

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

In the Matter of the Joint Application	)	
Of Rogue Creek Utilities, Inc. and	)	
Missouri-American Water Company,	)	Case No. WM-2019-0018
For MAWC to Acquire Certain Water and Sewer	)	
Assets of Rogue Creek Utilities, Inc.	)	

**OPC’S RESPONSE TO STAFF’S RECOMMENDATION**

**COMES NOW**, the Office of the Public Counsel, by and through undersigned counsel, and for the *OPC’s Response to Staff’s Recommendation*, states as follows:

1. On August 24, 2018, the Missouri Public Service Commission’s Staff filed its *Staff Recommendation*.
2. In the *Staff Recommendation*, the Staff agrees with MAWC’s request to “provide water service under its existing water tariff” and to “provide sewer service under its existing sewer tariff.” *Staff Recommendation*, Official Case File Memorandum, Pg. 6 of 13 (August 24, 2018).
3. According to the Staff, the likely bill impact of their recommendation could be a net increase in rates resulting from the balance of a decrease in water rates and an increase in sewer rates. *Id.*
4. Staff explains that “applying MAWC’s existing tariff rules and rates to customers in the RCU service area is reasonable, in consideration of capital improvements that MAWC will need to undertake for the RCU service area, and because it would be less cumbersome to include the RCU customers on existing rates for purposes of billing and for handling customer inquiries at call centers on billing issues.” *Id.*
5. MAWC’s *Application* requests rate changes consistent with *Staff’s Recommendation*, but MAWC’s *Application* does not provide its reasoning for the request.

6. The context of this *Staff Recommendation* and this *MAWC Application* matters because justice requires that the Commission treat similarly situated actors equitably. *Joint Application and Motion for Waiver*, Pg. 7, Paragraph 16 (July 24, 2018).

7. The OPC is given pause by the *Staff Recommendation* and by the *MAWC's Application* because of the circumstances in WA-2018-0222 and that justice requires equitable treatment for similar actors.

8. In WA-2018-0222, MAWC filed its Application to use the City of Lawson's existing rates. *See*, WA-2018-0222, *Application and Motion for Waiver*, Pg. 5, Paragraph 12 (February 12, 2018).

9. Much like the current case before this Commission, if the Commission had adopted existing MAWC rates, then there would have been a net increase in the City of Lawson's rates resulting from the balance of a decrease in water rates and an increase in sewer rates. *Compare* WA-2018-0222, *Staff Recommendation*, Official Case File Memorandum, Pg. 5 of 11 (May 29, 2018) *with* Missouri American Water Company's Consolidated Water Tariff, PSC Mo No. 13 and Missouri American Water Company's Consolidated Tariff, PSC Mo No. 26.

10. Unlike this case, however, MAWC's sales agent, as an inducement to the transaction, made a representation to the City of Lawson guaranteeing fixed rates for two years. WA-2018-0222, *Staff Recommendation*, Official Case File Memorandum, Pg. 5 (May 29, 2018) ("MAWC has committed to the city of Lawson that it will retain existing rates for at least two (2) years after closing"). MAWC's sales agents have no authority to set rates. Yet, that is what was promised. *Id.*

11. The OPC argued that inducement to the transaction as communicated by MAWC's sales agents may not comport with the law. Not only because MAWC's sales agents have no

authority to order just and reasonable rates, but also because § 393.320.6, RSMo states, “whether or not the procedures for establishing ratemaking rate base provided by this section have been utilized, the small water utility shall, for ratemaking purposes, become part of an existing service area.” See WA-2018-0222, *Response to Staff Recommendation and Motion to Open a Workshop Docket*, Pg. 3, Paragraph 9 (June 25, 2018). The OPC brought § 393.320.6, RSMo, to the Commission’s attention in good faith because the strict application of the OPC’s interpretation of the law likely would have meant a net increase in customers rates for the City of Lawson – but would have brought greater certainty and greater equity in terms of how to uniformly treat similarly situated actors.

12. The Staff rejected the entire argument of the OPC relating to 393.320.6, and the Staff offered its interpretation that the Staff’s recommendations were “follow[ing] the letter of the law” by recommending then-current rates of the municipality instead of adopting the Commission approved rates based on MAWC’s tariff. See, WA-2018-0222, *Staff Reply*, Pg. 1-2, Paragraph 3 (June 28, 2018).

13. MAWC agreed with the Staff by standing firm in its recommendation to utilize “the rates currently charged by the City of Lawson.” See, WA-2018-0222, *Reply to OPC Response to Staff Recommendation*, Pg. 3, Paragraph 10 (June 28, 2018). MAWC’s interpretation would have also avoided its exposure to potential litigation based on representations that its sales agents made to the City of Lawson.

14. Ultimately, the Commission ordered MAWC to “apply the existing inside-city water and sewer rates.” See *Order Approving Transfer of Assets and Granting Certificate of Convenience and Necessity*, WA-2018-0222, Pg. 6, Ordered Paragraph 1a. (July 29, 2018).

15. In this case, the OPC believes a couple of options would lead to a just outcome. First, if the Commission desires consistency across cases, then the Commission should order that Rogue Creek continue to use existing rates. That result would be consistent with the WA-2018-0222 case. Secondly, if the Commission is now persuaded by the OPC's concern that § 393.320.6, RSMo, may require the Commission to put a newly acquired system on an existing MAWC rate, then the OPC believes that the City of Lawson rates would be a better proxy as it is the "best suited due to operational or other factors" rather than the entire non-Saint Louis service area. As proof that it is best suited, the Commission should consider Staff's and MAWC's prior interpretation of the law and the reality that the City of Lawson is the only other system that has been acquired since the MAWC's most recent general rate case. Attached find a memoranda that identifies maintaining Rogue Creek's existing rates or applying the newly created City of Lawson water and sewer rates would result in lower rates for the customers of Rogue Creek.

16. No explanation has been provided by the Applicant as to why the impediments identified by Staff to maintaining different service territory tariffs ("handling customer inquiries at call centers on billing issues") were not concerns sufficient in the City of Lawson acquisition application, where the company sought maintaining the acquired system's rates. The OPC is only seeking consistency in the treatment of ratepayers— and the about-face taken by the Applicant and the Staff after a strong rebuke of the OPC's proposal in the City of Lawson case, and despite the Commission agreeing and authorizing the creation of a separate tariff in the City of Lawson system, raises questions as to why maintaining Rogue Creek's current rates until the next general rate proceeding is not the appropriate course of action in this case.

**WHEREFORE**, the OPC asks that the Commission accept the OPC's Response to Staff Recommendation, and to approve the acquisition maintaining Rogue Creek's existing rates until

the next general rate proceeding, or in the alternative, apply the City of Lawson rates for water and sewer as the systems are more similar under § 393.320.6 than the Applicant's proposal.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 4th day of September, 2018, with notice of the same being sent to all counsel of record.

/s/ Hampton Williams