

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

Staff of the Missouri)	
Public Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2008-0160
)	
Missouri-American Water Company,)	
)	
Respondent.)	

RESPONSE TO RECLASSIFICATION REQUEST

COMES NOW Missouri-American Water Company (MAWC), and, in response to the Staff's request to reclassify information, states as follows to the Missouri Public Service Commission (Commission):

1. On November 13, 2007, the Staff of the Commission (Staff) filed its Complaint Pursuant to Commission Rule 4 CSR 240-3.640(5), Pertaining to Annual Reports By Water Utilities. The Commission issued its Notice of Request to Reclassify Information as Nonproprietary Under Commission Rule 4 CSR 240-3.640(5). Therein, the Commission stated that MAWC's response is due by November 30, 2007.

2. The Staff pleading in this matter has been styled as a "Complaint," and references Section 386.390 and Commission Rule 4 CSR 240-2.070(1) which concern complaints. However, the Commission's Notice characterizes the Staff pleading as a request to reclassify certain information pursuant to Commission Rule 4 CSR 240-3.640(5). MAWC believes that the Commission's approach is correct as the Staff pleading alleges no violation of statute, rule or Commission order as required for a complaint by Section 392.360.1. Accordingly, this response will assume that the Staff merely seeks reclassification of information and does not seek

penalties.

3. If the Commission would later decide to treat this matter as a complaint/penalty action, MAWC's response would be different and MAWC reserves its right to respond at that time with affirmative defenses and other matters that would be relevant to a true complaint.

4. MAWC filed its 2006 Annual Report, provided the information requested and received correspondence from the Commission Staff dated July 2, 2007, indicating the annual report filing requirements had been satisfied and that no further response was necessary (Appendix A).

5. The Annual Report Form does not just request salary information associated with officers and directors. It also requests salary information for "each other employee whose annual salary is \$50,000 or more." In answer to this question, MAWC's 2006 Annual Report includes the names and salaries of over 400 employees, many of whom perform duties that would not normally put them in the public eye.

6. MAWC identified that information as nonpublic in accordance with Commission Rule 4 CSR 240-3.640(4), which provides that a utility may file information as confidential, if the "water utility subject to this rule considers the information requested on the annual report to be nonpublic information."

7. Commission Rule 4 CSR 240-3.640(5) states in part:

If an entity asserts that any of the information contained in the nonpublic version of the annual report should be made available to the public, then that entity must file a pleading with the commission requesting an order to make the information available to the public, and shall serve a copy of the pleading on the utility affected by the request. The pleading 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.

8. In support of its allegation that the public interest is better served by disclosure of

the subject information, Staff cites to Section 393.140(6), RSMo and argues that the General Assembly has already determined that the requested information is public information. Staff alleges that this statute “specified the disclosure of salary information in [Section] 393.140(6) and did not provide any mechanism for keeping such information secret; therefore, the General Assembly must be considered to have already determined that the public interest is best served by disclosing such salary information.”

9. A very substantial flaw in the argument is the fact that Section 393.140(6) does not specify or require the disclosure of the requested information. It instead states in relevant part that the “report shall show in detail . . . the *names of its officers* and the *aggregate* amount paid as salaries to them and the amount paid as wages to its employees” (emphasis added).

10. *Black’s Law Dictionary* defines “aggregate” to mean “entire number, sum, mass, or quantity of something; total amount; complete whole. . . . Composed of several; *consisting of many persons united together*; a combined whole” (emphasis added). Thus, to the extent the Annual Report Form requests salary information concerning individual employees rather than the aggregate salaries paid by MAWC, it is contrary to the referenced statute and exceeds the Commission’s jurisdiction. Additionally, Section 393.140(6) applies only to persons and corporations under the Commission’s supervision and amounts paid by them. To the extent that the Annual Report Form asks for salary amounts paid by entities other than MAWC, it also exceeds the Commission’s jurisdiction.

11. Staff further alleges that public access must be permitted because the compensation of officers, directors and executives is an item that is treated “above the line” and thus charged to the rate payers.” Staff also argues that “the public interest requires that public utility rate making, including such operating expense items as the compensation paid to public

utility officers, directors and executives, be open and public in order to maintain public confidence.”

12. First, the information relevant to a rate case is public. The “aggregate” amount of the Missouri allocated share that is built into rates for employee salaries is very much public in each and every rate case. There is no withholding of that salary information from the public. What Staff seeks be made public is information that exceeds both that identified by Section 393.140(6) and beyond that which is included in a rate case.

13. More important, this information is of a type for which the Commission has already determined that the public interest is served by the maintenance under seal. Commission Rule 4 CSR 240-2.135 states, in part, that “highly confidential” information includes “employee-sensitive personnel information.” No information is more employee sensitive than the salaries of the 400 plus employees that would be made public by the proposed change.

14. The public provision of the information at issue can be expected to have an adverse impact on employee morale and productivity that is extremely difficult for management to address.

15. The Commission should remember that this is not a situation where MAWC has refused to provide the employee salary information at issue. MAWC provided individual salary information for its employees to the Commission as a part of its 2006 Annual Report, as it has always done. MAWC also provided this information in response to data requests in its last rate case (Case No. WR-2007-0216), as it has always done. The Commission, its Staff and the Office of Public Counsel, the representative of the public have always had access to this information. There is no benefit to the public interest in making the information concerning the individual employees public that is not already served by the access had by the Commission, Staff and

Office of the Public Counsel.

WHEREFORE, MAWC respectfully requests that the Commission deny the Staff's request to reclassify.

Respectfully submitted,



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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on November 30, 2007, to the following:

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