

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Missouri-American Water Company for an)	<u>File No. WU-2017-0351</u>
Accounting Authority Order Related to Property)	
Taxes in St. Louis County and Platte County)	

ST. LOUIS COUNTY'S REPLY BRIEF

COMES NOW St. Louis County and presents its Reply Brief to the Missouri Public Service Commission (hereinafter "Commission") as follows:

In MAWC's Initial Brief, it has taken a position that St. Louis County's modification of the recovery period for MAWC's personal property was unanticipated. MAWC's Brief, pg. 8. Further, MAWC asserted that OPC and St. Louis County were exercising hindsight when they stated that MAWC should have known or expected St. Louis County to transition to the 20 year recovery period as the other 23 counties had done. MAWC's Brief, pg. 13.

In response to MAWC's assertion as to OPC and St. Louis County's use of its hindsight, no doubt MAWC was either wearing blinders and/or turning a deaf ear to Tammy Frost's frequent warnings to MAWC about the transition that might occur. In an email dated May 31, 2017 from Tammy Frost to Elizabeth Arriga of MAWC, Ms. Frost wrote

"We have discussed frequently of Missouri's implementation of MACRS depreciation schedules (statewide) for valuation of personal property and the potential impact should that occur fully in St. Louis County." (Our emphasis).

Exhibit 15. What steps did MAWC take to transition the depreciation factor for its personal property being reported to St. Louis County? None whatsoever; MAWC was not going to transition until told to do so by St. Louis County. Tr. pg. 44, lns. 12 – 16.

It is odd that MAWC would argue that St. Louis County's change from the 7 year period of recovery to the 20 year period of recovery was unexpected. In an email dated March 19,

2007, Tammy Frost asks Karen Leahy of St. Louis County, “Will we use the same depreciation as last year for all 2006 additions? To which Ms. Leahy replied to Ms. Frost,

“If you have depreciated locally assessed personal property items in the past using our depreciation schedules, I see no reason why [20]06 acquisitions shouldn’t be depreciated using the new recovery schedules.” (Our emphasis).

Exhibit 2 – ST_JWR-Property Tax AAO_Schedule 4 – WU-2017-0351. It is clear that Ms. Leahy is directing Ms. Frost to have MAWC use the depreciation factor for the 20 year recovery period for its personal property assets, using the MACRS depreciation schedule set forth in Section 137.122.3 R.S.Mo., which took effect in 2007. St. Louis County started following the MACRS schedule in 2007. Tr. pg. 176, lns. 10 – 16.

As to why MAWC chose to depreciate its personal property assets using the 7 year recovery period contrary to Ms. Leahy’s directive and kept the practice up for 10 years, it is unclear. However, MAWC states that Suzanne Strain of St. Louis County testified that there was no malfeasance on MAWC’s part, which she did testify to, but the evidence as presented in the emails between Karen Leahy to Tammy Frost and the emails from Tammy Frost to Elizabeth Arriga of MAWC would suggest otherwise. For Ms. Strain to try and surmise what was MAWC’s intent would have been purely speculative.

With 40,000 business accounts, St. Louis County has to rely upon the businesses to correctly report the rate that they are using covers the correct recovery period. Tr. pg. 180, lns. 18 – 22. It is the responsibility of the assessor for calculating the depreciation of MAWC’s equipment used in gathering and treatment of water, but as a self-reporting utility, MAWC is responsible in filing its listing with the assessor the actual estimated value of the equipment as required by Section 137.340 R.S.Mo. Ex. 12, para. 18. The fact that St. Louis County accepted

the MAWC filing for 10 years was an oversight, a mistake and resulted because St. Louis County was duped by MAWC's deceptive reporting practice of its personal property to St. Louis County.

On the St. Louis County form, the taxpayer would normally report the actual depreciation factor and the assessment factor, two different numbers, specifying the original cost of the asset and the year the asset was acquired. On Missouri American Water Company Real Property Tax Sheet – January 1, 2017, MAWC neither provided the depreciation factor nor the assessment factor to the St. Louis County Assessor but only the assessment rate of 0.2848. See Exhibit 13. Ms. Strain was able to determine the depreciation factor, backing into it, by dividing the assessment rate of .2843 as reported by MAWC on its worksheet by the assessment factor of 32% for MAWC's distributable property in order to obtain the depreciation factor of 89% ($.2843/.32 = .89$), the 7 year recovery period depreciation factor. See Section 137.122.3 R.S.Mo.; Exhibit 13; Tr. pg. 175, lns. 7 – 25, pg.176, lns. 1 – 9, pg. 179, lns. 1 -25 & pg. 180, lns. 1 – 17.

As can be seen, MAWC did not present the depreciation factor and the assessment factor on its worksheet. Only after careful investigation of MAWC's worksheet was Ms. Strain able to determine that MAWC was using the 7 year recovery period.

MAWC talks about the dramatic effect St. Louis County's change from the 7 year recovery period to the 20 year recovery period will have on MAWC's property tax expense, creating a 92% increase in MAWC's property tax expense. MAWC's Brief, pg. 8. What MAWC does not talk about is the fact that in its failure to pay the property tax expense as required under the 20 year recovery period over a 10 year period, MAWC was able to accumulate a significant tax saving, increasing its overall net income during each of the 10 years.

The St. Louis County taxing authorities, i.e. school districts, special school districts, fire districts, park districts to name a few, that relied on those taxes to fund their respective services, were adversely affected by MAWC's failure to use the 20 year recovery period. The residents of St. Louis County who had to pick up the slack were adversely affected by MAWC's failure. MAWC's net income from 2007 – 2016 was positively affected by its use of the 7 year recovery period. MAWC's shareholders benefitted from MAWC's failure. See Tr. pgs. 83, lns.20 – 25 & pgs. 84 – 86, lns. 1 - 14.

Despite MAWC's denial, it only has itself to blame for the position it put itself in. The day of reckoning caught up with MAWC.

MAWC's motion for an AAO does not relate to an extraordinary event. St. Louis County's requirement that MAWC use the 20 year recovery period after 10 years of reporting the distributing equipment using the 7 year recovery period was following the statute, Section 137.122 R.S.Mo. MAWC has used the 20 year recovery period in reporting the value of its distributing assets in 23 Missouri counties.

WHEREFORE, St. Louis County submits its Post-Hearing Brief and asks the Commission to deny MAWC's AAO motion.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 1st day of December, 2017.

/s/ Robert E. Fox, Jr.

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