BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

Christina Baker #58303
Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
christina.baker@ded.mo.gov

TABLE OF CONTENTS

Section **Page**

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POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel (Public Counsel) and states for its Post-Hearing Brief as follows:

I. Introduction

On March 7, 2007 the Missouri Public Service Commission (Commission) heard oral arguments regarding the question of whether Missouri American Water Company's (MAWC) imposition of a fee for the provision of certain water usage and customer identification data to Metropolitan St. Louis Sewer District (MSD) is a violation of Missouri law.

MSD is a sewer district that is not regulated by the Commission. MAWC is a public water utility that is regulated by the Commission under §393.140, RSMo. As a public utility, MAWC's costs are recovered from its ratepayers. MAWC ratepayers are located throughout Missouri. MSD's ratepayers are located only in the St. Louis metropolitan area. Because the ratepayers of MSD are not the same as MAWC's ratepayers, ratepayers from areas throughout Missouri will be asked to bear the burden of MSD's request that MAWC provide water use data for free.

II. Applicable Statute

The applicable statute is Sec. 249.654.1,RSMo.:

> …Any private water company, public water supply district, or municipality supplying water to the premises located within a sewer district shall, upon reasonable request, make available to such sewer district its records and books so that such sewer district may obtain therefrom such data as may be necessary to calculate the charges for sewer service…

However, it does not define exactly what "make available" means and is also silent on whether a fee can be charged for data a sewer district receives from the private water company.

In *State ex rel. Remy v. Alexander,*[1] the court said that the plain meaning of a word is generally derived from the dictionary meaning. Therefore, a document is "available" when it is ready for use, readily obtainable, and accessible.[2] Applying the plain (dictionary) meaning, Sec. 249.654.1, RSMo. only requires that a private water company "make available" its data and only in a format that is ready for use, readily obtainable, and accessible to the sewer district.

Two opposing arguments have been made on the interpretation of Sec. 249.654.1 RSMo. in the dispute between MSD and MAWC. MSD looks to Sec. 250.233, RSMo. which states:

> …a private water company shall, at reasonable charge upon reasonable request, make available to a city, town or village its records and books…

MSD argues that since Sec. 250.233, RSMo. specifically requires a reasonable charge while the applicable statute in this case does not, a reasonable charge is prohibited by Sec. 249.654.1, RSMo. MAWC's counter-argument is that a charge for copies can be made since a reasonable charge is not specifically prohibited in Sec. 249.654.1, RSMo. Unfortunately, there is no legal authority on point for either interpretation which gives a definitive answer.

[1] 77 SW3d 628, 631 (Mo. App. S.D. 2002)
[2] *Id.*

III. Precedent of Missouri Sunshine Law Regarding Access

Public Counsel suggests that in light of the two interpretations and the lack of clear authority to guide the Commission, it is reasonable and proper to look to the historical treatment of access to documents in Missouri statutes.

The premiere statute relating to access to documents is Sec. 610, RSMo., also known as the Missouri Sunshine Law. In the Missouri Sunshine Law, public records must be open for inspection and copying[3] and, upon request, copies of those public records must be furnished, subject to reasonable fees.[4] These allowable fees include per page copying fees as well as staff assistance, duplicating, and research time.[5]

Although the Sunshine Law is limited to the state and its political subdivisions, agencies, and quasi-governmental bodies, the statute demonstrates that while the law demands access to public records, only a minimal amount of access to the records must be provided for free. Special access or copying requests above that minimal access are properly subject to reasonable fees as are the costs for any research, manipulation, or copying of the data in a different form or format than that of the original document.

IV. Conclusion

Public Counsel suggests that without definitive authority for the copying charge dispute, it is reasonable to look to Missouri's Sunshine Law as the expression of the intent and purpose of Sec. 249.654.1, RSMo. relative to access and copying of private records for a public purpose. The statutes show that only a minimal amount of access to the records must be provided for free. Anything above that minimal access is subject to reasonable fees.

[3] §610.011(2), RSMo. & §610.024.1, RSMo.
[4] §610.026, RSMo.
[5] *Id.*

Applying this historical precedent to this case, "make available" under Sec. 249.654.1, RSMo. does not give MSD a free and unbridled right to demand from MAWC that the requested data be provided in any form demanded by MSD. MAWC is within its rights to require reasonable payment for costs incurred above its minimal statutory obligation to "make available" its records. This interpretation would ensure that the ratepayers of MAWC would not bear the burden of increased rates due to MSD's potential windfall.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By:_____

Christina L. Baker (#58303)
Assistant Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 26th day of March 2007:

Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Keith Krueger
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Keith.Krueger@psc.mo.gov

Byron Francis
Metropolitan St. Louis Sewer District (MSD)
One Metropolitan Square, Suite 2600
211 North Broadway
St. Louis, MO 63102
bfrancis@armstrongteasdale.com

Gentry Sayad
Metropolitan St. Louis Sewer District (MSD)
One Metropolitan Square, Ste. 2600
St. Louis, MO 63102-2740
gsayad@armstrongteasdale.com

Jacqueline Levey
Metropolitan St. Louis Sewer District (MSD)
One Metropolitan Square, Ste. 2600
St. Louis, MO 63102-2740
jlevey@armstrongteasdale.com

Kent Lowry
Metropolitan St. Louis Sewer District (MSD)
One Metropolitan Square, Ste. 2600
St. Louis, MO 63102-2740
klowry@armstrongteasdale.com

Kenneth Jones
Missouri-American Water Company
727 Craig Road
St. Louis, MO 63141
kenneth.jones@amwater.com

/s/ Christina L. Baker