

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 21<sup>st</sup> day  
of December, 2011.

In the Matter of Missouri-American Water Company's )  
Request for Authority to Implement A General Rate ) **File No. WR-2011-0337, et al.**  
Increase for Water and Sewer Service Provided in )  
Missouri Service Areas )

**ORDER DENYING MOTION**

Issue Date: December 21, 2011

Effective Date: December 21, 2011

At a regularly scheduled Discovery Conference held on September 28, 2011, Utility Workers Union of America, Local 335 ("Local 335") brought an oral motion to compel discovery. The motion concerned Local 335's Data Request No. 1 (issued on August 15, 2011), which stated as follows:

State the total compensation (including bonuses) paid to each MAWC employee, including management personnel and officers, for 2010. Please provide your response in an Excel chart which lists each employee and the total compensation paid to him/her.

Missouri American Water Company ("MAWC") had responded to this Data Request on September 6, 2011, and provided the requested information for its approximately 864 employees. Specifically, MAWC provided Local 335 with a Microsoft Excel chart listing each employee by number and job title, each employee's total compensation, and the total compensation paid to all of the employees. MAWC designated the information as "highly confidential" pursuant to Commission Rule 4 CSR 24-2.135.

At the Discovery Conference,<sup>1</sup> Local 335 requested the name for each employee, instead of compensation listed by employee number. Counsel for MAWC argued that providing the names of the employees bore no relevance to setting rates and noted that sensitive personnel information was protected as highly confidential information under Commission Rule 4 CSR 240-2.135. When asked by the Regulatory Law Judge (“RLJ”) how this information was relevant to setting rates, counsel for Local 335 argued that the public had the right to see what MAWC paid its employees to determine “what they pay each month for their water bill.”<sup>2</sup>

The RLJ noted that Local 335 had been provided with each employee’s compensation by number and job category and the total of all compensation paid – the information necessary for determining rates for customers. The RLJ also noted that the specific salary information for MAWC’s top executives is already public information that is included with MAWC’s annual report. The RLJ denied Local 335’s motion to compel because the employees’ names are not relevant for determining rates when their total compensation by job category is all that could be at issue. Additionally, Local 335 could not offer a cogent reason why non-executive employee salaries were a relevant matter of public interest to be publicly disclosed. This information simply has no bearing on setting rates and it is sensitive in terms of privacy and management issues.

Local 335 had five business days, or until October 5, 2011, to file a motion for reconsideration of the RLJ’s ruling, but failed to do so.<sup>3</sup> Instead, on November 30, 2011,

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<sup>1</sup> See Transcript, Vol. 3, pp. 44-52.

<sup>2</sup> See Transcript, Vol. 3, p. 48.

<sup>3</sup> The RLJ had instructed Local 335 that it could elect to file a motion to declassify that would be taken to the full Commission for a vote. Transcript, Vol. 3, p. 52.

Local 335 filed a new motion to compel production of the same material and declassify the employee salary information. The November 30, 2011 motion, with respect to compelling production is, in fact, nothing more than a motion for reconsideration of the RLJ's ruling on September 28, 2011, and it is 56 days out of time. The RLJ did instruct Local 335 that it could elect to file a motion to declassify the information already provided, so this portion of Local 335's motion is timely. Regardless of Local 335's procedural deficiencies, the Commission will rule on both aspects of this motion to bring finality to this issue. There are four reasons Local 335's motion, in total, will be denied.

As an initial matter Local 335's data request does not ask for the employees' names, but rather seeks the total compensation paid to each employee. Local 335 has been provided with that information by employee number and employee classification, so MAWC has provided all of the information actually requested.

Secondly, the added request for specific names in relation to compensation is not reasonably related to the discovery of admissible evidence with regard to the setting of just and reasonable rates. For purposes of setting rates, it does not matter whether a specific position is occupied by a specifically identifiable person. What is important is the nature of the job and the cost of maintaining an employee in that position.

Third, Local 335 argues that during the period between 2002 and 2005 MAWC's annual reports revealed names of employees earning greater than \$25,000 and contends that the public has a right to know all employee salaries. MAWC points out that it was the Commission who decided to change what was required in the annual reports for the years following 2005, and the Commission has since only deemed it appropriate to have MAWC disclose its officer's salaries, not the salaries of its receptionists and truck drivers. Indeed,

Local 335 provides no reason, beyond its conclusory statement, that there is a legitimate public interest in the individual compensation by name for all of MAWC's 864 employees. The Commission appropriately directed MAWC to make public the salaries of its top officers in File Number WC-2011-0291. The Commission will decline to extend that ruling to non-executive positions.

Finally, Local 335 asks the Commission to declassify the information that MAWC has already provided; i.e. the compensation listed by employee number and job title. MAWC argues that the employee number is the key to several items for employees, such as changes in beneficiary designations, benefits choices and other matters. MAWC argues that this information should not be publicly available.

Commission Rule 4 CSR 240-2.135(1)(B)(2) defines employee-sensitive personnel information as being highly confidential. There is no question that the information provided in response to Local 335's Data Request is "employee-sensitive personnel information" and is appropriately classified as highly confidential. Again, Local 335 offers no valid reason for making this information public.

Local 335's repeated attempt to compel production of MAWC's employees' names, which actually exceeds the scope of its data request, will again be denied. Local 335's motion to declassify the information already produced in relation to its Data Request No. 1 will be also denied.

**THE COMMISSION ORDERS THAT:**

1. The Utility Workers Union of America, Local 335's November 30, 2011 motion to compel production and declassify information is denied.

2. This order shall become effective immediately upon issuance.

( S E A L )

**BY THE COMMISSION**



Steven C. Reed  
Secretary

Gunn, Chm., Davis, Jarrett, and  
Kenney, CC., concur.  
Stoll, C., not participating.

Stearley, Deputy Chief Regulatory Law Judge