

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

MAWC'S REPLY BRIEF

COMES NOW Missouri-American Water Company (“MAWC” or “Company”), and provides this reply to the Initial Briefs of the Staff of the Commission (Staff), the Office of the Public Counsel (OPC), the Missouri Energy Consumers Group (MECG), and the Missouri Department of Economic Development (DED). The parties’ briefs consider several issues, but the fundamental issue in this case remains singular: Should the Commission grant MAWC the accounting authority order (“AAO”) requested by the Company? Again, the answer is yes. The fact that MAWC does not respond to every statement contained in those briefs should not be taken as acquiescence to the statements not specifically addressed in this Reply Brief. Rather, MAWC’s decision simply reflects the fact that those statements and arguments were adequately addressed in its Initial Brief.

STAFF INITIAL BRIEF

Staff agrees that “MAWC should be granted the AAO requested in this case.” (Staff Ini. Brf., p. 1) In its view, “research on the negative health effects of lead is well established, as are the benefits of total lead service line replacements [and] MAWC’s plan to mitigate negative impacts is reasonable and beneficial to customers.” (Staff Ini.Brf., p. 2) Staff takes the position

that the proposed deferral is appropriate, as the LSLR is “a non-typical, non-reoccurring business activity for the water utility industry as a whole.” (Id. at p. 7)

Staff agrees with MCEG and OPC as to the application of American Water’s short-term debt rate during the period between deferral and when a recovery decision is made in the rate case. (Staff Ini.Brf., p. 8) MAWC addressed this issue in its Initial Brief and confirms its willingness to continue the program with a carrying cost equal to the short-term debt 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. (MAWC Ini.Brf., p. 10-11)

DED INITIAL BRIEF

DED “supports [MAWC’s] lead service line replacement (“LSLR”) program.” (DED Ini.Brf., p. 1) DED describes the LSLR Program as “a cost-effective solution to a potential threat to safe and adequate service.” (Id. at p. 2) DED takes no position as to the appropriate accounting treatment associated with the LSLR program. (Id. at p. 4)

While DED is not opposed to a “reasonably priced study,” it conditions that position on the continuation of the current LSLR program until such time as an alternative might be implemented; and suggests that the scope of any such study be “limited to MAWC’s service territory and problems that MAWC could reasonably address, since the study would be funded by MAWC ratepayers.” (Id.) DED further suggests that a study could address the questions surrounding which customers should pay for their own LSLRs. MAWC is replacing lead service lines in conjunction with its main replacement program. Main replacements are prioritized and completed without regard for property value or average household income in the neighborhood where they are performed. Similarly, as restoration costs, lead service lines should be completed

as part of the Company's main replacement program without differentiating between customers. MAWC believes it is appropriate to address the health and safety of its customers in a consistent manner.

MECG INITIAL BRIEF

MECG "does not oppose MAWC's AAO request," "does not oppose the grant of an Accounting Authority Order," and "does not oppose the Commission authorizing the deferral of MAWC's service line replacement program." (MECG Ini.Brf., p. 1, 9, 11). MECG recommends that the carrying cost for the period between deferral and ratemaking determination of those costs in the pending rate case be set at the short-term debt rate. (MECG Ini.Brf., p. 10) As stated above, MAWC confirmed its willingness to continue the program with a carrying cost equal to the short-term debt rate until the effective date of the Report and Order from MAWC's pending rate case (WR-2017-0285). (MAWC Ini.Brf., p. 10-11)

MECG also recommends additional conditions that are more appropriately addressed in the Company's pending rate case. MECG proposes that the Commission order MAWC to "maintain any deferred balances within the district in which the costs are incurred." This is a rate design issue and most appropriately addressed in a rate case, not in this AAO proceeding. MECG also proposes that "any deferral balance associated with the replacement of customer-owned service lines should be retained within the rate class affected." This is also a rate design issue more appropriately addressed in a rate case. (MECG Ini.Brf., p. 11) Not only are both of these requests purely rate design issues, but it is unclear how an order in this case could bind the Commission as to the rate design for districts and classes as described within MAWC's pending rate case. MECG further recommends that the Commission order the implementation of OPC's

proposed pilot study (MECG Ini.Brf., p. 10). While, as discussed in the Company's Initial Brief, MAWC welcomes targeted collaboration with clearly identified goals, MAWC does not believe that the OPC's proposed Pilot Study is appropriate (MAWC Ini.Brf., p. 14-17).

OPC INITIAL BRIEF

OPC is the outlier among the initial briefs. OPC's Initial Brief can be summed up with its request that the Commission "deny the company's AAO petition." (OPC Ini.Brf., p. 23)

OPC's disagreement starts with the fundamental circumstance that forms the basis for MAWC's proposal to replace lead service lines. MAWC, Staff and DED have all provided testimony that indicates that lead service lines are a potential threat to safe and adequate service.

OPC states to the contrary as follows:

Simply put, the evidence shows there is *no inherent risk to water quality from the existence and continued use of lead service lines.*

(OPC Ini.Brf., p. 13) (emphasis added)

OPC's assertion that the evidence does not support full lead service line replacement (LSLR) is inconsistent with conclusions made by the United State Environmental Protection Agency and Water Research Foundation that full lead service line replacement is in the best interest of the public. (Exh. 2, Naumick Reb., p. 4)

MAWC RESPONSES TO STATEMENTS IN THE OPC INITIAL BRIEF

Rather than address the fundamental issue in this case, OPC spends only two paragraphs (OPC Ini.Brf., p.19-20, para. 30 and 31) addressing the issue of whether the Commission should grant the AAO. OPC spends most of its 23-page Initial Brief addressing non-issues, or issues

better dealt with during the Company's pending rate case proceeding. In the following paragraphs, MAWC will respond to certain allegations in the OPC Initial Brief

Costs to Replace Customer-Owned Lead Service Lines OPC alleges that the "plan to replace customer-owned lead service lines may be a waste of \$180,000,000" and refers to a Company "plan to spend \$180,000,000 replacing lead service lines." (OPC Ini.Brf., p. 1) MAWC has made no request in this case that meets OPC's description. MAWC's Application asks for the Commission to grant MAWC an Accounting Authority Order whereby the Company is authorized to record and defer to Account 186 – Deferred Debits -- the cost of customer-owned lead service line replacements 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). Cost recovery of the expended amounts should be addressed in that rate case (Exh. 6, LaGrand Sur., p. 3) The Commission will likely have other cases, including rate cases, to continue to evaluate the merits and cost recovery of the Company's LSLR program, which is estimated to continue over at least a ten year period. (Tr. 283-284, Marke)

Restoration Costs

OPC argues that "the company likely has a legal obligation to repair customer-owned property it damages; no legal obligation requires (or authorizes) the company to replace customer-owned lead service lines." (OPC Ini.Brf., p. 3) Importantly, OPC does not identify what this "legal obligation" is, and in fact is not even certain of its existence. OPC only opines that such a legal obligation is "likely." While the Company may not have a legal obligation to replace lead service lines, restoration costs of customer owned lead service lines is a prudent investment for safety reasons when the line is disturbed by water main infrastructure work.

... Physical disturbance of lead service lines and electrochemical processes both contribute to an increased risk of lead contamination following a partial replacement. Removing and replacing the service line and curb box connection may disturb the “scale” or coating that builds up naturally inside of the service line over its years in service. If an insoluble and adherent scale forms, there is a physical barrier that prevents leaching of lead into the water the lead service line delivers. However, following physical disturbances related to infrastructure work, this protective barrier may be susceptible to releasing lead and other accumulated material in the scales. If a lead service line is replaced with a pipe made of another metal, conditions are created for bimetallic corrosion. The lead in the service line is a sacrificial metal that loses electrons to the non-lead material it adjoins. This is the cause of corrosion, which affects the interior wall of the lead service line and accelerates leaching of lead into the water passing through the line. While optimal corrosion control techniques can mitigate this risk, it is still a risk that should be avoided given the health and safety concerns associated with lead contamination.

* * * * *

...The term physical disturbance is used to indicate when a lead service line is either physically cut or otherwise disconnected, or when sufficient vibration occurs in close proximity to the line that the integrity of the interior scale may be vulnerable to breaking off. 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, reducing the potential for exposure to lead in the drinking water we supply our customers. (Exh. 1, Naumick Dir., p. 12) The investment is part of a prudent expenditure incurred on behalf of utility customers for the purpose of maintaining safety and public health. Replacing lead service lines in conjunction with main replacements or relocations is not only the most cost-effective, efficient, and responsible way to continue the Company’s main replacement program, it also best addresses the health and safety concerns associated with partial lead service line replacements. (MAWC Ini.Brf., p. 7-10).

MAWC's Decision to Begin Replacing Lead Service Lines

OPC complains that the “company began replacing customer-owned service lines in January of 2017 without making any demonstration whether the program was legal, without demonstrating the program was necessary, and without providing any cost-benefit analysis.” (OPC Ini.Brf., p. 5) MAWC disputes that there is any requirement to proactively take the steps suggested by OPC.

MAWC determined 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. MAWC has properly placed the issue of how to account for the costs of LSLR between January 1, 2017 and May 31, 2018 squarely before this Commission while the LSLR program is still in its infancy.

MAWC Tariff Provisions

OPC alleges that “MAWC’s current and proposed practice violates a number of the company’s commission-approved tariff provisions.” (OPC Ini.Brf., p. 5) MAWC’s LSLR program does not violate any of the Company’s tariff provisions, and none of the tariff provisions cited by OPC prohibit the Company’s actions.

Moreover, examining the tariff provisions cited by OPC (OPC Ini.Brf., p. 7-8) reveals that the matter at hand may be distinguished from the situations addressed by those tariff provisions:

<u>OPC Cited Tariff Provision</u>	<u>Distinguishing Factor</u>
PSC MO No. 13, Original Sheet No. R. 12, Rule 4.C	States what the Company will not be “required” to do. It does not prohibit any conduct and refers to matters “requested by the

	Customer,” which is not the case here.
PSC MO No. 13, Original Sheet No. R 12, Rule 4.I	Specifically applies to an “Applicant.” There is no “Applicant” in this situation as that term is defined in the Tariff.
PSC MO No. 13, Original Sheet No. R. 13, Rule 4.J	Refers to installation of a service line, not replacement.
PSC MO No. 13, 1 st Revised Sheet No. R. 14, Rule 4.N	Describes a situation outside St. Louis County where the Company owns the service line and “shall make the replacement at its own expense.”
PSC MO No. 13 1 st Revised Sheet No. R 16, Rule 6.B	The only reference to “replacement of Water Service Lines” concerns material and construction requirements. The specific subsection cited by OPC concerns “construction and maintenance,” not replacements.
PSC MO No. 13, 1 st Revised Sheet No. R 17, Rule 6.F	Refers to “changes” in the “Customer Water Service Line required by changes of grade, relocation of mains, or other causes.” There is no “change” to the line in this case. The line is being replaced.
PSC MO No. 13, 1 st Revised Sheet No. R 17, Rule 6.H	Refers specifically to “repairs or maintenance,” not replacement.

If the Company’s actions are not prohibited by the tariff, they are permitted, unless found to be unlawful for some other reason. No prohibition has been identified.

Prior Partial Replacements

OPC alleges that the fact that MAWC does not immediately plan to go back and perform full replacements at the location of all prior partial replacements has significance in terms of whether there is any value to full replacements. (OPC Ini.Brf., p. 13) This allegation represents a significant misunderstanding of the testimony and situation. The proposal to perform replacements as a part of the main replacement program takes advantage of the economies and efficiency of performing this work while the street is open and while such lines are actively being disturbed (by the construction itself). (See Exh. 7, Aiton Dir., p. 10; Tr. 186-187, Aiton)

As Mr. Naumick testified, how to address past partial replacements is something that is under consideration. (Tr. 128, Naumick) However, they are currently a lower priority because, while there can be various sources of disruption (such as the replacement of a tree in the vicinity), one known source of disruption (main replacement) is not currently taking place at those locations and the lines are in a relatively stable condition. (Tr. 128-129, Naumick) There has been no decision to permanently ignore those prior partial replacements.

No Requirement to Replace

OPC suggests that MAWC has not demonstrated “the necessity of replacing customer-owned service lines,” at least in part because “there is no legal or regulatory requirement to replace the customer-owned lead service lines.” (OPC Ini.Brff., p. 12-13) MAWC certainly agrees that there is no legal or regulatory requirement that it make such replacements.

MAWC’s proposed LSLR program is based on the risks associated with lead service lines and the opportunity to replace those lines in an efficient manner. 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. MAWC’s application is not based on an allegation of legal requirement, but rather a suggestion that proceeding in the manner proposed is responsible, reasonable, and prudent.

Lessons from Flint

OPC’s Initial Brief takes a position that the Flint, Michigan water crisis was essentially – not that bad – or, at least not worth the attention it received. However, for perspective, as of June 14, 2017, criminal charges had been brought against fifteen (15) persons as a result of the matters associated with Flint.

It may be helpful to remember that the actions that started the Flint problems were driven by a misguided attempt to save money in the provision of drinking water. “The dire problems affecting the city’s water started in April 2013 when, *as a short-term cost saving measure*, city officials opted to switch the water supply from Lake Huron to the Flint River.” (Exh. 16, Marke Sur., p. 28) (emphasis added) Michigan’s Attorney General has described the situation as follows in his investigative report – “A cause of the breakdown in state governmental management was a fixation, a preoccupation, with data, finances and costs, instead of placing the health, safety and welfare of citizens first.” (*Interim Report of the Flint Water Crisis Investigation*,

http://www.michigan.gov/documents/ag/Flint+Water+Interim+Report_575711_7.pdf)

One of the subjects that the OPC wants to study further in its Pilot Study is this very situation in Flint. The Flint situation has been studied by a variety of interested parties, including the EPA, and does not need to be studied further as recommended in OPC’s proposed pilot study. The main lesson from Flint that should be applied to any study or collaboration is that the process not hinder the Company’s ability to provide for health, safety, and welfare of its customers.

Cost Estimates

The OPC Initial Brief distorts the cost information that has been provided to the Commission in this case. MAWC initially estimated that replacements would average approximately \$3,000 - \$5,500. (Exh. 7, Aiton Dir., p. 10) That was later amended to an estimated average of \$6,000. (Exh. 9, Aiton Sur., p. 4) OPC ignores this testimony and alleges that MAWC’s estimate has “jumped from \$3,000 per customer to \$6,000 per customer.” (OPC Ini.Brf., p. 17) It has not.

Also erroneous and misleading is the OPC's use of an "AWWA territory estimate" for its "Total Cost" estimates. (OPC Ini.Brff., p. 18) The 330,000 "#of Service Lines" cited by OPC comes from an AWWA report based on inputs from surveys of water utilities across the country.¹ That number does not purport to represent lead service lines in MAWC's territory. It is represented to be a lead service line estimate *for the entire State of Missouri* extrapolated from regional data. MAWC does not serve the entire State of Missouri. More significantly, MAWC does not serve Kansas City, St. Louis, Springfield, Independence and Columbia, the five largest cities in Missouri, and the areas where the most lead service lines are expected to be found. (Tr. 268-269, Marke)

Water Filters

OPC further asks the question whether "a 'point of use' lead-free water filter [would] represent a reasonable alternative" to the LSLR program. (OPC Ini.Brff., p. 18) MAWC has already studied the possible use of filters and explained why it believes that they are not a preferred approach for several reasons. (Tr. 135-137, Naumick)

First, relying on a filter and leaving the lead service line in place fails to address an obvious pathway of potential exposure to lead. The line in this circumstance remains in place and continues to be utilized for the provision of water. (Tr. 136, Naumick)

Second, because the lead service line remains in place and in use, the filter options do not represent an apples to apples comparison to line replacement. With the pitcher-type filters, there is a limit to the filter's use of about 100 gallons. (Tr. 136, Naumick) Thus, it must be replaced very frequently, adding to the cost. More significantly, if it is not replaced in a timely manner,

¹ MAWC has further provided testimony as to the weaknesses as to the process used in this report. (Exh. 3, Naumick Sur., p.7-8)

the filter can have a breakthrough and actually be worse in terms of the lead contamination than the water prior to filter use. (Id.) This places great responsibility on the customer to remain constantly vigilant. Lastly, these types of filters are not a “whole-house” solution. If the pitcher is in the refrigerator, people may not take that pitcher to other rooms where water may be drunk, such as the bathroom (for brushing teeth). (Tr. 137, Naumick)

Tap specific filters have similar issues to the pitcher filter in terms of changing of filters and consequences associated with the failure to do so. In addition, it has an additional disadvantage in that it cannot be moved, even if the customer is so inclined. Moreover, there are operational problems with the tap filters in regard to the ability to correctly and adequately install those filters. (Tr. 150-151, Naumick)

Lastly, while a whole-house filter option is available, it comes at a much higher price tag than the pitcher or tap-specific filter. It also still requires the continued vigilance of the customer to timely and correctly change the filter, or its benefit is muted. (Tr. 137, 151-152, Naumick)

It is for these reasons that MAWC does not believe filters are a good and permanent solution to the problems presented by lead service lines.

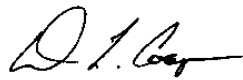
CONCLUSION

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. Once again, the answer is yes.

WHEREFORE, MAWC respectfully requests the Commission consider this Reply Brief

and, thereafter, issue such order as it shall find to reasonable and just.

Respectfully submitted,



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
dcooper@brydonlaw.com

Timothy W. Luft, MBE #40506
Corporate Counsel
MISSOURI-AMERICAN WATER COMPANY
727 Craig Road
St. Louis, MO 63141
(314) 996-2279 telephone
(314) 997-2451 facsimile
timothy.luft@amwater.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 or by U.S. Mail, postage prepaid, on October 30, 2017, to the following:

Nicole Mers
Office of the General Counsel
staffcounsellservice@psc.mo.gov
nicole.mers@psc.mo.gov

Lewis R. Mills
Bryan Cave, LLP
lewis.mills@bryancave.com

John Coffman
John B. Coffman, LLC
john@johmcoffman.net

Tim Opitz
Office of the Public Counsel
opcservice@ded.mo.gov
timothy.opitz@ded.mo.gov

David Woodsmall
Woodsmall Law Office
david.woodsmall@woodsmalllaw.com

Brian Bear
Department of Economic Development
brian.bear@ded.mo.gov

