

**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 RECLASSIFICATION REQUEST

COMES NOW Missouri-American Water Company (MAWC), and, in response to the Utility Workers Union of America, Local 335's (Local 335) Complaint concerning the classification of certain parts of MAWC's 2009 Annual Report as nonpublic, states as follows to the Missouri Public Service Commission (Commission):

1. On March 17, 2011, Local 335 filed a document entitled Complaint. The Commission thereafter issued its Order Directing Notice and Responses Pursuant to 4 CSR 240-3.640(5). The Commission appears to be treating Local 335's Complaint as a request that certain information be made available to the public under Commission Rule 4 CSR 240-3.640, rather than as a complaint under Commission rules.¹ MAWC agrees with this approach as there does not appear to be any allegation that MAWC has violated a statute, rule, order or decision within the Commission's jurisdiction. However, if the Commission would later decide to treat this matter as a complaint/penalty action, MAWC's response would be different and MAWC reserves its right to respond at that time with affirmative defenses and other matters that would be relevant to a true complaint.

2. MAWC filed its 2009 Annual Report on April 15, 2010, and, therein, provided all information requested by the Commission. Among other things, the annual report requested the name, title, office address and salary of each MAWC officer whose annual salary is \$50,000 or more. The title and names of MAWC's seventeen corporate officers (president, vice presidents, and the assistant secretaries, treasurers and comptrollers) were provided in the public document. However, in accordance with Commission Rule 4 CSR 240-3.640, MAWC identified the salary information as nonpublic. Commission Rule 4 CSR 240-3.640(4), provides that a utility may file information as confidential, if the "water utility subject to this rule considers the information requested on the annual report to be nonpublic information." On August 27, 2010, the Commission Staff sent correspondence to MAWC indicating the annual report filing requirements had been satisfied and that no further response was necessary.

3. Local 335 has asserted that the information identified as nonpublic should be made available to the public. Commission Rule 4 CSR 240-3.640(5) states in part, that in making this assertion a party's pleading "must explain how the public interest is better served by disclosure of the information than the reason provided by the utility justifying why the information should be kept under seal."

4. In support of its allegation that the public interest is better served by disclosure of the subject information, Local 335 stated that:

Disclosure of the salaries of MAWC's officers is in the public interest. Due to the highly regulated nature of the water industry, the public has a right to know the compensation paid to MAWC's officers.

5. Local 335 seems to argue that merely because MAWC is a regulated entity, there should be a presumption that all of its financial information should be available to the public.

¹ Complaints would be governed by Section 386.390, RSMo and Commission Rule 4 CSR 240-2.070.

This argument finds no basis in Missouri statutes and, in fact, is directly contrary to the Missouri statutes. Section 386.480, RSMo creates the opposite presumption – that is, that information provided by a public utility should not be open to public inspection and not be made public, unless certain exceptions exist. Maintenance of these public utility records as confidential was of great enough importance that violation of this statute carries a criminal penalty. Thus, any presumption that may exist as a result of MAWC’s regulated status favors protection of this information.

6. Public disclosure is not necessary because the persons and entities responsible for regulating MAWC already have access to this information. The subject information is provided to the regulatory body (the Commission) and its Staff as a part of the annual report filing. MAWC’s financial information is provided in even greater detail in the course of MAWC’s general rate cases, where the setting of just and reasonable rates is at issue. The Commission, its Staff and the Office of the Public Counsel (the representatives of the public) have always had, and continue to have, access to this specific salary information for purposes relevant to the regulation of MAWC. There is no benefit to the public interest in making the individual employee information public that is not already served by the access had by the Commission, Staff and Office of the Public Counsel.

7. Lastly, and perhaps most importantly, 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) provides, in part, that “highly confidential” information includes “employee-sensitive personnel information.” No information is more employee sensitive than the employee salaries sought by this request. A release of the information in this case would be contrary to this general policy determination that the

Commission made previously.

8. Local 335 cites to a footnote provided by MAWC explaining that its officers' salaries are not paid by MAWC and alleges that "water utilities are required to report the salaries of their officers, regardless of the entity which pays them." Local 335 further refers to Section 391.140(6), RSMo, for support, which states, in part, that a public utility shall file an annual report that includes "the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees."

9. This argument and the cited statute are wholly irrelevant to the issue at hand. First, MAWC has provided the salaries of its officers in its annual report. The footnote merely explains the source of those salaries. Second, Section 393.140(6) does not specify or require the disclosure of the salary of each individual officer. It instead states in relevant part that the "report shall show in detail . . . the *names of its officers* and the *aggregate* amount paid as salaries to them and the amount paid as wages to its employees" (emphasis added). "Aggregate" means the "entire number, sum, mass, or quantity of something; total amount; complete whole. . . . Composed of several; *consisting of many persons united together*; a combined whole" (emphasis added). *Black's Law Dictionary*. The provision of the total amount of wages paid to officers and employees will satisfy this requirement.² Third, the statute has no requirement that the referenced information be made public. In fact, Section 386.480, discussed above, would suggest that the information should not be made public.

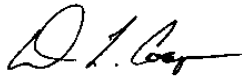
9. Maintaining the subject information as nonpublic is consistent with the policy found in both Missouri statutes and the Commission's rules. Those statutes and rules contemplate that the entities to which they apply will be regulated. Thus, Local 335's allegation

² Surely, no one would argue that the salary of every individual employee must be provided as a result of this statute.

that the subject information should be released because MAWC is a regulated entity provides no justification for such release.

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 Report.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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