BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program.	))))	File No. WU-2017-0296

MAWC'S INITIAL BRIEF

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

INTRODUCTION

Throughout this case, the parties have presented extensive testimony regarding the merits of replacing customer-owned lead service lines. While this is an important issue, it is not the issue the Commission must resolve in this case. The issue in this case is singular: Should the Commission grant MAWC the accounting authority order ("AAO") requested by the Company? The answer is yes.

The Office of the Public Counsel ("OPC") alleges that the Company is seeking a "blank check" for a ten-year customer-owned lead service line replacement ("LSLR") program. That is simply not true. MAWC's Application asks the Commission to grant MAWC an AAO whereby the Company is authorized to record and defer to Account 186 – Miscellaneous Deferred Debits -- the cost of all customer-owned LSLRs made beginning in 2017, through the effective date of the Report and Order in MAWC's pending general rate proceeding (Case No. WR-2017-0285). Recovery of these deferred costs, as well as the merits of the Company's LSLR program, should be addressed in that rate case, not here. (Exh. 6, LaGrand Sur., p. 3) In addition, the Commission will likely have other cases, including rate cases, to continue to evaluate the merits and cost recovery of the LSLR program. (Tr. 283-284, Marke)

While the Company believes there is only one fundamental issue in this case, MAWC's Initial Brief will address each of the issues contained in the *List of Issues, Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements* filed by MAWC on September 19, 2017:

1. The Commission should grant MAWC the Accounting Authority Order it has requested.

MAWC seeks, and the Commission should grant, an AAO allowing MAWC to defer the costs associated with the replacement of customer-owned lead service lines as follows:

a) record and defer on its books the cost of all customer-owned lead service line replacements made from January 1, 2017 through May 31, 2018 (the approximate operation of law date for MAWC's pending rate case);
b) calculate a monthly carrying charge on the balance in that regulatory asset account during the deferral period, as described on page 11; and,
c) allow MAWC to defer and maintain these costs on its books until the effective date of the Report and Order in MAWC's pending general rate proceeding (Case No. WR-2017-0285) and that any amortization should start with the effective date of that Report and Order.

The portion of any such replacement where MAWC owns the service line will be recorded on MAWC's books like any other capital project.

Not only does the Commission have the authority to grant the requested AAO, but the current circumstances fit within the criteria used by the Commission in granting AAOs in the past. In addition, granting this AAO will allow the Company to continue its main replacement program in the most cost-effective, efficient and responsible way while the Commission considers the full merits and cost recovery of the LSLR program in the Company's pending rate case.

A. The Commission has the authority to grant the requested AAO.

OPC, in its Opening Statement, framed at least a portion of its argument as follows - does "the PSC have jurisdiction to *order* replacement of customer-owned service lines." (emphasis added) This is a question the Commission need not answer. Neither MAWC, nor any other party, is asking the Commission to "order" replacement of customer-owned service lines. Instead, this case concerns proposed deferral accounting for any such replacement performed by MAWC.

Midwest Energy Consumers Group ("MECG") does argue that the Commission lacks statutory authority to address the deferral of costs associated with customer-owned service lines. For this proposition, MECG cites Section 386.025(59), RSMo, which defines "Water System", as well as that part of the Commission's *Report and Order* in *In the Matter of Kansas City Power & Light Company*, Case No. ER-2016-0285 (issued May 3, 2017), concerning the "Clean Charge Network" (electric vehicle (EV) charging stations).

MECG's argument is flawed in more than one respect. First, the structure of the water corporation definition is different from the electrical corporation definition reviewed in the *KCPL* case. An "electrical corporation" includes those ". . . owning, operating, controlling or managing any *electric plant*. . . ." Section 386.020(15), RSMo (emphasis added). This gives the subsequent definition of "electric plant" utilized by the Commission (Section 386.020(14), RSMo) in the *KCPL* case import as to electrical corporations.

No such linkage exists between a water corporation and the "water system" cited by MECG. Section 386.250(3), RSMo provides that the Commission's jurisdiction shall extend to "[t]o all water corporations, and to the land, property, dams, water supplies, or power stations

thereof and the operation of same within this state." Section 386.025(58) defines a "water corporation" as follows:

> "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

MAWC does all of the things specified in the definition above and it is a water corporation. Therefore, the Commission's jurisdiction to grant the Company's requested relief is not limited by this definition to a "water system."

Moreover, the most significant aspect of the Commission decision cited by MECG regarding the Commission's lack of jurisdiction over the charging stations was completely unrelated to the water statutes. The Commission found that "EV charging stations are not 'electric plant' as defined in the statute because they are not used for furnishing electricity for light, heat or power," as required by the electric plant definition. No similar concept or situation is present either in regard to the Company, water corporations in general, or the replacement of lead service lines.[1] In fact, if viewed from that lens, the opposite is true: customer-owned service lines are necessary for the furnishing of water service to customers. Without it, water service would not be delivered to their homes or businesses.

MECG goes one step further and suggests (and OPC agrees) that the existence and non-passage of Senate Bill 541 in the 2017 Session of the Missouri General Assembly somehow

[1] The *KCPL* decision further focused on the competition available in the EV charging station market, something that is inapplicable to the replacement of lead service lines.

supports a finding that the Commission has no jurisdiction over lead line replacement. This is both in law and fact a non-issue.

First, it bears repeating that even as to legislation that has been *enacted*, legislative history has been deemed to be rarely persuasive in Missouri. It is necessarily incomplete as "the Missouri legislature does not record debates on any bill, nor does it publish committee reports. A legislative history . . ., therefore, is lacking." *Roosevelt Federal Savings and Loan Association v. Crider*, 722 S.W.2d 325, 328, FN 3 (Mo.App. S.D. 1986). For this reason and others, the courts have commented that "our supreme court has cautioned that the use of the history of a Missouri bill's enactment is not highly persuasive." *Page, et al. v. Scavuzzo, et al.*, 412 S.W. 3d 263, 268 (Mo.App.W.D. 2013), *citing Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. 1995). Legislative history is even less persuasive where the bills in question were *not enacted*.

More importantly, the proposed legislation that has been cited has nothing to do with the Commission's basic jurisdiction over the requested AAO or over pipe replacement authority. It has to do with different methods of potential cost recovery and not MAWC's authority to replace lead service lines. Senate Bill 541 added "replacement of lead pipes, including pipes that contain lead solder" to the definition of "Water utility plant projects" that can be recovered through the Infrastructure System Replacement Surcharge. This would have provided a mechanism by which the Company could seek cost recovery of lead service lines replacements between rate cases, but only for those replaced in St. Louis County. It did not address the Company's authority to replace lead service lines. It didn't even address cost recovery for replacements in the remainder of the Company's service territory.

Similarly, the proposed legislation cited by OPC in its opening statement was focused on cost recovery between rate cases. The language cited by OPC would have provided a mechanism by which the Company could seek periodic rate adjustments for the "replacement of lead service lines" regardless of where the lines are being replaced. Section 386.266, RSMo (Exhibit 26) provides authority for the fuel adjustment clause, the environmental cost adjustment riders, and other "periodic rate adjustments outside of general rate proceedings." No one would argue that it would be unlawful for electrical corporations to purchase fuel or power but for this statute. It would be equally absurd to suggest that it would be unlawful for electrical, gas, and water corporations to incur costs to comply with environmental laws, but for this statute. Again, this relates to cost recovery for such replacements, not MAWC's authority to perform such replacements.

B. Commission precedent supports Commission approval of the requested AAO.

The Commission has discretion in granting an AAO. While there is no express standard for the exercise of the Commission's authority to grant AAOs, the Commission has considered whether the utility has incurred a cost that is extraordinary or unusual.[2] The Commission has reviewed the cases in regard to this standard on a case-by-case basis and will grant or refuse to grant them according to the particular circumstances of each case.[3]

[2] *In the Matter of Missouri-American Water Company, et al., Report and Order on Remand,* MoPSC Case No. WO-2002-273, p. 29 (November 10, 2004).

[3] *Id.* at p. 37.

The LSLR program costs for which the Company seeks the requested AAO are extraordinary and unusual. As Mr. LaGrand pointed out on page 7 of his direct testimony (Exh 4):

> [t]he LSLR program is not a typical or customary business activity of the Company. The replacements concern service lines owned by customers, something that the Company would not do absent extraordinary circumstances. In this case, that extraordinary circumstance is the public health issue associated with lead in the water distribution system.

OPC witness Hyneman asserts that not only must the costs be extraordinary or unusual but they must also be material, stating that "[m]ateriality of the costs to annual reported earnings is also a factor considered by the Commission in AAO cases. The 'rule of thumb' used by the Commission in past AAO cases was that the extraordinary costs must be at least 5 percent of net income of the period. (Exh 17, Hyneman Dir., p.4-5) The LSLR program costs also meet Mr. Hyneman's materiality threshold. The Company estimates that it will incur approximately $9.5 million in LSLR program costs between January 1, 2017 and May 31, 2018, which, after adjusting for income taxes, would amount to 12.1% of net income as presented in MAWC's 2016 Annual Report filed with the Commission. (MAWC Position Statement, p. 1-2)[4] This is well above Mr. Hyneman's five percent "rule of thumb" for eligibility.

C. Granting the AAO allows MAWC to continue its main replacement program in the most cost effective, efficient and responsible way.

The Company's treatment and sampling efforts have effectively reduced potential lead exposure from drinking water. However, as the research regarding potential exposure to lead has

[4] The MAWC Position Statement provides the most up to date information available at the time. *See* also Exh 5, LaGrand Rebuttal Testimony, p.3 noting that "the potential costs that the Company could incur through the period covered by the AAO is estimated to be $8.9 million. After adjusting for income taxes, this represents approximately 11.5% of the Company's 2016 net income."

been further developed and refined, the Company has determined it should take additional steps to further mitigate the risk of potential customer exposure to lead in drinking water.

A growing body of research indicates that the galvanic corrosion that can occur after a partial lead service line replacement and the physical disturbance of the lead service line have the potential to increase lead levels following replacement. Now, when the Company encounters a lead service line during the course of its main replacement projects, the Company believes all segments of lead in the service line should be replaced. The full replacement would include both the lead portions owned by the Company and the lead portions owned by the customer/property owner. This work should be done at the same time whenever possible and should be integrated in the Company's water main replacement program. (Exh. 1, Naumick Dir., p. 7-8)

On the other hand, replacing only a part of the lead service line may potentially increase the risk of lead exposure through drinking water at the customer's tap. This is because physical disturbance of lead service lines and electrochemical processes both contribute to an increased risk of lead contamination following a partial replacement. Such physical disturbance results when a lead service line is either physically cut or otherwise disconnected, or when sufficient vibration occurs in close proximity to the line such that the integrity of the interior scale may become vulnerable to breaking. Vibration concerns include when excavation occurs in close proximity to the service line, such as during water main replacement, other nearby underground utility work, or tree removal. (Exh. 1, Naumick Dir., p. 10-11)

By removing the entire lead service line from active operation, a source of lead will be removed, further reducing the potential for exposure to lead in the drinking water supplied to customers.

Currently, MAWC is replacing customer-owned lead service lines in conjunction with its main replacement program. Main replacements are currently prioritized by considering a variety of factors, including the condition of the main, gauged by a combination of leaks or breaks in the line, pressure and flow conditions, and pipe age and material. MAWC also coordinates with local municipalities to replace mains in conjunction with road projects. It is during this regular main replacement process that MAWC anticipates replacing the lead service lines. Under the LSLR Program, when the Company encounters lead service lines during a main replacement project, it will proactively replace the lead portion of the service line. This may include Company-owned lead service lines and/or lead goosenecks as well as customer-owned portions of lead service lines. If only the gooseneck is lead, the Company will replace the service line up to the service shut-off valve. If the service line is lead, the Company will, with the customer's consent, replace the entire service line from the main to just outside the customer's premise or to the shut off valve within the customer's premise. (Exh. 7, Aiton Dir., p. 5-6; Tr. 215-216, Aiton).

The program further includes a flushing protocol, sampling protocol, notification of customers of results, and information for customers as to how to reduce exposure to lead in drinking water. (Exh. 1, Naumick Dir., p. 12-15; Exh 7, Aiton Dir., p. 6-7)

Without the AAO, MAWC may likely try to avoid areas with lead service lines and postpone main replacement projects with known lead service lines to avoid increasing the risk of potential exposure to lead associated with a partial replacement. Delaying main replacement projects, however, has a downside. Not only can it result in an increased number of main breaks and leaks over time, but it can also be costly and disruptive to customers and the community. As Mr. Aiton explained (Exh 9, Aiton Surrebuttal, p.4-5):

> Planned pipe replacements are much less costly on a unit cost basis than the costs of increasing pipe breaks, service disruptions, property damages, health risks from potential drinking water contamination exposure during pipe breaks, related community opportunity costs related to community health and economic development, and the steep increase in future pipe replacements resulting from prior deferral of the replacements. In addition, MAWC[] works with other entities when pipelines need to be relocated due to the work by other utilities, state and local roadway projects and redevelopment. Considering the level of coordination normally needed for the various types on infrastructure upgrades by the Company, the Commission should be aware that there could be a wider potential impact if the AAO is not granted.

Replacing lead service lines in conjunction with main replacements or relocations is not only the most cost-effective, efficient, and responsible way to continue its main replacement program, it also best addresses the health and safety concerns associated with partial lead service line replacements.

2. While the Company believes the Commission should use the Company's weighted average cost of capital to calculate the carrying costs on the balance of the deferred costs, MAWC is willing to accept a short term rate during the deferral period.

MAWC asserts that the carrying costs on the balance of the regulatory asset associated with the requested AAO should be recorded at the Company's pre-tax cost of capital because of the nature of the underlying projects (thousands of ongoing, short-term projects, which are completed and placed into service in a very short time period). (Exh. 6, LaGrand Sur., p. 3-4) Once each individual project is placed in service, AFUDC stops and depreciation and taxes start to accrue. Thus, each and every one of the hundreds of projects represents a drag on earnings for the Company that cannot be avoided by the Company given rate case timing. Unlike a big capital project that can be timed to coincide with a rate case, these numerous, small, continuing projects are impossible to time with a rate case in any effective manner.

Having said this, because of the nature of the projects, MAWC would be able to continue the program, and will accept a carrying cost equal to the short-term borrowing rate until the effective date of the Report and Order from MAWC's pending rate case (WR-2017-0285), if so ordered by the Commission. . (Tr. 157-158, 171, LaGrand)

The Company was also asked to provide its position as to whether it would continue the program if it received a return "of" its investment, but no return "on" its investment, going forward. (Tr. 171-172) It would be very difficult for the Company to continue its program under those circumstances. While LSLRs are an important investment, they are also a discretionary investment at this time. As Commissioner Kenney pointed out, the Company's level of investment is also "finite". (Tr., p.174, l.25) As such, MAWC will compete with other American Water Works Corporation's subsidiaries for discretionary capital, which can be used to invest in a variety of types of capital projects. Receiving only its investment back with no recognition of the cost of capital for investing in LSLRs would seriously compromise MAWC's ability to attract the necessary discretionary capital to complete the proposed LSLR program over the next ten years.

3. MAWC's tariff does not prohibit it from replacing customer-owned service lines.

OPC asserts that the Company is violating its tariff by replacing customer-owned lead service lines, but a review of the tariff provisions cited by OPC reveals that none of those provisions forbid MAWC from performing these replacements.[5] Certainly, the tariff provisions set forth the customers' ownership and responsibility for costs for part, or for all, of the service line, depending on the customers' location. Further, MAWC would be well within those

[5] This is for good reason, as in almost every main replacement in St. Louis County, it is necessary to replace some portion of a Customer Water Service Line in order to complete the main replacement.

provisions to refuse to replace any of the customer-owned service lines and leave the customers on their own to discover the lead service lines, contract for replacement, pay for replacement, and decide what sampling and flushing protocols should be applied to the replacement.

However, MAWC's voluntary replacement of those lines, with implementation of flushing and sampling protocols, is not "unlawful," any more than if the newspaper company tossed you a newspaper for which they did not charge you. Customers, who own and are responsible for the service lines, in this situation provide the Company their consent to replace the lines - something that is within an owner's right to do. (Exh. 7, Aiton Dir., p. 6, Sch. BWA-1) If the owner elects to not provide the Company with consent, the Company provides that owner with additional information concerning the lead service line, but it respects the owner's right to make that decision and does not replace the customer-owned service line. (Exh. 9, Aiton Sur., Sch. BA-SR2 (3 of 9); Exh. 28; Tr. 190, 197-198, Aiton)

MAWC does not propose to change its tariff or the Customer's basic responsibility for the Customer Water Service Line in this case, even where MAWC has replaced a Customer Water Service Line. The resulting replaced Customer Water Service Line will still belong to the Customer and responsibility for repairs and maintenance remains with the Customer.

OPC's argument relates to the wrong question. The question in this case is not the "lawfulness" of the service line replacements, it is how those replacements once completed are to be accounted for by the Company. MAWC has properly placed this issue squarely before this Commission while the LSLR program is still in its infancy.

From a cost of service perspective, customer-owned lead service line replacements are similar to restoration costs routinely incurred on infrastructure replacements. Restoration costs include costs to replace disturbed pavement, pavement base, driveways, sidewalks, curbing, and

landscaping, as well as costs related to damages to the property of others, and other general costs relating to restoring areas to their prior conditions. Including replacement of customer-owned lead service lines as restoration costs is appropriate for safety reasons when the line is disturbed by water main infrastructure work. (Tr. 172-173, LaGrand)

4. MAWC's record evidence sufficiently demonstrates the need to replace customer owned lead service lines.

A. Research supports the replacement of customer-owned lead service lines.

There is extensive research indicating that no amount of exposure to lead is safe.[6] (Exh. 3, Naumick Sur., p. 3) More specifically, OPC witness Marke states that "both the [Environmental Protection Agency] and the [Center for Disease Control] have said that no amount of lead in water is safe for children . . . ."[7] (Exh. 15, Marke Reb., p. 9)

Lead seldom occurs naturally in water supplies like rivers and lakes, and is rarely present in water coming from treatment plants. Rather, lead, if present in drinking water, is likely a result of corrosion of plumbing materials containing lead such as lead pipe, copper plumbing containing lead-based solders, brass faucets, fittings, and other various customer premise fixtures containing lead. The risk for lead contamination arises when water passes through lead service lines and/or premise plumbing fixtures with lead-based solder used to join pipes and faucets. Lead solder was banned for use on water pipes in 1986. Congress has also set limits on the amount of lead that can be used in plumbing. (Exh. 1, Naumick Dir., p. 5)

[6] Lead is a naturally occurring metal that is harmful if inhaled or swallowed, particularly to children and pregnant women. Lead exposure can cause a variety of adverse health effects. For example, lead exposure can cause developmental delays in babies and toddlers and deficits in the attention span, hearing, and learning abilities of children. Lead exposure can also cause hypertension, cardiovascular disease, and decreased kidney function in adults. (Exh. 1, Naumick Dir., p. 6)

[7] Witness Marke does further observe that "neither agency supported that statement with regulatory action." *Id.*

Lead service lines can be encountered on the utility side or customer side during water main construction and relocation projects or service line repairs and renewals. Removing lead service lines in their entirety will complement the other mitigation work MAWC performs, including providing stable water quality and treatment to minimize corrosion, compliance sampling, and following good management practices**.**

As described above, MAWC's testimony shows that performing partial lead service line replacements increases customers' risk of potential exposure to lead in drinking water and that replacing customer-owned lead service lines in conjunction with main replacements is a cost-effective, efficient, and responsible way to address the health and safety concerns otherwise present with lead service lines. (Exh. 7, Aiton Dir., p. 3-11; Exh. 8, Aiton Reb., 5; Exh. 9, Aiton Sur. 4-6; Exh. 1, Naumick Dir., p. 4-16; Exh. 2, Naumick Reb., p. 2-10; Exh. 3, Naumick Sur., p. 2-6).

B. A pilot study is not necessary, but the Company welcomes collaboration.

MAWC's current approach is the most cost-effective, efficient, and responsible way to address the health and safety concerns associated with partial lead service line replacements. Commission Staff and the Department of Economic Development agree. Staff believes "MAWC's proposal is a reasonable approach and is consistent with current EPA recommendations." (Exh 13, Merciel Rebuttal, p.8) "DED is supportive of an immediate response at the time of lead service line discovery during main replacement, which presents a more timely and cost-effective solution." (Exh 10, Hyman Rebuttal, p.8)[8]

[8] *See* also Tr. at p. 32 ("it's clear that the company is trying to do the right thing here and is engaging in the type of behavior that we would like from a regulated entity; that is, being proactive, identifying a problem and providing a solution today rather than one that will be arrived at after two years of study.").

OPC, on the other hand, recommends denying the Company's AAO request and proposes an extensive "Pilot Study" instead.[9] As further discussed below, a pilot study is not necessary or the most efficient way to proceed in this case. However, MAWC agrees there is value in gaining input from a broad range of stakeholders and recognizes that the health of the public is a primary concern and responsibility that it shares with other entities. MAWC's ability to effect change with respect to lead exposure is limited, however, to ensuring our water treatment is effective and by doing what the Company can to eliminate lead service lines from the systems it owns. Therefore, MAWC believes it is appropriate to engage in a dialogue with key stakeholders to gain input and refine best practices to best implement its LSLR program rather than engaging in a less focused pilot study. While MAWC supports dialogue, those engaged in the dialogue will need to recognize that MAWC bears the ultimate responsibility for providing safe and adequate water service to its customers and, therefore, entities engaged in the dialogue cannot mandate detailed program implementation details because they do not bear the ultimate responsibility for the successful completion of the program.[10] One key area that stakeholders can provide helpful input is the identification and pursuit of alternate funding opportunities. (Tr. 140-141, Naumick)

In addition, there were questions raised about how MAWC prioritizes main replacements, and whether that process might be expanded to take into account other factors such as vulnerable

[9] However, OPC does not recommend that the Commission approve the Pilot Study in this case. OPC suggests that the Commission reject MAWC's application in this case in total and "consider" the Pilot Study and proposed accounting treatment only within MAWC's pending rate case (Case No. WR-2017-0285). (Exh. 14, Marke Dir., p. 5). The accounting treatment would only provide for deferral of costs incurred after the date of a Commission order approving the pilot program. (Exh. 17, Hyneman Dir., p. 6). This could perhaps be sometime in May of 2018, around the operation of law date in the rate case. (Tr. 284, Marke)

[10] MAWC will follow all applicable rules, regulations and relevant best practices in the implementation of its LSLR program. Within these parameters, detailed implementation decisions need to be made by the Company without undue outside restriction. For example, when MAWC is installing a water main, it needs to determine diameter and material, what construction technique to employ, how to disinfect and place the main in service, etc.

populations (schools, nursing homes, or low income areas). MAWC currently prioritizes its main replacements based on: 1) problems with specific mains such as a history of main breaks and other factors in an attempt to solve problems and prevent service interruptions for customers; and, 2) government driven projects. (Tr. 131-132, 142-143, Naumick) Other entities may be in a better position to inform the utility where its most sensitive populations are located and how to meet their specific needs. The Company remains interested in collaborating, and does collaborate with those that do, such as the local Health Departments. (Tr. 133-134, Naumick; Exh. 3, Numick Sur., p. 4) Through this collaboration, sensitive populations and their location could be identified along with a process by which such locations could be communicated to MAWC by local health departments. MAWC can then consider that information during its project prioritization process. Similarly, together, stakeholders could also develop a protocol for identifying new and existing child care facilities and other locations where potential exposure to children may exist.

OPC also raised questions about whether and how customers are notified that they have a lead service line. Mr. Aiton explained that customers are notified in advance of a LSLR. (Exh. 7, Aiton Dir., p. 6) If a customer calls in to inquire, they are told whether the tap card indicates they have a lead service line and to contact a plumber to confirm whether the record is accurate. (Tr. 198-199, Aiton) The Company acknowledges this is not a perfect system and welcomes input on how to make the location of lead service lines more accessible to customers while maintaining appropriate control of the information as required for proper system operation. Stakeholders may also have good ideas that will help the Company advance its knowledge of the service line materials that actually exist at customers' premises, allowing the Company to better plan and prioritize its LSLR program.

Targeted collaboration with clear goals like some of those discussed above is preferable to a "two-year pilot study" to "explore the feasibility, legality and associated policy implications of full lead service line replacement across MAWC's entire service territory and the state of Missouri with the results presented to the Missouri Public Service Commission, the Missouri Legislature and the Missouri Governor's Office for consideration." (Exh. 14, Marke Dir., p. 5-6)

The OPC recommended pilot study would include five "policy tracks"[11] and be limited to "no more than $4 million annually (or $8 million in total) [to] be spent on planned full lead service line replacement and third-party administrative costs associated with the collaborative research efforts." (Exh. 14, Marke Dir., p. 5) The proposed Pilot Study would result in unnecessary delay, cost, and limitation on the replacement process for the following reasons:

1) **OPC's Recommended Pilot Study is Redundant of Work that has Already Been Performed**.

The United States Environmental Protection Agency ("EPA") and Water Research Foundation ("WRF"), along with partners from utilities and universities, have performed much research on this topic and have concluded that full lead service line replacement is in the best interest of the public. The WRF has published a summary of its extensive library of research on lead and copper corrosion and the Lead and Copper Rule, and has enlisted research partners,

[11] The five "policy tracks" are as follows: (1) an advisory committee, led by a third-party consultant, responsible for issuing a final report taking into account a large range of considerations; (2) a scoping analysis to provide lead service line estimates and information as well as the feasibility of developing a repository to contain lead service line information and water testing results; (3) a two-year lead service line replacement pilot program that includes testing and modeling to verify the link between lead service line removal and lead abatement in drinking water; (4) a review and summary of the advisory committee's thoughts on communications, disclosure, prioritization, and implementation; and, (5) ancillary considerations such as potential job creation, lead paint and soil abatement, and potential funding sources. (Exh. 14, Marke Dir., p. 6-11)

which include EPA, National Science Foundation, and Water Environmental Research Foundation. (Exh. 2, Naumick Reb., p. 4)

The literature OPC recommends be reviewed has been studied extensively and is readily available. Lead has been a topic of intense interest to many health agencies including EPA, the Center for Disease Control, the Department of Housing and Urban Development, National Institute of Health, National Toxicology Program, National Institute of Environmental Health Sciences, and others over the past several years. (Exh. 2, Naumick Reb., p. 4)

Moreover, the EPA has already had extensive engagement with stakeholder groups and the public on the current Lead and Copper Rule methodology and limitations. EPA published the "Lead and Cooper Rule Revisions White Paper" ("LCR Revisions White Paper") in October 2016 that discusses the key principles for revision to the LCR, the health effects of lead, lead in plumbing materials, a summary of the LCR, key challenges of the current LCR, a summary of the National Drinking Water Advisory Council Recommendations, and a summary of other stakeholder input. (Exh. 2, Naumick Reb., p. 5-6) The LCR Revisions White Paper recognizes the significant lead exposure risks that can accompany partial service line replacements. (Exh. 2, Naumick Reb., p. 7)

2) **OPC's Recommended Pilot Study Delays a Public Health Benefit**.

MAWC's LSLR Program proposes to replace lead service lines within a ten-year period, or roughly 3,000 per year. Using an average cost of $6,000 per service, MAWC estimates that it could invest approximately $18 million per year. OPC's proposal to limit the investment in LSLR to $4 million per year during the pilot limits MAWC's ability to replace lead service lines during the proposed pilot. Consequently, the Company's ability to perform planned main replacement projects will also be limited. Since partial LSLR has the potential to increase the

risk of exposure to lead, the Company will not perform partial LSLR. This means MAWC will not complete the main replacement projects in areas where lead service lines are present, delaying much needed infrastructure replacement and rehabilitation, missing opportunities to coordinate replacements with main replacement projects, and pushing the replacement process out well beyond ten years. (Exh. 8, Aiton Reb., p. 5)

3) **OPC's Recommended Pilot Study Creates Unnecessary Costs**.

The OPC's suggestion that MAWC solicit a contractor to provide "independent testing and modeling verification of the link between lead service line replacements and lead abatement in water at the tap" would result in costs and work that are duplicative of the work of the Lead Service Line Replacement Collaborative (LSLR Collaborative), which MAWC already has access to and has been utilizing. (Exh. 2, Naumick Reb., p. 4)

The national LSLR Collaborative was formed in 2016 at the invitation of the National Association of Water Companies, a steering committee member. The LSLR Collaborative is a joint effort of national public health, water utility, environmental, labor, consumer, housing, and state and local governmental organizations to help communities to accelerate full removal of the lead service lines providing drinking water to millions of American homes. (Exh. 1, Naumick Dir., p. 2-3) One of the purposes of this organization is to avoid duplicative and inefficient studies like the one proposed by OPC. Cities all across the country face the same problem. It does not make sense for every local city or entity to go at it alone. The collaborative was brought together to help provide centralized resources to those communities. (Tr. 115, Naumick)

4) **OPC's Recommended Pilot Study Includes Tasks Beyond the Scope of a Water Utility**.

There are several aspects of the proposed OPC Pilot Study that are beyond the expertise and responsibility of MAWC or any water corporation to undertake and would improperly require the Company to expend additional money and resources to evaluate issues outside the scope of the Company's provision of water service, at an additional cost to Missouri-American's customers. Examples include considering:

- "…lead contamination from external sources separate from the distribution system (e.g., lead paint)" (Exh. 14, Marke Dir., p. 9);

- ". . . real estate and legal implications of Missouri's Seller Disclosure Statement for properties with lead service lines" (Exh. 14, Marke Dir., p. 10); and,

- … potential job creation as well as lead paint and soil abatement messaging or service offerings." (Exh. 14, Marke Dir., p. 10)

(Exh. 2, Naumick Reb., p. 9-10)

5) **OPC's Recommended Pilot Study is Unclear and Ambiguous**.

It is unclear what will happen at the end of the two year Pilot Study. OPC proposes that the resulting study be presented to the Missouri Public Service Commission, the Missouri Legislature and the Missouri Governor's Office for consideration. What would happen next, and when, would be anybody's guess. One possible outcome is that all efforts to replace lead service lines might necessarily come to a halt, no matter what the outcome of the study, while the information is considered by the identified bodies.

MAWC has carefully considered its LSLR program in many aspects, including field construction methodology, sampling, flushing, customer communication, and community coordination. (Exh. 9, Aiton Sur., p. 6) Engaging a third party to repeat these activities would unnecessarily delay the Company's ability to implement its Lead Service Line Replacement Plan, and do so at an additional cost to customers. (Exh. 2, Naumick Reb., p. 3)

5. MAWC's proposed LSLR program costs are significant but the total cost of the program is not an issue in this case.

The Company is seeking an AAO for LSLR program costs it has incurred from January 1, 2017 through May 31, 2018. The total cost is not, and will not be, known until the work has been completed, but the Company has demonstrated that the lead service line replacement costs are significant and material. MAWC estimates the average cost of a service line replacement to be approximately $6,000, and that the total costs during this period may exceed $9 million. (Exh. 4, LaGrand Dir., p. 4-5, 8; Exh. 8, Aiton Reb., p. 1-5; Exh. 9, Aiton Sur., p. 2-4; Exh. 3, Naumick Sur., p. 7-9; Tr. 169-171, LaGrand)

6. Amortization of the deferred account should be begin at the end of MAWC's pending rate case.

The amortization of costs deferred as a result of this case should start with the effective date of the Report and Order in MAWC's pending general rate proceeding because the ability to start an amortization essentially requires a decision as to ratemaking treatment. (Exh. 5, LaGrand Reb., p. 4-5) Before MAWC could start an amortization, it would need to know over what period those costs are going to be amortized. No party has suggested an amortization period related to this case, and doing so would establish a recovery period in a future rate case. Accordingly, any amortization should be decided in the rate case, along with other recovery issues.

7. Granting the requested AAO does not require that the Commission make a determination that the deferred costs are a "regulatory asset", as defined by generally accepted accounting principles.

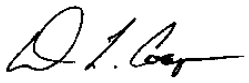
OPC argues in the Surrebuttal Testimony of its witness Charles Hyneman that the designation of the requested deferral as a "regulatory asset" is improper because of its description under the Generally Accepted Accounting Principles (GAAP). The identified costs should be recorded in NARUC account 186 Miscellaneous Deferred Debits. The Commission need not make a regulatory asset determination. (Exh. 4, LaGrand Dir., p. 6; Exh. 6, LaGrand Sur., p. 3)

CONCLUSION

The Commission need only decide one issue here: Should the Commission grant MAWC the AAO requested in this case? The answer is yes. The remainder of the issues while important need not and should not be resolved in this case. The Commission will have ample time and opportunity to speak to each of them, including the prudence of the LSLR program, the cost recovery of LSLR program costs and appropriate areas for collaboration, in the Company's pending rate case. It need not do so now. The Commission's focus should be on the AAO and whether the Company's LSLR program costs incurred between January 1, 2017 and May 31, 2018 are appropriate for deferral. Again, the answer is yes.

WHEREFORE, MAWC respectfully submits this Initial Brief for the Commission's consideration.

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 October 19, 2017, to the following:

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