

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 19<sup>th</sup> day  
of April, 2011.

In the Matter of,	)	
	)	
Utility Workers Union of America,	)	
Local 335,	)	<b><u>File No. WC-2011-0291</u></b>
	)	
and	)	
	)	
Missouri-American Water Company	)	

**ORDER REGARDING REQUEST FOR DISCLOSURE PURSUANT  
TO COMMISSION RULE 4 CSR 240-3.640(5)**

Issue Date: April 19, 2011

Effective Date: April 29, 2011

**Local 335's Request**

On March 17, 2011, Utility Workers Union of America, Local 335 ("Local 335"), filed pleading captioned "Complaint" with the Commission regarding Missouri-American Water Company's ("MAWC") 2009 Annual Report. Local 335 objects to MAWC designating the salaries of its officers as being "nonpublic."

Commission Rule 4 CSR 240-3.640(5)<sup>1</sup> provides:

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

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<sup>1</sup> Commission Rule 4 CSR 240-3.640 outlines the annual report submission requirements for water utilities.

under seal. The utility affected by the request may file a response to a pleading filed under these provisions within fifteen (15) days after the filing of such a pleading. Within five (5) business days after the due date for the filing of the utility's response to a request filed under these provisions, the general counsel by filing of a pleading will make a recommendation to the commission advising whether the request should be granted.

Local 335 claims that disclosure of the salaries of MAWC's officers is in the public interest, and because of the highly regulated nature of the water industry, the public has a right to know the compensation paid to MAWC's officers.

### **MAWC's Response**

On April 1, 2011, MAWC responded. MAWC points out that it filed its 2009 Annual Report on April 15, 2010, and provided all information requested by the Commission. Among other things, the annual report requested the name, title, office address and salary of each MAWC officer whose annual salary is \$50,000 or more. The title and names of MAWC's seventeen corporate officers (president, vice presidents, and the assistant secretaries, treasurers and comptrollers) were provided in the public document. However, in accordance with Commission Rule 4 CSR 240-3.640, MAWC identified the salary information as nonpublic.<sup>2</sup> On August 27, 2010, the Commission Staff sent correspondence to MAWC indicating the annual report filing requirements had been satisfied and that no further response was necessary.

According to MAWC, Local 335's argument is directly contrary to the Missouri statutes. MAWC cites Section 386.480, RSMo 2000, which creates the opposite presumption – that is, that information provided by a public utility should not be open to public inspection and not be made public, unless certain exceptions exist. MAWC believes

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<sup>2</sup> Commission Rule 4 CSR 240-3.640(4), provides in pertinent part: "If a water utility subject to this rule considers the information requested on the annual report form to be nonpublic information, it must submit

that since the information is provided to the Commission and its Staff as a part of the annual report filing, public disclosure is not necessary because the persons and entities responsible for regulating MAWC already have access to this information. MAWC's financial information is provided in even greater detail in the course of MAWC's general rate cases, where the setting of just and reasonable rates is at issue. The Commission, its Staff and the Office of the Public Counsel have always had, and continue to have, access to this specific salary information for purposes relevant to the regulation of MAWC.

MAWC also argues that the Commission has already determined that the public interest is served by protecting this information. Commission Rule 4 CSR 240-2.135(1)(B) provides, in part, that "highly confidential" information includes "employee-sensitive personnel information." No information is more employee sensitive than the employee salaries sought by Local 335's request, MAWC argues. MAWC believes release of this information would be contrary to this general policy determination that the Commission made previously.

### **Staff Counsel's Recommendation**

On April 6, 2011, Staff Counsel filed its recommendation.<sup>3</sup> Staff Counsel recommends that the request for declassification be granted, because it believes the public interest in disclosing the information in question outweighs any possible private interest in keeping it confidential. According to Staff Counsel, MAWC is the monopoly provider of a necessity of life to its ratepayers, and therefore the public has a right to access such information as may be necessary to understand exactly what is included in the "just and

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both a fully completed version to be kept under seal and a redacted public version that clearly informs the reader that the redacted information has been submitted as nonpublic information to be kept under seal."

<sup>3</sup> On March 21, 2011, the General Counsel delegated the duty to provide the requested recommendation to the Chief Staff Counsel.

reasonable” rates for this service. Executive compensation is necessarily a matter of abiding and legitimate public concern, particularly as rising costs make utility service increasingly less affordable to a segment of the public. The state, which exists to serve and protect its citizens, has granted and sustains the monopoly enjoyed by MAWC and, moreover, sets the rates for its services. Consequently, according to Staff Counsel, withholding the information from the public can only result in an erosion of public trust.

### **MAWC’s Reply**

On April 13, 2011, MAWC filed a reply to Staff’s recommendation. MAWC asserts that Staff is unable to identify a basis for its alleged “public interest,” beyond the basic statement that MAWC is a regulated public utility. MAWC also does not believe that making the salary information public will serve Staff’s stated purpose of understanding what is included in the just and reasonable rates, because rate cases are based on a historical test year that may or may not be match a calendar year, because adjustments to the historical figures are frequently made by Staff, and because salaries change over time. Consequently, the salaries reported in MAWC’s 2009 Annual Report, according to MAWC, are almost certainly not exactly what is included in the “just and reasonable rates” and not even the same exact information that was examined by the parties involved in setting those rates.

MAWC further asserts that if a party wants to find out what salaries are examined for the purpose of setting rates, this can be done within the context of a rate case and Local 335, being a party to MAWC’s rate cases, has had the opportunity to request and examine, albeit subject to the Commission’s confidentiality rule, the requested salary information.

MAWC states there is no “withholding” of information and there can be no erosion of public trust as Staff has claimed.

MAWC also challenges Staff’s suggestion that the requested information should be provided to the public because the state “has granted and sustains the monopoly enjoyed by MAWC”. MAWC claims it has been found previously that a certificate does not provide an exclusive right to serve.

Finally, MAWC believes that maintaining the confidentiality of this salary information will protect from public disclosure personal and sensitive information that is specific to individual employees and might be used to harass or embarrass those employees. And, maintaining the subject information as nonpublic is consistent with the policy found in both Missouri statutes and the Commission’s rules.

## **Decision**

The Commission notes that while Local 335 captioned its request as being a complaint, it has alleged no violation of any statute, regulation or tariff provision. Consequently, the Commission’s decision on Local 335’s request does not involve a finding of any violation or any potential adverse consequences that might normally be associated with such a violation. Indeed, the Commission’s Staff has advised MAWC that its 2009 Annual Report requirements were satisfied. That being said, the Commission agrees with Local 335 and Staff Counsel that it is in the public interest to require disclosure of MAWC’s officers’ salaries.

## **THE COMMISSION ORDERS THAT:**

1. Utility Workers Union of America, Local 335’s request to have Missouri-American Water Company disclose the salaries of its officers is granted.

2. No later than May 16, 2011, Missouri-American Water Company shall re-classify the salaries of its officers as public information in its 2009 Annual Report, and shall include that information in the public version of its 2009 Annual Report.

3. No later than May 16, 2011, Missouri-American Water Company shall re-classify the salaries of its officers as public information in its 2010 Annual Report, and shall include that information in the public version of its 2010 Annual Report.

4. This order shall become effective on April 29, 2011.

5. This file shall be closed on April 30, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Gunn, Chm., Clayton, Davis, and Kenney, CC., concur.  
Jarrett, C., concurs, with separate concurring opinion to follow.

Stearley, Senior Regulatory Law Judge