BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order related to Property Taxes in St. Louis County and Platte County.	)))))	File No. WU-2017-0351

APPLICATION FOR REHEARING

COMES NOW Missouri-American Water Company ("MAWC" or "the Company"), and pursuant to §386.500 RSMo. (2000), the Company respectfully submits its Application for Rehearing of the Report and Order issued by the Commission in the above-captioned matter on December 20, 2017 (hereinafter "Order"). In support hereof, MAWC states as follows:

Introduction

The Unusual and Extraordinary Nature of the Expense

1. The Order correctly identified the issue here as "did the Counties' implementation of a different standard for assessing MAWC's property taxes cause an unusual, unique and nonrecurring event worthy of exceptional treatment".[1] However, the Order's conclusion that it did not is contrary to Commission precedent and is, therefore, unjust and unreasonable to the Company. The Order's primary rationale appears to be that property taxes are an expected cost of operating a business and that it "is an obligation borne by all investor-owned utilities, including MAWC…"[2]. This rationale is flawed. It is not the cost category that matters in the context of Accounting Authority Orders ("AAO"). Instead, what matters is the level of the extraordinary cost imposed on the Company and the fact that the cost is beyond MAWC's control. Consistent with how the Commission has viewed other requests for an AAO, the

[1] Report and Order, p. 15.
[2] *Id.*

Commission should grant the requested AAO in this case because the cost changes were extraordinary, unforeseeable for purposes of traditional ratemaking, and clearly beyond MAWC's control.

2. The Commission has granted several AAOs for expenses that reflect ordinary cost categories for utility companies.[3] If the Order's "expected cost of operating a business" reasoning were followed, those decisions would have required a different outcome and a reversal of prior findings that the costs involved were unusual and extraordinary. Whether the extraordinary change in cost was a result of extreme weather, a change in regulation, a newly proposed cost of service by a utility, or a dramatic change in tax assessment methodologies, it is the extraordinary size of the change, whether it was a known and measurable cost for ratemaking purposes, and the degree of utility control that is important. For instance, the fact that an electric company incurred vegetation management expenses is neither atypical nor extraordinary. Yet, the Commission nevertheless granted an electric company an AAO when government action caused an increase in its vegetation management costs.[4] Similarly, costs related to compliance with the Cold Weather Rule also are neither atypical nor extraordinary, yet, the Commission has granted AAOs to utilities after a change to the Cold Weather Rule.[5] Furthermore, the incurrence of costs related to employees' post-retirement benefits are not unusual or extraordinary, yet, the

[3] In the Order, the Commission states that MAWC "is requesting the Commission single out one increased expense for special deferred treatment without consideration for other items of profit or loss." Order at 18. If the Commission applied this logic to all AAO requests, the Commission would never grant an AAO because almost every utility likely has some items of profit or decreased cost that could partially offset an extraordinary and material expense. As discussed in this paragraph two, however, the Commission has granted AAOs in the past, and to deny MAWC an AAO on this ground would be to subject the Company to a disparate treatment inconsistent with Commission precedent.

[4] *In the Matter of Union Elec. Co., d/b/a Ameren UE's Tariffs to Increase Its Annual Revenues for Elec. Service*, (475 ER-2008-0318) (Jan. 27, 2009).

[5] *In the matter of the Application of UtiliCorp United Inc., d/b/a Missouri Public Service and St. Joseph Light and Power Company for an Accounting Authority Order Relating to Commission Rule 4 CSR 240-13.055(13),* 11 Mo. P.S.C. 3d 78 (GA-2002-285) (January 10, 2002); *In the Matter of the Application of Missouri Gas Energy, a Division of Southern Union Company, for an Accounting Authority Order Relating to Commission Rule 4 CSR 240-13.055(13),* 2002 Mo. P.S.C. 3d 317 (GA-2002-377) (June 13, 2002).

Commission also has granted several AAOs to utilities after a change in Financial Accounting Standards increased these expenses for certain utilities.[6]

3. The Commission has also granted an AAO to a utility after an unusual and extraordinary property tax increase despite the fact that property taxes are generally considered usual operating expenses. Indeed, the massive increase in MAWC's property tax obligation is very similar to the situation Missouri Gas Energy faced in 2005, when Kansas introduced a new property tax that created a tax obligation amounting to about nine percent (9.0%) of its annual income.[7] There, the Commission recognized that the material increase in property taxes resulting from governmental action was "extraordinary, unusual and unique, and not recurring."[8] The Commission should treat MAWC's nearly identical increase in property tax obligations the same way.

4. The fact that an expense is typically an ordinary one does not preclude the level of the expense associated with it from being extraordinary under specific circumstances. Expenses related to vegetation management, compliance with the Cold Weather Rule, and changes to post-retirement benefits all reflect ordinary cost categories of utility service for which the Commission has granted AAOs. Property tax expense is no different. In each case, there is an extraordinary cost change, unforeseeable for purposes of traditional ratemaking, and beyond the utility's control. In contrast with how the Commission has ruled in the past, the Order creates a false dichotomy when it claims that an atypical extraordinary cost increase can be ignored as

[6] *In Re Union Electric*, 1 Mo.P.S.C.3d 328, 330 (EO-92-179) (June 12, 1992); *In Re St. Joseph Light and Power Company*, 2 Mo.P.S.C.3d 248, 270 (ER-93-41, EC-93-252) (June 25, 1993); *In Re Missouri Gas Energy, 3 Mo.P.S.C.3d 203* (GO-94-255) (September 28, 1994); *In Re Empire District Electric Company* (EO-93-35) (February 2, 1993).
[7] *In the matter of the Application of Missouri Gas Energy, a Division of Southern Union Company, for an Accounting Authority Order Covering the Kansas Property Tax for Gas in Storage*, Case No. GO-2005-0095 (R&O issued September 8, 2005), 2005 Mo. PSC Lexis 1191.
[8] *Id*. at 24.

long as the incurrence of the category of increase – in this case, property tax expense – is a typically incurred expense.

5. While property tax expense is an ordinary cost, it is the sheer magnitude of the change that makes it extraordinary. The near tripling in the applied class life, from seven (7) to twenty (20) years, has caused a substantial, nearly double, increase in MAWC's St. Louis County property tax obligations.[9] That amounts to an increase of over $6.9 million of property tax expenses in St. Louis County from January 2017, to May, 2018.[10] This single increase in St. Louis County alone consists of 8.9% of MAWC's 2016 annual income. Such a dramatic cost change could not be addressed under traditional ratemaking, and therefore, was unforeseeable from a ratemaking perspective. The change was also outside of MAWC's control. The same can be said for the changes in Platte County that led to the Company's sudden and unexpected increases in property tax expense in that county. Even Commission Staff Witness Oligschlaeger conceded that St. Louis County's increase in recovery life span is "a rare situation", and that Platte County's increase "appears to be unprecedented."[11]

6. The Commission's Order acknowledges that "Platte County's use of a 50-year class life may be unexpected," but denies AAO treatment because the resulting level of increase of approximately $560,000 is "hardly extraordinary for a utility the size of MAWC."[12] The Commission's decision to treat the two counties' actions as separate and unrelated events is unreasonable and contrary to the record evidence. The testimony of St. Louis County witness Strain, which the Commission found "helpful," clearly established that the triggering event for these counties' actions to review and revise their assessment methodologies was the pending

[9] MAWC Brief, p. 8; Reply Brief p. 2-3.
[10] Exh. 5, LaGrand Sur., p. 8; Schedule BWL.
[11] Tr., p. 143; Exh. 6, Oligschlaeger Reb., p. 7.
[12] Report & Order, p. 20.

State Tax Commission cases involving Ameren and Laclede Gas Companies.[13] The change in administrative guidance by these two counties to increase class lives has the same effect as a change in law. Thus, the Commission's finding that Platte County's action was extraordinary, but not material, is inconsistent and cannot be reconciled with its finding that St. Louis County's action was not extraordinary, but material. On the contrary, both counties based their changes in assessment methodologies on their interpretation of law as a result of the very same Tax Commission cases.

7. Further, the Order may set unintended precedent in ruling that the payment of an extraordinary increase in a category of taxes is, nevertheless, a "recurring expense" and cannot be considered unusual or extraordinary simply because the category of expense is not unusual. Beginning next year, Missouri utilities are likely to incur substantial reductions in their federal income tax expense pursuant to the recently passed Tax Cuts and Jobs Act of 2017, which, among other things, will dramatically lower base corporate tax rates from thirty-five percent (35%) to twenty-one percent (21%).[14] Tellingly, Staff has recently filed a Motion to Open a Working Docket to determine "the actual impact of the Tax Cuts And Jobs Act of 2017 upon Missouri public utilities and their ratepayers …"[15]. Staff wants to develop a "prompt plan of response designed to ensure that Missouri public utility rates are just and reasonable."[16] Given the Commission's finding that "there is nothing unusual or extraordinary about paying property taxes to warrant an AAO [claiming it] is a recurring expense …" the same can be said for federal income taxes. In fact, all one has to do is substitute the word "income" for "property" in the

[13] Tr., 201.
[14] Kelsey Snell, *Final Version Of GOP Tax Bill Cuts Corporate Tax Rate To 21 Percent,* National Public Radio (December 15, 2017), https://www.npr.org/2017/12/15/571257526/final-version-of-gop-tax-bill-cuts-corporate-tax-rate-to-21-percent.
[15] *In the Matter of the Revenue Effects Upon Missouri Utilities of the Tax Cuts and Jobs Act of 2017,* Case No. AW-2018-0174; Staff's Motion to Open a Working Docket, p. 2.
[16] *Id.*

Commission's finding and, under the rationale set forth in the Order, there would be no need to open a working docket or look for ways to address income tax deductions outside the context of a general rate case. The requested rehearing should be granted to avoid establishing such unintended precedent.

The Alleged "Notice" Does Not Preclude an AAO

8. The Commission further states in its Order that MAWC was "put on notice" that St. Louis County could foreseeably apply a 20-year recovery period because it had internally discussed the possibility of such a change, other counties used a 20-year recovery period, and Jefferson County had recently made the switch to a 20-year period.[17] For ratemaking purposes, MAWC could only seek cost recovery of property tax expenses based on filings accepted by the County. Furthermore, the Company was not on notice of the actual change in assessment methodology prior to the actual change being made in 2017. As the County of St. Louis witness acknowledged, and as the Order correctly notes, St. Louis County accepted MAWC's property tax calculations for assessed value that used a 7-year recovery period from 2007 to 2016.[18] During that period, MAWC could not have utilized an alternative property tax methodology as the basis to seek rate recovery from customers, as such costs were not and could not be used for setting MAWC's rates. In fact, as the Order recognizes, the change to the 20-year recovery period was first communicated to MAWC's tax preparer on May 30, 2017. Thus, MAWC had no notice of the actual change in assessment methodology until May 30, 2017.[19]

9. Despite the Order's assertion that it recently denied Kansas City Power & Light Company's (KCPL) request "to do that exact thing with a tracker for increased property tax

[17] Report and Order, p. 17.
[18] *Id.* at 9.
[19] *Id.*

expense,"[20] the Company's current situation is distinguishable from the facts that led the Commission to deny KCPL's request for a property tax tracker mechanism. First, KCPL's request for a tracker was to "track" ordinary changes in its overall property taxes, which had been increasing over the prior five (5) years. KCPL was not experiencing (nor proposing to track) extraordinary, one-time changes in its property taxes due to foundational changes in the assessment methodologies used by the assessors in counties in which it operates, as the Company is seeking to do here. Second, KCPL's request was made in the context of a rate case where all relevant factors (i.e., revenues, expenses, investments, etc.) were being considered. Here, MAWC is not seeking any ratemaking determinations, but simply is asking for authority to defer these extraordinary expenses until they can be considered, with all other relevant factors, in the context of its pending rate case.

10. MAWC's property tax expense increase caused by St. Louis County's sudden tax assessment shift is extraordinary and material regardless of whether the possibility of such a change at some point in the future existed. The mere possibility of future changes is simply not notice of an actual change. Moreover, there is no requirement that all involved expenses be unforeseeable for an AAO to be granted. The Order's conclusion that "the Company should have known about the potential increase in St. Louis County since 2007 and acted accordingly …"[21] is simply wrong. The Company at all times "acted accordingly" contrary to the Order's implication. The Company verified its obligations with the appropriate taxing authorities from 2007 to 2017 and followed a consistent 7-year class life based assessment methodology for that entire time period, a methodology that St. Louis County and the Order acknowledge was

[20] *Id.* at 18.
[21] *Id*. at 20.

accepted by the County.[22] Surely, the Commission is not saying that MAWC could have "volunteered" in 2007 to increase its property tax expense based on alternative assessment methodology that was not applied to MAWC until 2017. The Company paid appropriate taxes and passed through any resulting savings on tax expense to customers. Denying the AAO thus unfairly penalizes the Company for doing what it would not have been permitted to do - "volunteering" for a major increase in taxes and passing it onto its customers.

11. Any suggestion that the Company could have recovered these costs as part of MAWC's pending or prior rate cases is misplaced. [23] As a practical matter, under the "file and suspend" procedure, MAWC could never time the effective date of new rates to coincide with the effective date of a change in its property tax expense, unless the taxing authority is willing (and able) to give MAWC at least one year advance notice of a change in the tax. Such notice is typically not available. The Commission need look no further than the current situation. The Company was notified in late May and early June, 2017, by the St. Louis and Platte County Assessors that the recovery periods (i.e. class lives) were being substantially increased and the resulting increases in property tax expense would apply retroactively to January 1, 2017. Coincidentally, the Company was planning to (and did) file a general rate case on June 30, 2017. However, the rates that will be set in the Company's pending rate case will not become effective until mid-2018. The filing of the pending rate case, therefore, was the earliest the Company could have filed a rate case to recover the increased property tax expense given the timing of the counties' notification of the assessment methodology change. As a result, absent the AAO, the Company will incur nearly 17 months of increased property tax expense that will never be recovered from the beneficiaries of those increased tax revenues – the St. Louis and Platte

[22] *Id.* at 9.
[23] *Id.* at 18.

County residents. This timing mismatch would have occurred whether the counties changed their assessment methodologies in 2007, 2008, or any year prior to 2017. For the Order to suggest the Company could have "acted accordingly" to recover this increased property tax expense had it occurred in prior years is not only unsubstantiated speculation, it is simply not possible given the time it takes to file and process rate cases. Finally, the Commission neglects to acknowledge that the Company acted accordingly when it saved its St. Louis County customers tens of millions of dollars in lower water rates because the change in recovery periods was not made until 2017.

The Lack of Prior AAO Requests is Immaterial

12. The Commission further speculates in its Order that, because MAWC did not file for AAOs when the other twenty-three (23) counties in which it operates converted to a 20-year recovery period, the Company did not consider those changes extraordinary at the time.[24]

13. This speculation is unsubstantiated and overlooks a number of different factors – all of which lead to a different conclusion. First, there is no evidence to indicate what class lives the other twenty-three counties were using prior to the passage of the current §137.122, RSMo. So, if those Counties were already applying a 10, 15 or 20 year recovery period, the change to a 20 year recovery period may not have had as dramatic an effect as moving from 7 to 20 years. Second, the impact from the class life changes in those counties probably did not meet a materiality threshold because MAWC owns considerably less property in the other counties than it does in St. Louis County. Finally, the fact that MAWC did not apply for an AAO in the past does not invalidate its current request, even if the circumstances are arguably similar. Thus, the

[24] *Id*. at 18.

fact that MAWC did not file for past AAOs is neither relevant nor dispositive in the Commission's present analysis.

Conclusion

For the reasons stated herein, Missouri-American Water Company respectfully requests that the Commission grant its Application for Rehearing, and upon rehearing, issue an order that grants Missouri-American Water Company the Accounting Authority Order it requested in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on December 29, 2017, to the following:

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