



John B. Coffman
Acting Public Counsel

State of Missouri

Bob Holden
Governor

Office of the Public Counsel
Governor Office Building
200 Madison, Suite 650
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Web: <http://www.mo-opc.org>
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

February 6, 2002

FILED

FEB 06 2002

Missouri Public
Service Commission

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

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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies **Reply to "Response to OPC 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

FILED²
FEB 06 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-)
American Water Company, for an Accounting)
Authority Order Relating To Security Costs.)

Case No. WO-2002-273

REPLY TO "RESPONSE TO OPC MOTION TO COMPEL"

COMES NOW, the Office of the Public Counsel, and replies to Missouri-American Water Company's ¹ (MAWC's) response to Public Counsel's previously filed Motion to Compel. By filing this reply, Public Counsel does not abandon its Motion the Dismiss filed February 4, 2002.

1. In support of the previously filed Motion to Compel, Public Counsel references and adopts its Response to Motion to Modify Protective Order, filed January 30, 2002, to address the issues related to that motion which MAWC has raised in its response. Public Counsel agrees that the Motion to Compel and the Motion to Modify Protective Order address the same subject matter, and should be considered together.

2. Public Counsel does **not** agree with MAWC's claim that it "has never denied access" to the information sought (p. 1 of MAWC's Response). By placing unreasonable and unconscionable restriction on Public Counsel's access, to wit: (1) refusing to provide

¹ The Joint Applicants completed their merger into a single Missouri-American Water Company on December 31, 2001.

or make copies of documents, (2) limiting the notes that can be made, (3) asking the Commission to require employees of the Office of the Public Counsel to undergo criminal background checks (and, presumably, make the results of such "checks" available to MAWC), (4) asking the Commission to require that only U.S. citizens have this limited access to data and, (5) requiring Public Counsel employees to travel to St. Louis to obtain this limited access. MAWC had effectively denied any meaningful access to the information which forms the very basis of its request for relief in the underlying case. The restrictions that MAWC seeks will substantially impair Public Counsel's ability to protect the interests of MAWC's customers.

3. Public Counsel has agreed, as stated in its Response to the Motion to Modify the Protective Order, to treat as "highly confidential" information regarding **materials, documents, strategies and other information related to actual or planned modifications of the company's methods of ensuring physical security of its public utility facilities**. This should satisfy all of MAWC's reasonable concerns.

4. Public Counsel has been willing to discuss reasonable accommodations with MAWC. On Thursday, January 30, 2002, Public Counsel offered to view the requested information under compromise conditions, including reviewing the material in Jefferson City at a location accessible to Public Counsel personnel during office hours, provided MAWC placed no limitations on note taking and the ability to obtain copies of those documents deemed necessary by Public Counsel and dropped its other requests for restrictions. However, MAWC has not agreed to this proposal.

5. MAWC has consistently refused to allege any facts which would explain **why** its proposed limitations are necessary additions to the existing legal prohibition against

Public Counsel employees disclosing this information, on pain of criminal sanction. §386.480 RSMo (2000). MAWC has consistently refused to state any legal authority for the criminal background checks and limitation of access to US citizens. MAWC's insistence that **NO copies be made** of any documents, and **that note taking be "limited"**—presumably the limits will be imposed by MAWC—will substantially impair the ability of Public Counsel to prepare rebuttal testimony in this case. Of course, impairing the ability of Public Counsel to challenge assertions made by MAWC will assist MAWC in making its case for the requested AAO. However, these restrictions will NOT assist MAWC's Missouri customers. Public Counsel represents the interests of MAWC's Missouri customers in this proceeding. (This representation does not give Public Counsel the authority to release highly confidential information to members of the public.)

6. MAWC 's response creates a "straw man", the possibility of the "improper release" of information after it leaves MAWC's premises, then suggests that dire consequences will flow from such an "improper release" if it should occur. **This is done without providing one iota of evidence which would suggest that an "improper release" is likely to occur in this case.** If MAWC has credible information that Public Counsel is likely to improperly release this information to "persons desiring to do harm to MAWC's customers, through contamination of the water supply or disruption of that supply" (MAWC's Response, at p. 4), Public Counsel invites MAWC to present such evidence at an evidentiary hearing in this matter, and give Public Counsel the opportunity for cross-examination and rebuttal. Public Counsel expects MAWC to oppose such a hearing, because no such information exists. MAWC's customers are Public Counsel's clients. Public Counsel's job is to "protect the interests of the public" in this proceeding.

§386.710.1 RSMo. Placing the public in danger would violate Public Counsel's legal duty to advocate on behalf of the public. The straw man, like MAWC's argument, is a product of MAWC's corporate imagination.

7. MAWC is wrong when it suggests that it can comply with the Commission's discovery requirements and yet deny Public Counsel and Staff the right to copies of documents necessary to preparing testimony and preparing for the evidentiary hearing in this case. As noted in the Staff's Response to the Motion to Modify the Protective Order, "Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court." 4 CSR 240-2.090.1. The civil procedure rule which guides this issue in the circuit court is Rule 58.01, which states:

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to **inspect and copy**, any designated documents...which constitute or contain matters within the scope of Rule 56.01(b) and which are in the possession, custody or control of the party upon whom the request is served.... (Staff's Response, at p. 8.)

Therefore, MAWC's proposal which attempts to restrict the copying of documents which Public Counsel deems necessary to the preparation of its case are without foundation and should be rejected by this Commission.

WHEREFORE, for the forgoing reasons, and those contained in Public Counsel's original motion, it is respectfully requested that this Commission **GRANT** the Motion to Compel, **ALLOW** MAWC to classify the responses to data requests as "Highly Confidential" and **ORDER** MAWC to provide the information sought in a timely fashion. Further, it is respectfully requested that the Commission **DENY** MAWC's request that the Commission impose unreasonable restrictions on access to the information sought by

Public Counsel, as reasonable restrictions already exist for the handling of highly confidential information, or, in the alternative, set MAWC's Motion to Modify Protective Order for evidentiary hearing, at which MAWC will be required to present testimony in support of its requested restrictions, and subject its witnesses to cross-examination by Staff and Public Counsel.

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) 751-1304

(573) 751-5562 FAX

Email: roneill1@mail.state.mo.us

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 6th day of February 2002:

VICTORIA L KIZITO

Missouri Public Service Commission
PO Box 360
Jefferson City MO 65102
Attorney for Staff
vkizito@mail.state.mo.us

DEAN L COOPER

Brydon Swarengen & England PC
312 E Capitol Avenue
PO Box 456
Jefferson City MO 65102
Attorney for Applicant
dcooper@brydonlaw.com

DAVID P ABERNATHY

Missouri-American Water Company
535 N New Ballas Road
St Louis MO 63141
Attorney for Applicant
dabernathy@slawc.com

STUART CONRAD

Finnegan Conrad & Peterson
1209 Penntower Office Center
3100 Broadway
Kansas City MO 64111
Attorney for City of Riverside, Missouri
stucon@fcplaw.com

