



John B. Coffman
Acting Public Counsel

State of Missouri

Bob Holden
Governor

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January 24, 2002

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED

JAN 24 2002

**Re: Missouri-American Water Company
Case No. WO-2002-273**

**Missouri Public
Service Commission**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Attachments to Motion to Compel**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

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

FILED
JAN 24 2002
Missouri Public
Service Commission

In the Matter of the Joint Application of Missouri-)
American Water Company, St. Louis County Water)
Company, d/b/a Missouri-American Water Company,)
and Jefferson City Water Works, d/b/a Missouri-) Case No. WO-2002-273
American Water Company, for an Accounting)
Authority Order Relating To Security Costs.)

ATTACHMENTS TO MOTION TO COMPEL

COMES NOW, the Office of the Public Counsel, and respectfully submits the following attachments to the Motion to Compel Applicants to Respond to Data Requests of the Office of the Public Counsel filed January 23, 2002.

Attachment 1 contains Public Counsel data requests 1001 through 1009.

Attachment 2 contains the December 31, 2001, letter to Public Counsel from Dean Cooper, attorney for the Applicants.

Attachment 3 contains the January 4, 2002, letter from Public Counsel to Mr. Cooper.

Attachment 4 contains the January 16, 2002, follow-up letter from Public Counsel to Mr. Cooper.

Public Counsel respectfully requests that the Commission consider these attachments as it reviews the Motion to Compel.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

M. Ruth O'Neill (#49456)

Assistant Public Counsel

P O Box 7800

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 24th day of January 2002:

GENERAL COUNSEL

Missouri Public Service Commission
PO Box 360
Jefferson City MO 65102

DEAN L COOPER

Byrdon Swearengen & England PC
312 E Capitol Avenue
PO Box 456
Jefferson City MO 65102
Attorney for Applicant

DAVID P ABERNATHY

Missouri-American Water Company
535 N New Ballas Road
St Louis MO 63141
Attorney for Applicant





FILE COPY

Martha S. Hogerty
Public Counsel

State of Missouri

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Telephone: 573-751-4857
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December 20, 2001

Dean Cooper
Brydon, Swearingen & England
P. O. Box 456
Jefferson City, MO 65102-0456

**RE: Missouri-American Water Company,
Case No. WO-2002-273**

Dear Dean:

Enclosed please find the Office of the Public Counsel's Data Request Nos. 1001 through 1009. Your attention is directed to 4 CSR 240-2.090(2). If Company has any objections or is unable to answer these data requests within twenty (20) days, please serve the objection or inability to answer in writing within ten (10) days after receipt of these data requests.

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

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:kh

Enclosures

Attachment 1-1

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please list all the new procedures the Company has adopted in response to the September 11, 2001 terrorist attacks.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE

RECEIVED: _____ SIGNED BY: _____
TITLE: _____

No. 1002

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please list all prodecures that have been updated since the September 11, 2001 terrorist attacks.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE

RECEIVED: _____ SIGNED BY: _____
TITLE: _____

No. 1003

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please list all new plant the placed into service to further safeguard the Company's water plants and systems. For each plant item, list the location of the plant, the cost of the new plant and when the plant was placed into service.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE

RECEIVED: _____ SIGNED BY: _____
TITLE: _____

MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please provide a reconciliation of the costs incurred related to safety concerns after the September 11, 2001 terrorist attacks. For each cost include the type of cost, the amount of the cost, when the cost was incurred, if this cost will be an on-going cost and what water system incurred the cost.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE

RECEIVED: _____ SIGNED BY: _____
TITLE: _____

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please provide a list of future costs that will be incurred due to the September 11, 2001 terrorist attacks. Please include for each costs the timeframe in which the costs will be incurred.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE

RECEIVED: _____ SIGNED BY: _____

TITLE: _____

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please provide a list of actions that the Company was asked to perform by a governmental entity due to the September 11, 2001 terrorist attacks. For each action list the governmental agency the suggested the performance of the action and list the date in which the Company was asked to perform the action.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE
RECEIVED: _____ SIGNED BY: _____
TITLE: _____

No. 1007

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: RE: Public Counsel data request no. 1006
Please provide all documents and statements suggesting how the existing security measures in place before September 11, 2001 were deficient or would not adequately protect customers in the current security environment.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE
RECEIVED: _____ SIGNED BY: _____
TITLE: _____

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please provide a list of all security actions that the Company plans to take or has taken in anticipation of its acquisition by RWEAG.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE
RECEIVED: _____ SIGNED BY: _____
TITLE: _____

**MISSOURI-AMERICAN WATER COMPANY
PUBLIC COUNSEL DATA REQUEST
CASE NO. WO-2002-273**

REQUESTED FROM: Dean Cooper

DATE REQUESTED: December 20, 2001

INFORMATION REQUESTED: Please provide a list of all the safety procedures the Company performed before September 11, 2001.

REQUESTED BY: Kimberly Bolin

INFORMATION PROVIDED: _____

—
The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE
RECEIVED: _____ SIGNED BY: _____
TITLE: _____

FILE COPY

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
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MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
BRIAN K. BOGARD

OF COUNSEL
RICHARD T. CIOTTONE

December 31, 2001

VIA FAX TRANSMISSION
(573) 751-5562

Ms. Ruth O'Neill
Assistant Public Counsel
Office of the Public Counsel
Sixth Floor, Governor State Office Building
Jefferson City, Missouri 65101

Re: Case No. WO-2002-273

Dear Ruth:

We are in receipt of the Office of the Public Counsel's ("OPC") Data Requests Nos. 1001-1009, which were received on December 20, 2001, and which carry the above-referenced case number. I would like to propose a method for handling responses to certain of the data requests in order to maintain the greatest level of security possible, while also allowing the OPC to perform its duties in this matter. This letter should be considered, to the extent necessary, an objection on behalf of Missouri-American Water Company ("MAWC") (to include Jefferson City Water Works Company and St. Louis County Water Company, which are merged into MAWC effective December 31, 2001) to OPC Data Requests Nos. 1001-1007 and 1009, in accordance with 4CSR 240-2.090(2).

As stated in MAWC's application, the Company has taken certain security measures in the aftermath of the September 11, 2001 terrorist attacks on the United States in an effort to protect MAWC's water sources, treatment and delivery systems from terrorist attacks and other forms of sabotage. Release of the information requested in the above requests would give persons desiring to do harm to MAWC's customers, through contamination of the water supply or disruption of that supply, a blueprint for circumventing the security currently in place, and cause MAWC to incur additional and significant expense for new and additional security measures. In other words, if information related to the security measures should be revealed, then persons would be able to impede the goals for which the measures were implemented.

Accordingly, in order to maintain security regarding this information, MAWC proposes that the release of the information which is the subject of the referenced data

Attachment 2-1

DEC 31 2001

Ms. Ruth O'Neill
December 31, 2001
page two

requests be made in accordance with Paragraph C of the Protective Order in this case. That is, that the materials be made available at MAWC's premises and be reviewed by only attorneys for the OPC and such limited number of OPC personnel as have a "need-to-know." "No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the Highly Confidential information from which notes were taken."

If the process I have described is acceptable, we can and will make the information available to you on January 9, 2002, or at such other time as is convenient. Please contact me if you have any questions.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/rhg



FILE COPY

John B. Coffman
Acting Public Counsel

State of Missouri

Bob Holden
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January 4, 2002

Dean Cooper
Brydon, Swearingen & England
312 E. Capitol Avenue
PO Box 456
Jefferson City, MO 65102-0456

By FAX: 573-635-3847 and Mail

RE: WO-2002-273

Dear Dean:

I have received your letter dated December 31, 2001, regarding the data requests we sent to Missouri-American et al (the Company), in the above numbered case. We consider any objection to the data requests to be without foundation. These data requests, numbered 1001-1009, seek basic information which our office and the Commission must have in order to evaluate the Company's claim that it should be granted an AAO. While some of this information may be properly considered "highly confidential" or "proprietary" the Company does not have the right to improperly restrict Public Counsel's access to the information. Public Counsel is entitled to the requested information as a matter of law.

In response to your suggestion that these data requests should be responded to in the manner suggested in paragraph C of the protective order, this would not be appropriate. Public Counsel and the Staff of the Commission are explicitly exempted from the provisions of paragraphs C, D, J and L of the protective order by paragraph W of the order. As paragraph W states, "Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480 RSMo 2000." As further specified in that order, the names of Public Counsel employees who will have access to information designated "highly confidential" or "proprietary" will be limited to the following:

Ruth O'Neill
Kimberly Bolin
Russ Trippensee
John Coffman
Doug Micheel

Mike Dandino
Ted Robertson
Mark Burdette
Kathy Harrison
Jere Buckman

Bonnie Howard
Ryan Kind
Barb Meisenheimer
James Busch
Hong Hu

Attachment 3-1

If the Company has a legitimate objection to any of the above employees having access to this information, we will consider the reasons given for the objection.

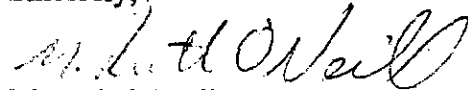
In reviewing the protective order in this case, it appears that some of the information requested in our DR's could be properly classified as "proprietary" in nature. (Proprietary is defined in the protective order as including "confidential or private technical, financial and business information.")

Highly confidential and proprietary information are treated the same way by my office. The information is provided to counsel, and the staff members working on the issue, but is kept separate from the general office file. The restricted access information is kept in a separate, locked cabinet within the Office of the Public Counsel. When no office staff members are in the office, the office itself is kept locked. There is a building maintenance crew which cleans beginning at approximately 5 p.m. While the cleaning crew may be in the office after the staff has left, the crew does not have access to the locked cabinet. The cabinet is not readily identifiable to anyone who is not an employee of the Office of the Public Counsel.

As you know, employees of the Public Counsel and Commission Staff are prohibited by law from disclosing highly confidential or proprietary information to persons not authorized to receive it.

Dean, I have no problem with the Company treating information as "highly confidential" or "proprietary" where appropriate. However, we cannot agree to your proposal that Public Counsel relinquish its statutorily granted rights to discovery in this case, which as you know, are co-extensive with the rights of the Commission and its Staff. I hope that you will convey this information to your client and that we will receive the responses to our data requests in a timely manner.

Sincerely,



M. Ruth O'Neill
Assistant Public Counsel

MRO:jb



FILE COPY

John B. Coffman
Acting Public Counsel

State of Missouri

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Governor

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January 16, 2002

Dean Cooper
Brydon, Swearingen & England, PC
PO Box 456
Jefferson City MO 65102

Via FAX and Mail

RE: Data Request Responses in Missouri-American AAO case, WO-2002-273

Dear Dean,

This letter follows up our telephone conversation of Monday, January 14, 2002, regarding the status of your client's responses to data requests submitted by Kimberly Bolin of my office in December of 2001. As we have previously discussed, and as you know from my previous letter to you on this issue (sent January 4, 2002), the Office of the Public Counsel believes that any objections of the company as referenced by your letter of December 31, 2001, are without merit.

In my January 4 letter, I outlined our position regarding the information sought in the data requests, and our office policy regarding the handling of material designated as Proprietary or Highly Confidential. I also provided a list of the persons in my office who may have access to the information. While I understand that your clients may have a legitimate interest in keeping some of the details requested in DRs 1001-1009 from being made available to the general public, I fail to understand how your clients have reached the conclusion that they can refuse to provide even the most basic explanation of the facts underlying their request for extraordinary accounting treatment of an unknown level of expense.

Surely, your clients understand that they have the burden of producing evidence in support of their request for an AAO. Surely, they understand that they have the burden of proof on the issue of whether the Commission should grant an AAO. Surely, they understand that they will be required to establish a need for an AAO based upon evidence specific to their company (or companies, per the application) and specific to these alleged improvements. Surely, they do not intend to go before the Commission, stand up and say "September 11" and sit down. I am confident that your clients understand this because they are experienced in Commission procedure.

Attachment 4-1

Because they are so experienced with Commission procedure, I am asking you to advise your clients to IMMEDIATELY provide the requested information. In the alternative, you and I should IMMEDIATELY contact the regulatory law judge for a conference, at which you can explain why your clients feel that they are suddenly exempt from the Commission's procedural and evidentiary rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Ruth O'Neill".

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb