

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

In the Matter of a Motion for an Emergency)
Order Establishing a Temporary Moratorium)
on Utility Discontinuances to Protect Public) File No. AO-2021-0164
Health and Safety by Mitigating the Spread of)
the COVID-19 Pandemic.)

MISSOURI-AMERICAN WATER COMPANY’S RESPONSE

COMES NOW Missouri-American Water Company (MAWC), by and through the undersigned counsel, and hereby provides the following response to the Missouri Public Service Commission (Commission):

1. On December 7, 2020, Consumers Council of Missouri (CCM) filed its *Motion for an Emergency Order and Request for Expedited Treatment* (Motion) requesting the Commission issue a statewide moratorium on the involuntary disconnection or discontinuance of residential service by Commission-regulated electric, gas, and water corporations through at least March 31, 2021. The motion also requests the Commission order the waiver of any late fees and related costs. Thereafter, on December 8, 2020, the Commission issued its *Order Directing Notice and Shortening Time for Responses*, wherein the Commission directed that “Responses to Consumers Council’s motion for a disconnection moratorium and request for expedited treatment shall be filed no later than December 14, 2020.”

GENERAL COMMENT

2. CCM’s Motion alleges that its proposed measures are necessary to protect the health and welfare of the public during the Covid-19 pandemic. MAWC is certainly aware of these issues and shares CCM’s concern. Having said this, MAWC believes that remedy proposed by CCM is not called for at this time.

3. MAWC has already taken substantial steps to work with customers as we move forward through the Covid-19 pandemic and available information indicates that these measures have been effective within MAWC's service territories. Given this experience, MAWC believes that the moratorium on involuntary disconnection or discontinuance of residential service called for by CCM may, in fact, undermine those steps that are already in place.

CURRENT ASSISTANCE AVAILABLE

4. MAWC has taken several steps to adjust its payment and collection processes during the Covid-19 pandemic. Most prominently, MAWC has implemented an enhanced payment plan for customers. This plan allows customers twelve months to pay their past due balance, and for most customers, does not require any down payment.

5. As a part of the Stipulation and Agreement in Commission File No. WU-2020-0417, MAWC has committed an additional \$250,000 to the H2O program to support customers in financial need in its service territory.

CURRENT EXPERIENCE

6. Experience thus far suggests that the mechanisms currently in place are doing their job to manage the circumstances. Under normal, pre-pandemic conditions, MAWC would average approximately 1,700 disconnections per month. Since MAWC resumed disconnections in September 2020, MAWC's monthly disconnections have averaged approximately 1,500 per month.

7. Moreover, customer participation in the enhanced payment plan has seen increasing utilization. In August 2020, approximately 1,200 customers had signed up for

the new payment plan, and through November 2020, that number has increased to nearly 5,000.

LEGAL CONSIDERATIONS

8. The Commission should consider the process related to any order that may purport to set state-wise policy, such as that requested by CCM. Section 536.010(6), RSMo, defines a “rule” to be “each agency statement of general applicability that implements, interprets, or prescribes law or policy . . .” An administrative rule that is adopted in violation of the notice and comment procedures of the state Administrative Procedures Act is “void.” See *NME Hosps., Inc. v. Development of Soc. Servs.*, 850 S.W.2d 71 (Mo. banc 1993).

9. The Administrative Procedures Act provides a procedure for the adoption of emergency rules where there is an “immediate danger to the public health, safety or welfare [that] requires emergency action. . . .” Section 536.025, RSMo. The Commission has used the emergency rulemaking powers in the past in similar situations, such as the promulgation of emergency cold weather rules. (See Commission Case No. AX-2002-203).

10. Section 386.310.1, RSMo, which is cited as authority by the Motion, states as follows:

The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the

public may demand, including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules.

11. Section 386.310 authorizes the Commission to act in regard to safety rules.¹

The remedy requested by the CCM would not modify the Commission's existing safety rules, but instead would modify the Commission's existing Service and Billing rules found in 20 CSR 4240 Chapter 13. The Commission may take such steps, but only where it follows the procedures outlined by the Administrative Procedures Act.

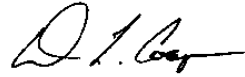
WHEREFORE, Missouri-American Water Company submits this response for the

¹ If it is believed that Section 386.310, RSMo, is applicable to the situation at hand, CCM should further explain why its proposed order should apply only to electrical corporations, gas corporations, and water corporations, and not other non-investor owned utilities, as Section 386.310 broadly applies to "every person, corporation, municipal gas system and public utility."

Commission's information and consideration.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to the following on this 14th day of December, 2020:

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