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October 27, 2006

FILED<sup>3</sup>

NOV 7 2006

Missouri  
Service C

Colleen M. Dale  
Secretary  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102-0360

**Re: Metropolitan St. Louis Sewer District v. Missouri American Water  
Case No. WC-2007-0040**

Dear Ms. Dale:

Enclosed herewith, please find Complainant's Answers and Objections to Respondent's First Set of Data Requests to be filed in the above-referenced matter. Please file the original with the Commission and return the extra copy to me stamped-filed in the enclosed, self-addressed, stamped envelope.

Thank you for your cooperation.

Very truly yours,

Byron E. Francis

BEF/lva  
Enclosure

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Missouri Public  
Service Commission

V.

3. MSD objects to Respondent's First Set of Data Requests to the extent that they call for disclosure of information or documents of a confidential or proprietary nature, including documents and materials that contain sensitive business, financial, and/or production information.

4. MSD objects to Respondent's First Set of Data Requests to the extent that they are vague, overly broad or ambiguous.

5. MSD objects to Respondent's First Set of Data Requests to the extent that they seek information or communications which are irrelevant and immaterial to the issues in this action, and which are not reasonably calculated to lead to the discovery of admissible evidence, which are unduly burdensome and oppressive, and would cause undue time and expense to MSD which is not commensurate with Respondent's discovery needs.

6. MSD objects to Respondent's First Set of Data Requests to the extent that they attempt to impose obligations in addition to those provided by the Missouri Rules of Civil Procedure or 4 CSR 240-2.090.

7. MSD reserves the right to amend or supplement these answers to reflect information gathered in discovery, if they find that inadvertent errors or admissions have been made, and/or more accurate information becomes available at a later date.

The following responses reflect MSD's best present knowledge, information and belief based on a reasonably diligent search for responsive documents. MSD reserves the right to change, modify or supplement these answers based on further discovery or on facts or circumstances that hereafter may come to MSD's knowledge and attention. Nothing in these responses should be construed as waiving any rights or objections that otherwise might be available to MSD, and MSD's answer to any of these Data Requests should not be deemed an admission of relevancy, materiality, authenticity or admissibility in evidence of the discovery or the responses thereto.

#### **DATA REQUESTS**

1. Does MSD acquire usage data from any water district or private water company in Missouri other than MAWC? If so, identify each such water district and state the amount the

MSD pays annually for acquisition of such data. Attach copies of all such data acquisition agreements.

**ANSWER:**

MSD does not acquire usage data from any water district or private water company in Missouri other than MAWC. It does acquire information from the City of St. Louis. However, the City of St. Louis is not a water district or private water company.

2. Does MSD know of any other sewer district in Missouri that acquires water usage data from a water district or a private water company? If so, identify each such sewer district(s) and the water district(s) or private water company (ies) from which it acquires usage data, and state whether each such sewer district pays a charge for such usage data, and the annual amount of such charge.

**ANSWER:**

No.

3. Please describe in detail the manner in which MSD employs the water usage data it currently receives from MAWC in order to generate sewer bills for its customers.

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

4. Does MSD use the water usage data it currently receives from MAWC for any purpose other than generating sewer bills for its customers? If so, describe in detail such use.

**ANSWER:**

No.

5. How much would it cost MSD to install meters at the premises of each of its St.

Louis County customers?

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

6. How much would it cost MSD annually to read meters for each of its St. Louis County customers?

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

7. Has MSD prepared cost analyses, including capital and operating expenses, that detail the costs of installing meters and collecting metered water usage data from its customers? If so, state the date and attach copies of each such cost analysis?

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

8. If MSD is successful in eliminating or reducing the charges it pays to MAWC for water usage data, will MSD pass those savings along to its customers by decreasing its rates?

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

9. Please describe in detail the reason(s) why MSD bills its St. Louis County customers based on metered water usage, whereas its charges to St. Louis City customers are not based on metered water usage.

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.

10. Is there any statute, rule, regulation or case law that requires MSD to bill its St. Louis County customers based on metered water usage?

**OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, MSD objects to this data requests as it calls for a legal conclusion.

11. Given MSD's allegation in its Complaint that "MAWC's conduct in charging MSD for the Water Usage Data is unreasonable and illegal" and that "MAWC's charging of a fee for the Water Usage Data constitutes a violation of Section 249.645.1 RSMo," is MSD contending that the Public Service Commission violated the law when it approved a tariff requiring MSD to pay a fee for the acquisition of water usage data?

**ANSWER AND OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, MSD objects to this data requests as it calls for a legal conclusion. Subject to said objection, and without waiving same, MSD is not contending that the

Commission violated the law when it approved the tariff. The tariff was approved based upon a contract between MSD and MAWC which has now expired. As MAWC and the Commission are aware, in its most recent rate case, MAWC attempted to circumvent the law by attempting to have the Commission approve a new tariff without a contract between the parties, which the Commission refused to do following MSD's intervention and objection.

12. Given MSD's allegation in its Complaint that "MAWC's conduct in charging MSD for the Water Usage Data is unreasonable and illegal" and that "MAWC's charging of a fee for the Water Usage Data constitutes a violation of Section 249.645.1 RSMo," why did MSD sign a contract in 2002 wherein it agreed to pay a fee for the water usage data? Furthermore, why has MSD paid a fee since 1999, when Section 249.645.1 RSMo became applicable to MSD?

**ANSWER AND OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, MSD objects to this data requests as it calls for a legal conclusion. Subject to said objection, and without waiving same, MSD has always acknowledged that the statute in question is silent with respect to whether the sewer district is required to pay for the water usage data and that there is a justiciable issue whether it was required to pay for such data. As a result, after weighing the possibility of being refused such data or paying a reasonable sum for such data, it entered into a contract with St. Louis County Water Company on terms which were favorable to both parties. It then entered into a subsequent contract with MAWC in 2002 for like reasons. In light of its most recent demands regarding compensation, MAWC has now placed MSD in the position of being required to institute this proceeding.

13. Given MSD's allegation in its Complaint that "MAWC's conduct in charging

MSD for the Water Usage Data is unreasonable and illegal” and that “MAWC’s charging of a fee for the Water Usage Data constitutes a violation of Section 249.645.1 RSMo,” why did MSD assert in an April 15, 2004 filing before the Public Service Commission (Application for Rehearing or Reconsideration and Opposition to Motion for Expedited Treatment of Metropolitan St. Louis Sewer District) that the amount of the fee should be negotiated between MSD and MAWC, rather than assert that the data should be provided free of charge?

**ANSWER AND OBJECTION:**

MSD objects to this data request as it calls for information which is totally irrelevant and immaterial to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, MSD objects to this data requests as it calls for a legal conclusion. Subject to said objection, and without waiving same, see response to Data Request No. 12. In addition, MSD has taken such position throughout its negotiations with MAWC and, in fact, one of the Commissioners inquired of MAWC’s own witness regarding the legality of such a charge in light of the language of Section 249.645.1 RSMo.

14. Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, providing each such expert’s name, address, occupation, place of employment and qualifications to give an opinion.

**ANSWER:**

MSD has no current plans to call an expert witness at the trial or hearing of this matter. In then event that MSD decides to call an expert witness at the trial or hearing of this matter, MSD will seasonably supplement this response.

15. With respect to each person identified in your response to Data Request No. 14, state the general nature of the subject matter on which the expert is expected to testify and the expert’s hourly deposition fee, if any.



**ANSWER:**

Not Applicable.

16. Identify an non-retained or non-engaged expert whom you expect to call at trial or hearing who may provide expert witness opinion testimony by providing such person's name, address and field of expertise.

**ANSWER:**

MSD has no current plans to call a non-retained or non-engaged expert witness at the trial or hearing of this matter. In then event that MSD decides to call a non-retained or non-engaged expert witness at the trial or hearing of this matter, MSD will seasonably supplement this response.

17. For each expert witness identified in your responses to Data Requests No. 14 and No. 16, please provide a list of all proceedings in which the expert has testified previously, including the following information:

- a. the court, tribunal or agency that conducted the proceeding;
- b. the case number or equivalent identification of the proceeding;
- c. the caption of the proceeding;
- d. the date of the testimony; and
- e. the general nature of the testimony.

**ANSWER:**

Not applicable.

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ATTORNEYS FOR COMPLAINANT

CERTIFICATE OF SERVICE

It is hereby certified that a copy of Complainant's Answers and Objections to

Respondent's First Set of Data Requests has been served, first class, postage prepaid, this 27th

day of October, 2006 to the following parties of record.

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