

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. )

sheet PSC MO No. 13 Original Sheet No. R 12, Rule 4.I requires that “[f]or service at a new location, *a replacement service*, or additional service at an existing location, *applicant shall pay, in advance*, a service connection charge in accordance with approved tariff charges or as provided in these rules” (emphasis added). PSC MO No. 13 Original Sheet No. R. 12, Rule 4.J states, in part, “[t]he Customer’s Water Service Line shall be installed by the Customer at that Customer’s expense.” When a service connection or service line is installed by the company “[t]he company will hold title to all such service connections, Service Lines and meter box installations installed by the company.” (See PSC MO No. 13, 1<sup>st</sup> Revised Sheet No. R. 14, Rule 4.N). MAWC tariff sheet PSC MO No. 13 1<sup>st</sup> Revised Sheet No. R 16, Rule 6.B specifically addresses “all new or replacement Water Service Lines”. At B.2 of the same tariff sheet, the law requires for all service areas (delineated separately in the tariff section based on customer ownership) that “the Customer shall be responsible for construction and maintenance of the Customer’s water service line...”. Tariff sheet PSC MO No. 13 1<sup>st</sup> Revised Sheet No. R 17.F demands “[c]ustomers at their own expense shall make all changes in their Customer Water Service Line required by changes of grade relocation of mains, or other causes.” On the same sheet paragraph H requires that “[r]epairs or maintenance necessary on the Customer Water Service Line or on any pipe or fixture in or upon the Customer’s premise ... **shall be the responsibility of the Customer.**” (Emphasis added). Each of these provisions is violated by MAWC’s ongoing program.

However, as stated above, the company does not request reprieve from these obligations or otherwise request any modification. Based on the documents attached to MAWC witnesses’ testimony, Public Counsel infers the company’s putative solution is to ask that customers sign a

contract affecting payment obligations to replace their service lines (at least a few customers have declined) as well as having the company assume liability for replacing the customer-owned service line (those contract forms can be found attached to MAWC witness Aiton's pre-filed surrebuttal as Schedule BA-SR3, pp. 3-8). Schedule BA-SR3 is a contract that purports to reflect an agreement wherein MAWC "warrants the workmanship of its restoration [for determining whether lead service lines are at a location] ...for a period of two months ... with the Company's liability limited to the cost of repairing ... [.]". Schedule BA-SR3 purports to be an agreement between MAWC and the company wherein MAWC "will install a Customer connecting line from the Installation to Customer's residence." Adding the caveat "[t]he Customer connecting line is currently and will continue to be owned and maintained by Customer." (*Id.*). However, the same document *extends* MAWC's (and its customers) liability with an additional putative agreement wherein MAWC "warrants the workmanship of its installation of its installation of the Customer service line for a period of 12 months ... [.]". (*See* Schedule BA-SR3, p. 7). These contracts do not resolve MAWC's tariff violations. In fact, the company's decision asking its customers to sign these documents violates its tariff in two additional ways.

First, MAWC's tariff unambiguously requires that all "written agreements shall conform to these Rules and Regulations in accordance with the statutes of the State of Missouri and rules of the Commission." (PSC MO No. 13 1st Revised Sheet No. R 9, Rule 2.D). Furthermore the general provisions of the company's tariff provide that "[n]o employee or agent of the Company shall have the right or authority to bind it by any promise, agreement or representation contrary to the letter or intent of these Rules and Regulations of law." (PSC MO No. 13 Original Sheet

No. R 10, Rule 2.K). The agreements utilized by MAWC in furtherance of its program are contrary to the current tariff.

Second, the form agreements include language attempting to limit liability to the company when, in fact, the agreements expose the company to *greater* liability. MAWC tariff sheet PSC MO No. 13 Original Sheet No. R 11, Rule 3 defines the parameters surrounding MAWC's liability. Rule 3.F prohibits the company from entering agreements that assume or assign liability contrary to the parameters in the tariff (*See* PSC MO No. 13 Original Sheet No. R 11). When MAWC increases its liability it places a greater burden and risk on its customers from whom MAWC would seek to recover any payments made under the liability terms.

Since January 2017 MAWC has been violating its Commission-approved tariff. As the Commission is aware, a tariff has the same force and effect as a statute and that it becomes state law when approved by the Commission (*See State ex rel Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 477 (W.D. Ct. App. 2013)). The Company has not asked for any relief that would resolve the current violations and has, instead, focused only on recovering the money associated with the project.

II. *Has MAWC demonstrated the necessity of replacing customer-owned lead service lines?*

**OPC Position**

No. As an initial matter, MAWC, as the applicant bears the burden of proof. Here, the company has not offered testimony demonstrating the necessity of replacing customer-owned lead service lines. As confirmed by the Commission Staff's recent report the "Overview of lead in Missouri's drinking water", all of the water utilities regulated by the Public Service Commission, including MAWC, are presently in compliance with the Lead and Copper Rule

(See Marke Direct, p. 11). The company offers that the project will reduce “potential exposure to lead in drinking water” that may increase as a result of disturbances caused by the company’s main replacement program and so it intends to replace customer-owned service lines in conjunction with its main replacement program (See generally Naumick Direct, pp. 11-12).

Public Counsel has raised a number of concerns regarding the company’s approach to lead service line replacement. As explained in the testimony of OPC witness Marke, the issue of lead line replacements cuts across public health, scientific, technical, and legal arenas and should not be viewed as an engineering exercise alone. The Company’s proposal falls short in addressing the multitude of issues presented by a plan to remove customer-owned lead service lines.

Importantly, OPC’s proposed pilot program presents a path forward to address the issues – including the necessity and efficacy of full lead service line replacement – while permitting the Company to continue replacing lead service lines as the pilot is conducted. OPC’s proposed pilot study from its direct testimony provides the framework to facilitate the substantive research, planning and communication to mitigate known risks and to anticipate and plan for the otherwise unintended consequences that are undoubtedly linked to this complex, decade(s)-long policy reform.

III. *What is the cost of MAWC’s proposed program to replace customer-owned lead service lines?*

#### **OPC Position**

Public Counsel does not know the cost of the program. More importantly, MAWC does not know either. Instead, the company asks for a “blank check” without demonstrating the

necessity of the project or developing any kind of cost-benefit study. In testimony, Public Counsel has challenged the company's estimates of both the number of lead service lines and the cost to replace each line. In their surrebuttal testimonies, MAWC witnesses Naumick and Aiton admit the company's estimate of lead service lines is not perfect. Mr. Aiton also addresses the inaccuracy of the company's initial replacement cost estimate, now stating the company expects the average cost across all replacements to be \$6,000 (*See Aiton Surrebuttal*, p. 4). With replacement costs in St. Louis County regularly exceeding the revised estimate by thousands of dollars, the accuracy remains uncertain (*See Merciel Rebuttal*, p. 7; *Merciel Rebuttal Schedule JAM-R6*). Based on the company's most conservative cost estimate (30,000 lines at \$3,000), MAWC's proposed program will cost ratepayers \$90,000,000. Now, with the Company's new estimate of \$6,000 average replacement cost, assuming the service line estimate is accurate, the cost *explodes* to \$180,000,000.<sup>2</sup> This is not a trivial amount of money for customers to bear, especially considering that MAWC is currently seeking to increase the rates of its customers in the St. Louis area by 45% (*See Marke Surrebuttal*).

These costs, when combined with the fact that MAWC has not demonstrated a need to replace these service lines, underscore the importance of performing a cost-benefit study to explore all available options. Public Counsel's proposed pilot program offers an opportunity to do so while continuing to replace the lead service lines while the study is conducted. For example, if the argument is that a partial lead line replacement potentially elevates lead exposure in the short-term would a "point of use" lead-free water filter represent a reasonable alternative? Lead-free water filters have also been historically utilized by the EPA at federally designated

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<sup>2</sup> 30,000 x \$6,000 = \$180,000,000.

Superfund sites found in Missouri's old lead belt (*See* Marke Surrebuttal, p. 15; Marke Surrebuttal, Schedule GM-2). Today, lead-free water filters cost approximately \$50. If water filters are appropriate in federally designated superfund sites, certainly it should be an option considered to address the mere potential for temporarily increased water lead levels. Through OPC's proposed pilot program and collaborative study, the company would have an opportunity to identify alternative solutions that could produce *superior* public benefits at a fraction of the price.

Public Counsel's pilot program proposes an annual cost-cap *double* what the company projects to spend in 2017 to accommodate the company's stated intent to replace more lines in the future.<sup>3</sup> The reasonable budget parameters proposed by OPC will permit the company to continue replacing customer-owned lead service lines for the duration of the study and ensure that customers are protected from unnecessary rate increases.

IV. *Should the Commission grant MAWC the Accounting Authority Order it has requested in this case?*

#### **OPC Position**

No. First, as explained above, the company's proposal does not address the fundamental question of its legal ability to replace customer-owned service lines. Second, as a matter of policy, the company's proposed plan focuses only on the engineering aspect of replacing

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<sup>3</sup> To the extent MAWC can demonstrate it requires more money than double what it has spent so far annually in order to fund lead line replacement during the pilot, OPC would consider a counter-proposal. The company's assumption of 3,000 replacements annually to support its projected costs based only on dividing the estimated total number of lines by the company's desired 10 year completion date is insufficient to justify any increase (See LaGrand Direct, p. 5).

customer lines without demonstrating any cost-benefit analysis or addressing any of the feasibility and policy considerations raised in the testimony of OPC witness Marke. Third, to the extent MAWC is seeking an order determining the “probability of rate recovery” the Commission can only make rate determinations in a rate case and so cannot grant the AAO requested by MAWC.

V. *If the Commission grants an AAO, what carrying costs should be utilized in regard to the balance of the costs deferred?*

**OPC Position**

The monthly carrying costs to be charged to Account 186 should be the American Water Works Company’s (“AWWC”) current short term debt rate (Hyneman Surrebuttal, p. 15).

VI. *If the Commission grants an AAO, what is the starting date of the amortization of the deferred account?*

**OPC Position**

The amortization of the deferred amounts should begin immediately.

VII. *If the Commission grants an AAO, does the Commission classify any deferred cost related to this application as a “deferred debit” per NARUC USOA Account 186, or does the Commission make a determination that the deferred costs are a “regulatory asset”, as defined by generally accepted accounting principles.*



### **OPC Position**

If the Commission grants an AAO it should permit the company to classify the deferred cost as “deferred debit” to be recorded in NARUC USOA account 186. Under GAAP, in order for MAWC to record the deferred costs as a “regulatory asset” company management must determine the deferred costs are probable of rate recovery. The Commission cannot make rate determinations outside of a rate case and so it should not grant an AAO classifying the deferred amounts as a “regulatory asset”.

WHEREFORE Public Counsel and MECG submit their *Joint Statement of Positions*.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 21<sup>st</sup> day of September 2017:

**/s/ Tim Opitz**

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