

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the matter of)	
)	
Utility Workers Union of America,)	
Local 335,)	Case No. WC-2011-0341
)	
and)	
)	
Missouri American Water Company.)	

**UWUA, Local 335's RESPONSE TO STAFF'S RESPONSE TO ANSWER AND MOTION
TO DISMISS**

1. In its three Count Complaint, Local 335 argues that MAWC has failed to (1) adequately provide a valve maintenance program, (2) adequately maintain a fire hydrant maintenance program, and (3) adequately oversee the training, qualifications, and safety record of subcontractors and the bid process used to select them on ISRS projects.

2. In its response, the Staff takes the position that Local 335's Complaint "adequately states a claim for Counts I and II"—but later takes the position that a motion to dismiss Counts I and II "may" be granted because Local 335 (1) "fails to ascertain with certainty its cause of action against the Company" and (2) that it "appears that [MAWC] has procedures for both valve and fire hydrant maintenance and those procedures do not violate any current rules, statutes, or tariffs issued by the Commission."

3. With regard to the first argument, all of the relevant data and evidence is in the possession of MAWC. To grant a motion to dismiss simply because MAWC is the only party in possession of the data in question would effectively insulate public utilities from Complaints before the Commission. Instead, the discovery process will permit the parties to fully flesh out all details in this matter.

4. With regard to the second argument, by assuming that MAWC already has proper procedures for valve and fire hydrant maintenance, the Staff relies on unsupported allegations presented in MAWC's Answer to support the dismissal of Counts I and II. This misstates the correct evidentiary standard on a motion to dismiss, which assumes that all facts stated in the Complaint are true. See, e.g., State ex rel. Nixon v. American Tobacco Co., Inc., 34 S.W.3d 122, 134 (Mo. 2000). Therefore, portions of MAWC's Answer may not be used to support a Motion to Dismiss.

5. The Staff further asserts that MAWC should not be required to follow any specific policy or reporting for valve or fire hydrant maintenance. However, Local 335 merely asks that MAWC be required to follow the policy its parent company, American Water Company, has established with regard to both valve and fire hydrant maintenance. Moreover, it is important to note that this policy was sponsored by Frank Kartmann, President of MAWC. Without further discovery in this matter, it is impossible to tell whether MAWC is complying with the policy created by its parent corporation.

6. The Staff also expresses concern over whether any additional "reporting or implementation might create an additional cost that may be passed to the rate payers in the future." To the contrary, the "Valve Operation, Inspection, and Maintenance Practice" document from MAWC's parent stresses that proper valve maintenance is a method to reduce costs through the avoidance of damage to infrastructure, loss of service interruption, and costly repairs.

7. Finally, the Staff recommends dismissal of Count III because the Commission lacks jurisdiction over working conditions between a utility and a labor organization. This misunderstands Local 335's argument: Count III does not seek to prevent MAWC from subcontracting ISRS work. Instead, it argues that the selection of subcontractors on a "no bid"

basis implicates the safety and adequacy of the service provided by MAWC. Moreover, the training provided to the employees of such subcontractors directly impacts safety and adequacy of service. Therefore, there is jurisdiction over Count III.

For these reasons, Local 335 asks that MAWC's Motion to dismiss be denied.

Respectfully submitted,

/s/ Michael A. Evans
MICHAEL A. EVANS, MBN 58583
HAMMOND and SHINNERS, P.C.
7730 Carondelet Avenue, Suite 200
St. Louis, Missouri 63105
(314) 727-1015 (Telephone)
(314) 727-6804 (Fax)
mevans@hstly.com (email)
Attorneys for UWUA Local 335

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served on June 9, 2011, by United States mail, hand-deliver, email, or facsimile upon:

Office of the General Counsel
GenCounsel@psc.mo.gov

Office of the Public Counsel
opcservice@ded.mo.gov

Dean L. Cooper
dcooper@brydonlaw.com

Carla Schnieders
Carla.schnieders@psc.mo.gov

Rachel Lewis
Rachel.lewis@psc.mo.gov

Meghan McClowry
Meghan.mcclowry@psc.mo.gov

/s/ Michael A. Evans