

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

Utility Workers of America,)	
Local 335,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2011-0291
)	
Missouri-American Water Company,)	
)	
Respondent.)	

RESPONSE TO STAFF’S RECOMMENDATION

COMES NOW Missouri-American Water Company (MAWC), and, in response to the Staff’s Recommendation, states as follows to the Missouri Public Service Commission (Commission):

1. On March 17, 2011, Local 335 filed a document entitled Complaint. MAWC filed its response on April 1, 2011. On April 6, 2011, in accordance 4 CSR 240-3.640(5), the Staff of the Commission (Staff) filed a document entitled Staff’s Recommendation. MAWC will respond herein to that recommendation.

2. Staff’s Recommendation alleges, among other things, that MAWC did not state “any reason justifying keeping the executive salary information confidential” (Rec., para. 6). This is strange in that the Staff then proceeded to recite the reasons MAWC provided for keeping the information confidential. To recap, MAWC pointed out that: 1) there is a statutory presumption that salary information is already provided by a utility to the Commission should be confidential (Section 386.480, RSMo); 2) access to the information is provided in ratemaking proceedings to parties, as well as outside of rate cases to the public’s representatives; and, 3) the subject information is of a type for which the Commission has already determined that the public

interest is served by protection (Commission Rule 4 CSR 240-2.135(1)(B)).

3. It is instead Staff's position that does not find any valid support. Staff suggests that the "public interest in disclosing the information in question greatly outweighs any possible private interest in keeping it confidential" (Rec., para. 5). However, Staff is unable to identify a basis for that alleged "public interest," beyond the basic statement that MAWC is a regulated public utility.

4. Staff alleges that access to this Annual Report information "may be necessary to understand exactly what is included in the 'just and reasonable' rates" (Rec., para. 5). The problem with this reasoning is that the requested information will not provide that understanding. It would be merely happenstance or coincidence if the numbers in an annual report match the salary numbers used in developing MAWC's rates. Rate cases are based on a historical test year, that may or may not match a calendar year. Further, Staff may make adjustments to the historical figures in developing its rate recommendations and salaries change over time. Thus, the salaries reported in MAWC's 2009 Annual Report are almost certainly NOT "exactly what is included in the 'just and reasonable' rates" and not even the same exact information that was examined by the parties involved in setting those rates. Thus, the requested information will not answer the question posed by Staff.

5. If a party wants to find out what salaries are examined for the purpose of setting rates, this can be done within the context of a rate case. Local 335 has been a party to the last few MAWC rate cases and has had the opportunity to request and examine, albeit subject to the Commission's confidentiality rule, the requested salary information.

6. Staff's suggestion that the requested information should be provided to the public because the state "has granted and sustains the monopoly enjoyed by MAWC" is also misplaced

(Rec., para. 5). It has been found previously that a certificate does not provide an exclusive right to serve.¹ If Staff believes that MAWC should be free of competition in its certificated territories, MAWC would appreciate Staff's initiating complaints to seek penalties against those entities currently serving customers within such territory.

7. Lastly, in regard to the public interest, Staff suggests that "withholding the information from the public can only result in an erosion of public trust" (Rec., para. 5). As MAWC explained in its original response, there is no "withholding" of information. The persons and entities responsible for regulating MAWC have access to the subject information as a part of the annual report filing and the information is provided in greater detail to these parties and requesting interveners (which may include Local 335) within the context of MAWC's general rate cases. The information is not, and may not, be withheld.

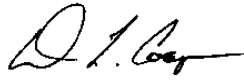
8. Maintaining the confidentiality of this salary information will protect from public disclosure personal and sensitive information that is specific to individual employees and might be used to harass or embarrass those employees. Further, maintaining the subject information as nonpublic is consistent with the policy found in both Missouri statutes and the Commission's rules. Release of the information will not identify what salary figures are included in MAWC current rates. Nor is this release necessary for parties to a rate case to have access to MAWC's salary information. Local 335's request should be denied.

WHEREFORE, MAWC respectfully requests that the Commission deny Local 335's Complaint and its request therein to reclassify information found in MAWC's 2009 Annual

¹ See, for example, *Missouri Power & Light Co. v. Lewis County Rural Electric Co., et al.*, 149 S.W.2d 881, 886 (Mo. App. 1941) ("... it has been given no exclusive franchise.") and *In the matter of the application of Union Electric Company* 30 Mo. P.S.C. (N.S.) 224 (1990) ("The General Assembly is well aware of the coexistence of the regulated and the unregulated suppliers of electricity and of the competition such coexistence engenders").

Report.

Respectfully submitted,



Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
Email: dcooper@brydonlaw.com

ATTORNEYS FOR
MISSOURI-AMERICAN WATER COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on April 13, 2011, to the following:

Michael A. Evans
Hammond and Shinnars, P.C.
7730 Carondelet Avenue, Suite 200
St. Louis, MO 63105
mevans@hstly.com

Kevin Thompson
Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
kevin.thompson@psc.mo.gov

Christina Baker
Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
christina.baker@ded.mo.gov

