

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MISSOURI 64111

(816) 753-1122
TELECOPIER (816) 756-0373

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

*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

January 8, 2000

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

FILED²

JAN 10 2000

Missouri Public
Service Commission

Re: **Missouri-American Water Company**
Missouri PSC Case Nos. WR-2000-281 et al.

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) conformed copies of **Industrial Intervenors' Motion to Compel Response to Data Requests and Request for Expedited Treatment**, which please file in the above matter and call to the attention of the Commission.

An additional copy 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

STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

FILED²

JAN 10 2000

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 REQUESTS
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's propounded the following two data requests to MAWC on December 21, 1999.

16. Provide a copy of each data request that you have received from any party 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.

17. Provide a copy of each data request that you propound or have propounded to 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 requests transmitted to MAWC are 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 30, 1999, counsel for Industrial Intervenor's received an objection from MAWC by facsimile. In relevant part, the objection as to Data Request No. 16 states:

MAWC objects to this data request on the basis that it is not a proper data request, is over broad and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and creates undue burden and expense. 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 authority to obtain certain mate-

rials that may not be discoverable by other parties and not reasonably calculated to lead to the discovery of admissible evidence.

5. In relevant part, the objection as to Data Request No. 17 states:

MAWC objects to this data request on the basis that it is over broad. Also, providing these requests will constitute the disclosure of mental impressions, conclusions, opinions or legal theories of MAWC's attorneys and are therefore attorney work product and privileged.

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

6. 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 dated January 5, 2000. Industrial Intervenors' counsel offered to consider any alternatives with counsel for MAWC. A copy of that letter, together with the electronically generated facsimile receipt therefor, is attached hereto as Exhibit E.

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

ARGUMENT

Data Request No. 16

8. The obvious thrust of Industrial Intervenors' Data Request No. 16 as quoted above (and attached as Exhibit A), is

simply to request that a copy of **data requests** that are received by MAWC from other parties be provided to Industrial Intervenors' technical representative. As is noted on Exhibit B, Industrial Intervenors did not even request that a duplicate copy of such data requests 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 requests be provided to Industrial Intervenors' principal technical consultant.

9. MAWC first objected on the grounds that Industrial Intervenors' Data Request No. 16 is "not a proper data request." No indication in MAWC's objection was given why this request is not a proper data request pursuant to 4 CSR 240-2.090. **The request seeks nothing more than a copy of data requests received by MAWC to other parties' data requests.** Industrial Intervenors are without question authorized and entitled to propound data requests to the applicant utility. 4 CSR 240-2.090; Sections 386.410 and 386.420 RSMo 1994.

10. MAWC next objected on the grounds that the request is "over broad and oppressive." The data request seeks only a **single copy of requests that MAWC may receive from other parties.** It does not require MAWC to compile **any information at all**, it does not require MAWC to conduct **any studies at all**, nor does it require MAWC to do **anything other than to make a copy of the data request that they have received.** There is nothing "over broad"

about this request, nor can it be "oppressive" to request a copy of the data request received. MAWC has already produced many copies of testimony and will doubtless produce more during the court of this proceeding to obtain a 67% rate increase from these very customers.

11. A data request is unlikely to consist of voluminous material. Regardless, at the request of MAWC, there is already in place a Protective Order which provides a mechanism for dealing with voluminous material. Accordingly, such is not a basis for objection to a data request. We would anticipate that all but the most unusual individual data request would consist of a single sheet of paper. 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 objects that the request exceeds the scope of discovery. Nothing could be further from the case. Data requests are propounded within the context of this proceeding. MAWC's objection might lie as to a particular **response** to a particular request, but that is not what is sought here. All parties are entitled to access to the proceedings in this case. It is as though MAWC noticed a deposition of a Staff or Public Counsel witness, then sought to exclude the other parties from that process.

13. MAWC next objected on the grounds that the request "creates undue burden and expense." Making a copy of a data

request received does not create undue burden or expense. This objection is not meaningful in a multi-million dollar rate case where MAWC seeks to raise its rates by multiple millions of dollars.

a. MAWC is the applicant and the initiating party in this proceeding. It is seeking to increase its rates in all its service territories by over 50% and by over 67% from these very customers. MAWC is fully able to supply information when it suits its interest so to do.

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, and this is still the **Public Service Commission**. The purpose of such a request as this is to **reduce** burden on the utility. Industrial Intervenors could propound their own data requests to MAWC, many perhaps covering virtually identical ground. It is significantly more efficient and less burdensome to the utility to seek to coordinate data requests with others to permit the utility to provide responses that have already been assembled or are in the process of being assembled for others. This is an efficient approach, not a burdensome one.

14. The mechanism of simply requesting copies of data requests propounded by others is not only common in many jurisdictions, but in many is required by rule.^{1/} It 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 seeking virtually the same information. It would appear, however, that MAWC wants to **create** a self-fulfilling prophecy of multiple data requests in this proceeding, presumably so that it can later wail to this Commission how "burdened" it has been by multiple data requests that the utility's own obstructive attitude caused to be generated. 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 because "in the case of Staff and OPC data requests, these parties have been said

^{1/}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).

to have a statutory right to obtain certain materials that may not be discoverable by other parties...." Analysis of this objection reveals its lack of merit.

a. Such an objection is premature. Nothing is confidential about a data request itself. Certainly the data request may seek a response that might be subject to protection under the Protective Order. But not the request. Even if the requesting party had designated its **request** as Highly Confidential, counsel would still be entitled to access to that data request to determine whether the claim of confidentiality is legitimate or to oppose it under the Protective Order. The Protective Order establishes a procedure to handle such concerns. MAWC's refusal to provide copies on this basis is, in effect, nothing more than a refusal to abide by the terms of the Protective Order that it sought in this proceeding.

b. 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. They are entitled to the same due process -- neither less -- nor more -- than other parties.

c. This is a contested case under Section 393.150 RSMo 1994. 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" to each other that other parties cannot see, or obtain access to material in the context of this case through data requests that no other parties can view. This is not a "star chamber" proceeding, but rather is one that is to be conducted in public **subject to the reasonable applicability of the existing Protective Order**. MAWC confuses the Staff (and, oddly, Public Counsel) with the Commission. They are not the same as the applicability of the ex parte rules to them demonstrates.

d. Moreover, it will be recalled that in Case No. WO-98-204 both Staff and MAWC **jointly asserted** a position regarding intra-district cost allocation and rate design that was opposed by Industrial Intervenors and 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, "super" due process and "super" access to materials in this proceeding that other parties are denied, 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.

e. 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 disingenuous.

f. As mentioned, a Protective Order has already been issued in this case, and Industrial Intervenors' technical consultant has already submitted the required non-disclosure Agreement. Should others 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.

g. This situation is not analogous to a competitor seeking to pervert the regulatory process to obtain competitively valuable information. Industrial Intervenors are

ratepayers of and 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. 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 and by its filing opens all its affairs to scrutiny. Section 393.150.1 RSMo 1994. 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).

Data Request No. 17

16. MAWC objected to this data request on the basis that it was "over broad." That objection has no more merit than the similar objection to Data Request No. 16 and therefore Industrial Intervenors incorporate by reference paragraphs 1 through 15 of this Motion with respect to that objection.

17. MAWC also objects on the basis that "providing these requests will constitute the disclosure of mental impressions, conclusions, opinions or legal theories of MAWC's attor-

neys and are therefore attorney work product and privileged." This argument, while uniquely creative, falls flat.

a. Industrial Intervenors' Data Request No. 17 sought copies of data requests that MAWC **propounded** to other parties. We emphasize the term "propounded" -- by definition, a data request that exists only in MAWC's counsels' mind is not sought. MAWC appears to egotistically ascribe a significant yet subtle content to its data requests that could be discerned by any person reviewing them. Regardless of whether or not "impressions, conclusions, opinions or legal theories" might be discerned by such review, *by propounding such heavily content-laden data requests to opposing parties MAWC has waived any such privilege.*

18. By transmitting a data request (or indeed any other communication) to another party who is **not** the attorney's client, any claim of attorney-client privilege, work product protection, or any other similar claim is **waived**, not only as to the specific communication, but as to material or statements contained within the communication. Asserting that a data request or interrogatory that has been transmitted or presented to an **opposing party by such transmission or presentation** retains some vestigial attorney-client privilege is totally devoid of merit.

Request for Expedited Treatment

19. Industrial Intervenors incorporate by reference paragraphs 1 through 18 of this pleading, inclusive.

20. 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 and additional investigation is needed with respect to such issues.

21. The Commission has established a hearing in early June of next year and approved a proposed procedural schedule that contains an accelerated intervening testimony schedule.

22. In addition to reviewing the prudence of 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 all these tasks.

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

24. 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

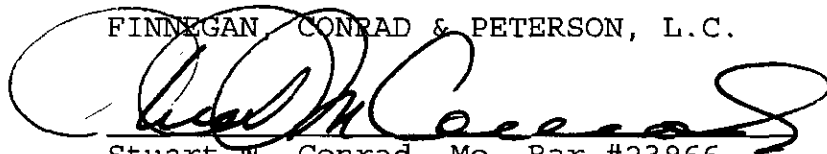
the essence and Industrial Intervenors respectfully request that the Commission rule on this motion on an expedited basis.

25. Therefore 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 Requests Nos. 16 and 17 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, Swearingen & 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
Suite 301
Jefferson City, MO 65101

Mr. James M. Fischer
Law Offices of Jim Fischer
101 West McCarty Street
Suite 215
Jefferson City, MO 65101

Louis J. Leonatti
Attorney
Leonatti & Baker, P.C.
123 E. Jackson St
P. O. Box 758
Mexico, MO 65265

Lisa M. Robertson
City of St. Joseph
City Hall, Room 307
11th & Frederick Ave.
St. Joseph, MO 64501

Diana Vuylsteke
Attorney
Bryan Cave, LLP
One Metropolitan Square
Suite 3600
St. Louis, MO 63102-2750

Shannon Cook
Assistant Public Counsel
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Mr. Lee Curtis
Attorney
130 S. Bemiston
Suite 200
Clayton, MO 63105

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

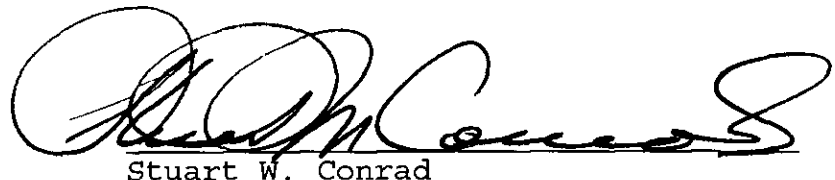
Mr. Keith Krueger
Assistant General Counsel
Missouri Public Service Commission
Truman Office Building - R530
P. O. Box 360
301 West High - P.O. Box 360
Jefferson City, MO 65102-0360

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

Charles B. Stewart
Stewart & Keevil
1001 E. Cherry Street
Suite 302
Columbia, MO 65201

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

Dated: January 8, 2000



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 21, 1999

<u>Item No.</u>	<u>Description</u>
-----------------	--------------------

- | | |
|-----|---|
| 16. | Provide a copy of each data request that you have received from any party 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 2

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 21, 1999

<u>Item No.</u>	<u>Description</u>
17.	<p>Provide a copy of each data request that you propound or have propounded to any party to this proceeding other than these intervenors.</p> <p>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.</p>

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 2 of 2

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MISSOURI 64111

(816) 753-1122
TELECOPIER (816) 756-0373

Internet: stucon@sky.net

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 21, 1999

VIA FACSIMILE AND MAIL

Mr. William R. England, III
Brydon, Swearengen & 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 Trip:

Enclosed are additional data requests. Rule 4 CSR 240-2.090(2), requires responses within twenty (20) days of this date. Objections or requests for delay should be made to me within ten (10) days. Please forward your responses 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. 9080
CONNECTION TEL 15736347431p210
CONNECTION ID
START TIME 12/21 11:25
USAGE TIME 01'27
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 21, 1999
Number of Pages: 4
(including cover sheet)

To:

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

EXHIBIT

Page 1 of 1

LAW OFFICES

BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 455

JEFFERSON CITY, MISSOURI 65102-0455

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-3847

E-MAIL: DEANBSE@ROCKET.NET

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA S. MORGAN
CHARLES E. SMARR

DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
RACHEL M. CRAIG
BRIAN T. MCCARTNEY
DALE T. SMITH

OF COUNSEL
RICHARD T. GIOTTON

December 30, 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. 16 and 17 in this case. This letter should be considered an objection for Missouri-American Water Company ("MAWC") to the following data requests, in accordance with 4CSR 240-2.090(2):

- DR 16- This data request asks MAWC to "provide a copy of each data request that [Missouri-American Water Company (MAWC) has] received from any party other than these intervenors." MAWC objects to this data request on the basis that it is not a proper data request, is over broad and oppressive, is not reasonably calculated to lead to the discovery of admissible evidence and creates undue burden and expense. In particular, in the case of Staff and OPC data requests, these parties have been said to have specific statutory authority to obtain certain materials that may not be discoverable by other parties and not reasonably calculated to lead to the discovery of admissible evidence. *See Order Concerning Motion to Compel, In the Matter of Southwestern Bell Telephone, Case No. TO-89-56 (June 30, 1989).*
- DR 17- This data request asks MAWC to "provide a copy of each data request that [Missouri-American Water Company (MAWC) propounds or has] propounded to any party to this proceeding other than these intervenors." MAWC objects to this data request on the basis that it is over broad. Also, providing these requests will constitute the disclosure of mental impressions, conclusions, opinions or legal

EXHIBIT

Page 1 of 2

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

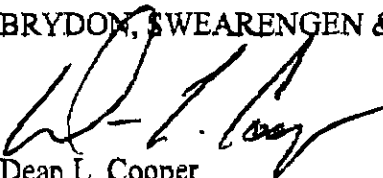
theories of MAWC's attorneys and are therefore attorney work product and privileged.

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

EXHIBIT D
Page 2 of 2

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

1209 PENNTOWER OFFICE CENTER
3100 BROADWAY
KANSAS CITY, MISSOURI 64111

(816) 753-1122
TELECOPIER (816) 756-0373

Internet: stucon@fcplaw.com

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

January 5, 2000

VIA FACSIMILE TO (573)634-7431

Mr. Dean Cooper
Brydon, Swearngen & 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:

On returning from a brief Y2K break, I was disappointed to find your letter of December 30 which apparently came in at the close of that day. It appears that your client has determined to make the discovery process associated with its significant rate filing as difficult as possible.

As before, your objections lack merit. They are also obstructionist. There is nothing improper about either data request, nor does it create "undue burden and expense" to request that you provide us with a copy of each data request that you receive. Both requests are clearly within the scope of discovery and may lead to the discovery of admissible evidence. Further, regardless of the scope of discovery that you claim as unique to Staff and Public Counsel, their data requests contain no such information as you claim. There is or could be nothing confidential in a data request, and, even if there was, a protective order has been entered in this case.

The objection to the second data request is even more flimsy. The data request seeks a copy of any data request that is or has been propounded to any other party. It does not seek in pectore data requests that were not transmitted to another party, nor does it seek any potentially privileged communications between your client and its attorneys. By transmitting a data request to another party who is not your client, any claim of attorney-client privilege, work product protection, or any other similar claim is waived, not only as to the specific communication sought, but even as to the content of the

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transmitted communication. Asserting that a data request or interrogatory that has been transmitted or presented to an **opposing party by such transmission or presentation** retains some vestigial attorney-client privilege is totally devoid of merit.

Both data requests are proper and well inside the scope of proper discovery in this proceeding. As before, I will be happy to discuss any reasonable alternatives that you might propose, but time becomes critical. Your client was, I thought, interested in expeditious handling of the case. Based on these objections, it appears that your client is more interested in engaging in obstructionist behavior. Accordingly, if I do not have an agreement from Missouri-American Water Company to withdraw these objections and provide timely responses to these data requests or propose an acceptable substitute by close of business on Thursday, January 6, 2000, we shall prepare and submit to the Commission yet another Motion to Compel and associated pleadings. In connection therewith, I again 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

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01/05/00 3:06pm

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*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 9296
CONNECTION TEL 15736347431p210
CONNECTION ID
START TIME 01/05 15:38
USAGE TIME 01'33
PAGES 3
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

January 5, 2000
Number of Pages: 3
(including cover sheet)

To:

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

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