BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Working Case to Consider Proposals to create a Revenue Decoupling Mechanism for Utilities.	)))	File No. AW-2015-0282

MAWC COMMENTS CONCERNING NOTICE

APPENDIX C

On August 5, 2015, the Commission issued its Notice wherein, among other things, it invited interested stakeholders to "comment on the legality of decoupling in Missouri." MAWC provides the following comment concerning that request.

INTRODUCTION

A decoupling mechanism separates ("decouples") a utility's revenues from its unit sales volumes. As explained in the following paragraphs, Missouri statutes and laws provide the Commission with tools that will allow it to lawfully decouple revenues from unit sales volumes.

PRIOR MAWC PROPOSAL

1. In Commission File No. WX-2015-0209, MAWC proposed a Revenue Stabilization (RSM) Rule. The decoupling mechanism proposed by MAWC was essentially a "tracker" mechanism. Amounts above and below a water or sewer company's revenue requirement would be booked annually and the net of those amounts considered for recovery through an amortization in the company's next rate case.

2. Trackers are commonly used by the Commission through its authority found in Section 393.140.4, RSMo. Section 393.140.4 states that 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. . . .". The use of a tracker was approved in *State ex rel Noranda Aluminum, Inc. v. PSC*, 356 S.W.3d 293, 320 (Mo.App.S.D. 2011), where the Court stated:

> . . . the tracking provision does not simply set up a future situation where rates will be set retroactively. The tracking mechanism works to account for both under- and over-expenditures on vegetation/infrastructure expenses that are incurred in complying with the new regulations. The Commission will consider the net result in the next rate case, in which it may be possible for AmerenUE to prospectively recover up to 10% of $64.8 million in additional expenses. This is not retroactive ratemaking.

3. The rule proposed by MAWC would create a tracker that, while different in subject matter, is not different in operation than any number of trackers that are currently in place.

ALTERNATIVE RATE MECHANISM

4. Further, the Missouri Court of Appeals has specifically found an alternative rate mechanism – the straight fixed variable rate design – to be lawful. *See State ex rel. Office of the Public Counsel v. PSC*, 367 S.W. 3d 91 (Mo.App. 2012); *See also State ex rel. Office of the Public Counsel, et al. v. PSC*, 293 S.W.3d 63 (Mo.App. 2009). The "straight fixed variable" (SFV) rate design allowed for all of Missouri Gas Energy's distribution costs allocated to certain classes of customers to be recovered through a single, fixed monthly charge. Thus, the SFV rate design was implemented to "break the link between the amount of energy [or other commodity] sold and the actual (allowed) revenue collected by the utility" (albeit without an "adjustable price mechanism"). The Court in the 2012 case stated that "MGE's SFV rate design is not 'unlawful' under section 393.130 and 393.140 because it requires payment only of the customer's true cost of

service, and does not prejudice or disadvantage any customer." *Office of the Public Counsel (2012)* at 106.

5. This is also true of other alternative rate mechanisms as decoupling specifically focuses on requiring payment of a company's cost of service as it has been determined by the Commission in a rate case.

SLIDING SCALE RATES AND EXPERIMENTAL RATES

6. The Commission's statutes and law provide two additional provisions – sliding scale rates and experimental rates -- that assist the Commission in the effort to decouple unit sales volumes from the revenues collected.

7. An exception to the fixed rate system is provided in Section 393.130.4, RSMo, for "sliding scale" rates. Section 393.130.4 states:

> Nothing in this section shall be taken to prohibit a gas corporation, electrical corporation, water corporation or sewer corporation from establishing a sliding scale for a fixed period for the automatic adjustment of charges for gas, electricity, water, sewer or any service rendered or to be rendered and the dividends to be paid stockholders of such gas corporation, electrical corporation, water corporation or sewer corporation;

8. In describing a "sliding scale" rate, the Missouri Supreme Court has quoted the following description:

> The essential characteristic of this method of regulating the price of gas is by a prearranged automatic and interdependent adjustment of the price to consumers and the rate of dividends to stockholders, whereby for every decrease or increase in the price the stockholders are permitted an increase or suffer a decrease in the rate of dividend.

Utility Consumers Council of Missouri, Inc., et al. v. Public Service Commission, et al., 583 S.W.2d 41 (Mo. 1979), quoting *Bertha A. Mining Co. v. Empire Dist. Electric Co.,* 210 Mo.App.,622, 235 S.W. 508, 511 (1921).

9. One form of decoupling MAWC will describe provides for such automatic

adjustment of rates (either on an annual, quarterly, or some other period) based upon the Company's authorized revenue requirement. That approach would appear to constitute a "sliding scale.".

10. Further, the Commission has the authority to implement "experimental rates." The Commission has described this power as follows:

> Furthermore, the authority of this Commission to approve an experimental rate plan is well within its powers.[1] Indeed, the Court of Appeals has characterized the Union Electric experimental alternative regulation plan "not as an abdication of the Commission's responsibility to regulate, but as embodiment of it. It was an attempt to streamline the rate monitoring process and provided a means to resolve issues in lieu of the formal complaint process."

In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company, 242 P.U.R.4th 492, Case No. EO-2005-0329 (Mo.PSC 2005); *See also State ex rel. Laclede Gas Co. v. PSC*, 535 S.W.2d at 567, n.1 (noting the Missouri Supreme Court "has long held" that the Commission has the power to grant interim test or experimental rates "as a matter of necessary implication from practical necessity").

11. Finally, some parties often cite the *State ex rel. Utility Consumers Council of Missouri, Inc., et al. v. Public Service Commission, et al.*, 583 S.W.2d 41 (Mo. 1979) (the "*UCCM Case*") in opposition to various rate proposals. In the *UCCM Case*, the Missouri Supreme Court found a fuel adjustment clause implemented by the Commission and utilized by electric utilities to be beyond the Commission's statutory authority because it allowed "an increase in rates without consideration of all factors, thus overweighing the effect of one factor, and ignoring compensating economies . . . ." *UCCM Case* at 49.[2]

12. MAWC would note that this is not the situation in regard to the Company's

[1] *See Union Electric Co. v. PSC*, 136 S.W.3d 146, 149, 152 (Mo. App. W.D. 2004).
[2] This issue was later resolved by the enactment of Section 386.266, RSMo, which provided specific authority for charges related to fuel and purchased-power costs

proposed revenue decoupling mechanism. Here, there is no adjustment of rates to deal with increases in costs. Instead, a revenue decoupling mechanism will make adjustments merely to deliver the same revenue requirement that has been found by the Commission to be just and reasonable. There is no change in the revenue requirement the utility is permitted to collect and no change in the relationship in the underlying cost factors. The *UCCM Case* is not an impediment to adjustments associated with revenue decoupling strategies.