

Clayton, Robert

From: Dean Cooper [dcooper@brydonlaw.com]
Sent: Monday, November 26, 2007 1:32 PM
To: Wandel, Joan
Cc: Mills, Lewis; Davis, Jeff; Appling, Linward (Lin); Murray, Connie; Clayton, Robert; Jarrett, Terry
Subject: 2007 Annual Report Form
Attachments: 2007 Annual Report - MAWC Comments.pdf

Ms. Wandel –

In response to your invitation, attached please find comments provided on behalf of Missouri-American Water Company in response to the 2007 Annual Report Form proposed changes. A hard copy will be delivered this afternoon.

If you have any questions, please contact me.

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12/13/2007

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November 26, 2007

**HAND DELIVERED AND VIA
ELECTRONIC MAIL**

Ms. Joan C. Wandel
Manager, Auditing Department
Missouri Public Service Commission
Governor State Office Building, 4th Floor
Jefferson City, Missouri

**RE: 2007 Annual Report Forms
Missouri-American Water Company**

Dear Ms. Wandel:

Thank you for your letter dated November 20, 2007, providing Missouri-American Water Company (MAWC) the opportunity to provide comments in regard to the proposed changes to the 2007 Missouri Annual Report forms that were presented to the Commission on November 20, 2007. We would like to take this opportunity to provide you with the following information before the Commission makes a decision in regard to these changes.

MAWC is necessarily interested in the proposed changes to the large water corporation form. As we understand the document, there are two changes proposed: 1) the insertion of a footnote below section 1 indicating that "the fact that the information provided in this section is salary information is not deemed an adequate reason for this information to be treated as Highly Confidential;" and 2) a split within column e of Section one to provide "total" and "regulated" portions of the Missouri allocated salary.

The Commission should be mindful of the fact that section one does not just request salary information associated with officers and directors. It also requests salary information for "each other employee whose annual salary is \$50,000 or more." Such a request extends beyond officers and directors to rank and file employees. Applying the proposed change to MAWC's 2006 Annual Report would have made public the salaries of over 400 employees, many of whom perform duties that would not normally put them in the public eye.

This is not a situation where MAWC has refused to provide employee salary information. MAWC provided individual salary information to the Commission as a part of its 2006 Annual

Report, as it has always done. MAWC also provided this information in response to data requests in its last rate case (Case No. WR-2007-0216), as it has always done.

The issue appears to be the fact that the information was provided in accordance with Commission Rule 4 CSR 240-3.640(4), which provides that a utility may file information as confidential if the "water utility subject to this rule considers the information requested on the annual report to be nonpublic information." MAWC has complied with this rule in the past and intends to comply with this rule in the future. An attempt to effect an amendment of this rule through the adjustment of the annual report form, rather than the rulemaking process specified by statute, would be unlawful.

It is MAWC's further observation that both the existing form and the proposed changes appear to be inconsistent with the statutes and rules governing this matter. The annual report process is governed by Section 393.140(6), RSMo. That statute does not require salary information for individual employees. It instead states in relevant part that the "report shall show in detail . . . the names of its officers and the *aggregate* amount paid as salaries to them and the amount paid as wages to its employees" (emphasis added).

Black's Law Dictionary defines "aggregate" to mean "entire number, sum, mass, or quantity of something; total amount; complete whole. . . . Composed of several; *consisting of many persons united together*; a combined whole" (emphasis added). Thus, to the extent the Annual Report Form requests salary information concerning individual employees rather than the aggregate salaries paid by MAWC, it already exceeds the Commission's jurisdiction. Additionally, Section 393.140(6) applies only to persons and corporations under the Commission's supervision and amounts paid by them. To the extent that the Annual Report Form asks for salary amounts paid by entities other than MAWC, it also exceeds the Commission's jurisdiction.

As to the statement that "salary information is not deemed an adequate reason for this information to be treated as Highly Confidential," MAWC would note that the Commission's own rules currently consider such information to be confidential. Commission Rule 4 CSR 240-2.135 states, in part, that "highly confidential" information includes "employee-sensitive personnel information."

MAWC's designation of the employee salary information as confidential is therefore consistent with the Commission's own rules. No information is more employee sensitive than the salaries of the 400 plus employees that would be made public by the proposed change. The public provision of such information can be expected to have an adverse impact on employee morale and productivity that is extremely difficult for management to address. In fact, no other state within American Water's Central Region requires this information be provided in a public form.

Ms. Joan C. Wandel
Manager, Auditing Department
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If the Commission desires that executive salaries similar to those provided by publicly traded Missouri utilities be provided in public form, MAWC would note that such information for American Water is already available. That information is included in American Water's S-1 that is on file with the Securities and Exchange Commission (www.sec.gov).

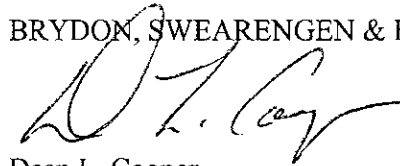
For the reasons stated above, we would encourage the Commission to not amend the 2007 Annual Report Form for large water utilities as is proposed in your letter dated November 20, 2007.

Thank you for the opportunity to provide these comments and for the Commission's consideration.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

Cc: Commissioners
Office of the Public Counsel