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August 15, 2003

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED³
AUG 15 2003
Missouri Public
Service Commission

Re: Case No. WR-2003-0500

Dear Mr. Roberts:

Enclosed for filing on behalf of Missouri-American Water Company, please find an original and eight (8) copies of a Response to Staff Motion to Compel Answers to Staff Depreciation Data Requests.

A copy of this filing is being provided to the General Counsel and Office of the Public Counsel.

Please see that this filing is brought to the attention of the appropriate Commission personnel.

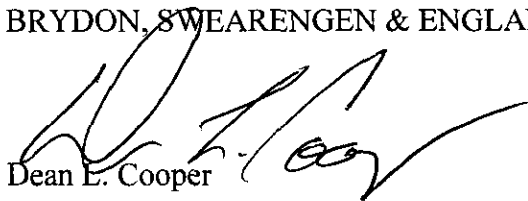
I thank you in advance for your cooperation in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

Dean L. Cooper



DLC/llv
Enclosure
cc: Parties of Record

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

FILED³
AUG 15 2003

In the Matter of the General Rate Increase)
for Water and Sewer Service Provided)
by Missouri-American Water Company.)

Case No. WR-2003-0500

**Missouri Public
Service Commission**

**RESPONSE TO STAFF MOTION TO COMPEL
ANSWERS TO STAFF DEPRECIATION DATA REQUESTS**

COMES NOW Missouri-American Water Company ("MAWC" or "Company") and, as its Response to Staff Motion to Compel Answers to Staff Depreciation Data Requests ("Motion to Compel"), states as follows to the Missouri Public Service Commission ("Commission"):

SUMMARY

The data requests that are the subject of Staff's Motion to Compel ask MAWC to produce depreciation files, in a specified format, that do not otherwise exist. In an effort to work with the Staff, MAWC has attempted to produce the requested information and will continue to do so. However, producing the files requested by the Staff is time consuming and has a cost associated with it as MAWC does not have the resources to create the requested files itself.

Case law indicates that a party cannot be required to provide documents or information not in its records. *Keefover v. Director of Revenue*, 996 S.W.2d 75, 76 (Mo.App. S.D. 1999). MAWC may accurately answer these data requests without further obligation to provide the files by stating that the requested files are not a part of MAWC's records and would have to be created anew. Thus, the Commission should deny the Staff's Motion to Compel.

DISCUSSION

1. On August 6, 2003, the Commission Staff ("Staff") filed its Motion to Compel wherein it requested that the Commission compel MAWC to provide answers to Staff data requests

numbers 4602 and 4608. The Staff also asks that the Commission “direct the Company to correct erroneous data relating to data requests 4601, 4603-4607 and 4609 “within an expeditious time frame after notice from the Staff of discovery of the error.”

2. The subject data requests each ask for “the depreciation database” for each of the MAWC operating districts. Each of the data requests also goes on to additionally state that the database should be presented:

in the Gannett Fleming format . . . containing dollar amounts by capital account from date of inception, or earliest date of Company records. For each capital account, include dollars by year of installation, year of retirement, year of transfer, and account balance at the end of fiscal 2002.

3. MAWC does not maintain depreciation data in the “Gannett Fleming format” as described by the Staff. In order to provide the information requested by Staff in the subject data requests, the Company must create new data files.

4. The fact that new files must be created is evident from the Staff Motion to Compel. One of the Staff’s complaints is *how* MAWC created the data files that have been provided to the Staff. In the second section of paragraph 5(c), the Staff goes into detail as to how it “suggested to the Company that it *build new data files* for each separate calendar year, rather than merge those files” (emphasis added).

5. Commission Rule 4 CSR 240-2.090(1) provides that discovery may be obtained by the same means and under the same conditions as in civil action in the circuit court.

6. MAWC’s responses to data requests 4602 and 4608 are not “non-responsive” as asserted by Staff. MAWC has stated in its responses that it does not have the depreciation information requested by the Staff, an accurate, truthful and complete response to the requests made.

MAWC does not have the resources to create these files itself. MAWC must instead incur additional expenses for a consultant at Gannett Fleming to create the files.

7. In order to answer data requests, MAWC is not required to engage in research or compile information in a form not readily available to the Company. As stated by the Missouri Supreme Court, “[a]s a general rule a party in answering interrogatories must furnish information which is in his possession and can be given without undue labor and expense Consequently interrogatories which require a party to make investigations, research, or compilation of data for his adversary are in many circumstances improper.” *State ex rel. Gamble Construction Co. v. Carroll*, 408 S.W.2d 34, 38 (Mo.banc 1966).

8. The depreciation data requested by Staff does not exist in the form requested by Staff. MAWC cannot be expected to produce what it does not have. *St. Louis County v. Hisel*, 804 S.W.2d 775 (Mo.App. 1990). Appellate courts have repeatedly held that a party cannot be required to provide documents or information not in its records. *Keefover v. Director of Revenue*, 996 S.W.2d 75, 76 (Mo.App. S.D. 1999). Thus, MAWC does not have a duty to provide information in the specific form requested by the Staff.

9. This having been said, MAWC has attempted to voluntarily provide the information in the requested format. Unfortunately, this has turned out to be a time consuming endeavor as the age and ownership history of the various districts makes the task very difficult. The “erroneous data” of which the Staff complains will always be a potential by-product of this file creation process. The question becomes what errors are significant enough to justify the time and expense necessary to track down and correct data. For example, the retirement of property recorded in the year 1900 for property not placed in service until 1954, about which Staff complains, concerns a handful of entries of less than \$100 each within a study concerning millions of dollars of plant. While these entries

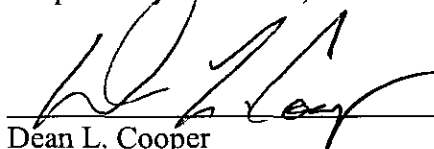
can be tracked down and corrected, the expense to do so will far exceed the amount of money represented by the entries.

10. MAWC will continue to work with the Staff as to these issues and will strive to provide the requested files as soon as is possible. In fact, MAWC has provided the St. Louis County District data through 2002 and the Jefferson City District data years 2000 through 2002 to the Staff as of August 15, 2003, and is continuing to work on cleaning up old data.

11. However, because responses to the subject data requests require MAWC to create files which it does not otherwise possess, there is no legal justification for the Commission to issue an order compelling MAWC to respond to data requests 4602 and 4608, nor is there a basis to compel MAWC to "correct erroneous data relating to the other DRs . . . within an expeditious time frame after notice from the Staff or discovery of the error."

WHEREFORE, MAWC respectfully requests that the Commission issue its order denying the Staff's Motion to Compel Answers to Staff Depreciation Data Requests.

Respectfully submitted,



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WATER COMPANY

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 15th day of August, 2003, to the following:

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A handwritten signature, likely "D. L. Long", is written over a horizontal line.