

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

In the Matter of Utility Workers Union of) America, Local 335, and Missouri-American) Water Company.)	<u>Case No. WC-2011-0291</u>
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STAFF'S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its Recommendation states as follows:

1. Petitioner Local 335 of the Utility Workers Union of America ("Union") filed its Complaint herein on March 17, 2011, seeking declassification of certain information designated as Highly Confidential (HC) by Respondent Missouri-American Water Company ("MAWC") on its Annual Report to the Commission, to-wit: the salaries of its officers.

2. On March 21, 2011, the Commission directed MAWC to respond to the Union's Complaint by April 1, 2011, and further directing "[t]he General Counsel of the Missouri Public Service Commission" to file a recommendation within five business days after MAWC filed its response.

3. On that same day, the General Counsel delegated the duty to provide the requested recommendation to the Chief Staff Counsel. The undersigned has interpreted the delegation as being to the Staff Counsel's Office on behalf of the Staff.

4. On April 1, 2011, MAWC responded in opposition to the Union's Complaint. In particular, MAWC asserted that the Union had failed to satisfy the requirement of Rule 4 CSR 240-3.640(5), that the party seeking declassification

“must explain how the public interest is better served by disclosure of the information than the reason provided by the utility justifying why the information should be kept under seal,” because the reason suggested by the Union – that the public has a right to know – is simply inadequate to support declassification.

5. Staff recommends that the request for declassification be granted. Staff believes that the public interest in disclosing the information in question greatly outweighs any possible private interest in keeping it confidential. MAWC is the monopoly provider of a necessity of life to its ratepayers. The public therefore has a right to access such information as may be necessary to understand exactly what is included in the “just and reasonable” rates for this service. Executive compensation is necessarily a matter of abiding and legitimate public concern, particularly as rising costs make utility service increasingly less affordable to a segment of the public. The state, which exists to serve and protect its citizens, has granted and sustains the monopoly enjoyed by MAWC and, moreover, sets the rates for its services. Consequently, withholding the information from the public can only result in an erosion of public trust.

6. Staff notes that MAWC has not actually stated any reason justifying keeping the executive salary information confidential anywhere in its lengthy response. In Paragraph 5, MAWC argues that there is no presumption in favor of public release. In Paragraph 6, MAWC asserts that public disclosure is unnecessary because the Commission, the Staff and the Public Counsel have access to the information. In Paragraph 7, MAWC points to Rule 4 CSR 240-2.135(1)(B), which allows “employee-sensitive personnel information” to be made

confidential and asserts that the question is thus already decided in its favor. In Paragraphs 8 and 9 – *both* Paragraphs 9 – we learn that the specific requirement of § 393.140(6), RSMo, is no help to the Union here because nowhere is public disclosure required. None of this constitutes a sufficient reason for maintaining confidentiality within the intendments of Rule 4 CSR 240-3.640(5). A sufficient reason would actually explain the benefits that confidentiality bestows or the harms that it avoids, none of which has been explained by MAWC.

WHEREFORE, inasmuch as the foregoing demonstrates that the public interest is best served by release of the information in question and in view of MAWC's failure to state any reasons supporting its continued confidentiality, Staff prays that the Commission will grant the Union's declassification request and make MAWC's executive compensation information available to the public; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **6th day of April, 2011**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson