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

MAWC'S INITIAL BRIEF

COMES NOW Missouri-American Water Company (MAWC or Company) and for its Initial Brief states to the Missouri Public Service Commission (Commission) as follows:

Introduction and Background

The scope of this case is limited to a single, straight-forward request for an Accounting Authority Order (AAO) allowing MAWC to defer the incremental increase in property tax expense for the period between January 1, 2017, and May 31, 2018 that MAWC is required to pay to St. Louis and Platte Counties beginning in 2017 as a result of the counties' decisions to significantly change their property tax assessment methodologies as applied to MAWC's property in those counties.

For at least the past ten (10) years, these referenced counties have utilized different Modified Accelerated Cost Recovery (MACRs) class lives[1] in the calculation of depreciation and, thus, the value of MAWC's property subject to property tax. Both counties are altering their administrative practices in a way that results in a significant increase in the assessed value of MAWC's property and, thus, a significant increase in its property tax obligation.

In that regard, St. Louis County, beginning in 2017, is moving a significant portion of MAWC's property to a fifteen (15) year MACRs class life from the seven (7) year class life it has used for the past ten plus (10+) years. St. Louis County further indicates that for 2018, it

[1] These MACRs class lives are also referred to as recovery periods. See *§137.122(2) and (6), RSMo.*

will transition that property to a twenty (20) year MACRs class life. Platte County has indicated that it will move a significant portion of MAWC's property to a fifty (50) year MACRs class life from the twenty (20) year MACRs class life it had been using for the past ten plus (10+) years. In addition, Platte County has included the value of Construction Work in Progress (CWIP) in the assessed value of MAWC property subject to tax. This is the first time Platte County has ever sought to include the value of Construction Work in Progress in its property tax valuation.[2]

The property tax liability increases resulting from these sudden and unanticipated changes in assessment methodologies are substantial. These changes will result in an estimated increase of approximately $4.4 million to MAWC's property tax obligations in St. Louis County for 2017, and $6.1 million for 2018. In Platte County, MAWC estimates an increase of approximately $0.4 million to its property tax obligations in both 2017 and 2018. Thus, MAWC expects to incur a total increase in property tax paid to these two counties of approximately $4.8 million in 2017 and $6.5 million in 2018.[3]

The property tax expense that was used for rate setting purposes in MAWC's last rate case (WR-2015-0301) was calculated using far lower historic levels. At the time of its last rate case, MAWC had no reason to believe that its property tax expenses would increase suddenly and significantly beyond the levels incorporated into MAWC's current rates as a result of St. Louis and Platte Counties' unexpected administrative changes in how they assess the Company's property. These increases in MAWC's property tax expense are not built into its current rates and, absent a grant of the instant AAO, MAWC has no mechanism to recover these significant additional property tax expenses.[4]

[2] Exh. 1, Wilde Dir., pp. 4-5.
[3] Exh. 1, Wilde Dir., p. 6.
[4] Exh. 1, Wilde Dir., p. 8.

The change in administrative practice being implemented by the referenced counties results from unusual and extraordinary actions of local government officials that are beyond the control of MAWC's management and this Commission. The changes these counties are making in their property tax assessment methodologies were unpredictable and could not have been adequately or appropriately addressed through the ratemaking process in MAWC's last rate case.[5]

1. The Commission should grant MAWC the Accounting Authority Order it has requested in this case. (Issue No. 1)

MAWC seeks, and the Commission should grant, an AAO allowing MAWC to defer the incremental increase in property tax expense for the period between January 1, 2017, and May 31, 2018, associated with the change in tax assessment methodologies employed by St. Louis and Platte Counties as follows:

a) That MAWC is authorized to record and defer on its books the increase in Missouri property taxes for the counties of St. Louis and Platte associated with the counties' change in the calculation of MACRs class lives; and

b) That MAWC may defer and maintain these costs on its books until the effective date of the Report and Order in MAWC's pending general rate proceeding (WR-2017-0285).[6]

The Commission has granted similar AAOs in the past, as the Commission has granted AAOs for extraordinary, unusual and unique, and not recurring costs, regardless of whether that cost was brought about by either government action, change in accounting standards, natural disasters, or another unpredictable event.

[5] Exh. 1, Wilde Dir., p. 8.
[6] Exh. 4, LaGrand Dir., p. 7.

Specifically, the Commission should grant MAWC an AAO in this case because the increased expense:

- is a result of the sudden and unexpected change to the way in which the St. Louis and Platte County Assessors are calculating the depreciation of MAWC's property values and is not likely to occur again in the near future;
- is not the result of an ordinary change in property tax assessments due to increases in plant investment or changes in tax rates; and
- is material, representing approximately 9.6% of the Company's 2016 net income.

MAWC will pay approximately $7.5 million in additional property taxes for the seventeen (17) months prior to June of 2018, when new customer rates will be set in MAWC's pending rate case (WR-2017-0285). As Commissioner Kenney recognized, "It's a lot of money" for that short period of time.[7]

A. Commission precedent supports Commission approval of AAOs for expenses caused by extraordinary, unusual and unique, and not recurring circumstances.

An AAO is a mechanism used to allow a utility to accrue expenses between rate cases to cover items that were not in effect at the time of the last rate case and were generally unforeseen. Section 393.140(8), which expressly authorizes AAOs, grants the Commission:

> . . . the power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

The Commission has discretion in granting an AAO. The Commission has granted AAOs for costs caused by "unpredictable events, acts of government, and other matters outside

[7] Tr., p. 56.

the control of the utility or the Commission."[8] While there is no express standard for when the Commission should grant an AAO, the Commission has stated that it will grant an AAO "when events occur during a period which are extraordinary, unusual and unique, and not recurring."[9] The Commission has further stated that it "has periodically granted AAOs and subsequent ratemaking treatment for various unusual occurrences such as flood-related costs, changes in accounting standards, and other matters which are unpredictable and cannot adequately or appropriately be addressed within normal budgeting parameters."[10] The Commission typically requires costs must be material to qualify for an AAO, determining that costs be at least five percent (5%) of net income for the period.[11]

The Commission has granted AAOs for expenses brought about by government actions. In fact, the Commission has previously granted an AAO because of a change in the way a governmental body assessed property tax. In 2005, Missouri Gas Energy ("MGE") applied for an AAO to defer Kansas property taxes after a new Kansas law authorized such property taxes for the first time. As the Commission noted, MGE could not have included the Kansas property tax costs in its prior rate case, as the costs were not known and measurable at the time.[12] Based on the "extraordinary, unusual and unique, and not recurring" circumstance of the new property taxes, which amounted to 9.03% of its annual income, the Commission granted MGE an AAO to defer the property taxes for consideration in a future rate case.[13]

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[8] *In the matter of St. Louis County Water Company's Tariff Designed to Increase Rates for Water Service to Customers in the Company's Service Area*, MoPSC Case No. WR-96-263, p. 13 (R&O issued December 31, 1996), 1996 Mo. PSC Lexis 99, p. 18.
[9] *In the matter of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations*, Case No. EO-91-358 et al., (R&O issued December 20, 1991), 1991 Mo. PSC Lexis 56, p. 11.
[10] *Id.*, 1996 Mo. PSC Lexis 99, p. 19.
[11] Exh. 5, LaGrand Sur., p. 7.
[12] *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, p. 22.
[13] *Id.*, 2005 Mo. PSC Lexis 1191, pp. 21, 24.

While Staff and the Office of Public Counsel (OPC) have tried to distinguish the 2005 MGE case, this case has many similarities. In both instances, a governmental body's sudden and unexpected increase in property tax assessments caused a material financial impact on the utility. Here the financial impact is actually greater (i.e., 9.6% of MAWC's net income, compared to 9.03% in the MGE Case), making the unexpected change in methodology even more extraordinary. Further, the increase in property taxes for MAWC was just as unexpected, as both St. Louis and Platte Counties had used the same methodology for at least ten years, but nevertheless, suddenly and without prior notice, made major changes to their assessment procedures. While Staff has seemingly tried to distinguish the MGE Case by arguing that MGE was raising a legal challenge to the new Kansas property tax, the Commission has never held that initiating litigation affects its AAO decision-making process. Accordingly, any attempts to distinguish the matters are without merit, and the Commission should grant MAWC an AAO in line with its past decision.

OPC and Missouri Energy Consumers Groups (MECG) note failed efforts by KCPL in recent rate cases to implement a tracker for its property tax expense and argue that the Commission's decision to deny KCPL's request is relevant precedent for the Commission to reject MAWC's instant request for an AAO.[14] However, the KCPL cases are distinguishable in two important respects. First, KCPL's requests were made in the context of rate cases where all relevant factors (i.e., revenues, expenses, investments, etc.) were being considered.[15] Here, MAWC is not seeking any ratemaking determinations, but simply asking for authority to defer

[14] Tr., p. 26-27; Exh. 10, Riley Reb., p. 10.

[15] *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electrical Service* (ER-2014-0370) (R&O Issued Sept. 2, 2015); *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service* (ER-2016-0285) (R&O Issued May 13, 2017).

these extraordinary expenses until they can be considered, with all other relevant factors, in the context of its pending rate case. Second, and more importantly, KCPL's request for a tracker was to "track" ordinary changes (primarily increases) in its overall property taxes which had been increasing over the last five (5) years.[16] Significantly, KCPL was not experiencing (nor proposing to track) extraordinary, one-time changes in its property taxes due to foundational changes in the assessment methodologies being utilized by the assessors in counties in which it operates.[17]

The instant case is also analogous to the Commission's granting of AAOs based upon changes in accounting board standards. In 1992, the Financial Accounting Standards Board (FASB) amended Financial Accounting Standard 106, an accounting standard that applied to Missouri utility companies through the Federal Securities and Exchange Commission. The amended Financial Accounting Standard 106 altered the way in which employers accounted for "other post-retirement benefits," leading to increased expenses for the utilities. Over the two years following the amended accounting standard, the Commission authorized AAOs for several utilities based upon the extraordinary change in standards.[18]

Finally, the Commission has broad discretion in granting AAOs and has done so for several other matters, including, but not limited to: compliance with the Clean Air Act[19], compliance with emergency amendments to the Cold Weather Rule[20], unexpected expenses

[16] *Id*., p. 38. The Commission specifically found that, "KCPL's property taxes are not rare or unusual."
[17] Tr., p. 166 (Riley)
[18] *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).
[19] *In the matter of the application of Missouri Public Service*, 1 Mo.P.S.C.3d 200, 203-204 (December 20, 1991).
[20] *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*

following a severe ice storm[21], and increased vegetation management expenses caused by a new regulation.[22]

In sum, the Commission has granted AAOs in the past for many different "extraordinary, unusual and unique, and not recurring" expenses. These include expenses caused by governmental actions, changes in accounting board standards, natural disasters, and other extraordinary events. The Commission's granting of an AAO in this case, therefore, is in line with the Commission's prior AAO precedent.

B. <u>The actions taken by the St. Louis and Platte County Assessors are extraordinary, unusual and unique, and not recurring.</u>

The actions taken by the St. Louis and Platte County Assessors are "dramatic, sudden, one-time foundational shifts" from how the assessors in these counties have historically calculated MAWC's tax assessments.[23] Both St. Louis and Platte Counties had used the same assessment methodologies for at least ten years before making these unilateral modifications that could not be anticipated by MAWC and were not considered in past rate cases. These changes represent an almost 200% increase in the recovery periods in St. Louis County (i.e., from 7 to 20 years) and 150% in Platte County (i.e., from 20 to 50 years). These drastic changes in recovery periods result in an increase of approximately 92% and 37% in the property tax expense for St. Louis and Platte counties, respectively.[24] These changes in recovery periods will cause major,

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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).

[21] *In re Aquila Inc.* (EU-2002-1053) (July 7, 2002); *In the Matter of the Application of Union Electric Company d/b/a AmerenUE for an Accounting Authority Order Regarding Accounting for the Extraordinary Costs Relating to Damage from the January 2007 Ice Storm* (EU-2008-0141) (April 30, 2008).

[22] *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).

[23] Exh. 5, LaGrand Sur., p. 5.

[24] St. Louis County's estimated property tax for 2017 using a seven (7) year recovery period is $6,607,127 and its estimated property tax using a twenty (20) year recovery period is $12,708,424. Thus, $12,708,424 less $6,607,127 divided by $6,607,127 is 92.3%. Platte County's estimated property tax for 2017 using a twenty (20) year recovery

material new expenses for MAWC, resulting in an additional $7.5 million in property tax obligations prior to June of 2018 (the expected effective date of the Commission's decision in MAWC's pending rate case).[25] Furthermore, it is extremely unlikely that MAWC will experience another such dramatic spike in property tax expense in these counties based on a future alteration of property tax assessment methodologies.[26] Staff witness Oligschlaeger conceded that St. Louis County's 200% increase in lives is a "rare situation" and Platte County's move to a 50-year recovery period "appears to be unprecedented."[27] As such, the counties' actions were extraordinary, unusual and unique, and not recurring.

C. The increase in MAWC's property tax expense is material.

MAWC estimates its increased property tax expense, due solely to St. Louis and Platte Counties' change in assessment methodologies, for the seventeen (17) month period from January, 2017, through May, 2018 (the period covered by this AAO), is $7.5 million. After adjusting for income taxes, this represents approximately 9.6% of the Company's 2016 net income.[28] This amount easily exceeds the Commission's standard materiality threshold of 5% of a utility's net income for consideration of an AAO deferral request.[29]

Staff acknowledges that the materiality standard has been met for St. Louis County, but argues that the Platte County changes "considered in isolation" are not material.[30] OPC witness Riley asserts that the Company's estimate of the increase is material in 2017, but not material in 2018, suggesting that each year should be considered separately.[31] However, Mr. Riley's

period is $972,610 and its estimated property tax using a fifty (50) year recovery period is $1,328,056. Thus, $1,328,056 less $972,610 divided by $972,610 is 36.5%. (Exh. 1, Wilde Dir., Sch. JRW-1).
[25] Exh. 1, Wilde Dir., p. 6.
[26] Exh. 5, LaGrand Sur., p. 5.
[27] Tr., p. 143; Exh. 6, Oligschlaeger Reb., p. 7.
[28] Exh. 5, LaGrand Sur., p. 8; Schedule BWL.
[29] Exh. 5, LaGrand Sur., p. 7.
[30] Exh. 7, Oligschlaeger Reb., p. 6.
[31] Exh. 10, Riley Reb., p. 3.

reliance on the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA) on page 4 of his rebuttal suggests otherwise. In citing FERC's USOA definition of extraordinary items, he actually provides support for the fact that the impact in 2017 and 2018 should be considered in the aggregate. The FERC USOA definition of extraordinary items provides that "the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate."[32] In addition, Staff witness Oligschlaeger stated, "It's okay to look at the fiscal impact for both years together and comparing it for the materiality standard."[33]

In this case, the change in tax assessment methodology arises from a single and identifiable event. St. Louis County witness Strain provided the background behind the single and identifiable event when she testified. Ms. Strain noted recent State Tax Commission decisions involving Ameren and Laclede Gas which involved the utilities' allegedly underreporting the value of their assets, and stated that these decisions caused the St. Louis County assessor's office to more closely examine utilities' asset reporting.[34] Following the major decisions that two of Missouri's largest utilities were not correctly reporting their property in multiple counties[35], assessors throughout the state, including in St. Louis County and Platte County, are re-considering how they assess property and how they evaluate utilities' reports, leading to the county assessors' actions in the instant matter. This reevaluation is the single and

[32] Exh. 10, Riley Reb., p. 4.
[33] Tr., p. 145.
[34] Tr., p. 201.
[35] *LACLEDE GAS COMPANY, COMPLAINANT v. CATHY RINEHART, ASSESSOR, CLAY COUNTY, MISSOURI, RESPONDENT AND DAVID COX, ASSESSOR, PLATTE COUNTY, MISSOURI, RESPONDENT* (September 6, 2017); *MISSOURI NATURAL GAS, COMPLAINANT v. THOMAS COPELAND, ASSESSOR FRANKLIN CO., MISSOURI DAN WARD, ASSESSOR, ST. FRANCOIS CO., MISSOURI, LINDA WAGNER, ASSESSOR STE. GENEVIEVE CO., MISSOURI, RESPONDENT* (May 30, 2016); *UNION ELECTRIC COMPANY, D/B/A AMEREN MISSOURI, COMPLAINANT v. ASSESSORS OF: BOLLINGER COUNTY BUTLER COUNTY, CALLAWAY COUNTY, CAPE GIRARDEAU COUNTY, COLE COUNTY, COOPER COUNTY, HOWARD COUNTY, LINCOLN COUNTY, MONITEAU COUNTY* (October 20, 2015).

identifiable event in this case. The connection is even more apparent when one considers that one of the Laclede Gas State Tax Commission cases involved the Platte County Assessor's Office, which precipitated that office's recent changes.

Regardless of whether there was a "single and identifiable event," the Company does not experience the financial impact of changes to its property taxes "in isolation." The changes in tax assessment methodology, including Platte County's "unprecedented" imposition of a 50-year life category, both occurred during the time period at issue in the Company's AAO petition (i.e., 2017). Based on the financial impact of the property tax assessment methodology changes imposed on the Company, the materiality threshold has been exceeded and is not a bar to the Commission granting the Company's AAO petition.

D. The property tax increases are not ordinary.

Despite assertions to the contrary by other parties in this case, MAWC is not seeking to defer "ordinary" or "routine" property tax payments. While it is generally true that "the property taxes paid by a utility are considered to be a cost of doing business,"[36] MAWC is not seeking an AAO for increased property taxes due to normal increases in its investment in a county, or annual adjustments to the property tax rates of counties.[37] Rather, MAWC is only seeking to defer the increased expenses from these two counties' dramatic, one-time departure from existing assessment methodology that these counties have been using for at least the past ten (10) years which will have a material financial impact on the Company.

MAWC's proposal is analogous to Ameren's past request to the Commission for an AAO based on increased vegetation management expenses following a new regulation. As Commissioner Rupp has noted, an electric utility expects to pay for tree trimming and other

[36] 2005 Mo. PSC Lexis 1191, p. 10.
[37] Exh. 5, LaGrand Sur., p. 6.

vegetation management every year as an ordinary expense.[38] Nevertheless, the Commission has still granted an AAO when expected vegetation management expenses rose to a previously unforeseeable level because of government action. In 2009, the Commission granted Ameren an AAO to recover expenses stemming from compliance with the new Commission Regulation, 4 CSR 240-23.020.[39] The Commission reasoned that the new regulation increased Ameren's costs by requiring it to go "above and beyond" its previous commitment to vegetation management.[40] Thus, it granted the AAO for vegetation management expenses that had not been included in the Commission's prior rate case.

Similarly, MAWC expects to pay property taxes annually and recognizes that paying property taxes is a cost of doing business. However, St. Louis and Platte Counties' unpredictable and sudden changes in their assessment methodologies were discretionary government actions beyond MAWC's control, like the new vegetation management regulation was for Ameren. While Staff witness Oligschlaeger tries to differentiate the Ameren AAO, as the Commission had ordered that additional expense, this is actually quite similar. In both cases, discretionary and unpredictable government actions caused the utility's regular expenses to increase by an extraordinary magnitude to a level "above and beyond" what it had paid in the past. Accordingly, just as it has in the Ameren vegetation management case, the Commission should grant the requested AAO to defer MAWC's extraordinary and unexpected expenses.

Staff also attempts to dismiss the extraordinary and unusual decisions of the counties as within the "ordinary discretion available to those bodies," implying that the government action in question must be beyond its discretion or otherwise improper before it can be characterized as

[38] Tr., p. 141.
[39] 475 ER-2008-0318 (Jan. 27, 2009), p. 24.
[40] *Id*.

extraordinary. That is simply not the case. The Commission was neither acting improperly when it implemented a new vegetation management regulation, nor was it acting beyond its lawful discretion in adopting its cold weather rule. Similarly, the FASB was not acting beyond its lawful discretion in adopting Financial Accounting Standard 106. Yet, all of those lawful exercises of authority gave rise to extraordinary costs that the Commission determined justified the grant of an AAO.

Staff, OPC and St. Louis County also make much of the fact that the other twenty-three (23) counties in which MAWC has property have already transitioned or moved to twenty (20) year MACRs class lives and, as a result, MAWC should have known or expected St. Louis County to do so as well. However, this exercise in hindsight overlooks several critical facts. First, Section 137.122, RSMo., which authorized the use of MACR class lives, was first enacted in 2005. Prior to that time, counties were free to use whatever recovery periods they believed reasonable in calculating depreciation expense.[41] Thus, some counties may have already been using a twenty (20) year class life, or something close to twenty (20) years, such that a transition to a twenty (20) year MACRs class life would not have been a significant change.[42] Second, §137.122 is not a mandate and, as St. Louis County witness Strain admits, counties are within their discretion to use a seven (7) year MACRs class life.[43] In fact, some of these twenty-three (23) counties phased in the use of a twenty (20) year MACRs class life over several years and one county (i.e., Jefferson) only recently moved to a twenty (20) year class life.[44] This does not change the fact that St. Louis and Platte counties only decided to make this unilateral change at

[41] Tr., p. 185.
[42] Tr., pp. 151, 185.
[43] Tr., p. 199.
[44] Tr., p. 75 (Wilde).

this time without providing the Company any notice or opportunity to include the increased expenses associated with this change in its prior rate case.

E. MAWC Did Not Misreport Its Property to St. Louis County

Both St. Louis County and OPC assert that as a "self-reporting utility" MAWC was responsible for not only reporting the value (i.e., original cost) of its property to the St. Louis County Assessor, but also applying the appropriate MACRs class life or recovery period to that property pursuant to §137.122. They then assert that MAWC's failure to apply the proper MACRs class life to its property is MAWC's "fault" and it has no one to blame but itself for the position it now finds itself in.[45] This assertion is simply untrue. In fact, at the hearing, St. Louis County witness Strain admitted that there was no malfeasance on the part of the Company in reporting the way that it did.[46] MAWC has always filed its property tax declarations with the St. Louis County Assessor's Office (as well as the other twenty-three (23) counties where it owns property) consistent with the statute(s) and the guidance of the County Assessor.[47]

OPC and St. Louis County claim MAWC is unique in that it is a self-reporting utility. However, as St. Louis County witness Strain readily admits, all business taxpayers are required to self-report their property to the St. Louis County Assessor, so MAWC is not unique in this regard.[48] Section 137.340, RSMo., makes it clear that the taxpayer shall file with the County Assessor "an itemized return listing all the tangible personal property so owned or controlled on January first of each year," on forms provided by the Assessor. More significantly, §137.122.2, RSMo., requires each assessor to "use the standardized schedule of depreciation in this section to

[45] St. Louis County's Statement of Position on the Issues, p. 2, Office of the Public Counsel's Statement of Position on the Issues, p. 2.
[46] Tr., p. 202.
[47] Tr., p. 43 (Wilde).
[48] Tr., p. 186.

determine the assessed value of depreciable tangible personal property for the purpose of estimating the value of such property subject to taxation under this chapter." In addition, subsection 3 of §137.122 further provides: ". . . to estimate the value of depreciable tangible property for mass appraisal purposes, *each assessor shall value depreciable tangible personal property by applying the class life and recovery period to the original cost of the property according to the following depreciation schedule*." (emphasis added) The schedule of recovery periods listed by §137.122.3, RSMo., contains recovery periods of 3, 5, 7, 10, 15, and 20 years.

Thus, a plain reading of this statute reveals it is the responsibility of the local Assessor (not the taxpayer) to apply the appropriate recovery period (or MACRs class life) to the depreciable tangible property values. It is also clear that there is a range of recovery periods, from three (3) to twenty (20) years, that the assessors may use in depreciating the value of the property and St. Louis County witness Strain concedes that the Assessor has discretion in which recovery period to apply to the tangible personal property. In fact, she admits that the County has the discretion to use a seven (7) year recovery period, even after enactment of §137.122, RSMo.[49] Given the fact that the local Assessor has the responsibility to apply the appropriate recovery period and has the discretion to apply a recovery period within the range of years set forth in the statute, MAWC had no reason to expect a sudden change in the recovery period it had been using for the last ten plus (10+) years.

Because of this discretion and the range of recovery periods to be used, MAWC's tax preparer (Joseph C. Sansone Co.) contacted the St. Louis County Assessor's Office in 2007 to determine which recovery period was appropriate for use in MAWC's 2006 return. MAWC's tax preparer was advised at that time by Ms. Leahy, of the St. Louis County Assessor's Office,

[49] Tr., p. 199.

that, "I have used the existing schedules to locally assess the railroads and other utility companies that report to us also and will apply the '06 rates." The '06 property tax declaration that MAWC thereafter filed with the St. Louis County Assessor's Office applied a seven (7) year recovery period. That property declaration was accepted by the St. Louis County Assessor's Office; and, for each and every year subsequent to 2006, including the property tax return filed in April of 2017, MAWC's tax preparer used a (7) year recovery period. More importantly, the St. Louis County Assessor's Office accepted those annual property declarations for every year until the 2017 filing, when St. Louis County witness Strain candidly stated that while her office had accepted prior years' filings with a seven (7) year recovery period, such acceptance was due to the County Assessor's "oversight."[50]

Thus, it was St. Louis County's responsibility to apply the appropriate recovery period (or MACRs class life) to the tangible personal property in question. It is also clear that St. Louis County had the discretion to use recovery periods ranging from three (3) to twenty (20) years as set forth in the statute. So, St. Louis County's acceptance of a seven (7) year recovery period for all MAWC property tax filings prior to 2017 was clearly within its discretion. The fact that the St. Louis County Assessor's Office did not carefully examine the property tax declarations being filed by MAWC during this period is not MAWC's "fault." In fact, Ms. Strain admits, ". . . it's something that St. Louis County should have definitely have caught."[51] While St. Louis County's decision to convert to a twenty (20) year recovery period was within its discretion, its decision to do so was nevertheless extraordinary and unusual, particularly in light of its ten plus (10+) year track record of accepting a seven (7) year recovery period. MAWC's use of a seven (7) year recovery period was readily apparent from its filings, as they had only seven (7)

[50] Exh. 12, Strain Reb., p. 3.
[51] Tr., p. 179.

columns of depreciated property values when they would have had twenty (20) columns if they were using the longer life.[52]

F. The Commission Needs to Decide on the Company's Request for an AAO and Not Postpone a Decision to MAWC's Pending Rate Case.

If the Commission agrees with MAWC and grants an AAO authorizing it to defer the incremental property tax increase attributable to the decisions of St. Louis and Platte Counties to change their assessment methodology, MAWC respectfully requests the Commission to do so by December 31, 2017, and before MAWC closes its books for the calendar year 2017. Staff's suggestion that there is only a maximum lag of five (5) months between MAWC's payment of any increased property tax at issue in this AAO filing and approval of new customer rates incorporating the higher expense levels, implies that the failure to grant an AAO at this time will readily be cured in the near future. Staff's suggestion is not an appropriate or reasonable option. While the date new rates will go into effect may occur five months after payment of the 2017 property taxes, this misses the objective of the AAO request, which is to address the increased expense the Company will incur for the period between January 2017 and May 2018 prior to MAWC's new rates going into effect in June of 2018. Staff witness Oligschlaeger acknowledges that, without this deferral, MAWC will not be able to recover the approximately $7.5 million it will incur in increased property expense for this seventeen (17) month period of time prior to rates becoming effective in MAWC's pending rate case.[53]

2. The Commission need not decide in the instant case when the deferred debit amortization should begin. (OPC Issue No. 2)

[52] Tr., pp. 180-181.
[53] Tr., p. 131.

The issue of an appropriate amortization period and amortization start date is neither appropriate nor relevant to the instant proceeding. MAWC has not requested that the Commission make any ratemaking decision in this case, including an amortization of the deferred debit. MAWC has made a proposal in its pending rate case (WR-2017-0285) to recover any deferred property tax expense over a three (3) year period that would begin with the effective date of new rates to be set in the pending rate case. Until the Commission has determined the appropriate amortization period for recovery of the deferred expenses (which would occur in the rate case), it is premature to make any determination in the instant case as to when to begin that amortization.[54]

3. The Commission should grant MAWC's request for Accounting Authority Order and allow it to defer the expenses as a miscellaneous deferred debit to USOA Account 186. (OPC Issue No. 3)

MAWC is simply seeking Commission authorization to record and defer on its books in NARUC's USOA Account 186-Miscellaneous Deferred Debits the incremental increase in property tax expense for the period between January 1, 2017, and May 31, 2018, associated with the change in tax assessment methodologies employed by St. Louis and Platte Counties.[55] MAWC is not seeking any ratemaking treatment in the context of the instant case. If, however, the Commission decides to address OPC's issue No. 3, MAWC agrees with the following testimony of Staff witness Oligschlaeger:

> ". . . There is nothing in the USOAs or other Commission rules that prohibit utilities from seeking Commission authorization to implement desired accounting treatments, such as deferral of extraordinary costs. <u>It has been a long-standing practice in this jurisdiction that utilities, in most circumstances, will petition the Commission through AAO applications for authorization to book regulatory assets.</u> Receiving express

[54] Exh. 5, LaGrand Sur., pp. 12-13; Tr., p. 157.
[55] Exh. 5, LaGrand Sur., p. 12.

> Commission authorization for booking of deferrals strengthens the ability of utilities to justify reflection of the regulatory assets on their financial statements in conformity with GAAP standards. Staff disagrees with any inference made by OPC in this proceeding that MAWC's Application was improperly made in this specific proceeding or that, in general, recently utility AAO requests were improperly made."[56] (emphasis added)

4. If an Accounting Authority Order is granted in this case, the Commission need not decide whether the deferred expenses are "probable" of rate recovery or that rate recovery is "likely to occur." (OPC Issue No. 4)

As MAWC has repeatedly stated, it is not seeking any ratemaking determinations by the Commission in the context of this case. It is simply seeking an order of the Commission in this case allowing it to defer the extraordinary increases in property tax expense due to the change in assessment methodologies employed by St. Louis and Platte Counties. The Commission need not make a decision that the deferred expenses are "probable" of rate recovery or that rate recovery is "likely to occur". In that regard, MAWC agrees with Staff Oligschlaeger's testimony that:

> ". . . The Commission's general policy toward cost deferral requests has been in place for over twenty-five (25) years and from Staff's perspective has worked well in granting utilities reasonably [sic] flexibility in their accounting practices, in particular those used to account for extraordinary events. There is nothing in OPC's rebuttal testimony in this proceeding that persuades Staff that a major change is merited for the Commission's approach to AAO's at this time."[57]

Conclusion

The Commission needs to address only one issue in this case: Should the Commission grant MAWC the accounting authority it has requested in this case? In answering this question,

[56] Exh. 7, Oligschlaeger Sur., p. 7.
[57] Exh. 7, Oligschlaeger Sur., p. 14.

the Commission only needs to determine whether the changes in the tax assessment methodologies employed by St. Louis and Platte Counties and the resulting increase in MAWC's tax liabilities to those counties are extraordinary and material. The answer to this inquiry is clearly "yes." The changes in the tax assessment methodologies employed by these counties were dramatic, sudden, one-time foundational shifts from how the assessors in these counties have historically calculated MAWC's tax assessments. Furthermore, it is extremely unlikely that MAWC will experience another such dramatic spike in property tax expense in these counties based on a future alteration of property tax assessment methodologies. As such, the counties' actions were extraordinary, unusual and unique, and non-recurring. Moreover, the changes in expense are material, inasmuch as they amount to approximately 9.6% of MAWC's 2016 income. Consequently, the Commission should grant MAWC an AAO allowing it to defer the incremental increase in property tax expense for the period between January 1, 2017, and May 31, 2018, associated with the change in tax assessment methodologies employed by St. Louis and Platte Counties.

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 November 22, 2017, to the following:

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