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January 6, 2000

FILED²
JAN 06 2000
Missouri Public
Service Commission

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

**RE: Missouri-American Water Company - Consolidated Case Nos. WR-2000-281
SR-2000-282**

Dear Mr. Roberts:

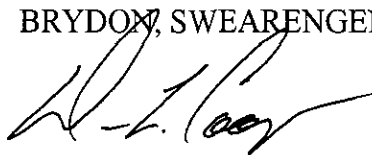
Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of MAWC's Response to AGP, Friskies and Wire Rope's Motion to Compel Response to Data Request and Request for Expedited Treatment. Please stamp the enclosed extra copy "filed" and return same to me.

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

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

DLC/rhg
Enclosures

cc: Office of the Public Counsel
Mr. Keith Krueger
Ms. Shannon Cook
Mr. Louis Leonatti
Mr. Jim Fischer
Mr. Leland Curtis
Mr. Brent Stewart
Mr. Chuck Brown

Mr. Joseph Moreland
Mr. Stu Conrad
Ms. Lisa Robertson
Ms. Diana M. Vuylsteke

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

FILED²
JAN 06 2000

Missouri Public
Service Commission

In the Matter of Missouri-American)	
Water Company's Tariff Sheets Designed)	
to Implement General Rate Increases for)	Case No. WR-2000-281
Water and Sewer Service provided to)	Case No. SR-2000-282
Customers in the Missouri Service Area)	
of the Company.)	

**MAWC'S RESPONSE TO AGP, FRISKIES AND WIRE ROPE'S
MOTION TO COMPEL RESPONSE TO DATA REQUEST
AND REQUEST FOR EXPEDITED TREATMENT**

COMES NOW Missouri-American Water Company ("MAWC" or "Company") and, in response to the Motion to Compel Response to Data Request and Request for Expedited Treatment filed by Ag Processing Inc., A Cooperative ("AGP"); Friskies Petcare, A Division of Nestle USA ("Friskies"); and, Wire Rope Corporation of America Inc.'s ("Wire Rope"), states to the Missouri Public Service Commission ("Commission") as follows:

1. On December 27, 1999, AGP, Friskies and Wire Rope filed with the Commission their Motion to Compel and Request for Expedited Treatment. This motion, among other things, asked that the Commission compel MAWC to respond to AGP, Friskies and Wire Rope's data request number 1. Data request number 1 stated as follows:

Please provide a copy of your response to each data request, whether formal or informal, from any party to this proceeding other than these intervenors.

This is a continuing request and should be updated as often as is necessary throughout the course of this proceeding. If you are unwilling to so regard this request, please advise counsel for the requesting party.

RESPONSES TO FORMAL DATA REQUESTS

2. First, AGP, Friskies and Wire Rope alleged that there was no indication why MAWC believed their data request was not proper. To the contrary, MAWC cited these parties to the Commission's *Order Concerning Motion to Compel, In the Matter of Southwestern Bell Telephone,*

Case No. TO-89-56 (June 30, 1989). (See AGP Motion¹, Exh. D). A copy of this Order is attached hereto as Appendix 1.

3. In the *Southwestern Bell* case, the Commission found that MCI's data request asking the Commission Staff ("Staff") to provide "copies of all discovery requests directed from Staff to *Southwestern Bell* in connection with *that* proceeding" was improper in that it requested information that was not discoverable. In reaching this decision, the Commission stated as follows:

The Commission has determined that other parties cannot obtain Staff DRs. Each party must determine its own interests and engage in its own discovery. Because of the specific statutory authority granted Staff, it is inappropriate to allow other parties access to Drs propounded by Staff.

4. As can be seen from this quote, the Commission resisted this form of discovery based upon the differing parameters of discovery due the Staff and other intervenors. This difference, which is based on Staff's statutory authority to audit company records, was described by the Commission as Staff's "unique position."

5. This unique position also applies to the OPC and has been confirmed by the Commission as recently as November 5, 1999, in Commission Case No. WM-2000-222. In that case, the Commission, in ruling on MAWC's objections to Staff data requests based on relevance, stated:

Section 386.450, RSMo 1994, misleadingly entitled "inspection of out of state records," confers broad authority on *the Commission and the Office of the Public Counsel (OPC)* to examine "books, accounts, papers or records" in the hands of "any corporation, person or public utility," "kept . . . in any office or place within or without this state[.]" This statute has been interpreted to authorize OPC to serve DRs on regulated entities, and the Commission to compel responses to those DRs, even in the absence of a pending proceeding. *See In the Matter of Public Counsel's Audit and Investigation of the Raytown Water Company Regarding the Reasonableness of*

¹ The Motion to Compel and Request for Expedited Treatment is hereinafter cited as "AGP Motion."

its Current Rates and its Compliance with Past Commission Orders, Case No. WO-94-192 (*Order Compelling Answers to Data Requests*, issued January 5, 1994). This authority is not conditioned on considerations of relevance under Rule 56.01(b)(1), Mo. R. Civ. Pro., made applicable to Commission proceedings by Section 536.073.2, RSMo Cum. Supp. 1998, and Commission Rule 4 CSR 240-2.090(1). Therefore, MAWC must provide the information requested by Staff.

(Emphasis added.)

6. Thus, it is inaccurate to state that AGP, Friskies and Wire Rope could “obtain from each individual party copies of their individual data requests to MAWC, cause them to be retyped, and submit each of them again to MAWC.” (AGP Motion, para. 13) A different discovery standard apparently applies to AGP, Friskies and Wire Rope data requests. Also inaccurate is AGP, Friskies and Wire Rope’s statement that if the Staff or OPC “data request is properly objected to as beyond the permissible scope of discovery and that objection is upheld or the request withdrawn or modified, by definition no response to this data request is required or is required only to the extent information is supplied to the other party” (AGP Motion, para. 15). Because the statutes have been interpreted to provide for different standards for discovery responses among the parties, a request from the Staff and OPC may not be objected to whereas MAWC would be perfectly within its rights to object to the same data request if served by AGP, Friskies or Wire Rope.

7. If intervenors are able to avoid this situation by merely asking for a copy of all responses “to each data request, whether formal or informal, from any party,” it may serve to hinder the flow of information between the company and Staff. A company will have to think twice if it knows that whatever it provides to Staff has the potential of being automatically turned over to other parties if a party asks for all the data requests propounded by Staff or all the information provided to Staff.

8. This line of reasoning is applicable not only to the requested responses to Staff and

OPC data requests, but also to the questions themselves. Since data requests often build upon information provided in prior answers, the prohibition from disclosure should follow the information no matter what form it takes. As stated in the *Southwestern Bell* decision, “each party must determine its own interests and engage in its own discovery.”

RESPONSES TO INFORMAL DATA REQUESTS

9. It is unclear from the AGP, Friskies and Wire Rope motion whether they continue to seek MAWC’s “informal” responses to data requests as requested in data request number 1. MAWC does continue to object to this portion of the request. First, it is unclear to MAWC what an “informal” data request would be. A standard would need to be developed so MAWC can determine when a request is an “informal data request” and when it is a request for more general information. Second, assuming that by “informal” data requests AGP, Friskies and Wire Rope mean any question that may be posed to any MAWC employee, agent or representative during the course of this proceeding, this is an impractical and unworkable data request. Information may be provided orally in response to oral inquiries over the telephone or in person in any number of locations in the State of Missouri or in the New Jersey offices of MAWC’s parent by any number of MAWC representatives. Attempting to resolve what questions rise to the level of “informal” data requests, tracking such conversations and then providing this information to AGP, Friskies and Wire Rope is an impossible task. It would invite the Company to instruct its employees, agents and representatives to stop all conversations with Staff, OPC and intervenor personnel and request that all inquiries, no matter how minor, be placed in writing, a prospect that would greatly chill the information gathering process.

GOOD FAITH

10. MAWC also disagrees with AGP, Friskies and Wire Rope’s assertion that they made

“a good faith attempt to resolve the dispute short of this motion.” (AGP Motion, para. 5) The subject data request was served on MAWC on December 15, 1999. Although not required to provide its objections until December 25, 1999, MAWC responded on December 20, 1999. In reaction, MAWC received correspondence from AGP, Friskies and Wire Rope’s counsel at 7:20 p.m. on December 20, 1999 (AGP Motion, Exh. E). This correspondence contained no possible mitigation or attempt to work out the differences between the parties on the issue of responses to Staff/OPC data requests, and instead demanded compliance with AGP, Friskies and Wire Rope’s request by close of business on December 21, 1999, approximately 22 hours later (and still four days before MAWC was even required to state its objection).

11. Because of other filings, MAWC counsel was unable to discuss this matter with his clients and obtain a decision by close of business on December 21, 1999. Thus, an e-mail was sent to AGP, Friskies and Wire Rope’s counsel suggesting that something more than 22 hours would be needed to respond. (AGP Motion, Exh. F) AGP, Friskies and Wire Rope’s counsel then stated, still on December 21, 1999 (six days after service of the data request), that he would be proceeding with the motion to compel (which he had stated in his initial correspondence would be submitted to the Commission on December 22, 1999). (AGP Motion, Exh. E) With these facts in mind, AGP, Friskies and Wire Rope’s counsel should not have been surprised that “no other response, affirmative or negative, has been received.” (AGP, para. 7)

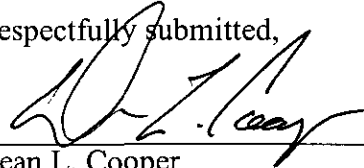
REQUEST FOR EXPEDITED TREATMENT

12. AGP, Friskies and Wire Rope ask the Commission to rule on their motion to compel on “an expedited basis.” It is unclear from the motion what is meant by an expedited basis. However, as long as MAWC is given ten (10) days, as provided by regulation, to respond to the motion, MAWC does not object to an expedited Commission decision. MAWC believes obtaining

the full ten days is reasonable as it has already expedited the matter by providing AGP, Friskies and Wire Rope its objections five days sooner than would have been required by Commission regulation.

WHEREFORE, MAWC respectfully requests that the Commission issue its order: 1) denying the Motion to Compel filed by AGP, Friskies and Wire Rope; and, 2) granting such further relief as the Commission should find to be reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN
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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 10th day of January, 2000, to the following:

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