



through the Commission's General Counsel as authorized by Commission Rule 4 CSR 240-2.070(1). Section 386.390.1 provides that "Complaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

3. Respondent Missouri-American Water Company ("MAWC") is a Missouri corporation with its principal office and place of business at 727 Craig Road, St. Louis, Missouri 63141. MAWC provides water service to the public for gain in and around the cities of Brunswick, Jefferson City, Joplin, Mexico, Parkville, Riverside, St. Joseph, Warrensburg, and parts of Lincoln, Platte, St. Charles, St. Louis, and Warren Counties, Missouri; and provides sewer service to the public for gain in and around the cities of Cedar Hill and Parkville and in parts of Warren County, Missouri. MAWC provides water service to approximately 459,000 customers and sewer service to approximately 1,000 customers. MAWC is the largest single water utility in the State of Missouri.

4. The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and is authorized under §§ 386.700 and 386.710, RSMo 2000, to "represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]"

***Jurisdiction:***

5. By reason of the activities described in Paragraph 3, above, MAWC is a water corporation, a sewer corporation and a public utility within the intendments of § 386.020, RSMo Supp. 2006, and is subject to the jurisdiction and regulation of this Commission pursuant to § 386.250 and Chapter 393, RSMo.

***The Annual Report Obligation:***

6. At § 393.140(6), the Missouri General Assembly has authorized the Commission to require every public utility by statute the obligation of filing with the Commission an Annual Report:

Require every person and corporation under its supervision and it shall be the duty of every person and corporation to file with the commission an annual report, verified by the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same, shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report shall show in detail the amount of its authorized capital stock and the amount thereof issued and outstanding; the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; its receipts and expenditures during the preceding year; the amount paid as dividends upon its stock and as interest upon its bonds; the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person or corporation making such report to amend the same within a time prescribed by the commission. Any such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state. The commission may extend the time prescribed for cause shown.

7. Pursuant to the authority delegated in § 393.140(6), the Commission has duly promulgated its Rule 4 CSR 240-3.640, which sets out the annual report obligation

imposed on every public water utility in Missouri.<sup>2</sup> That rule, at subsection (4), allows each reporting utility to designate some or all of the information in its annual report as confidential information, which is not available to the public. The cited rule, at subsection (5), also sets out a mechanism whereby the designation by the reporting utility of some or all of the information in its annual report as confidential information may be challenged, as follows:

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 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.

***The Conduct Complained of:***

8. MAWC initially filed its Annual Report for 2006 on April 16, 2007. The report was deficient in that it failed to include any salary information concerning officers and directors and did not include all required information concerning employees earning more than \$50,000 annually. After Staff issued a Deficiency Notice on June 11, 2007, MAWC supplemented the report on July 2, 2007.

9. In its Annual Report for 2006 as supplemented, MAWC designated as confidential all of the salary-related information requested by the Commission form, pertaining to officers, directors and employees making more than \$50,000 annually. In

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<sup>2</sup> Rule 4 CSR 240-3.335, which sets out the annual report obligation of public sewer utilities in

support and explanation of this designation, MAWC stated, "The data regarding salary information is not public information and is not publicly available in any format."

***Why the Information Should be Disclosed:***

10. Rule 4 CSR 240-3.640(5) requires that the entity seeking disclosure of the information designated as confidential by the reporting utility must file a pleading that "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 under seal." In satisfaction of this requirement, Staff states as follows:

A. The General Assembly specified the disclosure of salary information in § 393.140(6) and did not there provide any mechanism for keeping such information secret; therefore, the General Assembly must be considered to have already determined that the public interest is best served by disclosing such salary information;

B. The justification stated by MAWC for keeping the salary information secret does not even address the public interest;

C. The justification stated by MAWC for keeping the salary information secret does not state that the Company will suffer any harm or prejudice whatsoever if the salary information is made public;

D. Ratepayers desire access to salary information to ascertain whether the compensation paid to public utility officers, directors and executives is reasonable; such public access must be permitted because the compensation of officers, directors and executives is an item that is treated "above the line" and is

thus charged to the ratepayers in ratemaking and paid by the ratepayers in rates;<sup>3</sup>

E. The public interest requires that public utility ratemaking, including such operating expense items as the compensation paid to public utility officers, directors and executives, be open and public in order to maintain public confidence in the ratemaking process;

F. Withholding the salary information from the public will necessarily foster concerns and induce suspicions that the actual information shows matters of excess or impropriety; and

G. Staff has already received a number of requests by members of the public for the confidential salary information contained in MAWC's Annual Report for 2006.

**WHEREFORE,** Staff prays that the Commission will (1) send Notice of this Complaint to MAWC, (2) require MAWC to file its responsive pleading within fifteen (15) days thereafter, pursuant to Rule 4 CSR 240-3.640(5), and (3) thereafter by its order make public the salary information designated confidential by MAWB in its 2006 Annual Report; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully Submitted,

**/s/ KEVIN A. THOMPSON**

Kevin A. Thompson  
General Counsel  
Missouri Bar No. 36288

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<sup>3</sup> James E. Sueflow, *Public Utility Accounting: Theory and Application (MSU Public Utilities Studies)*, 23-25, 77-79 (East Lansing, 1973).

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Missouri Public Service Commission

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served as required by Rule 4 CSR 240-3.640(5), either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **13<sup>th</sup> day of November, 2007**, on Respondent and Respondent's attorneys of record as set out below:

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s/ Kevin A. Thompson