

**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	)	File No. WU-2017-0351
Property Taxes in St. Louis County and	)	
Platte County.	)	

**REPLY OF MISSOURI-AMERICAN WATER COMPANY TO  
MIEC’S RESPONSE IN OPPOSITION TO REQUEST FOR WAIVER**

Comes now Missouri-American Water Company (“MAWC” or “Company”) and, for its Reply to the Response of the Missouri Industrial Energy Consumers (“MIEC”) in Opposition to MAWC’s Request for Waiver, respectfully states as follows:

1. On June 29, 2017, MAWC filed a Request for an Accounting Authority Order (AAO), along with a request that the Commission waive the 60-day notice requirement contained in its Rule 4 CSR 240-4.020(2) (the “60-day notice requirement”), if such rule was applicable to the instant Application.

2. On August 1, 2017, MIEC filed its Response in Opposition to Missouri-American Water Company’s Request for Waiver, asserting that the 60-day notice requirement, did apply and that MAWC’s justification for seeking a waiver of the rule did not constitute good cause.

3. At the time Missouri-American filed its request for an AAO, Commission Rule 4 CSR 240-4.020(2) provided as follows:

“Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the Secretary of the Commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the Commission.” (emphasis added)

Commission Rule 4 CSR 240-4.020(1)(C) further provided that a “contested case” shall have the same meaning as in Section 536.010(4), RSMo. Section 536.010(4) defines contested case as:

“ . . . a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing . . . ”

4. In its Application, MAWC questioned whether a request for an AAO qualifies as a contested case and, thus, whether the 60-day notice requirement applied. MAWC is unaware of any statute or Commission rule that requires the Commission to hold a hearing in the case of an Application for an AAO. MIEC, in its Response, fails to cite any authority for the proposition that an Application for an AAO is a contested case. Simply because MIEC “contests” the relief sought by MAWC in this case does not make it a contested case within the meaning of Section 536.010(4). Thus, there is a legitimate question whether the instant filing is a contested case and thus requires the 60-day notice filing contained in Commission rule 4 CSR 240-4.020(2).<sup>1</sup>

5. Assuming for sake of argument that the instant filing is a “contested case” under the definition of Section 536.010(4), then MAWC has demonstrated sufficient cause to warrant a waiver of the request. It is important to remember that the purpose of 60-day notice requirement is:

“To set forth the standards to promote the public trust in the Commission with regard to pending filings and cases. This rule regulates communication between the Commission, technical advisory staff, and presiding officers, and anticipated parties, parties, agents of parties, and interested persons regarding substantive issues that are not part of the evidentiary record.” (4 CSR 240-4.020 Purpose Statement)

6. Clearly, the purpose of the rule is to prevent improper ex parte influence on the Commission prior to the filing of a case and not to unduly delay the filing of an Application, particularly, as in this case, where time is of the essence and no prior ex parte contact has been made. MAWC first became aware of this property tax issue on May 26, 2017, as to Platte County; and on May 30, 2015, as to St. Louis County. As indicated in MAWC’s Application,

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<sup>1</sup> The Commission recently revised its Rules regarding Standards of Conduct and, in particular, its Rule requiring a 60-day notice in the filing of any “case,” effective July 30, 2017.

MAWC engaged the counties in informal discussions in an effort to resolve and minimize the property taxes. Until such time as it became apparent that those efforts would not be successful, there was no need for MAWC to file an Application for an AAO, much less file a 60-day notice of intent to file same. However, when it became apparent in early June, 2017, that MAWC's efforts to resolve and minimize the property taxes would not be successful and that it would be facing a substantial increase in its property tax assessment in St. Louis and Platte counties, MAWC commenced internal discussions among its staff and counsel to determine the best way to address this situation. After confirming the significant impact the new assessments would have on MAWC's earnings for 2017 and discussing same internally and with counsel, MAWC made the decision to file the Application for an AAO and did so on June 29, 2017.

7. Moreover, if MAWC receives the relief it requests, it needs to have a Commission decision issued and effective on or about December 31, 2017, so that the appropriate accounting treatment can be reflected on the Company's 2017 books and records. Delaying the filing of the instant Application by 60 days would reduce the Commission's time to process and decide this Application by a commensurate amount of time and ultimately adversely impact MAWC's 2017 earnings if a decision cannot be timely rendered. MIEC, on the other hand, has asserted no harm or prejudice to it if the 60-day notice requirement is waived.

8. Finally, as MIEC notes, the new rule regarding the 60-day notice requirement (4 CSR 240-4.020(2)) contains examples of the types of good cause that would be sufficient for a waiver. One of the examples is:

"A verified declaration from the filing party that it has had no communication with the Office of the Commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case . . ."

9. While that specific example was not contained in the old rule, MIEC agrees that it would also suffice under the old rules. Accordingly, MAWC affirmatively states that it has had no communication with the Office of the Commission (as defined in Rule 4 CSR 240-4.015(10)) within the prior one hundred fifty (150) days of June 29, 2017, regarding any substantive issue likely to be addressed in this case. (See Affidavit and Verification of Timothy W. Luft attached to this Reply as Attachment 1.)

WHEREFORE, in light of the foregoing, MAWC requests the Commission grant its request for waiver of 4 CSR 240-4.020(2).

Respectfully submitted,

/s/ William R. England III  
William R. England III MBE#23975  
Dean L. Cooper MBE#36592  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166  
(573) 635-3847 (facsimile)  
[trip@brydonlaw.com](mailto:trip@brydonlaw.com)  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)  
ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on August 8, 2017, to the following:

Office of the General Counsel <a href="mailto:staffcounsel@psc.mo.gov">staffcounsel@psc.mo.gov</a> <a href="mailto:jacob.westen@psc.mo.gov">jacob.westen@psc.mo.gov</a> <a href="mailto:nicole.ers@psc.mo.gov">nicole.ers@psc.mo.gov</a>	Office of the Public Counsel <a href="mailto:opcservice@ded.mo.gov">opcservice@ded.mo.gov</a>
Edward F Downey/Lewis Mills <a href="mailto:efdowney@bryancave.com">efdowney@bryancave.com</a> <a href="mailto:lewis.mills@bryancave.com">lewis.mills@bryancave.com</a>	David Woodsmall <a href="mailto:david.woodsmall@woodsmalllaw.com">david.woodsmall@woodsmalllaw.com</a>
Robert E. Fox, Jr. <a href="mailto:rfox@stlouisco.com">rfox@stlouisco.com</a>	

/s/ William R. England III