

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of Missouri-American Water            )  
Company's Request for Authority to Implement        )        File No. WR-2017-0285, et al.  
General Rate Increase for Water and Sewer        )  
Service Provided in Missouri Service Areas.        )

**APPLICATION FOR REHEARING**

COMES NOW Applicant, Home Builders of St. Louis and Eastern Missouri ("HBA"), by and through counsel, pursuant to § 386.500, RSMo, and for its Application for Rehearing states:

1. HBA is a Missouri non-profit corporation, incorporated on May 8, 1979, and is in good standing with the Missouri Secretary of State.
2. HBA has its principal place of business at 10104 Old Olive Street Road, St. Louis, Missouri.
3. HBA's purposes include "[t]o work for the elimination of governmental orders improperly restricting the building industry, and to support beneficial government directives" and "[t]o serve, advance and protect the welfare of the building industry, in such manner that adequate housing will be made available by private enterprise to all Americans."
4. HBA has over 600 members either engaged in or in support of the residential homebuilding industry in the City of St. Louis and the Missouri counties of St. Louis, St. Charles, Jefferson, Lincoln, Pike, Montgomery, Franklin, Warren, and Washington.
5. Missouri American Water Company ("MAWC") is a Missouri corporation that provides water service to approximately 464,187 customers and sewer service to

approximately 12,844 customers throughout the State of Missouri. MAWC's service territory includes St. Charles, the St. Louis metropolitan area, and other outlying areas in the State of Missouri.

6. MAWC is a wholly owned subsidiary of American Water Works Company, Inc., the largest investor-owned water and wastewater utility company in the United States, which is headquartered in Voorhees, New Jersey,

7. HBA's homebuilder members construct residential projects in MAWC's service area.

8. The Public Service Commission ("Commission") is required to ensure that all utilities, like MAWC, are providing safe and adequate service and that all rates set by the Commission are just and reasonable. See §§ 393.130 and 293.140, RSMo.

9. On May 2, 2018, the Commission entered Orders in *In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas*, File No. WR-2017-0285, et al.

10. On December 22, 2017, the President signed into law the Tax Cut and Jobs Act, P.L. 117-97 ("hereinafter "TCJA").

12. Prior to the effective date of the TCJA, a water company, like MAWC, enjoyed a tax exemption for contributions in aid of construction ("CIAC") such that CIAC was not considered part of a water company's taxable income, but rather was considered as a contribution to capital.

13. The TCJA, *inter alia*, reduced corporate income tax rates from 35% to 21%.

14. The TCJA, *inter alia*, eliminates the tax exemption for CIAC; provides that CIAC is no longer treated as a contribution to capital, but is treated as ordinary taxable income; and allows water companies to take depreciation deductions relating to CIAC.

15. The TCJA, *inter alia*, disallows a corporation to take a deduction for net interest expense in excess of 30 percent of adjusted taxable income.

16. In connection with several residential construction projects, MAWC has recently begun requiring HBA's homebuilder members make an advance payment to MAWC of the entire Federal and Missouri tax purportedly owed by MAWC relating to CIAC.

17. The May 2, 2018 Orders entered by the Commission in *In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas*, File No. WR-2017-0285, et al., fail to address or even consider the direct fiscal impacts to MAWC resulting from the CIAC provisions in the TCJA:

A. MAWC receives a direct tax benefit from depreciating the property that is associated with the CIAC. The ability to fully depreciate the contributed property results in zero income to MAWC over the full depreciable life of the depreciable asset, which means the only cost to MAWC is the financing costs related to paying the tax in the year the CIAC is received. However, by requiring HBA's homebuilder members to pay the entire income tax in advance and by then depreciating the contributed property over its useful life, MAWC is paying nothing for an asset that it then depreciates in order to reduce its overall tax liability. Thus, by not addressing CIAC, the May 2, 2018 Orders

fail to properly account for MAWC's costs and tax benefits and do not accurately reflect MAWC's overall rate of return;

B. MAWC receives a direct tax benefit from deducting interest expenses. Because of the 30% cap in the TCJA, MAWC is limited in its interest deductions. However, by now including all CIAC in its gross income, the amount of interest expense that MAWC is able to deduct, which serves to lower its overall tax liability, is increased because MAWC's income has increased by the amount of CIAC. Thus, by not addressing CIAC, the May 2, 2018 Orders fail to properly account for MAWC's tax benefits and do not accurately reflect MAWC's overall rate of return; and

C. Although there is no requirement to do so in the TCJA, the existing MAWC Tariff, or any other applicable Missouri law, MAWC is requiring HBA's homebuilder members to make an advance payment of 100% of the amount determined by MAWC to constitute its Federal and Missouri tax liability related to CIAC, including inspection charges related to the contributed assets. Upon receipt of such funds, it is likely that MAWC does not place such funds in a non-interest bearing account, but rather earns interest on such funds until a tax payment is made. In addition, requiring HBA's homebuilder members to pay taxes based on the estimated cost of the inspection fees for projects is outside of the existing MAWC Tariff. Thus, by not addressing CIAC, the May 2, 2018 Orders fail to properly account for all of MAWC's actual revenue derived from CIAC, and do not accurately reflect MAWC's overall rate of return.

18. Although MAWC's parent company is aware of the tax implications raised by the TCJA,<sup>1</sup> the record before the Commission is noticeably silent as to any affirmative action or statement by MAWC to fully apprise the Commission and its staff of the tax benefits received by MAWC as a result of the changes to the treatment of CIAC resulting from the TCJA.

19. HBA and its homebuilder members are interested parties to this action who are adversely affected and aggrieved by MAWC's demand for payment in advance of all purported Federal and Missouri tax liability for CIAC.

20. HBA and its homebuilder members are interested parties to this action who are adversely affected and aggrieved by the failure of the May 2, 2018 Orders to address or even consider the fiscal impacts to MAWC relating to the CIAC provisions in the TCJA.

21. This Application for Rehearing is timely filed in accordance with § 386.500, RSMo.

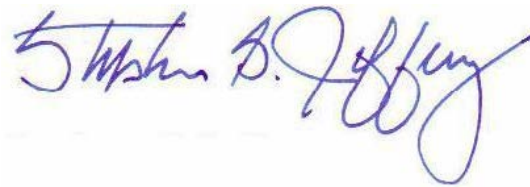
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<sup>1</sup> See American Water Works Co, Inc., Form 10-K (December 31, 2017), p. 50 ("On December 22, 2017, the TCJA was signed into law, which, among other things, enacted significant and complex changes to the Internal Revenue Code of 1986, including a reduction in the maximum U.S. federal corporate income tax rate from 35% to 21% as of January 1, 2018, and certain other provisions related specifically to the public utility industry, including continuation of interest expense deductibility, the exclusion from utilizing bonus depreciation and the normalization of deferred income tax. . . ."); see *also* American Water Works Co., Inc., Form 10-K (February 20, 2018), p. 59 ("The taxability of advances and contributions in aid of construction was changed with the enactment of the TCJA. Previously, the majority of advances and contributions that we collected were not taxable however, with the enactment of the TCJA, they will be taxable going forward. Regulatory treatment for advances and contributions under the TCJA has not yet been defined and we are working with our regulatory jurisdictions to determine impacts to the Company and our customers.").

**WHEREFORE**, HBA respectfully requests the Commission sustain its Application for Rehearing; fully address and consider in File No. WR-2017-0285, et al., all the fiscal impacts to MAWC relating to the CIAC provisions in the TCJA; find that there is no legal authority or requirement for MAWC to require advance payments of 100% of any Federal and Missouri tax liability relating to CIAC; and award such further relief the Commission deems just and appropriate.

Respectfully submitted,

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ATTORNEY FOR APPLICANT

Certificate of Service

I certify a true copy of the foregoing was served on all counsel of record via the EFIS filing system on this 22nd day of May 2018.

