

In the Matter of Missouri-American Water Company

Discovery Conference

Judge Ron Pridgin

January 12, 2023

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1 (The proceedings commenced at 10:02 a.m.)
2 THE COURT: Good morning. We are on the
3 record. This is the discovery conference in
4 File No. WR-2022-0303. I am Ron Pridgin. I'm the
5 regulatory law judge assigned to preside over this
6 conference that's being held via Webex on
7 January 12th, 2023, and the time is approximately
8 10:03 a.m.

9 I would like to get entries of appearance
10 from counsel, please. And let me begin with the
11 Office of the Public Counsel.

12 MS. VANGERPEN: Good morning, Your Honor.
13 Lindsay VanGerpen on behalf of the Office of the
14 Public Counsel.

15 THE COURT: All right. Ms. VanGerpen,
16 thank you.

17 On behalf of the staff of and the
18 Commission, please.

19 MS. BRETZ: Karen Bretz Commission staff.

20 THE COURT: Ms. Bretz, thank you.

21 On behalf of Missouri American Water
22 Company, please.

23 MR. COOPER: This is Dean Cooper from
24 Brydon, Swearingen & England, PC, appearing on
25 behalf of Missouri American Water Company. And

1 I'll -- Ms. Niemeier is on as well. I'll let her
2 enter her appearance.

3 MS. NIEMEIER: Good morning. This is
4 Rachel Niemeier on behalf of Missouri American Water
5 Company, and my address is 727 Craig Road in
6 St. Louis 63141.

7 THE COURT: Mr. Cooper, thank you.
8 Ms. Niemeier, thank you.

9 Does anyone else wish to enter an
10 appearance?

11 All right. Hearing nothing, because this
12 is OPC's concern with discovery, my plan was to let
13 public counsel proceed with whatever concerns it has
14 and then let the company respond and let the staff
15 respond, unless the parties wish to go another
16 direction.

17 All right. I'm not hearing any --
18 anything, so Ms. VanGerpen, when you are ready.

19 MS. VANGERPEN: Thank you, Your Honor.

20 So the OPC has noticed four of our DRs
21 that we are having some trouble getting responsive
22 information to, and so it was my thought that we
23 could just maybe go through each individual one. I
24 believe -- I've -- I've been speaking with
25 Mr. Cooper that we might have a preliminary

1 agreement as regards to one of these and a possible
2 move forward on another, but I think we -- we might
3 still discuss those just while we're here.

4 So for the first one, it's DR 3001. And
5 this pertains to analyst reports. And the reason
6 that OPC -- so OPC has requested these reports, and
7 we've received a number of them, but as I understand
8 it, we are missing at least four of those reports.
9 And so -- and so we are requesting those reports --
10 the remaining four reports -- four of the firm's --
11 I apologize, Your Honor. I've been corrected. It
12 is four reports -- four firms.

13 THE COURT: Okay. Did you want to go
14 through these one by one, Ms. VanGerpen, or did you
15 just want to state your concern to all of these and
16 let the company respond? I don't have a preference.

17 MS. VANGERPEN: I think it might be easier
18 just to go one by one, if that's okay with everyone.

19 THE COURT: That's certainly fine with me.
20 Mr. Cooper, Ms. Niemeier, any response on
21 behalf of the company?

22 MR. COOPER: Sure. Yes, Your Honor.

23 As to 3001 -- and this will be something
24 that I'll restate, probably, in regard to two of the
25 other three as well. You'll note that the request

1 is for information concerning American Water Works
2 Company and not Missouri American. Additionally --
3 and -- well, let me back up.

4 So as to three of these four, we're going
5 to certainly believe that -- that Missouri American
6 has NO possession, custody, or control over the
7 documents that are being requested. They've done
8 what they can to request documents to provide
9 documents as best they can, but it's not something
10 that -- that they have in their possession and can
11 provide on their own.

12 Beyond that, as to 3001, again, what we're
13 talking about are equity research reports published
14 on American Water. They're not published by
15 American Water. They're not requested or contracted
16 for, even, by American Water. So, again, we've done
17 our best to provide those, as Ms. VanGerpen
18 indicated. There's permission to provide 10 of the
19 14 that are known, but these come with some -- some
20 terms and -- and restrictions from the publisher of
21 the reports. And when I say "published," it's not
22 like these are published for public consumption.
23 They're sent, as I understand it, to subscribers,
24 that sort of thing, so they're very proprietary to
25 the -- to the issuer. At least three of those four

1 remaining -- I think they are banks -- I understand
2 have indicated they do not consent to any further
3 release.

4 So that's kind of where we are on 3001. I
5 don't know what more Missouri American can -- can do
6 in this regard and -- and we would -- we would toss
7 it back to you, Your Honor, at that point.

8 THE COURT: All right. Thank you.

9 Ms. Bretz, any staff response on OPC Data
10 Request 3001?

11 MS. BRETZ: I don't think so.

12 Mr. Foster, Mr. Spratt, do you have
13 anything you want to say about 3001?

14 MR. SPRATT: No, I don't.

15 THE COURT: Thank you.

16 Ms. VanGerpen, I'll throw it back to you
17 to DR 3010, then.

18 MS. VANGERPEN: Thank you, Your Honor.

19 And so as it concerns 3010, this pertains
20 to American Water's finance committee materials.
21 And, again, OPC has requested these because they
22 discuss capital structure strategies, cost of
23 capital, business risk, and capital markets in
24 general. And it's the OPC's position that those are
25 at the heart of the rate of return issues that are

1 at issue in the current general rate case. As I
2 understand it -- I think this might be one of the --
3 the DRs that OPC and Missouri American are -- are
4 working towards a resolution on; however, that
5 resolution, I think, might just be an initial step,
6 and it wouldn't be until after the review at
7 Missouri American's counsel's office that we would
8 be able to say whether or not this dispute is
9 resolved.

10 THE COURT: Ms. VanGerpen, thank you.

11 Any response on behalf of the company?

12 MR. COOPER: Yes, Your Honor.

13 And, again, I -- just reiterating what I
14 said before. This is another one that concerns
15 American Water Works Company's financial committee,
16 not Missouri American's finance committee. There is
17 no Missouri American finance committee, as I
18 understand it. But even American Water Works
19 doesn't have exclusively a finance committee; it has
20 an audit finance and risk committee, so any minutes
21 would -- would be beyond what's really been
22 requested by -- by OPC here.

23 But, again, going back to where I started,
24 this is American Water; it's not Missouri American.
25 It's not something Missouri American has possession,

1 custody, or control over or can provide on its own,
2 if it wants -- even if it wants to.

3 Ms. VanGerpen accurately stated that we've
4 exchanged some -- some communication about a
5 possible resolution. I -- I can't tell you at this
6 point how -- how close I think we are. I just -- I
7 just don't know whether we're going to get there on
8 this one or not, but -- but those are -- those are
9 the points that we would make in regard to 3010.

10 MS. NIEMEIER: In addition, Your Honor --

11 THE COURT: Thank you -- I'm sorry. Go
12 ahead.

13 MS. NIEMEIER: In addition, the
14 information they're seeking is not relevant and it's
15 not related to the questions that they've raised.

16 THE COURT: If there's nothing from --
17 Ms. Niemeier, thank you.

18 If there's nothing further from the
19 company, I'll ask if Ms. Bretz has anything from
20 staff.

21 MS. BRETZ: No, nothing. Thank you.

22 THE COURT: All right. Thank you.

23 And, Ms. VanGerpen, I guess I'll ask what
24 your statement is on Data Request 3018.

25 MS. VANGERPEN: And, Your Honor, if I

1 might -- could I possibly back up to respond to
2 Missouri American's statement for both 3001 and
3 3010?

4 THE COURT: Sure.

5 MS. VANGERPEN: So since we're on 3010,
6 I'll just start there. And this pertains to 3001 as
7 well.

8 So Mr. Cooper has mentioned that these are
9 American Water Works Company's finance committee
10 meeting minutes and that they may be beyond the
11 care, custody, and control of Missouri American.
12 However, Missouri American is a wholly owned
13 subsidiary of American Water, and so it is OPC's
14 position that they should have access to those
15 documents and should give the -- those documents
16 over to us because they do go to the -- the -- to
17 the heart of the rate of return issues that are at
18 issue in this general rate case. However, if
19 Missouri American is asserting that they do not --
20 they cannot get those documents, I believe the
21 commission does have subpoena power, and the OPC
22 will -- is -- will pursue a subpoena of the parent
23 company in order to obtain those -- those documents.
24 Because they do go to the heart of our issues here.
25 And then as to the relevance of the -- the

1 finance committee documents, I think, similarly, as
2 I mentioned, these -- these documents do go to the
3 heart of the rate of return issues, which is
4 directly at issue in -- in this general rate case,
5 so they -- they certainly are relevant to this case.

6 And I think that -- that covers a lot of
7 what was discussed with 3001, as well, as far as the
8 information for American Water Works Company.

9 Again, Missouri American is a wholly owned
10 subsidiary of American Water, and so it is our
11 position that they should have access to those
12 documents, but if they do not, a subpoena to
13 American Water will -- will likely come about to
14 obtain those documents.

15 And as far as the permission of the
16 documents goes, if the concern is copyright, I would
17 imagine that this would fall within the fair use
18 exception to the copyright laws, which is, I
19 believe, 17 U.S.C. Section 107, and so that is --
20 that is our response to those two data requests as
21 well.

22 MR. COOPER: Judge, a couple of quick
23 things.

24 As to copyright -- again, keep in mind,
25 these are not publicly published documents in regard

1 to 3001. They're proprietary documents that are
2 sent essentially sold to subscribers, for lack -- or
3 investors or -- or what have you. So we're not
4 really talking just about a -- you know, a copyright
5 situation that you would have with publicly provided
6 materials.

7 Additionally, in regard to the possession,
8 custody, and control, it -- I think everybody on
9 here understands this, but Missouri American is a --
10 as was stated, a subsidiary of American Watter.
11 It's essentially a downstream corporation. It
12 doesn't have control over a parent, so I would kind
13 of note that and -- and just acknowledge, as
14 Ms. VanGerpen, said that there are subpoena powers
15 with the commission. And I don't think that's
16 really the question for today, but I would
17 acknowledge that those are out there.

18 THE COURT: Mr. Cooper, thank you.

19 Anything further before Ms. VanGerpen
20 makes her argument on -- on Data Request 3018?

21 All right. Ms. VanGerpen, when you're
22 ready.

23 MS. VANGERPEN: Thank you, Your Honor.

24 For 3018, these are some rating agency
25 reports. And the OPC has been able to review those

1 documents at Mr. Cooper's office, and we certainly
2 thank Missouri American for making those available
3 to us. However, now that we've reviewed those
4 documents, it is our position that they are -- are
5 relevant and we need to attach those documents to
6 Mr. Murray's upcoming rebuttal testimony, and so we
7 are now requesting copies of those documents to
8 attach to Mr. Murray's testimony for rebuttal next
9 week.

10 Again, it's my understanding that
11 Missouri American and OPC have reached a preliminary
12 agreement about this dispute, and we may -- I think
13 Mr. Cooper and I have discussed possibly filing a
14 motion for a protective order, and if -- if
15 Missouri American would like those documents to be
16 filed as highly confidential, that's not something
17 that OPC would oppose. We would -- we would give
18 them whatever designation Missouri American believes
19 is appropriate, as long as we can have possession of
20 those documents to attach to Mr. Murray's testimony.
21 And that would just be to support Mr. Murray's
22 testimony and his statements in testimony.

23 MR. COOPER: Judge, this is Dean Cooper.

24 Ms. VanGerpen accurately stated, I think,
25 where we are in regard to 3018. But as you probably

1 guessed, as she provided that description, we
2 probably are going to need your help, because how
3 we've talked about dealing with this is -- is filing
4 a motion for a protective order that would establish
5 a highly confidential category that -- that these
6 particular documents would then be -- would then
7 fall into. So -- and there is some timing concern.
8 Rebuttal testimony comes up, I think, next
9 Wednesday. It's the 18th, so I don't know that
10 there's anything you could do about that here today,
11 but just kind of giving you a heads up that we'll --
12 we'll try to get that to you quickly and hope that
13 you'll be able to help us out in terms of,
14 ultimately, an order.

15 THE COURT: Sure. Obviously, I don't want
16 to tell anybody how to practice. I mean, if
17 somebody files a motion and represents that nobody
18 objects, I could probably rule on that pretty
19 quickly. Also -- I guess there's always the
20 possibility of a late filed, you know, supplement
21 where perhaps somebody files a rebuttal that's
22 missing some information, and then you supplement
23 that information later. And I'm sure you've
24 considered these possibilities, as well, but,
25 hopefully -- I mean, if the parties agree, I

1 certainly don't want to stand in the way of -- of
2 whatever agreements you have.

3 MR. COOPER: Great.

4 THE COURT: Any -- any further comments
5 either from Ms. Bretz or anybody else on DR 3018?

6 MS. BRETZ: Nothing here. Thank you.

7 THE COURT: All right. And then I guess
8 that takes us to 3019, Ms. VanGerpen.

9 MS. VANGERPEN: Yes, Your Honor.

10 So for our final DR, we are asking for
11 some goodwill impairment studies. And those studies
12 support the company's financial statement reporting,
13 mainly its net worth. And that information informs
14 the financial health, cost of capital, and capital
15 structures issues related to American Water. And,
16 again, the OPC believes those are issues that are
17 directly at issue in the general rate case, and so
18 we have requested those documents from
19 Missouri American. And as I understand it, I
20 believe we've -- and Mr. Murray -- I'm looking at
21 Mr. Murray across the table from me. I hope he
22 corrects me if I'm wrong about this, but I believe
23 we've received some type of information in response
24 to this DR, but there is an outstanding piece of it
25 that we're still waiting -- and more recent

1 information, I'm informed.

2 THE COURT: All right. Ms. VanGerpen,
3 thank you.

4 Any company response?

5 MR. COOPER: Yes, Your Honor.

6 As to this particular DR -- again, all
7 we've said before about it concerning American Water
8 Works, as opposed to Missouri American remains the
9 case. Additionally, as -- well, let me back up.

10 As I understand it at the American Water
11 level, what we're -- we're talking about impairment
12 testing, and it can be quantitative or it can be
13 qualitative. And what has been provided by
14 American Water is the last quantitative impairment
15 testing that they did, which was 2019. Since then,
16 we understand no quantitative testing has been
17 performed; it's been qualitative in those years. So
18 that's -- that's the difference between, I guess,
19 what -- what has been provided and OPC has received
20 and what -- what has not.

21 I would disagree with something that
22 Ms. VanGerpen said about its relevance, and that
23 is -- well, I think she made the comment that it was
24 very -- it was relevant to essentially the financial
25 structure of American Water Works. You know, keep

1 in -- keep in mind that the issue in this case is
2 really the financial structure of Missouri American
3 Water Company. Now, the Commission may take
4 different factors in- -- into account in
5 establishing that or a hypothetical capital
6 structure, ultimately, but -- but, really,
7 American Water Works' structure is -- is not at
8 issue and not appropriate for this case.

9 Again, having said all of that, I'll
10 circle back around to where I started, which is this
11 is another question about American Water Works. The
12 financial statement that is referenced is the 10K
13 for American Water Works, not Missouri American.
14 The 10K is -- is audited by independent auditors.
15 To the extent someone does want to allege that it's
16 relevant, it should be able to stand on its own
17 without any further backup, in terms of this
18 impairment testimony.

19 THE COURT: Mr. Cooper, thank you.

20 Ms. Bretz, anything on behalf of staff?

21 MS. BRETZ: Nothing. Thank you.

22 THE COURT: All right. Thank you.

23 I think we've covered the four data
24 requests. Is there anything else counsel wants to
25 bring to my attention?

1 MS. VANGERPEN: Your Honor, could I have
2 just one moment to -- to discuss with Mr. Murray a
3 possible response to some of Mr. Cooper's
4 statements?

5 THE COURT: Sure.

6 MS. VANGERPEN: Thank you.

7 (Brief pause.)

8 MS. VANGERPEN: Thank you, Your Honor. If
9 I could just respond to some of Mr. Cooper's
10 statements before --

11 THE COURT: Sure.

12 MS. VANGERPEN: -- we -- we move on.

13 So, first, OPC has the same position
14 regarding AW -- or American Water having possession
15 of these documents and not Missouri American. We
16 believe because Missouri American is a wholly owned
17 subsidiary of American Water, that they should have
18 access to these documents, but we -- we agree that a
19 subpoena may -- may be necessary to -- to gain
20 access to those documents.

21 And as -- as far as the -- what's at issue
22 is Missouri American's capital structure and not
23 American Water's capital structure or financial
24 structure. OPC would -- would say that the majority
25 of Missouri American's capital structure is a result

1 of financial -- affiliate financial transactions,
2 which are impacted by American Water's financial
3 transactions, and so they -- we believe these
4 documents are relevant.

5 And I'm looking to Mr. Murray to make sure
6 I accurately represented that.

7 And that's all we have, Your Honor.

8 THE COURT: All right. Ms. VanGerpen,
9 thank you.

10 And I think we've covered the 4 DRs. Is
11 there anything further that counsel wants to bring
12 to my attention?

13 MR. COOPER: Judge, just one point of
14 clarification very quickly.

15 In terms of Ms. VanGerpen's statement
16 about Missouri American's financing, it does have
17 some debt, essentially, that it receives from an
18 affiliate, but it's not American Water; it is
19 Capital Corp., a different entity from
20 American Water. So I -- small point, but I just
21 want to make that point, that there is no direct
22 debt that Missouri American receives from
23 American Water Works Company.

24 THE COURT: Mr. Cooper, thank you.

25 Anything else from counsel?

1 MS. VANGERPEN: Nothing further from OPC.

2 THE COURT: All right. Thank you.

3 With that -- I mean, I think this -- at
4 least in my mind, this discovery conference kind of
5 takes the place of a -- of a telephone conference.
6 It sounds to me like the parties at least have had a
7 little movement on -- on resolving their disputes,
8 and I hope that you'll continue talking and trying
9 to resolve your disputes. If you cannot, I think,
10 you know, public counsel has the right to file any
11 sort of motion it wants to try to compel discovery
12 or whatever else.

13 I know -- I know rebuttal testimony is due
14 soon, and so if the parties think they need to move
15 quickly on these motions, I have no problem with
16 that. I'll just remind everyone that the MLK
17 holiday is Monday, and so that may kind of slow my
18 process or the Commission's process in dealing with
19 any kind of motions you may file.

20 But I -- I think that is all that I have.
21 Is there anything else from counsel before we close?

22 MR. COOPER: No, Your Honor.

23 MS. VANGERPEN: No, Your Honor.

24 THE COURT: All right. Very good. That
25 will then conclude today's discovery conference in

1 File No. WR-2022-0303.

2 Thank you very much. We are off the
3 record.

4 (The proceedings concluded at 10:29 a.m.)

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C E R T I F I C A T E

I, Lisa Valentine, a Certified Court Reporter for the State of Missouri, do hereby certify that I appeared at the time and place first hereinbefore set forth, that I took down in shorthand the entire proceedings had at said time and place, and that the foregoing constitutes a true, correct, and complete transcript of my said shorthand notes.

Witness my hand and seal this 17th day of January 2023



Lisa D. Valentine
Certified Court Reporter
State of Missouri