----|--|
| 1. | Please provide a copy of your response to each data request, whether formal or informal, from any party to this proceeding other than these intervenors. |
|----|--|

This is a continuing request and should be updated as often as is necessary throughout the course of this proceeding. If you are unwilling to so regard this request, please advise counsel for the requesting party.

The attached or above information provided to the requesting party or parties in response to this data or information request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts to the best of the knowledge, information or belief of the undersigned. The undersigned agrees to immediately inform the requesting party or parties if during the pendency of this case any matters are discovered which would materially affect the accuracy or completeness of the attached information and agrees to regard this as a continuing data request.

As used in this request the term "document" includes publications in any format, work papers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data recordings, transcriptions and printer, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to the party to whom this request is tendered and named above and includes its employees, contractors, agents or others employed by or acting in its behalf.

Signed: _____

Date: _____

EXHIBIT "A"

Page 1 of 1

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

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JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
C. EDWARD PETERSON*

*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

Writer's 24-Hour Number:
(800)821-5073 PIN:247-4501

December 15, 1999

VIA FACSIMILE AND MAIL

Mr. William R. England, III
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456

Re: Missouri-American Water Company
Missouri PSC Case No. WR-2000-281 et al. *- Data Req*

Dear Trip:

Enclosed are some data requests. Missouri Public Service Commission rules, specifically Rule 4 CSR 240-2.090(2), require responses within twenty (20) days of this date. Objections or requests to delay should be made to me within ten (10) days. Please forward your responses directly to the following person, with only a copy of your letter of transmittal to me:

Mr. Ernie Harwig
Brubaker & Associates, Inc.
1215 Fern Ridge Parkway, Suite 208
P. O. Box 412000
St. Louis, MO 63141-2000

Should you have any questions regarding the requests, please feel free to contact me. Thank you for your attention to these requests.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s
Enclosures
cc: Group (w/encl)
E.Harwig (w/encl)

EXHIBIT "B"
Page 1 of 1

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 8944
CONNECTION TEL 15736347431p210
CONNECTION ID
START TIME 12/15 15:18
USAGE TIME 02'32
PAGES 4
RESULT OK

LAW OFFICES

**FINNEGAN
CONRAD
&
PETERSON L.C.**

1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MISSOURI 64111
(816) 753-1122
FACSIMILE: (816) 756-0373

FACSIMILE COVER SHEET

From: S. W. Conrad
Client: 202.210

December 15, 1999
Number of Pages: 4
(including cover sheet)

To:

Name	Fax Number
England, William (FAX)	(573)634-7431

EXHIBIT "C"
Page 1 of 1

BRYDON, SWEARENGEN & ENGLAND P.C.

312 East Capitol Avenue (65101)

P.O. Box 456

Jefferson City, Missouri 65102-0456

GROUP 3 TRANSMISSION NUMBERS

When faxing to Garv Duffv, Johnny Richardson or Dean Cooper - (573) 635-3847

All other faxes - (573) 635-0427

Date: 12/20, 1999

Time: _____ .m

Please deliver the following pages to:

ATTENTION: Stu Conrad

COMPANY: _____

FROM: Dean Cooper

Total number of pages transmitted (including cover sheet):

3

COMMENTS: _____

The information contained in this facsimile message is a privileged and confidential attorney/client communication. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this fax in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Mail.

IF YOU DO NOT RECEIVE ALL MATERIAL IN GOOD CONDITION,
PLEASE CALL ROBBIN GRIFFITH AT (573) 635-7166, ext. 152.

HARD COPY TO FOLLOW: Yes or No

EXHIBIT

"D"

Page 1of 4

LAW OFFICES

BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 458

JEFFERSON CITY, MISSOURI 65102-0458

TELEPHONE (573) 636-7168

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E-MAIL: OCAWBS@SOCKET.NET

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GREGORY C. MITCHELL
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DALE T. SMITH

OF COUNSEL
RICHARD T. CIOTTONE

December 20, 1999

VIA FAX TRANSMISSION

(816) 756-0373

Mr. Stuart W. Conrad

Finnegan, Conrad & Peterson, L.C.

1209 Penntower Office Center

3100 Broadway

Kansas City, Missouri 64111

Re: Case No. WR-2000-281,
Missouri-American Water Company

Dear Stuart:

We are in receipt of Ag Processing Inc., A Cooperative ("AGP"); Friskies Petcare, A Division of Nestle USA ("Friskies"); and, Wire Rope Corporation of America Inc.'s ("Wire Rope") Data Requests Nos. 1 and 2 in this case. This letter should be considered an objection for Missouri-American Water Company ("MAWC") to the following data request, in accordance with 4CSR 240-2.090(2):

DR 1- This data request asks for "a copy of [Missouri-American Water Company (MAWC)'s] response to each data request, whether formal or informal, from any party to this proceeding other than these intervenors." MAWC objects to this data request on the basis that it is not a proper data request and also over broad and oppressive and creates undue burden and expense in that there are likely to be hundreds, if not thousands, of data requests and responses in this case. In particular, in the case of Staff and OPC data requests, it is over broad in that these parties have been said to have a statutory right to certain materials that may exceed those items which are relevant to this inquiry. AGP, Friskies and Wire Rope have no such statutory basis for discovery. *See Order Concerning Motion to Compel, In the Matter of Southwestern Bell Telephone, Case No. TO-89-56 (June 30, 1989).*

EXHIBIT "D"

Page 2 of 4

Mr. Stuart W. Conrad
December 20, 1999
page two

MAWC also objects to this data request on the basis that it is over broad and oppressive and creates undue burden and expense in that it would be impossible to track and duplicate all information that may be given to parties in response to "informal" requests. Such information may be provided orally in response to oral inquiries over the telephone or otherwise by any number of MAWC representatives. Attempting to answer to the request made by the intervenors for informal responses is an impossible task and would place an unreasonable burden on MAWC.

If you have any questions, then please do not hesitate to contact me.

Sincerely yours,

BRYDON SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/rhg

*** ACTIVITY REPORT ***

RECEPTION OK

TX/RX NO.

9035

CONNECTION TEL

5736353847

CONNECTION ID

START TIME

12/20 09:07

USAGE TIME

01'09

PAGES

3

RESULT

OK

EXHIBIT "D"

Page 4 of 4

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

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JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
C. EDWARD PETERSON*

*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

Writer's 24-Hour Number:
(800)821-5073 PIN:247-4501

December 20, 1999

VIA FACSIMILE AND MAIL

Mr. Dean L. Cooper
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456

Re: Missouri-American Water Company
Missouri PSC Case No. WR-2000-281 et al.

Dear Dean:

I have your letter of even date objecting to our data request No. 1. I do not think most of your objections have merit, and, indeed, border on frivolous. Indeed, your objections are on several basis surprising since the mechanism of simply requesting copies of responses to data requests propounded by others is not only common in many jurisdictions (in some by rule), but is intentionally designed to minimize the burden on the utility by not asking essentially similar requests thereby avoiding needless duplication and separate responses to multiple parties that are seeking virtually the same information.

First, you object on the basis that "it is not a proper data request." However, the data request was tendered on the same date with other data requests that were not objected to and were, except for content, identical. No indication is given why the data request is not "proper."

Second, you indicated that it is "broad and oppressive." Inasmuch as the data request *asks only for copies of responses to data requests from other parties that you have already prepared*, this objection is not meaningful. The breadth of the data request is determined by the data requests of the other parties, not by this data request; if they are overbroad, I presume you have objected to them and, until a response to them is made or compelled, no corresponding response to our data request is due. If it is your position that providing us with a copy of information that you have already provided to other parties is "oppres-

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sive," you can certainly stand on that objection, but I will provide you with an opportunity to defend it to the Commission.

Third, you state that the request "creates undue burden and expense in that there are likely [my emphasis] to be hundreds, if not thousands [my emphasis], of data requests and responses in this case." This is also not a meaningful basis for objection. If specific responses to specific data requests are voluminous, there is an established procedure for dealing with that under the existing protective order, but you have not made reference to that procedure and have thus waived benefit of that provision for this request. Moreover, a claimed "burden" of "hundreds, if not thousands" of data requests is entirely hypothetical and has nothing whatever to do with making one additional copy of responses that you have already produced or will be producing in response to other parties' requests. Indeed, providing an additional copy of responses to data requests of other parties would reduce rather than increase the number of data requests for the utility. Would you prefer that I obtain copies of the requests themselves, format them on our forms, and then retransmit them to you? Do you really think that would reduce the burden? Alternatively, we can proceed with full interrogatories, production requests and subpoenas duces tecum and depositions on an accelerated basis if you think that will be less "burdensome."

Fourth, you assert that the request is "overbroad" because, you assert "[Staff and Public Counsel] have been said [my emphasis] to have a statutory right to certain materials that may exceed those items which are relevant to this inquiry." Your objection does not delineate who is it that has made the claimed statement and citation to a telephone case where discovery is sought by competitors is not in point here. I do not represent your competitors. Indeed, insofar as I am aware, there are no competitors to your client in the St. Joseph district where my clients take their service, or in any other service district of your company. As regards relevance, we decline to presuppose what is relevant to this rate case in which the applying utility has the burden to demonstrate that all its claimed costs and expenses are just, reasonable and prudent. It has been my experience that a rate case is intended to be a broad and comprehensive inquiry into all aspects of a utility's operations. The standard for discovery is not, in any event, limited by trial or hearing-level relevancy, but rather what is reasonably calculated to lead to the discovery or disclosure of admissible evidence. Mo. R. Civ. Proc. 56.01(b).

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Further, on this point, your objection suggests that there are at least two classes of parties in this proceeding and that some parties have "special" preeminent rights that other parties lack. I would remind you that we represent ratepayers who have a direct pecuniary interest in the amount of the increase your client proposes. I would also remind you that a protective order is in place in this proceeding. You are also incorrect in your statement that my clients have "no statutory basis for discovery." Their statutory basis for discovery is found, among other places, in the Commission's rules which are authorized by statute (Section 386.410 RSMo) and in the statutory status given my clients by their intervention (Section 386.420 RSMo).

The one aspect of your objection that may have some merit is the objection to the "informal" requests. My experience with public utilities is that they do a fairly comprehensive job of "tracking" and "documenting" such informal requests, particularly from Staff and Public Counsel and thus I substantially discount your assertions. Nevertheless, I recognize that there are practical limits to any tracking process. What we are concerned with in this case is having equal access to information that is made available to other parties. If there is a means to identify that information such as tracking or contact logs that would be less difficult, that may be sufficient to address that aspect of the request and I will be happy to discuss with you any reasonable alternative that you may have in mind that will accomplish our objective and yet not require the utility to perform an "impossible task." This suggested mitigation of this portion of the request, however, applies only to this portion of the request and does not limit my belief that we are clearly entitled to responses to formal data requests from other parties.

I will be happy to discuss this last point with you further. But, if I do not have an agreement from Missouri-American Water Company to withdraw its objection and provide timely responses to this data request (except as may be suggested above with regard to "informal" data requests) by close of business on Tuesday, December 21, 1999, we shall prepare and submit to the Commission

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on the following day a Motion to Compel and associated pleadings.
In connection therewith, I draw your attention to Mo. R. Civ.
Proc. 61.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s
cc: Group
E. Harwig

F:\DOCS\SWC\42615.1
12/20/99 7:20pm

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 9071
CONNECTION TEL 15736347431P210
CONNECTION ID
START TIME 12/20 19:19
USAGE TIME 02'11
PAGES 5
RESULT OK

LAW OFFICES

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FACSIMILE: (816) 756-0373

FACSIMILE COVER SHEET

From: S. W. Conrad
Client: 202.210

December 20, 1999
Number of Pages: 5
(including cover sheet)

To:

Name	Fax Number
Cooper, Dean (FAX)	(573)634-7431

EXHIBIT "E"

Page 5 of 5

Stu Conrad

From: Dean Cooper [deanbse@socket.net]
Sent: Tuesday, December 21, 1999 3:38 PM
To: Stuart Conrad (E-mail)
Subject: Case No. WR-2000-281

I was able to review your letter dated December 20, 1999, concerning MAWC's objection to AGP, Friskies and Wire Rope's DR # 1 this afternoon. I will not be in a position to obtain direction from my client as to how to respond to your letter by the close of business today, as you request. However, I do believe that I will be in a position to respond to your letter prior to the date when a response would otherwise be due.

Dean Cooper

EXHIBIT "F"
Page 1 of 1

12/22/99

Stu Conrad

From: Stu Conrad [stucon@fcplaw.com]
Sent: Tuesday, December 21, 1999 3:48 PM
To: 'Dean Cooper'
Subject: RE: Case No. WR-2000-281

Dean, I appreciate your response, but the deadline will stand. That you for advsing me; we will proceed with the motion to compel and the other related pleadings.

Stuart W. Conrad, Esq., Attorney and Counselor at Law
Finnegan, Conrad & Peterson, L.C.
1209 Penntower Office Center
3100 Broadway
Kansas City, Missouri 64111
Office Voice: (816)753-1122
Office Fax: (816)756-0373
"Legis vigilantibus non dormientibus, subveniunt"
<stucon@fcplaw.com>

-----Original Message-----

From: Dean Cooper [mailto:deanbse@socket.net]
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Dean Cooper

EXHIBIT G"
Page 1 of 1

12/22/99