

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Metropolitan St. Louis Sewer District,)	
)	
Complainant,)	
)	Case No. WC-2007-0040
v.)	
)	
Missouri-American Water Company,)	
)	
Respondent.)	

ANSWER

COMES NOW Respondent Missouri-American Water Company (hereinafter "MAWC") and for its Answer to the Complaint of The Metropolitan St. Louis Sewer District (hereinafter "MSD") states as follows:

1. MAWC is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 1, and therefore denies the same.

2. MAWC admits the averments contained in Paragraph 2, excepting that it provides metered water service to approximately 450,000 customer accounts in the State of Missouri, and that the address of its principal place of business is not 535 N. New Ballas Road, St. Louis, MO 63141, but 727 Craig Road, St. Louis, MO 63141. Further answering, MAWC states that it is a public utility regulated by the Public Service Commission of the State of Missouri (hereinafter the "Commission").

3. MAWC admits the averments contained in Paragraph 3. Further answering, MAWC states: that MAWC has been providing water usage data and customer billing information to MSD for a fee, pursuant to agreement, since 1993 (first agreement, between MSD and MAWC's predecessor St. Louis County Water Company, approved by the Commission on August 10, 1993; amended agreement approved by the

Commission on January 25, 1994; subsequent agreement between MSD and MAWC approved by the Commission on April 9, 2002); that such agreements have been submitted for approval to the Commission, and have been approved by the Commission; that the Commission has issued tariffs and revised tariffs establishing the rate MSD must pay for receipt of such water usage data and customer billing information (tariff sheets and revised tariff sheets approved by the Commission on August 10, 1993; on February 25, 1994; as of January 9, 1997; as of January 1, 1998; and on April 9, 2002); and that the fees paid by MSD have been treated as revenue in MAWC's rate cases in order to reduce rates paid by MAWC customers.

4. MAWC admits the averments contained in Paragraph 4. Further answering, MAWC states that MAWC has spent substantial amounts over the decades installing and maintaining its water meters, in addition to substantial amounts expended each year in operating costs in order to collect the water usage data and customer billing information.

5. MAWC admits the averments contained in Paragraph 5.

6. MAWC admits the averments contained in Paragraph 6.

7. MAWC admits the averments contained in Paragraph 7.

8. MAWC admits the averments contained in Paragraph 8.

9. MAWC admits the averments contained in Paragraph 9.

10. MAWC admits that MSD has continued to pay MAWC for water usage data and customer billing information as per the Commission-approved tariff. Further answering, MAWC denies each and every other averment contained in Paragraph 10.

11. MAWC denies the averments contained in Paragraph 11. Further answering, MAWC states that MSD has requested to receive and has agreed to pay a fee for all the water billing data and customer billing information that MSD has received from MAWC since 1993.

12. MAWC denies the averments contained in Paragraph 12. Further answering, MAWC states: that it advised MSD that changes in the nature of the information requested by MSD may not necessarily decrease the overall charges to MSD, based on a number of factors; and that MSD should pay a reasonable fee per Commission-approved tariff for the water usage data and customer billing information it receives.

13. MAWC denies the averments contained in Paragraph 13. Further answering, MAWC states: that it advised MSD that changes in the nature of the information requested by MSD may not necessarily decrease the overall charges to MSD, based on a number of factors; and that MSD should pay a reasonable fee per Commission-approved tariff for the water usage data and customer billing information it receives.

14. MAWC denies the averments contained in Paragraph 14.

15. MAWC denies the averments contained in Paragraph 15. Further answering, MAWC states: that MSD has been paying for water usage data and customer billing information provided by MAWC since 1993; that Section 249.645.1 RSMo has been applicable to MSD since at least 1999; that MSD has continued to pay for water usage data and customer billing information provided by MAWC since 1999, when Section 249.645.1 RSMo became applicable to MSD; that the parties have shown, by

their conduct, their understanding and agreement that it is reasonable for MSD to pay fees and for MAWC to charge fees for water usage data and customer billing information; and that MSD did not assert that it should receive MAWC's water usage data and customer billing information for free until 2004.

16. MAWC denies that Section 249.645.1 RSMo does not require a sewer district to pay a fee for reviewing or receiving a water utility's records and books. Further answering, MAWC admits that it refuses to provide water usage data and customer billing information to MSD free of charge.

17. MAWC denies the averments contained in Paragraph 17.

18. MAWC admits that in its last rate proceeding (Case No. WR-2003-0500), MAWC submitted tariff sheets on April 7, 2004, and asked that the Commission approve the tariff sheets to be effective less than thirty (30) days after their filing. MAWC further admits that the referenced tariff sheets included terms designed to comply with the Commission's Order Approving Stipulations and Agreements. MAWC denies each and every other averment contained in Paragraph 18.

19. MAWC admits that on April 7, 2004, it submitted a Revised Sheet No. RT 16.0, which proposed a yearly flat fee of \$760,000 concerning the information to be provided to MSD. MAWC further admits the document identified as Exhibit 4 to the Complaint is a true and accurate copy of the tariff MAWC submitted to the Commission on April 7, 2004. MAWC is without knowledge or information sufficient to form a belief as to what notice MSD may have received concerning this tariff sheet, and therefore denies the same. MAWC denies each and every other averment contained in Paragraph 19.

20. MAWC admits that its tariff filing that initiated Commission Case No. WR-2003-0500 did not propose a revision to the tariff sheets applicable to the provision of water usage data to MSD. MAWC further admits that MSD did not participate in Case No. WR-2003-0500 as a party and was not a party to the stipulations that were reached in Case No. WR-2003-0500. MAWC is without knowledge or information sufficient to form a belief as to why MSD did not seek to participate as a party in Case No. WR-2003-0500, and therefore denies the same. MAWC denies each and every other averment contained in Paragraph 20.

21. MAWC admits that MSD filed an Application for Rehearing or Reconsideration on April 15, 2004, and that the Commission issued an Order Suspending Tariff on the same date. MAWC admits that MSD's Exhibits 5 and 6 are true and accurate copies of the Application for Rehearing and the Order Suspending Tariff, respectively. Further answering, MAWC states that Exhibits 5 and 6 speak for themselves. MAWC denies each and every other averment contained in Paragraph 21.

22. MAWC admits that at the April 19, 2004 hearing, MAWC agreed to voluntarily withdraw revised Sheet No. RT 16.0 and to negotiate the matter separately. MAWC further admits that MAWC and MSD agreed to report to the Commission if an agreement was not reached within 90 days. MAWC denies each and every other averment contained in Paragraph 22.

23. MAWC admits that MSD's Exhibit 7 is a true and accurate copy of the Status Report filed with the Commission on August 26, 2004, in Case No. WR-2003-0500. MAWC states that Exhibit 7 speaks for itself and denies each averment that is inconsistent with Exhibit 7. Further answering, MAWC states that the Circuit Court of St.

Louis County, State of Missouri, by its dismissal of MSD's Petition for Declaratory Relief on April 24, 2006, on the grounds that "primary jurisdiction of this matter rests with the Missouri Public Service Commission," attached to MSD's Complaint as Exhibit 13, has already concluded and declared that the Commission has the initial authority to entertain the legal issue presented in MSD's Complaint herein.

24. MAWC admits that MSD's Exhibit 8 is a true and accurate copy of MAWC's September 3, 2004 response. Further answering, MAWC states that Exhibit 8 speaks for itself.

25. MAWC admits that MSD's Exhibit 9 is a true and accurate copy of the Commission's October 15, 2004 Order. Further answering, MAWC states that Exhibit 9 speaks for itself.

26. MAWC admits that MSD's Exhibit 10 is a true and accurate copy of MSD's Petition for Declaratory Relief. Further answering, MAWC states that Exhibit 10 speaks for itself.

27. MAWC admits the averments contained in Paragraph 27, and that MSD's Exhibit 11 is a true and accurate copy of MAWC's Motion to Dismiss and Suggestions in Support. Further answering, MAWC states that Exhibit 11 speaks for itself.

28. MAWC admits the averments contained in Paragraph 28, and that MSD's Exhibit 12 is a true and accurate copy of the Commission's Motion to Dismiss and Suggestions in Support. Further answering, MAWC states that Exhibit 11 speaks for itself.

29. MAWC admits the averments contained in Paragraph 29, and that MSD's Exhibit 13 is a true and accurate copy of the Circuit Court of St. Louis County's

Judgment of Dismissal. Further answering, MAWC states that Exhibit 13 speaks for itself.

30. MAWC admits that it has negotiated with MSD over the terms of a potential new water usage data agreement. Further answering, MAWC denies each and every other averment contained in Paragraph 30.

31. MAWC denies the averments contained in Paragraph 31.

32. MAWC admits that, pursuant to tariff, MAWC requires MSD to pay a fee for water usage data and customer billing information. Further answering, MAWC denies each and every other averment contained in Paragraph 32. Further answering, MAWC states: that MSD has been paying for water usage data and customer billing information provided by MAWC since 1993; that Section 249.645.1 RSMo has been applicable to MSD since at least 1999; that MSD has continued to pay for water usage data and customer billing information provided by MAWC since 1999, when Section 249.645.1 RSMo became applicable to MSD; that the parties have shown, by their conduct, their understanding and agreement that it is reasonable for MSD to pay fees and for MAWC to charge fees for water usage data and customer billing information; and that MSD did not assert that it should receive MAWC's water usage data and customer billing information for free until 2004.

33. MAWC denies the averments contained in Paragraph 33.

34. MAWC denies the averments contained in Paragraph 34.

35. MAWC admits that the Commission has primary jurisdiction. Further answering, MAWC denies each and every other averment contained in Paragraph 35.

AFFIRMATIVE DEFENSES

1. In further answer and by way of affirmative defense, MAWC states that MSD's Complaint fails to state a claim upon which relief can be granted.

2. In further answer and by way of affirmative defense, MAWC states that the doctrines of waiver, estoppel and laches preclude MSD from claiming that Section 249.645.1 RSMo requires MAWC to provide water usage data and customer billing information to MSD free of charge.

3. In further answer and by way of affirmative defense, MAWC states that if Section 249.645.1 RSMo is deemed to require MAWC to provide water usage data and customer billing information to MSD free of charge, which MAWC denies, Section 249.645.1 RSMo is an unconstitutional violation of MAWC's due process rights under the United States Constitution, U.S. Const. amend. V and amend. XIV, §1, and the Missouri Constitution, Mo. Const. art. I, §10.

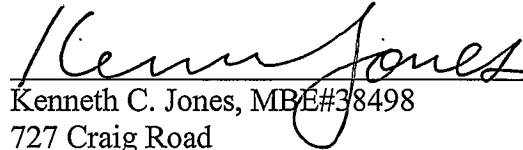
4. In further answer and by way of affirmative defense, MAWC states that if Section 249.645.1 RSMo is deemed to require MAWC to provide water usage data and customer billing information to MSD free of charge, which MAWC denies, Section 249.645.1 RSMo is an unconstitutional taking of MAWC's property under the United States Constitution, U.S. Const. amend. V, and the Missouri Constitution, Mo. Const. art. I, §26.

WHEREFORE, Respondent Missouri American Water Company prays that the Public Service Commission of the State of Missouri dismiss the Complaint with prejudice at Complainant's cost.

Respectfully submitted,

MISSOURI-AMERICAN WATER COMPANY

By:



Kenneth C. Jones, MBE#38498
727 Craig Road
St. Louis, MO 63141
kenneth.jones@amwater.com
(314) 996-2278 (telephone)
(314) 997-2451 (telefax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed postage prepaid the 31st day of August, 2006, to:

Kevin A. Thompson
General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lewis R. Mills, Jr.
Public Counsel
Missouri Office of Public Counsel
P.O. Box 2230
Jefferson City, MO 65102-2230

Byron E. Francis
E.W. Gentry Sayad
J. Kent Lowry
Jacqueline Ulin Levey
Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740

