

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

ROB LEE,)	
)	
Complainant,)	
)	
v.)	File No. WC-2009-0277
)	
MISSOURI AMERICAN)	
WATER COMPANY,)	
)	
Respondent.)	

**PROTECTIVE ORDER AND
ORDER DENYING MOTION TO RECONSIDER OR CLARIFY**

Issue Date: June 2, 2009

Effective Date: June 2, 2009

The Missouri Public Service Commission is denying Missouri American Water Company's ("MAWC'S") motion to reconsider or clarify filed on June 2, 2009 ("the motion"), but issuing a protective order, as follows.

Discovery before the Commission is virtually the same as under the Missouri Supreme Court rules for civil actions in circuit court.¹ The motion addresses the Commission's orders dated May 29 and June 1, 2009 granting motions to compel filed by Rob Lee. Mr. Lee's complaint and its many supplements allege that MAWC's system is leaking, as shown by the appearance of surface water, at several locations near his residence. The hearing date is June 9 and 10, 2009.

MAWC addresses the following three items of discovery that Mr. Lee served on MAWC:

¹ Section 536.073.2, RSMo 2000, and 4 CSR 240-2.090(1) and (2).

Item	Matter
First Request No. 1	Repair records for last nineteen (19) years within a 1/4 mile radius of 11119 Carl, St.
Second Request No. 2	All records of any leak testing performed on the water system in the last 70 years within one quarter mile radius of my home at 11119 Carl, St. Louis Mo 63138. If no records exist please state how MAWC has verified the integrity of [its] aging water system.
Second Request No. 3	A list of all complaints within one quarter mile radius of my home at 11119 Carl, St. Louis Mo 63138 in the last 19 years and the action taken to resolve each complaint.

MAWC makes three arguments.

a. Reconsideration

As to First Request Item No. 1, and Second Request Item No. 3, MAWC renews its objection to such discovery on the grounds that only current leaks are at issue and information from the past is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. But such information tests Mr. Lee's theory of pervasive breakdown in MAWC's system and is therefore reasonably calculated to lead to the discovery of admissible evidence.² Therefore, the Commission will deny the motion as to MAWC's renewed relevance objections to Mr. Lee's First Request Item No. 1, and Second Request Item No. 3.

b. Seven-Year Limitation

As to Second Request Item Nos. 2 and 3, MAWC asks to limit compliance to seven years, which MAWC alleges is the period for which such matters are in electronic format and subject to timely production. Otherwise, MAWC alleges, it will have to conduct a manual search of many records and cannot comply in time for the hearing date that the parties have chosen.

² *Id.*

But MAWC has already produced such matter according to MAWC's two previous statements as to both items:

. . . Respondent states it has previously produced to Complainant said records for the previous ten (10) year period in the civil action styled *Rob Lee v. Missouri-American Water Co.*, pending in Division 15 of St. Louis County Circuit Court, Cause No. 08SL-CC001242, as well as **in this action.**^[3]

On the basis of those representations, the May 29, 2009 order limited production from Mr. Lee's requested 70 years to MAWC's requested 10 years.

MAWC's responses are inconsistent. First, MAWC stated that that it had already produced 10 years of the requested matter. Second, MAWC repeated that assertion. Third, MAWC now states that it has not produced any matter but can timely produce seven years of such matter. MAWC does not explain the inconsistency. Therefore, the Commission will deny the motion as to further limitation on Mr. Lee's Second Request Item Nos. 2 and 3.

c. Ten-Year Limitation

MAWC seeks clarification as to that compliance with First Request Item No. 1 is subject to the ten-year limitation that the Commission imposed on other matters. The Commission imposed that limitation in addressing the following objection by MAWC:

[MAWC] objects to said data request in that it is overly broad and unduly burdensome due to [Mr. Lee]'s failure to limit his request to a specific time period.^[4]

MAWC raised that objection to the following items.

³ "Respondent's Objections to Complainant's 2nd Request for Information from MAWC" filed on May 15, 2009; and "Respondent's Response to Complainant's 2nd Request for Information from MAWC" filed on May 26, 2009. Emphasis added.

⁴ "Respondents Objections to Complainant's Data Requests," filed on April 6, 2009. Emphasis added.

Item	Matter
First Request No. 6	The number of feet of these pipes that have been tested with the ultrasonic type of test.
First Request No. 8	The number of gallons unaccounted for in this water system.
Second Request No. 6	Convert the total amount of “Non-revenue Water” to the total number of gallons of “Non-revenue Water” for this system.

MAWC did not raise that objection to First Request Item No. 1. That item drew only the following objection:

[MAWC] objects to said data request in that it is overly broad unduly burdensome.⁵

Because MAWC did not raise the temporal scope of the request, the Commission did not rule on it. Therefore, the Commission will deny the motion for clarification as to First Request Item No. 1.

In the alternative, the Commission will construe MAWC’s arguments as a motion for a protective order:

. . . to protect a party . . . from . . . undue burden or expense, including one or more of the following:

* * *

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

* * *

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters[.⁶]

MAWC cites the burden of compliance as follows.

⁵ *Id.*

⁶ Missouri Supreme Court Rule 56.01(c).

MAWC states that compliance will require a manual search of its files for the last 19 years. But the rest of MAWC's earlier statements about First Request Item No. 1 are:

. . . **Respondent** states it **has previously produced to Complainant said records for the previous ten (10) year period** in the civil action styled *Rob Lee v. Missouri-American Water Co.*, pending in Division 15 of St. Louis County Circuit Court, Cause No. 08SL-CC001242.[⁷]

Thus, the burden described in the motion is not as MAWC described it earlier.

Nevertheless, Mr. Lee has offered no argument in favor of the 19-year period for the matters he seeks in this item. MAWC has already produced the matter for ten years in the related civil suit. Consistency with the other discovery and attendant ease of administration also support a protective order.

Therefore, the Commission will grant a protective order limiting compliance with First Request Item No. 1 to a period of ten years.

THE COMMISSION ORDERS THAT:

1. MAWC's motion for reconsideration or clarification is denied.
2. A protective order is granted as to Item No. 1 of Mr. Lee's request for information filed March 23, 2009. As to such item, MAWC shall produce all matters requested and not already produced in this action, including matters related to the period from 2006 to date, subject to a ten-year limitation.

⁷ "Respondents Objections to Complainant's Data Requests," filed on April 6, 2009. Emphasis added.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Daniel Jordan, Regulatory Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 2nd day of June 2009.