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February 14, 2002

**FILED<sup>3</sup>**

**FEB 14 2002**

**Missouri Public  
Service Commission**

Mr. Dale Hardy Roberts  
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 proceeding please find an original and eight copies each of a Reply to Pleadings Concerning Discovery Matters, and a Response to Public Counsel's Motion to Dismiss. Please stamp the enclosed extra copy of each "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 L. Cooper*  
Dean L. Cooper *lyRg*

DLC/rhg

Enclosures

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

FILED<sup>2</sup>

FEB 14 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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. )

Missouri Public  
Service Commission

Case No. WO-2002-273

**REPLY TO PLEADINGS CONCERNING DISCOVERY MATTERS**

COMES NOW Missouri-American Water Company ("MAWC" or the "Company")<sup>1</sup>, and, in reply to the various pleadings concerning the discovery motions<sup>2</sup> filed by the Office of the Public Counsel ("OPC"), Commission Staff ("Staff"), St. Joseph Intervenors and the City of Joplin, states the following to the Missouri Public Service Commission ("Commission"):

**GENERAL DISCUSSION**

1. MAWC is shocked and amazed by the reaction and responses that have been filed concerning MAWC's Motion to Modify. MAWC's suggestion that security information pertaining to water plant and facilities serving approximately 1.2 million Missouri residents<sup>3</sup> be protected to a greater extent than the competitive pricing and

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<sup>1</sup> This 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.

<sup>2</sup> MAWC will respond separately to the OPC's Motion to Dismiss.

<sup>3</sup> Through retail and wholesale purchases.

contractual information that is generally the subject of the Commission's protective order is not outrageous considering that:

- this is a period less than six months after the terrorist attack on the World Trade Center;
- the President has stated as follows:

Our discoveries in Afghanistan confirmed our worst fears and showed us the true scope of the task ahead. We have seen the depth of our enemies' hatred in videos where they laugh about the loss of innocent life.

And the depth of their hatred is equaled by the madness of the destruction they design. *We have found diagrams of American nuclear power plants and public water facilities*, detailed instructions for making chemical weapons, surveillance maps of American cities, and thorough descriptions of landmarks in America and throughout the world.

What we have found in Afghanistan confirms that, far from ending there, our war against terror is only beginning. Most of the 19 men who hijacked planes on September the 11th were trained in Afghanistan's camps. And so were tens of thousands of others. Thousands of dangerous killers, schooled in the methods of murder, often supported by outlaw regimes, are now spread throughout the world like ticking time bombs, set to go off without warning; and,

- warnings concerning terrorist activities continue to be received.

2. MAWC recognizes that the discovery issues presented to the Commission in this case are somewhat out of the ordinary. What MAWC asks is that the Commission

carefully consider the issues raised by MAWC as it attempts to balance the interests of physical security with the world of public utility regulation.

3. The proposals made by MAWC are an honest attempt to address these unusual issues presented by this case. In spite of the fact that MAWC has been accused of raising the discovery issues in order to "vex and harass" the other parties, a careful look at these proposals reveals that they are reasonable proposals and are based to some extent on actions of this, or other, regulatory bodies.

4. In fact, MAWC's first proposal (adding a category of highly confidential materials specifically for security documents) has been agreed to in principle by the other parties. Apparently, this is a vexing and harassing proposal that is thought by the parties to be a good idea.

5. MAWC's second proposal suggests that Paragraphs C and W, of the Commission's standard form protective order, be modified such that in addition to the St. Joseph intervenors and Joplin, Paragraph C will also apply to the Staff and OPC. Again, this is an existing provision of the Standard Protective Order that has in the past been thought by the Commission to be a constitutional and appropriate provision for parties other than the Staff and OPC. MAWC merely seeks to apply this provision to the Staff and OPC in this unique case. Furthermore, the additional provision suggesting that dissemination be limited to those parties with a "need-to-know" does not seek to "dictat[e] which staff members can work on this case," as alleged by the OPC. This provision seeks to establish that the information be limited to those persons the OPC or Staff have assigned to the case. Such provisions are already found in the Federal Privacy Act provisions, as well as Federal Energy Regulatory Commission ("FERC") regulations.

Which, MAWC is told, completely prohibit Staff and OPC access to certain nuclear security information. These suggestions do not deserve the outrage reflected in various pleadings that have been filed. These are proposals for the Commission's consideration that are generally within the bounds of the standard form protective order previously utilized by the Commission or similar to other information restrictive statutes or regulations.

6. The final modification MAWC sought was the additional requirement of background checks and U.S. citizenship as a precursor for review of the subject information. Currently, if MAWC's counsel wants to file a registration of fictitious name for a corporation, listen to a Senate hearing or review the articles of incorporation of a Missouri corporation without being physically searched each and every time he enters state buildings, the State of Missouri requires him to have a criminal records background check and to apply for an identification card. Also, as cited in MAWC's Motion to Modify, the FERC regulations require criminal background checks before persons have access to certain "safeguards" information. 10 CFR § 73.21. While the OPC believes a background check is "invasive" and violates a "legitimate expectation of privacy," their employer participates in this process daily. If background checks are appropriate for the State of Missouri and the FERC, they should at least be appropriate for proposal and consideration by the Commission without allegations that MAWC is seeking to "vex and harass" other parties.

7. Further, in regard to those allegations that MAWC seeks to "vex and harass" other parties in order to somehow gain an advantage in this litigation, MAWC suggests that such a label may actually apply to the accusers. Rather than at least viewing the information under the conditions suggested by MAWC to see what is there, as could have

been done since on or about January 9, 2002, numerous pleadings have been filed expressing outrage with MAWC's proposals. There may be filings in this case designed to "vex and harass" by keeping the application from the Commission. However, they are not those filed by MAWC.

8. Lastly, contrary to some of the other parties' suggestions, the actions proposed by MAWC are within statutory bounds. The provisions within Chapters 386 and 393 of the Revised Statutes of Missouri do not require that copies of all public utility documents will be made and provided to Staff and OPC. Those chapters contemplate that public utility records will be available for "examination." The only provisions cited by the OPC as requiring copies find their roots in Commission rules, something that is within the Commission's power to address.

#### **EVIDENTIARY HEARING**

9. Both the Staff and OPC request that the Commission either deny the Motion to Modify or hold an evidentiary hearing, "pursuant to the Commission's procedures for taking highly confidential testimony, and require MAWC to present evidence in support of the Motion to Modify and provide Public Counsel and Commission Staff with the opportunity for cross-examination."

10. Commission Rule 4 CSR 240-2.085 establishes the Commission's requirements for the issuance of a protective order. This rule does not require testimony under oath, nor does it specify what protective order will be issued by the Commission. The Commission's rule leaves it free to issue and modify whatever protective order it believes is appropriate for a particular situation without taking testimony.

11. Moreover, in answer to the OPC's allegation, MAWC admits that it cannot

provide testimony indicating that there is a greater risk of security information being divulged, either intentionally or unintentionally, than is normally the case. What is obvious, however, is that the consequences of any such release in this case are monumentally greater. There is a fundamental difference between information about MAWC's contracting strategy and the physical security of its water plant and facilities. It is this fact upon which MAWC's proposal is based. This is a fact that should not need additional testimony. Whether or not this fact moves the Commission to modify the Protective Order is a question that, at this point, clearly must be answered by the Commission, as the parties are unable to settle the underlying discovery dispute.

## **CONCLUSION**

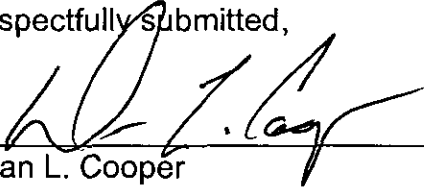
12. In response to the allegations that have been made by the other parties, MAWC again states that it makes its proposals in the context of what it believes to be a unique case and situation. That is, the subject of this case is the consideration of recently instituted security measures within a matter of months after an event of terrorism having earth shaking consequences. MAWC does not wish to permanently change the way the Commission does business in regard to protective orders, nor does it propose to prohibit the viewing of any information. It does seek the Commission's consideration of its proposals.

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

- 1) Denying the OPC's Motion to Compel;
- 2) Modifying the Protective Order in this case to:
  - a) include an additional definition of "highly confidential" materials, as provided in the Motion to Modify;

- b) amend paragraph W such that paragraph C is substantially applicable to the Staff and the OPC, as provided in the Motion to Modify; and,
  - c) amend paragraph C to require persons viewing security information to be United States citizens and undergo a criminal background check, as provided in the Motion to Modify; and,
- 3) Granting such further relief as is consistent with this pleading.

Respectfully submitted,

  
Dean L. Cooper MBE#36592  
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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 14<sup>th</sup> day of February, 2002, to the following:

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