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January 31, 2002

FILED
JAN 31 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 of a Response to OPC Motion to Compel. 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 for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean L. Cooper
Dean L. Cooper
kykg

DLC/rhg
Enclosures

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

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
JAN 31 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 Company)
d/b/a Missouri-American Water Company)
for an accounting authority order relating)
to security costs.)

Case No. WO-2002-273

RESPONSE TO OPC MOTION TO COMPEL

COMES NOW Missouri-American Water Company ("MAWC" or the "Company")¹,
and, in response to the Office of the Public Counsel's ("OPC") Motion to Compel Applicants
to Respond to Data Requests, states the following to the Missouri Public Service
Commission ("Commission"):

SUMMARY

MAWC has not "refused to provide the requested data" as alleged by the OPC.
MAWC's dispute with the OPC concerns the OPC's desire that copies of security sensitive
documents be made and possessed beyond MAWC's control. MAWC has never denied
access, it has been unable to agree with the OPC on the form of access. MAWC's Motion
to Modify Protective Order, which has been filed in this case, is closely related to the
OPC's Motion to Compel and MAWC suggests these motions should be considered
together.

¹ 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.

I. BACKGROUND

1. On January 23, 2002, MAWC filed its Motion to Modify Protective Order. On the same day, the OPC filed its Motion to Compel.

2. Both of these motions primarily concern OPC data requests numbers 1001-1009 which were served on MAWC on December 20, 2001. The OPC data requests ask for information concerning MAWC's security procedures including: what "new procedures" have been adopted; what procedures have been updated; what plant has been placed into service to safeguard the Company's water plant and systems; detailed cost information (which will necessarily identify specific security procedures); a list of security measures governmental bodies have asked MAWC to implement; and, how existing procedures were inadequate.

II. RESPONSE

3. The OPC Motion to Compel states that MAWC has "refused to provide the requested data" (OPC Motion, p. 1); "reused to provide the information requested" (OPC Motion, p. 3); and, "refuse[d] to provide the requested information." (*Id.*) However, a review of MAWC's response dated December 31, 2001 (MAWC Motion to Modify, App. A), very quickly reveals that this is not the case. MAWC offered to provide the information requested for examination, on the date the information was due, "or at such other time as is convenient."² The OPC's complaint is not that MAWC has failed to provide the requested information, it is that MAWC will not provide the OPC with complete copies of all MAWC's security documents for retention at the OPC's offices.

² This latter offer should have addressed OPC's counsel's concern (OPC Motion, Footnote 2) that she was unavailable on January 9, 2002.

4. The OPC implies that it has some sort of statutory right to such copies, stating that "Missouri law requires that the Applicants provide the requested information to Public Counsel in the same way that they must provide requested information to the Commission and its Staff." A review of the statute to which the OPC refers reveals that there is no provision requiring that copies be provided to the OPC or that the OPC must retain such copies on its premises. Section 386.450, RSMo, which the OPC cites as the basis for its "broad powers" (OPC Motion, p. 5), states as follows:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, *the production within this state at such time and place* as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so *that an examination thereof may be made by the public counsel* when the order is issued at his request or by the commission or under its direction.

(Emphasis added).

5. MAWC has offered to produce the requested documents within the State of Missouri so that an examination may be made by the OPC. Section 386.450 does not require that copies must be provided. In fact, the option to provide copies belongs to the public utility, not the OPC. Section 386.450 also does not require that the opportunity to examine security plans be provided at the OPC's office or that all fifteen OPC employees³ have unfettered access to examine the security plans as the OPC has requested.

6. The OPC correctly indicates in its Motion to Compel that "utility companies

³ OPC, in its response dated January 4, 2002, stated that access to the security information "will be limited to the following" and then proceeded to list all fifteen employees of the OPC. (MAWC Motion to Modify, App. B).

customarily provide information to those data requests by sending copies of the requested documentation.” (OPC Motion, p. 6). However, this is not a “customary” situation. The information requested in this situation concerns details of security measures. Improper release would give persons desiring to do harm to MAWC’s customers, through contamination of the water supply or disruption of that supply, a blueprint for circumventing the security currently in place. MAWC’s request for a modification of the protective order does not ask for a permanent change to the Commission’s standard protective order, but merely a change that will address this particular case. In all other situations, MAWC believes that custom will continue.

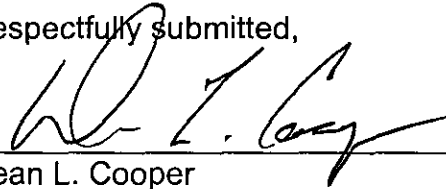
7. Lastly, the Motion to Modify Protective Order filed by MAWC is directly related to the subject of this Motion to Compel in that a modification of the Protective Order as requested by MAWC will make this motion moot. MAWC therefore requests that its motion be considered in conjunction with the Motion to Compel.

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 herein;
 - b) amend paragraph W such that paragraph C is substantially applicable to the Staff and the OPC, as provided herein; and,
 - c) amend paragraph C to require persons viewing security information to be United States citizens and undergo a criminal background check, as provided herein; and,

- 3) Granting such further relief as is consistent with this pleading.

Respectfully submitted,



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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 31st day of January, 2002, to the following:

Mr. Keith Krueger / *Victoria Kizito*
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