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Mark L. Oligschlaeger

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MISSOURI PUBLIC SERVICE COMMISSION

COMMISSION STAFF DIVISION

AUDITING

SURREBUTTAL TESTIMONY

OF

MARK L. OLIGSCHLAEGER

Staff Exhibit No. 7
Date 11-08-17 Reporter AF
File No. WU-2017-0351

MISSOURI-AMERICAN WATER COMPANY

CASE NO. WU-2017-0351

Jefferson City, Missouri
October 2017

1 A. On pages 5 – 9 of his rebuttal testimony, Mr. Hyneman makes five broad
2 claims regarding Missouri-American Water Company's (MAWC) AAO request in this case
3 for deferral of certain property tax expenses. In turn, these claims lead Mr. Hyneman to
4 suggest changes in overall approach by the Commission in regard to AAO requests. I will
5 address each of these claims in this testimony.

6 Q. Before addressing each of Mr. Hyneman's specific points, do you have any
7 general comments to make?

8 A. Yes. Throughout his rebuttal testimony, Mr. Hyneman consistently confuses
9 the requirements placed on utility companies by the Commission in regard to the regulatory
10 reporting obligations of those entities, and the requirements placed on the utilities for
11 public financial reporting purposes by the utilities' external auditors and, ultimately,
12 the Securities and Exchange Commission (SEC). In particular, Mr. Hyneman takes the
13 position that the Commission must conform its approval for how jurisdictional utilities
14 book their "regulatory assets" for purposes of its regulatory reporting to the standards
15 governing presentation of regulatory assets on utility public financial statements. This is
16 simply not accurate.

17 Q. In the context of Missouri utility regulation, what is "regulatory reporting" or
18 "regulatory accounting?"

19 A. Regulatory reporting and regulatory accounting are terms that both refer to the
20 periodic reporting of utility financial information to the Commission.

21 Q. What body has authority over the regulatory accounting practices of Missouri
22 jurisdictional utilities?

1 A. The Commission has authority over this aspect of utility accounting
2 by statute.¹ It is appropriate for the Commission to have this authority as no other body
3 would have the knowledge and expertise possessed by the Commission concerning the
4 question of the content and format of the financial information it will need on an ongoing
5 basis in order to set utility rates and carry out other functions necessary for effective
6 regulation of the State's utilities.

7 Q. How are the Commission's regulatory accounting requirements communicated
8 to Missouri jurisdictional utilities?

9 A. These requirements are adopted by rule for each separate major utility industry
10 in Missouri (electric, natural gas, water, and sewer) in the forms of "uniform systems of
11 accounts" (USOA).

12 Q. What body has authority over the public financial reporting practices of
13 Missouri jurisdictional utilities?

14 A. The SEC has authority over the public financial reporting practices of
15 investor-owned utility companies (as well as for investor-owned non-regulated business
16 entities). In practice, the SEC has delegated some of the responsibility of promulgating
17 "generally accepted accounting principles" (GAAP) that govern public financial reporting
18 practices of U.S. companies to the Financial Accounting Standards Board.
19 All investor-owned business entities (including utilities) are required to undergo an annual

¹ Section 393.140 (4): The Commission shall "have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books to be observed by gas corporations, electrical corporations, water corporations and sewer corporations...". "It may also, in its discretion, prescribe, by order, forms of accounts, records and memoranda to be kept by such persons and corporations."

Section 393.140 (8): The Commission shall "have 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."

1 audit by a public accounting firm (also referred to as "external auditors") to verify the
2 business entities' compliance with GAAP on public financial statements.

3 The overall purpose of SEC oversight over the financial reporting practices of
4 investor-owned businesses is to ensure that inaccurate or fraudulent public financial reporting
5 does not mislead actual and potential business investors.

6 Q. What are "public financial statements?"

7 A. In this context, public financial statements are required quarterly filings
8 (Form 10-Q) and annual filings (Form 10-K) that investor-owned companies must submit to
9 the SEC.

10 Q. What are "GAAP?"

11 A. GAAP are the financial reporting requirements that investor-owned business
12 entities must comply with in public financial statements to ensure that the financial results of
13 a multitude of businesses are stated accurately and in a consistent manner from company to
14 company. GAAP principles govern such items as whether a particular cost should be
15 capitalized or charged as an expense on a business' financial statements, the point when
16 revenue can be recorded by the business entity in regard to a financial transaction, and the
17 parameters by which a business may "accrue" expense amounts representing future cash
18 outlays on its current financial statements.

19 Q. In carrying out its regulatory accounting authority over jurisdictional utilities,
20 is the Commission required to make its accounting requirements consistent with GAAP?

21 A. No. The Commission has no obligation to follow GAAP in relation to the
22 required regulatory accounting of Missouri utilities if it finds that alternative

1 accounting approaches would be more appropriate in carrying out its regulatory authority for
2 Missouri utilities.

3 Q. In reality, are there large differences between the regulatory accounting
4 practices of Missouri utilities and the public financial accounting practices the companies are
5 required to follow by the SEC?

6 A. No. The uniform systems of accounts adopted for each utility industry in
7 Missouri are almost entirely consistent with GAAP. This should be expected, as the
8 fundamental accounting practices mandated by GAAP are, in almost all instances, as
9 reasonable to apply to regulated utilities as for nonregulated businesses.

10 Q. In carrying out its authority over the public financial accounting practices of
11 Missouri utilities, is the SEC required to make those requirements consistent with the
12 regulatory accounting requirements set out by the Commission?

13 A. No.

14 Q. What would happen if the Commission regulatory accounting requirements
15 and the SEC public financial accounting requirements are in conflict?

16 A. In that event, the accounting for certain items of revenue, expense, and rate
17 base may be different as depicted on the public financial statements of utilities from the
18 amounts reflected for regulatory accounting purposes to the Commission.

19 Q. Does this phenomenon occur frequently?

20 A. Not often, but it has occurred.

21 As an example, in Case No. EU-2012-0027 the Commission granted Ameren
22 Missouri authority to defer certain "lost revenues" or "lost fixed costs" associated with ice
23 storm impacts, and reflect a regulatory asset on its balance sheet for this item for regulatory

1 reporting purposes. However, Ameren Missouri did not reflect this particular deferral on its
2 balance sheet on its SEC financial reporting statements, due to its judgment that this
3 Commission-ordered deferral did not meet GAAP standards for booking of regulatory assets.

4 Q. Did the fact that Ameren Missouri did not reflect this regulatory asset on its
5 SEC public financial statements preclude that utility from seeking recovery of the lost revenue
6 deferral in a subsequent Commission general rate proceeding?

7 A. No. Ameren Missouri sought rate recovery of this deferral in Case No.
8 ER-2014-0258, with other parties opposing this recovery for reasons entirely unrelated to
9 Ameren Missouri's inability to reflect this cost on its SEC public financial statements.
10 The Commission ultimately denied Ameren Missouri rate recovery of this regulatory asset.

11 Q. What is a "regulatory asset?"

12 A. A regulatory asset is an asset booked by a utility as a result of the actions of its
13 regulator. The cost deferrals booked by Missouri utilities numerous times in the past related
14 to natural disasters are classic examples of "regulatory assets."

15 Q. Has the Commission authorized creation of regulatory assets outside of general
16 rate proceedings in the past?

17 A. Yes, numerous times. Any time the Commission authorizes a utility to defer
18 an extraordinary cost by approving an AAO application it is creating a regulatory asset
19 outside of a general rate proceeding.

20 Q. Turning back to Mr. Hyneman's rebuttal testimony in this proceeding, what is
21 his first claim?

22 A. Mr. Hyneman's first point made in opposition to MAWC's AAO request
23 in this proceeding at pages 5 – 6 of his rebuttal is "This AAO case is unnecessary.

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1 The Commission cannot provide MAWC with any relief when MAWC already has the ability
2 to act for itself.”

3 Q. Does Staff agree with this contention?

4 A. Staff agrees in part and disagrees in part. Staff agrees in the sense that
5 MAWC is not strictly required per the water USOA to seek Commission approval to book
6 cost deferrals to Account 186, as it seeks to do through this application. However, it is also
7 true that there is nothing in the USOAs or other Commission rules that prohibit utilities from
8 seeking Commission authorization to implement desired accounting treatments, such as
9 deferral of extraordinary costs. It has been a long-standing practice in this jurisdiction that
10 utilities, in most circumstances, will petition the Commission through AAO applications for
11 authorization to book regulatory assets. Receiving express Commission authorization for
12 booking of deferrals strengthens the ability of utilities to justify reflection of the regulatory
13 assets on their public financial statements in conformity with GAAP standards. Staff
14 disagrees with any inference made by OPC in this proceeding that MAWC’s application was
15 improperly made in this specific proceeding or that, in general, recent utility AAO requests
16 were improperly made.

17 Q. What is Mr. Hyneman’s second claim?

18 A. At page 6 of his rebuttal testimony, Mr. Hyneman states, “This case is an
19 accounting proceeding. The ratemaking issues MAWC raises in this accounting proceeding
20 can only be addressed in a ratemaking proceeding.”

21 Q. Does Staff agree with this?

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1 A. Yes, with the exception of the last statement made by Mr. Hyneman in this
2 section of his testimony at page 6, lines 20 - 22.² Staff agrees with OPC that ratemaking
3 issues in general should not be decided in AAO cases and should be reserved for general
4 rate cases.³

5 Q. What is Mr. Hyneman's third claim?

6 A. Mr. Hyneman states the following at pages 6 – 7 of his rebuttal testimony,
7 “The Commission should not unknowingly create a regulatory asset outside of a
8 rate proceeding.”

9 Q. Does Staff agree with this claim?

10 A. No. Staff disagrees with the contention that the Commission's ability to create
11 regulatory assets is restricted in the manner suggested by OPC. Staff would also state that, to
12 its knowledge, the Commission has taken the actions to create regulatory assets in the past in
13 an informed manner regarding the accounting and ratemaking implications of its actions.

14 Q. Why does Staff disagree with Mr. Hyneman's third claim?

15 A. The reasoning used by Mr. Hyneman to reach his conclusions on this point is
16 hard to follow. However, Mr. Hyneman's contention that the Commission cannot create
17 regulatory assets outside of general rate proceedings seems to result from the following chain
18 of thought: (1) A requirement under GAAP for the booking of a regulatory asset for financial
19 reporting purposes is that rate recovery of the amount of the regulatory asset must be deemed

² Mr. Hyneman's statement at page 6, lines 20 – 22 reads “While the Commission cannot order the creation of a regulatory asset in an accounting case, such as this AAO case, it can order the creation of a regulatory asset in a ratemaking case, such as MAWC's pending general rate case.” Staff will address the content of this particular statement as part of its later response to Mr. Hyneman's third claim in his rebuttal testimony.

³ Staff understands that MAWC will withdraw the language found in MAWC witness Brian W. LeGrand's direct testimony at page 7, lines 19-20, that constituted a request for a ratemaking determination in an AAO application.

1 "probable;" (2) A finding that future rate recovery of a particular cost is "probable" should be
2 viewed as a "ratemaking determination;" (3) The Commission expressly states in its cost
3 deferral orders that it is making no ratemaking determinations as part of the approvals;
4 (4) outside parties may interpret the Commission's actions in creating regulatory assets
5 as conforming to GAAP standards, thereby creating a "conflict," and (5) therefore,
6 the Commission should not refer to the deferrals it authorizes in AAO cases as
7 "regulatory assets."

8 Q. Do you agree with any of this logic?

9 A. Not at all. First, the Commission is free to establish any standards it thinks
10 reasonable for creation of regulatory assets, and those standards do not have to be consistent
11 with GAAP. The Commission's stated criteria for granting cost deferrals are that the costs
12 should be (1) extraordinary, and (2) material. The Commission has not chosen to make
13 explicit findings in its deferral orders that the costs in questions are "probable" of recovery in
14 future rates, and there is no requirement that it do so.

15 Q. Then, is it necessarily true that the Commission's current standards for
16 granting AAOs are inconsistent with GAAP requirements for booking of regulatory assets?

17 A. No, for two reasons.

18 First, while the Commission has not directly considered the probability of
19 future rate recoverability in its prior AAO authorizations, it is reasonable to assume that the
20 Commission has at least implicitly considered whether the cost deferrals in question are likely
21 to be recoverable in future rates. In AAO applications, the Commission is asked to determine
22 whether a particular cost should be deferred and, as a result of the deferral, eligible for
23 recovery in future rate proceedings. If a cost for which deferral is sought is of the nature that

1 it is unlikely future rate recovery would be granted, then the Commission would be
2 reasonably expected to deny the AAO application in the first place. In other words, by the
3 simple act of the Commission authorizing a cost deferral a reasonable inference would be that
4 the cost in question has a probability (but not a certainty) of future rate recovery.

5 Second, and more importantly, history shows that there is not a major conflict
6 between the Commission's standards for granting regulatory asset authority and GAAP
7 standards for regulatory asset creation. That is because, in the vast majority of cases in which
8 the Commission authorized creation of regulatory assets through AAO issuances over at least
9 the past 25 years, to Staff's knowledge the utilities fully reflected the ordered deferrals on
10 their published financial statements with the approval of both utility management and the
11 companies' external auditors.

12 Q. Does Staff concur with Mr. Hyneman that a finding that rate recovery of cost is
13 "probable" at a future time would constitute a "ratemaking determination?"

14 A. No. First, as previously explained, the Commission has made no
15 determinations concerning "probable recovery" in prior AAO cases, so the entire issue
16 appears to be irrelevant at this time from Staff's perspective. However, even in the
17 hypothetical event that the Commission was to make such findings, it should not be viewed as
18 equivalent to making "rate determinations." That is because the Commission presumably
19 would still not bind itself in any way for ratemaking purposes in its previous AAO approvals,
20 and all parties would still be free to argue for or against recovery of the deferred amount in
21 future rate proceedings.

22 Q. Has the Commission denied rate recovery of all or a portion of a cost it
23 previously ordered to be deferred in the past?

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1 A. Yes, at least several times. As previously referenced, in Case No.
2 ER-2014-0258 the Commission recently denied Ameren Missouri rate recovery of a deferral
3 the Commission had previously authorized.

4 Q. What is Mr. Hyneman's fourth rebuttal claim?

5 A. At pages 7 – 8 of his testimony, Mr. Hyneman states, "If the Commission
6 grants an AAO in this case and MAWC creates a regulatory asset on its books as a result
7 of this AAO, MAWC will likely be in violation of GAAP, which may have
8 serious repercussions."

9 Q. Does Staff agree with this claim?

10 A. No. As stated above, MAWC is seeking authorization for creation of a
11 regulatory asset for in this case in an identical manner to what utilities have been seeking in
12 this jurisdiction for decades. And, when the utility's application for an AAO has been
13 authorized by the Commission, I am not aware of any major problems in the past with these
14 regulatory assets being recognized on the utilities' books for financial purposes in conformity
15 with GAAP standards.

16 Q. In any event, can the Commission order a utility to "violate GAAP"?

17 A. No, because the Commission has no authority over the content of a utility's
18 SEC public financial reporting. If a utility chooses to violate GAAP standards in the
19 presentation of public financial information, even if the violation concerns how the financial
20 impact of Commission orders are reflected on the financial statements, the decision to violate
21 GAAP would be the responsibility of the utility's management and the utility's external
22 auditors alone.

1 Q. At pages 11 – 13 of his rebuttal testimony, Mr. Hyneman presents quotes from
2 two prior utility witnesses in Ameren Missouri proceedings, Mr. Stephen M. Ditman of
3 PricewaterhouseCoopers (Case No. EO-2012-0142) and Mr. Clifford Hoffman of Deloitte
4 LLP (Case No. EO-2015-0055), attesting to the serious consequences to utilities for GAAP
5 violations on their public financial statements. Do you agree with the quoted testimony of
6 these witnesses?

7 A. Yes, in the narrow sense that I agree that utilities should not violate GAAP
8 standards on their SEC public financial reporting documents. However, the context in the
9 cases for which these witnesses were testifying before the Commission was very different
10 from the issues in this AAO application, or for AAO applications in general.

11 Q. Please explain.

12 A. Both Mr. Ditman and Mr. Hoffman were testifying for Ameren Missouri in
13 Missouri Energy Efficiency Investment Act (MEEIA) rate proceedings, in which that utility
14 was seeking authorization to include amounts for estimated “lost revenues” as part of its
15 overall MEEIA cost recovery. Staff argued in that proceeding that amounts collected by
16 Ameren Missouri for lost revenue recovery should be subject to later true-up and be
17 refundable to customers if the lost revenue estimates were later found to be overstated.
18 Ameren Missouri responded that making lost revenue recovery contingent on a later true-up
19 procedure would have a detrimental impact on its earnings under GAAP standards, and that
20 Ameren Missouri would not implement MEEIA programs if Staff’s recommendations on this
21 point were accepted.⁴

⁴ It should be noted that Staff did not and does not agree with all of Ameren Missouri’s GAAP “accounting” arguments regarding MEEIA cost recovery, particular the positions it took in Case No. EO-2015-0055.

1 Q. Was Ameren Missouri arguing in those cases that adoption of Staff's
2 recommendations would force it somehow to "violate" GAAP?

3 A. No. Ameren Missouri was arguing that it would not be allowed to reflect the
4 accounting treatment for lost revenues recommended by Staff in those cases in its public
5 financial statements, and the resulting financial loss it would reflect under GAAP would make
6 it impossible for it to offer MEEIA programs. In other words, it was arguing that certain
7 Missouri ordered accounting treatments might not be allowed to be reflected on its SEC
8 public financial statements. This further illustrates that the Commission's regulatory
9 accounting requirements and the SEC's public accounting requirements under GAAP as
10 related to investor-owned utilities are separate and will not in all cases be identical.

11 Q. What is Mr. Hyneman's fifth rebuttal claim?

12 A. In his testimony, Mr. Hyneman states at pages 8 – 9, "Even if it were possible
13 for the Commission to grant an AAO that allows for the creation of a regulatory asset
14 because of probability of recovery MAWC has not presented evidence that these costs are
15 material or unusual."

16 Q. Do you agree with OPC's fifth point?

17 A. Yes, generally. Staff agrees that MAWC has failed to meet the Commission's
18 traditional deferral standards in its property tax AAO request. This position is set forth in my
19 rebuttal testimony in this case.

20 Q. In his rebuttal testimony, Mr. Hyneman concludes by implicitly recommending
21 that the Commission adopt the approach taken by the Federal Energy Regulatory Commission
22 (FERC) towards utility cost deferral requests. What is FERC's approach on this matter?

1 A. According to Mr. Hyneman, FERC neither affirms nor denies cost deferral
2 requests, choosing instead to leave it to utility management's discretion whether to book
3 the deferral.

4 Q. Would this be a reasonable stance for the Commission to take regarding
5 deferral requests?

6 A. Mr. Hyneman's rebuttal testimony is insufficient to allow a full understanding
7 and background as to why FERC has chosen to take this particular approach. I can say that
8 the Commission's general policy towards cost deferral requests has been in place for over
9 25 years, and from Staff's perspective has worked well in granting utilities reasonably
10 flexibility in their accounting practices, in particular those used to account for extraordinary
11 events. There is nothing in OPC's rebuttal testimony in this proceeding that persuades Staff
12 that a major change is merited for the Commission's approach to AAOs at this time.

13 **RESPONSE TO OPC WITNESS RILEY**

14 Q. At pages 10 – 14 of Mr. Riley's rebuttal testimony, what is the position
15 expressed by OPC regarding the appropriate starting date for the amortization of any cost
16 deferral that may be ordered for MAWC in this case?

17 A. OPC's position is that amortization of any deferral ordered by the Commission
18 in relation to MAWC's property taxes should begin immediately after the deferral is ordered.
19 In support of that position, Mr. Riley quotes testimony from a prior AAO case from myself
20 and Ms. Amanda C. McMellen.

21 Q. Does the Staff testimony quoted by Mr. Riley support the position taken by
22 OPC in this case regarding the starting date for a deferral amortization?

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1 A. In general terms, yes. Staff has opposed efforts by utilities to delay the starting
2 date for AAO deferrals indefinitely while waiting to time the start date to coincide with the
3 effective date of new rates. Delaying recognition of any amortization expense on the utility's
4 books until a later point when the amortization amount can be included in utility rates would
5 constitute a violation of the matching principle, and set up a situation where the utility would
6 be almost guaranteed to over-recover the amortization amount. However, Staff has not taken
7 the position that the amortization should in all cases start "immediately" after the triggering
8 event for the deferral has taken place.

9 Q. Is MAWC proposing in this case to delay indefinitely the starting date of any
10 cost it is authorized to defer?

11 A. No. Because MAWC has a general rate case currently on file, there should be
12 at most only a period of several months between its recording of any deferral and the effective
13 date of new rates

14 Q. What is Staff's recommended start date for amortizing any deferral the
15 Commission may authorize in this case?

16 A. Staff recommends that MAWC be ordered to start amortizing any deferral
17 authorized in this proceeding by no later than April 1, 2018. This date is approximately three
18 months following the incurrence of increased level of property taxes by MAWC that gave rise
19 to this deferral request.

20 Q. Does this conclude your surrebuttal testimony?

21 A. Yes, it does.

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)

Debra J. Hankin
NOTARY PUBLIC