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January 23, 2002

Mr. Dale Hardy Roberts
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²
JAN 23 2002
Missouri Public
Service Commission

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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of a Motion to Modify Protective Order. Please note that this document contains information which has been deemed to be "Highly Confidential" pursuant to the terms of the Protective Order on file in this proceeding. Also enclosed please find one version of the Non-Proprietary version. Please stamp the enclosed extra copy "filed" and return same to me.

If you have any questions concerning this matter, then please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean Cooper
Dean L. Cooper

DLC/rhg
Enclosures

cc: Mr. Keith Krueger
Ms. Victoria Kizito, PSC
Ms. Ruth O'Neill, OPC
Mr. Stuart Conrad
Mr. James Duetsch
Mr. Jeremiah Finnegan

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 23 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 Company)
d/b/a Missouri-American Water Company)
for an accounting authority order relating)
to security costs.)

Case No. WO-2002-273

MOTION TO MODIFY PROTECTIVE ORDER

COMES NOW Missouri-American Water Company ("MAWC" or the "Company")¹,
and, as its Motion to Modify Protective Order, states the following to the Missouri Public
Service Commission ("Commission"):

SUMMARY

MAWC moves the Commission to modify the Protective Order previously issued in
this case in order to address the unique aspects of the security information which is the
subject of this case. MAWC seeks modifications that will limit the potential for unintentional
release of such information while still providing access to such information for regulatory
purposes.

I. BACKGROUND

1. On December 10, 2001, MAWC filed its Application for Accounting Authority
Order. On January 18, 2002, the Commission issued its Order Granting Intervention and

¹ The case was initially filed by Missouri-American Water Company, St.
Louis County Water Company d/b/a Missouri-American Water Company and Jefferson
City Water Works Company d/b/a Missouri-American Water Company. Effective
December 31, 2001, St. Louis County Water company and Jefferson City Water Works
Company were merged into Missouri-American Water Company. Thus, Missouri-
American Water Company is the remaining applicant.

NP

Adopting Procedural Schedule wherein it ordered, among other things, that MAWC file its direct testimony on January 31, 2002. The remaining parties are to file any rebuttal testimony on March 7, 2002.

2. On December 12, 2001, the Commission, of its own volition, issued an Order Setting Prehearing Conference and Adopting Protective Order. The Protective Order adopted was the Commission's standard form protective order.

3. On December 20, 2001, the Office of the Public Counsel ("OPC") served data requests numbers 1001-1009 on MAWC. These data requests ask for information concerning MAWC's security procedures including: what "new procedures" have been adopted; what procedures have been updated; what plant has been placed into service to safeguard the Company's water plant and systems; detailed cost information (which will necessarily identify specific security procedures); a list of security measures governmental bodies have asked MAWC to implement; and, how existing procedures were inadequate.

4. MAWC has offered to provide the OPC with access to the requested information under conditions similar to those under which other parties could view the information and which are designed to minimize the danger of release. (See Appendix A, correspondence dated December 31, 2001, to Ms. O'Neill, counsel for the OPC). However, these conditions are not acceptable to OPC. (See Appendix B, correspondence dated January 4, 2002, from Ms. O'Neill, counsel for the OPC, to counsel for MAWC). Thus, MAWC moves the Commission to modify the Protective Order to address the unique aspects of the information which is the subject of this case.

II. DISCUSSION

5. The protective order commonly utilized by the Commission appears to have

been designed to prohibit the release of information that would change the positions of parties in negotiations and other competitive circumstances, as well as to protect certain privacy interests. The information which is the subject of this application brings into play a different set of concerns. Rather than competitive harm or embarrassment of individuals, the ability of MAWC to provide safe service can be directly impacted by improper release of the information.

6. 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. MAWC believes that release of the information pertaining to the details of these security measures 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, perhaps, 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. Thus, the harm that may occur from release is potentially both physical and economic harm to customers.

7. It also should be remembered that the purpose of this case is limited and does not include the full prudence review that would be the subject of a rate case. An application for an AAO contains a single factual issue -- whether the event driving the costs is extraordinary in nature. *In the matter of the application of Missouri Public Service*, 1 Mo.P.S.C.3d 200, 203-204 (1991). "By seeking a Commission decision [regarding he

issuance of an AAO] the utility would be removing the issue of whether the item is extraordinary from the next rate case. All other issues would still remain, including, but not limited to, the prudence of any expenditures, the amount of recovery, if any, whether carrying costs should be recovered, and if there are any offsets to recovery." (*Id.*)

8. Security issues are taken very seriously by MAWC and MAWC has devoted both financial capital and human resources over the last several months to address these issues. Security issues continue to be of importance to MAWC because of ***

***. (See Appendix C).

9. The issues raised by this motion are not unique to MAWC and the State of Missouri. On November 13, 2001, the Board of Directors for the National Association of Regulatory Utility Commissioners ("NARUC") approved a Resolution on Commission Procedures Related to the increased Security Measures Undertaken by Water Utilities. It was recommended, in part, that "... Public Utility Commissions and water utilities work together to identify effective procedures for selective access to information related to security measures of a highly sensitive nature, that if accessible to the public, could conceivably compromise the security of the utility's water quality and service reliability."

10. The resolution also suggested that "... within this review, consideration be given to existing directives and guidance pertaining to sensitive document procedures established for the nuclear industry as issued by the Federal Energy Regulatory Commission, or any other similar body, and be incorporated, if applicable."

11. The provisions applicable to the nuclear industry are found at 10 CFR part 73. In particular, 10 CFR § 73.21 states that persons seeking access to "Safeguard" information must have an "established 'need to know'" and fit into be one of a limited number of identified categories (which do not include state regulatory bodies). Certain persons also "must undergo a Federal Bureau of Investigation criminal history check. . . ." These protections apparently have not prohibited the Commission, its Staff and the OPC from performing their ratemaking duties in regard to AmerenUE and its Callaway plant.

A. PROPOSED CHANGE TO THE DEFINITION OF "HIGHLY CONFIDENTIAL"

12. The Protective Order defines "highly confidential" information as that which concerns:

(1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analysis or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

13. Security plans do not fit easily into any of these categories, although protection of such information is of greater importance.

14. Therefore, MAWC proposes that the Protective Order be modified to add the following category:

(6) materials, documents, strategies and other information related to physical security of public utility facilities.

B. TYPE OF ACCESS

15. Paragraph C of the current Protective Order states as follows:

Materials or information designated as HIGHLY CONFIDENTIAL may, at the

option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off premises and the designated information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. 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.

16. MAWC, in its correspondence, has generally proposed that the security information to be reviewed by the OPC be provided in the fashion outlined in paragraph C, with some amendment to make this provision fit the OPC. Because the OPC's witnesses are generally "in house" (and because requiring outside review would defeat the objective in this case), MAWC suggested that OPC in house personnel perform the review on a "need to know" basis. (See Appendix A).

17. Under the existing Protective Order, paragraph C is not applicable to the OPC, nor to the Staff. Paragraph W states as follows:

The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff of Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 2000. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.

18. As stated in paragraph W, this differing treatment is based upon the fact that the Staff and OPC are subject to punishment by misdemeanor for an improper release of information under Section 386.480, RSMo.

19. However, the danger in this instance is not so much that there will be an intentional provision of information to unauthorized persons. The danger lies in the fact that the risk of unintentional release increases as a greater number of copies exist, as

more persons have control over the information and as the information resides in more places.

20. On the other hand, the OPC had proposed that additional copies be made, that the information be transported and held in an additional location and that fifteen separate employees of the OPC have access to this information. (See Appendix B). This does nothing to reduce the risk of release and is not a reasonable proposal.

21. MAWC does not seek to block access to the information. It understands that it is a regulated public utility and that therefore its records are subject to review. What MAWC requests is that this need for access be balanced with the sensitive nature of the subject information in this particular case so that the risk of release is reduced. For this reason, MAWC merely asks that the Protective Order be modified to provide the Staff and OPC access which is similar to the conditions that would be applicable to other parties, while providing for review by OPC employees on a "need to know" basis.

22. Therefore, MAWC moves that paragraph W of the Protective Order be modified to provide as follows:

The provisions of paragraph D, J and L of this Protective Order do not apply to Staff of Public Counsel. As to paragraph C, the requirement that materials only be viewed by outside consultants shall not apply to Staff and the Public Counsel. However, information may only be viewed by Staff and Public Counsel personnel on a "need to know" basis. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 2000. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.

C. BACKGROUND CHECKS

23. Lastly, as stated previously, the federal regulations governing release of nuclear Safeguard information require Federal Bureau of investigation criminal background

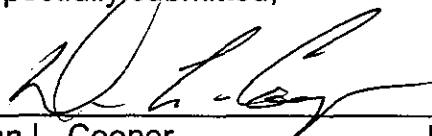
checks before persons may access that information. Thus, MAWC similarly moves that the Protective Order be modified to add the following provision to paragraph C:

Persons seeking access to information which falls within HIGHLY CONFIDENTIAL category 6 must be United States citizens and undergo a Missouri Highway Patrol criminal history check.

WHEREFORE, MAWC respectfully requests that the Commission issue an order:

- 1) Modifying the Protective Order in this case to:
 - a) include an additional definition of "highly confidential" materials, as provided herein;
 - b) amend paragraph W such that paragraph C is substantially applicable to the Staff and the OPC, as provided herein; and,
 - c) amend paragraph C to require persons viewing security information to be United States citizens and undergo a criminal background check, as provided herein; and,
- 2) Granting such further relief as is consistent with this pleading.

Respectfully submitted,



Dean L. Cooper MBE#36592
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Jefferson City, MO 65102
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(573) 635-3847 facsimile

ATTORNEYS FOR
MISSOURI-AMERICAN WATER COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand delivered, on this 23rd day of January, 2002, to the following:

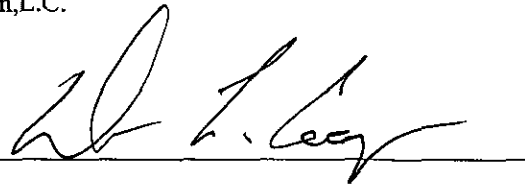
Mr. Keith Krueger *Victoria Kizito*
Missouri PSC
P.O. Box 360
Jefferson City, MO 65102

Mr. James B. Duetsch
Blitz, Bargette & Duetsch
308 E. High, Suite 301
Jefferson City, MO 65101

Ms. Ruth O'Neill
OPC
P.O. Box 7800
Jefferson City, MO 651021209

Mr. Jeremiah Finnegan
Finnegan, Conrad & Peterson, L.C.
Penntower Office Center
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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

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,

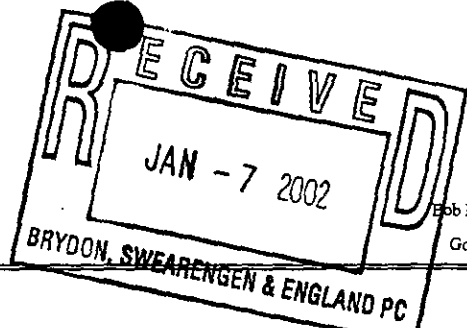
BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/rhg

John B. Coffman
Acting Public Counsel



Bob Holden
Governor

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January 4, 2002

Dean Cooper
Brydon, Swearengen & 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

APPENDIX B

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.

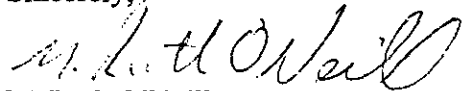
In reviewing the protective order in this case, it appears that some of the information requested in our DR's could be properly classified as "proprietary" in nature. (Proprietary is defined in the protective order as including "confidential or private technical, financial and business information.")

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

APPENDIX C

This Appendix has been identified as HIGHLY CONFIDENTIAL.