

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

UTILITY WORKERS UNION OF	)	
AMERICA, LOCAL 335,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. WC-2011-0341
	)	
MISSOURI-AMERICAN WATER	)	
COMPANY,	)	
	)	
Respondents.	)	

**MAWC’S REPLY TO RESPONSE IN OPPOSITION**

COMES NOW, Missouri-American Water Company (MAWC), by and through its counsel, and, in reply to the Response in Opposition to Motion to Dismiss, respectfully states the following to the Missouri Public Service Commission (Commission):

1. On May 18, 2011, MAWC filed an Answer and Motion to Dismiss in this matter. The Utility Workers Union of America, Local 335 (Local 335 or Union) filed its Response in Opposition to Motion to Dismiss (Response) on May 23, 2011.
2. MAWC’s Motion to Dismiss pointed out that none of the three identified counts of Local 335’s Complaint allege a violation of any provision of law or of any rule or order or decision of the Commission. Local 335’s Response further supports MAWC’s allegations and a dismissal of the Complaint.
3. Local 335 claims in its Response that the counts in its Complaint are based on the allegation that MAWC has failed to provide service that is “safe and adequate and in all respects just and reasonable” and, therefore, the Motion to Dismiss should be denied.

4. In support of this position, Local 335 cites the Commission's Order Denying Motion to Dismiss, issued in *USW Local 11-6 v. Laclede Gas Company*, Case No GC-2006-0390 (August 10, 2006). A review of this Order highlights the insufficiency of the Complaint in this case. In the *Laclede* Order, the Commission denied a motion to dismiss because the underlying Complaint alleged that certain meter implementation was "not being done in a safe manner" and that "Laclede's subcontractor's employees [were] causing damage to meters and [were] causing gas leaks."<sup>1</sup> Here, the Complaint alleges no unsafe conditions, nor results, that would be similar to an action which caused a gas leak. The Complaint merely alleges that certain aspects of the MAWC operation are not being conducted in the manner sought by Local 335.

5. As to the first two counts, Local 335 attempts to cover its deficiency by describing the alleged conduct as being "detrimental to customer service and create s safety hazards." Response, p. 2, lines 7-8. However, there is no violation of tariff, rule or law found in these counts and no detriment to customer service or unsafe condition cited.

6. As to Count III, the best that Local 335 can state is that, if true, its allegation "creates the potential for conflicts of interest between the contractors and MAWC management, which may also adversely impact safety and adequacy of service. Response, p. 2, lines 9-12 (emphasis added). "Potential" conflicts that "may" create violations at some point in the future cannot, by law, form the basis for a complaint.

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<sup>1</sup> While the motion to dismiss in Case No. GC-2006-0390 was denied, approximately ten months later the Commission issued its Report and Order in the case finding in favor of Laclede because the subject union "failed to present sufficient evidence to prove its allegations" and because "the service provided by Laclede relating to the installation of AMR devices on its meters [was] safe and adequate." Report and Order, Case No. GC-2006-0390 (June 22, 2007).

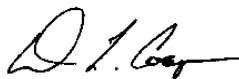
7. Local 335 also ignores the Commission's decision indicating that the Commission has no jurisdiction to "dictate to the company whether it must use its internal workforce rather than outside contractors." *In the Matter of Union Electric Company d/b/a AmerenUE*, Report and Order, Case No. ER-2008-0318 (issued January 27, 2009). The Union instead argues that the Commission may "determine whether or not MAWC's process for selecting subcontractors *implicates* its provision of 'safe and adequate' service." Response, p.3, lines 1-2 (emphasis added). The question in a complaint is not whether safe and adequate service is implicated by utility decisions, but whether or not there has been a failure to provide safe and adequate service.

8. Finally, Local 335 argues that its requested relief – investigation as to whether or not MAWC's practices may be, or might lead to, the provision of inadequate service – is within the powers granted to the Commission (Section 393.140(2), RSMo). While the power to investigate is certainly within the Commission's powers, this response misses the intent of MAWC's underlying argument. An investigation is a fact finding venture. It may be undertaken with or without the existence of a case. The result of an investigation may or may not ultimately justify the filing of a complaint. MAWC's point is that if there is a need to investigate to discover whether or not safe and adequate service is being provided, the matter is not (and may never be) ripe for complaint.

**WHEREFORE**, Missouri-American Water Company prays the Commission dismiss the

Complaint and grant such other relief as the Commission deems reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on June 2, 2011, to the following:

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