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January 13, 2000

**FILED<sup>2</sup>**

JAN 13 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:

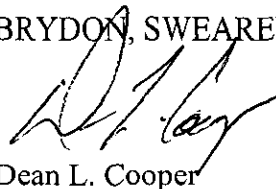
Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of MAWC's Response to AGP, Friskies and Wire Rope's Reply Concerning Motion to Compel and Supplement to Reply. Please stamp the enclosed extra copy "filed" and return same to me.

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. James Deutsch

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

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

**FILED<sup>2</sup>**  
JAN 13 2000

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.	)	

Missouri Public  
Service Commission

**MAWC'S RESPONSE TO AGP, FRISKIES AND WIRE ROPE'S  
REPLY CONCERNING MOTION TO COMPEL  
AND SUPPLEMENT TO REPLY**

COMES NOW Missouri-American Water Company ("MAWC" or "Company") and, in response to the Reply to MAWC's Response to Motion to Compel Response to Data Request and Request for Expedited Treatment ("Reply") and the Supplement to Reply to MAWC's Response ("Supplement to Reply") 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. In their Reply, AGP, Friskies and Wire Rope attempt to distinguish the Commission's decision in its *Order Concerning Motion to Compel, In the Matter of Southwestern Bell Telephone*, Case No. TO-89-56 (June 30, 1989) by pointing out that the *Southwestern Bell* case was not a rate case and that an intervenor in the case, MCI, was a competitor of Southwestern Bell.<sup>1</sup> There is no indication, however, that the Commission's Order was based upon either of these factors.

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<sup>1</sup> It should be remembered, however, that in spite of AGP, Friskies and Wire Rope's statements to the contrary, MAWC does have competitors in its service territories and, in fact, one of the intervenors in this case, Public Water Supply District No. 2 of St. Charles County, described its interest in this case as follows in pleadings before the Commission: "Moreover, the District is specifically interested in this proceeding because the District presently provides water service in and around Missouri-American Water Company's ("MAWC") certificated service areas in St. Charles and Warren Counties and because the District *directly competes* with MAWC for customers in these areas." (Emphasis added)

2. The Reply also focuses on the implications data request number 1 would have on responses to Staff data requests. As stated in MAWC's original response, its objection is equally applicable to requests made by the Office of the Public Counsel ("OPC") based upon the Commission's *Order Regarding Staff's Motion to Compel, et al.*, dated November 5, 1999, in Commission Case No. WM-2000-222.

3. The Commission's ruling in the *Southwestern Bell* case and MAWC's objection which is the subject of this pleading is a natural extension of the Commission's decision as to the breadth of the Staff and OPC's discovery rights. If Staff and OPC discovery is not limited by concepts of relevance, then a request for responses to all Staff and OPC data requests is by definition over broad.

4. This also explains the differences in approach complained of by AGP, Friskies and Wire Rope in their Supplement to Reply. AGP, Friskies and Wire Rope allege that MAWC has pursued "selective objections" because it believes that MAWC has not objected to Staff and OPC data requests which they believe are similar to the data request at issue.<sup>2</sup> However, because the Commission has indicated that, based upon statute, the Staff and OPC rights to documents and information are equally broad and unrestricted (see the orders cited above), sharing of information between the Staff and OPC is not the same as unfettered sharing of information between Staff (or OPC), on one hand, and AGP, Friskies and Wire Rope, on the other hand. This is not discrimination against AGP, Friskies and Wire Rope, but rather discrimination based upon the interpretation of Missouri statutes which distinguish between parties.

5. Additionally, it must be remembered that this objection does not involve a situation

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<sup>2</sup> This position is factually in error in that MAWC did timely object to OPC data request 3001. The parties, however, have since addressed their differences as to this data request.

where AGP, Friskies and Wire Rope have requested specific information relevant to this case. It is instead a situation where they have attempted to “piggyback” on the work of the Staff and OPC without regard for relevance. As the Commission stated in the *Southwestern Bell* case, “[e]ach party must determine its own interests and engage in its own discovery.” Nothing about that process is contrary to “fair play” or due process.

6. As to the aspect of AGP, Friskies and Wire Rope’s motion asking for MAWC to provide answers to informal information, MAWC continues to believe that this is extremely over broad and unworkable. The types of conversations to which this could conceivably apply range from the extremely informal and absurd (the answer to a Staff question as to the location of the bathroom?) to the privileged (settlement discussions).

7. AGP, Friskies and Wire Rope additionally allege that “MAWC has objected to all data requested.” It needs to be pointed out that MAWC has objected to “all data requested” by this data request. AGP, Friskies and Wire Rope have additionally ask 28 other data requests. Of these, MAWC has responded to 18. Responses to 9 are to be produced in short order. There is no answer to the remaining request.<sup>3</sup> Thus, MAWC has not “stonewalled” AGP, Friskies and Wire Rope. It merely has objected to data requests which, based on prior Commission decisions, certainly appear to be inappropriate in form.

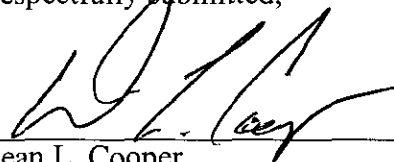
WHEREFORE, MAWC respectfully requests that the Commission issue its order: 1) denying the Motion to Compel filed by AGP, Friskies and Wire Rope; and, 2) granting such further relief as

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<sup>3</sup> Two of the data requests are somewhat in limbo. MAWC has both asserted an objection and, thus far, provided information that is responsive. These data requests are the subject of a separate AGP, Friskies and Wire Rope motion to compel.

the Commission should find to be reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN  
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 15<sup>th</sup> day of January, 2000, to the following:

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