



Commissioners
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Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

February 4, 2002

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

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

RE: Case No. WO-2002-273

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF'S RESPONSE TO MISSOURI-AMERICAN WATER COMPANY'S MOTION TO MODIFY PROTECTIVE ORDER AND REQUEST FOR EVIDENTIARY HEARING.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Victoria L. Kizito
Associate General Counsel
(573) 751-6726
(573) 751-9285 (Fax)
vkizito@mail.state.mo.us

VK:ccl
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 04 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

STAFF'S RESPONSE TO MISSOURI-AMERICAN WATER COMPANY'S MOTION TO

MODIFY PROTECTIVE ORDER

AND REQUEST FOR EVIDENTIARY HEARING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and
for its Response to Missouri-American Water Company's ("MAWC" or the "Company")
Motion to Modify Protective Order, respectfully states:

The Staff does not object to modifying the language of the Commission's
Protective Order, to include, within the definition of "highly confidential," the following
language:

**"(6) materials, documents, strategies and other information related to
actual or planned modifications of the company's methods of ensuring
physical security of its public utility facilities"**

This is identical to the language proposed by the Office of the Public Counsel
("OPC") in its response to the Company's Motion to Modify Protective Order.

The Staff objects, however, to MAWC's other proposed modifications to (1)
amend Paragraph W of the Protective Order such that Paragraph C is substantially
applicable to the Staff, (2) amend Paragraph C to prohibit Staff members from viewing

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security information unless they are United States citizens, and (3) amend Paragraph C to require Staff members to undergo a criminal background check before viewing security information.

The Staff agrees that, in light of security concerns that have recently been brought to the forefront, it is appropriate for the Staff to discuss with MAWC procedures for the handling of the sensitive and confidential information that relates to the physical security of the water utility, which the Staff has specifically requested in the form of data requests in this case. However, MAWC's proposed measures for a blanket amendment to the Protective Order such that Paragraph C apply to the Staff and OPC, that require persons viewing security information to be United States citizens, and that require persons viewing security information to undergo a criminal background check, are frivolous and are designed only to vex and harass the Staff and OPC in their duties to evaluate MAWC's application for an Accounting Authority Order ("AAO").

MAWC's proposed measures are not supported by any legal authority or any information that would justify such extraordinary restrictions. Further, the proposed measures do not rationally enhance the security of sensitive information, are unduly restrictive, overly burdensome, unnecessary and are contrary to the Commissions' regulatory oversight responsibilities.

The Staff proposes voluntary steps for its acquisition and handling of sensitive information that would be both effective in reducing unnecessary dissemination of sensitive information and which do not unduly interfere with the regulatory function.

Therefore, the Staff requests that the Commission either summarily deny the Motion to Modify, or set this matter for an evidentiary hearing, held pursuant to the Commission's procedures for taking highly confidential testimony, and require MAWC to present evidence in support of its motion.

SUGGESTIONS IN SUPPORT OF STAFF'S RESPONSE

1. **Standard for Issuance of AAO.** In its Motion to Modify Protective Order, MAWC incorrectly states that the Commission's ultimate issue for determination in this case is whether the September 11, 2001 attacks, or "the event driving the costs" that relate to security, is extraordinary in nature. (Motion for Protective Order, page 3). The issue for determination is not whether the event driving the costs is extraordinary, but rather whether the *effect on the company* is extraordinary. MAWC implies that the Staff's and OPC's data requests submitted to the Company in this case are not relevant to this proceeding. However, for the Commission to grant MAWC's AAO application for special treatment of security costs, the Commission must find by clear and satisfactory evidence, that the security expenses to be deferred are "extraordinary, unusual and unique and not recurring." *In the Matter of Missouri Public Service*, 1 MPSC 3d 200, 205 (1991). While an AAO case is not the occasion for the full prudence review that would be the subject of a rate case, the Company must prove that the security expenses, themselves, are in fact extraordinary, unusual and unique and not recurring, before deferral may be considered. The Uniform System of Accounts, which contains the accepted definition of "Extraordinary Items" and which the Commission cited in 1 MPSC 3d 200, 205 (1991), directs its analysis of extraordinary items to "the business activities

of the company” and the “operating processes of the business,” rather than to the character of the events causing the extraordinary expenses.

On January 25, 2002, the Staff submitted its data requests numbers 1-9 (attached hereto as Appendix A). The Staff seeks to obtain documentation from the Company that will enable Staff to evaluate the validity of MAWC’s request for special treatment of security expenses. Staff’s requests include inquiries regarding the security measures that MAWC put into place and intends to put in place in response to the September 11, 2001 attacks. In these data requests, the Staff also inquires into the costs and expenditures for such measures, and whether they are one-time or recurring. The Staff anticipates that MAWC will object to Staff’s data requests and will seek to impose the same limitations upon Staff as it sought to impose upon the OPC.

2. The NARUC Resolution. In its motion, MAWC also incorrectly characterizes NARUC’s Resolution on Commission Procedures Related to the Increased Security Measures Undertaken by Water Companies (“Resolution”). The Resolution’s guidance to Commissions relating to sensitive information provides that commissions should give such information “confidential treatment” and should retain such information “in a secure location under seal... .” The purpose of the Resolution would be met in this case by merely designating information relating to physical security of the plant as “highly confidential.” The Resolution in no way suggests the further restrictions and actions suggested by MAWC, which include limiting the availability of the information to Staff, limiting access to United States citizens and requiring criminal background checks.

3. Citizenship Requirement Has No Rationally Basis. The Staff agrees that it is appropriate to re-evaluate the procedures Staff uses for the handling of information regarding the security of public utilities in light of recent events. MAWC, however, has not demonstrated that requiring United States citizenship has any rational relationship with the goal of reducing the exposure of sensitive information the public. Recent history includes highly publicized crimes of terror initiated by United States citizens as well as non-United States citizens.

4. Citizenship Requirement Would Impede Staff's Work. The Staff supports the OPC's arguments in response to MAWC's motion regarding MAWC's suggestion that only United States citizens may have access to "highly confidential" information. The Commission also has no authority to impose such a restriction. Such a requirement would illegally discriminate on the basis of national origin. Not all Staff members are United States citizens, and on a day-to-day basis, the Staff who are necessary and available need to be able to freely consult with each other regarding any given case at any given time. The requirement that the Company suggests could therefore unduly restrict the Staff in its ability to perform its statutory function.

5. Criminal Background Checks Would Not be Effective. Criminal background checks conducted by the Missouri Highway Patrol would also be ineffective, as they would not necessarily contain criminal records accrued in other states. The Commission does not have any authority to require such an investigation.

6. Criminal Background Checks Would Invade Privacy. The Staff also supports the OPC's arguments regarding the potential implications of a criminal background check on the privacy rights of the Staff and the OPC under state and federal law. Further, the Staff points out that MAWC has not detailed how the criminal history check would be conducted and evaluated and what use would be made of the information that is gathered. For example, who would be responsible for evaluating the results of the criminal history check - MAWC or the Highway Patrol? Such details are necessary to determine what information would be disclosed and to whom it would be disclosed. MAWC also does not address the question of what entity would be responsible for the \$5.00 fee that must be paid for each criminal history check, pursuant to Section 43.530 RSMo. 2000.

7. 'Need To Know' Restriction is Not Workable. MAWC's suggestion as to how to limit the number of the Staff's in-house personnel who review the Company's information to those who have a "need-to-know" is not clear. Such restrictions upon the Staff personnel or attorneys of the General Counsel's Office would be of minimal benefit, would be unduly restrictive and would likely interfere with Staff's ability to efficiently carry out its regulatory function. On a day-to-day basis, the Staff who are necessary and available need to be able to freely consult with each other regarding any given case at any given time.

8. Statute Protects Company From Improper Disclosure. Section 386.480 RSMo. (2000) provides that:

No information furnished to the commission by a corporation person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo., shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. ... Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.

This provision, making disclosure of confidential information by Commission employees a criminal offense, makes the restrictions that MAWC wishes to impose upon the Staff and other personnel of the Commission unnecessary.

9. Requested Modification Would Vex And Harass Staff and OPC. MAWC's Motion to Modify the Protective Order provides no information showing that its requests are necessary for or rationally related to protection of the public. The requests in MAWC's motion, therefore, are only designed to vex and harass the Staff and the OPC in performing their duties to evaluate MAWC's application for an AAO.

10. Recommended Procedure. In this case, the Staff does not object to making certain accommodations with MAWC similar to those Staff has voluntarily made before with other utilities for other types of sensitive materials such as Board of Directors' meeting minutes and merger negotiation related documents. The Staff is willing to conduct its review of certain sensitive documents on-site at Company facilities in Missouri. If the Staff believes such documents are relevant to the Staff's investigation of the Company's Application, the Staff reserves the right to take verbatim notes from the

documents or, alternatively to obtain actual copies of the documents, if the Staff believes physical possession to be necessary to support the Staff's testimony and recommendations in this proceeding. Financial data regarding security-related investment and expenses should not be treated as "proprietary" or "highly confidential" in and of themselves. Only information regarding the nature of the security procedures and what steps have been taken or may be proposed should be considered highly confidential.

11. No Authority For Imposing Note-Taking and Copying Restrictions

Upon Staff. The Commission's discovery rules are set out in 4 CSR 240-2.090. This section allows for data requests as a means of discovery and states further that "[D]iscovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court." 4 CSR 240-2.090(1). Further guidance on the procedure of production of documents is found in Rule 58.01:

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, *to inspect and copy*, any designated documents... which constitute or contain matters within the scope of Rule 56.01(b) and which are in the possession, custody or control of the party upon whom the request is served...

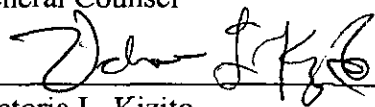
This provision places no limitations upon Staff's right to inspect and copy documents relating to the Company's AAO application. While the Commission's standard protective order contemplates the need for special restrictions on the dissemination of highly confidential information to other parties in the case who are not covered by Section 386.480 RSMo. (2000), which makes disclosure of confidential information by

Commission employees a criminal offense, MAWC cites no authority for imposing the same restrictions regarding copying and note-taking upon Staff.

WHEREFORE, Staff respectfully requests that the Commission summarily deny the Companies' Motion to Modify Protective Order or set this matter for an evidentiary hearing, held pursuant to the Commission's procedures for taking highly confidential testimony, and require MAWC to present evidence in support of its motion.

Respectfully submitted,

DANA K. JOYCE
General Counsel

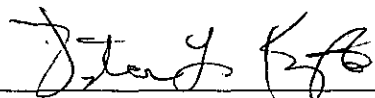


Victoria L. Kizito
Associate General Counsel
Missouri Bar No. 46244

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)
vkizito@mail.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 4th day of February 2002.





Commissioners
KELVIN L. SIMMONS
Chair
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BRYAN FORBIS

Missouri Public Service Commission

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Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

January 25, 2002

Mr. Jim Jenkins
Missouri-American Water Company
535 N. Ballas Rd.
St. Louis, MO 63141


Dear Mr. Jenkins:

Enclosed are Staff Data Requests Nos. 1-9 issued in Missouri Public Service Commission Docket No. WO-2002-273, Missouri-American Water Company.

When information concerning Missouri-American Water Company, St. Louis County Water Company and Jefferson City Water Company is desired individually, the data requests should so indicate. Otherwise, please assume that information is desired respecting the entire Missouri operations of Missouri-American Water collectively.

If you have any questions regarding these data requests, please feel free to call me at (573) 751-7443. Thank you.

Sincerely,


Mark Oligschläger
Regulatory Auditor

Information Requested:

In regard to the "certain government entities" listed on p.4 of the application, please provide copies (or allow the Staff access to copies) of all documentation pertaining to MAWC's communications with these entities, including all documents that reflect the recommendations made by these bodies to MAWC on security matters.

Requested By: Mark Oligschlaeger

Information Provided: _____

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. WO-02-273 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Missouri-American Water Company office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies of data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "you" or "your" refers to Missouri-American Water Company and its employees, contractors, agents or others employed by or acting in its behalf.

Signed By: _____

Date Response Received:

Prepared By: _____

Please describe or provide documentation that describes all new security procedures that have been put in place for the MAWC companies since September 11, 2001.

Information Provided:

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Missouri-American Water Company office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies of data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "you" or "your" refers to Missouri-American Water Company and its employees, contractors, agents or others employed by or acting in its behalf.

Prepared By: _____

Missouri-American Water Company

CASE NO. WO-02-273

Requested From: Jim Jenkins

Date Requested: 01/25/02

Information Requested:

For Missouri-American Water, St. Louis County Water, and Jefferson City Water, please provide the amount of security related costs reflected in each company's rates in its last Missouri rate proceeding. Break out these amounts into capital cost and expense components.

Requested By: Mark Oligschlaeger

Information Provided:

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. WO-02-273 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

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Signed By: _____

Date Response Received: _____

Prepared By: _____

CASE NO. WO-02-273

Information Requested:

B. Please provide the amount of all capital expenditures expected to be incurred by each of the MAWC companies in 2002 related to and in response to the Sept. 11 event. Break out these amounts by plant account, and indicate what depreciation rate the companies propose to use for deferral purposes for each account. Also indicate the expected in-service date for these capital projects.

Requested By: Mark Oligschlaeger

Information Provided:

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. WO-02-273 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

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Signed By:

Date Response Received:

Prepared By: _____

DATA INFORMATION REQUEST

Missouri-American Water Company

CASE NO. WO-02-273

Requested From: Jim Jenkins

Date Requested: 01/25/02

Information Requested:

Do the MAWC companies propose to defer carrying charges for its security related capital costs? If so, please provide the proposed carrying charge rate to be used for this purpose, and the basis for this proposed rate.

Requested By: Mark Oligschlaeger

Information Provided:

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. WO-02-273 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

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Signed By: _____

Date Response Received:

Prepared By: _____

DATA INFORMATION REQUEST

Missouri-American Water Company

CASE NO. WO-02-273

Requested From: Jim Jenkins

Date Requested: 01/25/02

Information Requested:

A. Please provide a listing and quantification of all incremental expenses the MAWC companies have incurred in 2001 for security reasons related to the Sept. 11 event, broken out by each company. For each expense item listed, provide the account the expense would normally be charged to, and whether the expense is recurring in nature or a one-time charge.

B. Please provide a listing and a projected quantification of all incremental expenses the MAWC companies expect to incur in 2002 for security reasons related to the Sept. 11 event, broken out by each company. For each expense item listed that was not included in Part (A), provide the account the expense would normally be charged to, and whether the expense is recurring in nature or a one-time charge.

Requested By: Mark Oligschlaeger

Information Provided:

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. WO-02-273 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

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Signed By:

Date Response Received:

Prepared By: _____

Information Requested:

Please provide support for the amounts provided.

B. Please provide an estimate of the total deferral that will be reflected in the 2002 books if this application is approved for each of the MAWC companies. Break out this amount by capital cost deferrals and expense deferrals. Please provide support for the amounts provided.

Requested By: Mark Oligschlaeger

Information Provided:

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Signed By: _____

Date Response Received:

Prepared By: _____

DATA INFORMATION REQUEST

Missouri-American Water Company

CASE NO. WO-02-273

Requested From: Jim Jenkins

Date Requested: 01/25/02

Information Requested:

For each of the MAWC companies, please provide the annual net income and net operating income amounts for the years 1998-2000. Provide the same information for 2001 when available.

Requested By: Mark Oligschlaeger

Information Provided:

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Signed By: _____

Date Response Received:

Prepared By: _____

DATA INFORMATION REQUEST

Missouri-American Water Company

CASE NO. WO-02-273

Requested From: Jim Jenkins

Date Requested: 01/25/02

Information Requested:

Please provide a copy of the American Water Works Annual Report to Shareholders for 2000. Provide a copy of the 2001 Report when available.

Requested By: Mark Oligschlaeger

Information Provided:

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. WO-02-273 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

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Signed By:

Date Response Received:

Prepared By: _____

**Service List for
WO-2002-273**

Revised: January 4, 2002, (cgo)

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

**David P. Abernathy
Missouri-American Water Company
535 N New Ballas Road
St. Louis, MO 63141**

**Stuart W. Conrad/Jeremiah Finnegan
Finnegan, Conrad & Peterson, L.C.
Penntower Office Center
3100 Broadway
Kansas City, MO 64111**

**Dean Cooper
Brydon, Swearngen & England
312 East Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102**

**Mr. James B. Duetsch
Blitz, Bargette & Duetsch
308 E. High, Suite 301
Jefferson City, MO 65101**