

**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.)

MAWC'S RESPONSE TO MOTION TO REJECT

COMES NOW Missouri-American Water Company (“MAWC” or “Company”), and, in response to the *Motion to Reject Proposed Procedural Schedule*, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On August 28, 2017, MAWC filed its *Motion for Approval of Proposed Procedural Schedule* and proposed the following schedule:

Direct Testimony – MAWC	September 12, 2017
Rebuttal Testimony – Staff, OPC, and Intervenor	October 11, 2017
Surrebuttal Testimony – all parties	October 25, 2017
List of Issues, Order of Cross, etc.	October 31, 2017
Statements of Positions	November 3, 2017
Evidentiary Hearing	November 6-9, 2017 (Probably only 1 or 2 days needed)
Initial Post-Hearing Briefs – all parties	November 22, 2017
Reply Post-Hearing Briefs – all parties	December 1, 2017

2. Thereafter, also on August 28, 2017, the Staff of the Commission (Staff) filed its *Notice of Non-Opposition* to the schedule proposed by MAWC.

3. On August 30, 2017, the Office of the Public Counsel, Missouri Industrial Consumers, and Midwest Energy Consumers Group (collectively “Intervenors”) filed their *Motion to Reject Proposed Procedural Schedule*.

4. MAWC will respond below to some of the specific allegations made in the Intervenor's Motion.

5. As an initial matter, the schedule proposed by the Intervenor's had several practical issues. Three of the dates identified were federal and state holidays (September 4, 2017 (Labor Day), November 10, 2017 (Veterans Day), and November 23, 2017 (Thanksgiving)). MAWC has adjusted its proposed schedule to avoid these holidays.

6. MAWC agrees with the Intervenor's proposed addition to MAWC's shortened data request schedule indicating that "in addition to providing reasons for the inability to answer within 10 days, the Company/Party should be ordered to state the date on which the requested information will be provided." (Motion to Rej., p. 3, para. 9)

7. Intervenor's Motion alleges that the proposed schedule provides the Intervenor's a reduced time to engage in discovery and further refers to a MAWC's alleged "failure to timely file its Direct Testimony." (Motion to Rej., p. 2, para. 5-6)

8. Intervenor's opportunity to conduct discovery does not begin with the filing of direct testimony. It begins with their entry into the case. OPC, by statute, has a party from the date the application was filed (June 29, 2017). MIEC and MECG have been parties since their applications to intervene were granted effective July 17, 2017. MAWC's Application in this case is straight forward as to its request and its reasoning. The lack of discovery as of this date is not due to the non-filing of direct testimony.

9. Utilizing this schedule originally proposed by MAWC would provide parties approximately 30 days from the filing of MAWC's direct testimony (along with reduced discovery response times) to prepare rebuttal testimony. When combined with the fact that the Application has been on file and available to the Intervenor's since June 30, 2017, this would

appear to be a reasonable schedule to provide the Commission with the evidence necessary for it to make a decision in regard to the issue at hand.

10. Moreover, the statement suggesting that MAWC has failed to “timely file its Direct Testimony” seems to be quite a reach given that *no Commission rule or order has required the filing of direct testimony as of this date.*¹ The Commission, by its *Order Directing Notice, Establishing Intervention Deadline and Directing Staff to File Recommendation* (issued June 30, 2017), directed Staff to file a recommendation or status report on August 12, 2017. When Staff indicated in its Status report filed August 11, 2017 that it would be unable to file a recommendation until later, MAWC attempted to work with the parties on a schedule. Obviously, the parties were, and continue to be, unable to reach agreement on a schedule.

11. Having said this, and given that the direct testimony date identified by Intervenors has already passed, to the extent the Commission may want to provide additional time for rebuttal testimony, MAWC provides the following as a possible alternative for consideration:

Direct Testimony – MAWC	September 12, 2017
Rebuttal Testimony – Staff, OPC, and Intervenors	October 20, 2017
Surrebuttal Testimony – all parties	November 1, 2017
List of Issues, Order of Cross, etc.	November 2, 2017
Statements of Positions	November 3, 2017
Evidentiary Hearing	November 6-9, 2017 (Probably only 1 or 2 days needed)
Initial Post-Hearing Briefs – all parties	November 22, 2017
Reply Post-Hearing Briefs – all parties	December 8, 2017

¹ Intervenors correctly cite the language from Section 393.140(8), suggesting a hearing is required. However, it has also been suggested in the past that the Commission may issue an accounting authority order under Section 393.140(4), which does not require a hearing. This issue was raised before the Court of Appeals in *State ex rel Missouri Office of Pub. Counsel v. Public Serv. Commission*, 858 S.W.2d 806 (Mo. App. 1993), but was determined to not be ripe for decision, as in that case a hearing had been held.

12. Lastly, Intervenor attempt to make some point (it is uncertain what point) in regard to MAWC's past requests for waivers from the 60 day filing requirements of 4 CSR 24-4. First, it should be remembered that the Commission's rule in this regard changed as of July 30, 2017. Over the first seven months of the eight month period cited by the Intervenor notice was only required where a case was "likely to be a contested case." Thus, in some instances, the request for waiver was only made in an abundance of caution.

13. Of the cases cited by Intervenor,² none of the concluded cases resulted in a hearing. Two of the cases involved acquisition/certificate cases. Those types of cases will always be ill-suited for a 60 day notice as it is unknown whether a deal will be done until an agreement is signed, and once it is signed, it serves no purpose to wait 60 days before filing the case. The bottom line is that in most cases, the utility does not know 60 days ahead of the filing what, if anything, it will be filing. This is not a fundamental problem. It must also be remembered that the notice requirement exists for the purpose of furthering the *ex parte communications* rules found in Chapter 4 of the Commission's Rules pertaining to discussions with the office of the commission (as it is defined in 4 CSR 240-4.015(10)). In the absence of such communication³, arbitrarily delaying a matter for 60 days serves no purpose.

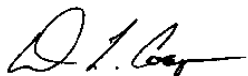
14. The schedule proposed by MAWC in its *Motion for Approval of Proposed Procedural Schedule* is a reasonable approach to the issues in this case and MAWC asks that it be adopted by the Commission. To the extent the Commission may desire to provide additional time for rebuttal testimony, MAWC provides the alternative schedule found in paragraph 11 above for the Commission's consideration.

² It should be noted that Intervenor's list also cites twice the pending Case No. WO-2018-0059 (ISRS).

³ As recognized by Commission Rule 4 CSR 240-4.017(1)(D).

WHEREFORE, MAWC submits this proposed procedural schedule and moves the Commission for approval thereof.

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 September 5, 2017, to the following:

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