BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water	)	
Company's Request for Authority to Implement	)	Case No. WR-2017-0285
General Rate Increase for Water and Sewer	)	Case No. SR-2017-0286
Service Provided in Missouri Service Areas.	)	

MAWC'S RESPONSE TO STAFF SUGGESTIONS IN OPPOSITION TO MOTION FOR VARIANCE

COMES NOW Missouri-American Water Company (MAWC, Missouri-American, or Company), and, states as follows to the Missouri Public Service Commission (Commission) as its response to the *Suggestions in Opposition to Missouri-American's Motion for Variance*:

1. On August 24, 2017, MAWC filed its *Motion to Establish Procedural Schedule and, If Necessary, Motion for Variance.* The Motion for Variance concerned MAWC's proposal that non-Company parties be required to respond to MAWC's case-in-chief in what has commonly been referred to as non-Company "direct testimony." MAWC's motion stated, in relevant part:

> MAWC seeks a Commission order that parties be directed to respond to MAWC's direct testimony in the non-company "direct testimony" and, to the extent necessary, requests a variance from Commission Rule 4 CSR 240-2.130(7) for this purpose. The reason for MAWC's uncertainty as to whether a variance is needed is found in the true nature of the usual first non-company filing in a rate case. While the phrase "direct testimony" is commonly used to describe the non-company testimony, this testimony filing, separated by 5 months from the Company's direct testimony filing, is different from the situation referred to in Commission Rule 4 CSR 240-2.130(7)(B) ("Where all parties file direct testimony. . . ."). Here, the Company has filed its direct testimony on day 1 (June 30, 2017) and non-company direct testimony under a likely schedule is not due until November 30, 2017 - five months later. There is no reason that non-Company parties should be unable to examine and respond to the Company's direct case over a five month period.

MAWC's motion went on to explain that the consequence of failing to do so results in the

Company not seeing the other parties' responsive positions until approximately six and one-half months after the filing of the Company's direct testimony (i.e., mid-January). After waiting six and one-half months for the other parties' positions, the Company must then provide its surrebuttal to these responsive positions within only a few weeks. As explained in greater detail below, the procedures that Staff advocates is that the parties will end up with , the parties 'talking past' one another and the record in this proceeding will not be sufficiently developed in a way that would provide the Commission with defined issues to address at hearing . . . [or] a clean[] hearing record for the Commission.

2. On August 28, 2017, the Staff of the Commission filed its *Suggestions in Opposition to Missouri-American's Motion for Variance*. Therein, the Staff stated its opposition to a Variance for a variety of reasons. The most prominent of Staff's objections is what it describes as "information asymmetry," which Staff describes as "informational imbalance between what Missouri-American knows and uses from a time before a rate case begins, and what Staff and other non-Company parties must learn through the course of the case with discovery." This description, however, really does no more than point out the fact that the Company's operations are the subject of the rate case. This is not a new or surprising situation. Indeed, it has been the nature of a rate case and a situation that has existed since the Public Service Commission's creation in 1913.

3. Moreover, the orderly examination of rate filings is not unique to the State of Missouri. Rate cases always concern the operations of the regulated entity, and a regulatory commission's staff, a consumer advocate, and/or some equivalent, must conduct an audit of the public utility. In each of the other states where American Water has operating subsidiaries, the

non-company parties' direct filings are responsive to the Company's case-in-chief. This helps produce a clear and concise record on which to establish rates. Missouri is an outlier in this respect. The result is that the "traditional" Missouri procedural schedule is more inefficient and complex than those from other states that the Company has reviewed. . For example, attached as **Appendices A-O** are ordered procedural schedules from Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia, respectively. Notably, these schedules are from states that utilize various forms of test years to set rates. In other words, irrespective of the test year employed, the common thread is that the evidentiary filings submitted by the respective staff and interveners all respond directly to the respective utility's rate case filing.[1]

4. Staff points out that between the time of the Company's initial filing, and Staff's first testimony filing, "Staff is conducting a complete, thorough, and necessary audit of Missouri-American's books and records"[2] and that "Staff cannot, either legally or practically speaking, put on a direct case without the information to which the Company is already privy at the start of the case." [3] MAWC understands that Staff must obtain information about the Company's operations from the Company, and does not suggest otherwise.

5. MAWC believes, however, that its proposal provides ample time for this audit of

[1] The advantages of an ordered procedure of having Staff and interveners file testimony responsive to the Company's filing and then permitting MAWC to rebut that evidence allows for issues to be honed, narrowed, defined and often settled at a much earlier point in the process. The Company's case, for example, says expense A should be determined using a 3 year average. Staff responds that a 5 year average is more representative. The Company then rebuts Staff, agreeing that 5 years is acceptable but normalizing one of those years for clearly abnormal expense levels. Under such a procedure, the Commission can see the development of the record and make an intelligent decision on it. That is not the case under the procedures Staff suggests because Staff's "case in chief" attempts to ignore the Company's direct filing.
[2] Staff Sugg., p. 2, para. 6.
[3] Staff Sugg., p. 3, para. 9.

the Company's filing and such other information as Staff may require in order to *respond* appropriately to the Company's filing. The critical point in this regard is that Staff's role should be to respond to the Company's case. Both the procedural schedule proposed by MAWC and the schedule proposed by Staff already provide a significant period of time between the filing of the Company's case-in-chief and the first testimony filing required by the other parties. MAWC filed its case-in-chief/direct testimony on June 30, 2017. Both of the proposed schedules before the Commission provide for the first non-Company testimony on November 30, 2017 – approximately five (5) months, or 150 days after MAWC's case-in-chief was presented. Additionally, both proposed schedules call for expedited data request responses beginning on October 14, 2017, and data request response times being further reduced at later points in the schedule.

6. The non-Company parties began to avail themselves of the opportunity for discovery some time ago in this case. MAWC received its first data request on July 10, 2017. Since that time, MAWC has received approximately 318 data requests from the parties, to include 164 as of this date from Staff. This is only 60 days into the 150 days provided for the non-Company parties to file responsive testimony- leaving another 90 days for this discovery process and for non-Company parties to address the Company's direct case (including the proposed future test year).

7. Staff also states that "there is no guarantee that a party can obtain necessary information prior to the start of a rate case,"[4] citing a recent Commission order in the Laclede rate case (Case No. GR-2017-0215). MAWC understands that to be the case, and its proposal

[4] Staff Sugg., p. 4, para. 12.

does not rely on any obligation or need for discovery prior to a company's initial filing. MAWC's proposal relies upon the five months after the filing that is available for the discovery and analysis of such information.

8. Again, the linchpin of the problem is that Staff describes its "case-in-chief" as something independent from the Company's case. What Staff refers to as its "case-in-chief," is not responsive to the Company's filing, but, purports to be offered as an alternative to the Company's case. The Staff, however, has no obligation to file a case-in-chief. Legally, the burden of proof/persuasion is on MAWC and remains on MAWC throughout the case. The Staff should prepare its case in response to the Company's filing; not as an independent alternative. That is the only purpose for Staff's audit. The issue, moreover, is further complicated because the difference between the Staff's "case-in-chief" and its "rebuttal" is neither clear nor relevant. It serves only to muddy the record and create complexity and confusion without needing to do so.[5] Staff's case-in-chief should be in practice, responsive to the Company's rate request.

9. If Staff would like to simplify its work in this regard, it should look to the experience of other states. One of the features of this process that adds to its complexity is the examination and reexamination of data through the process. Within the context of future test periods, some of the states initially experimented with hybrid test periods (i.e., true up periods) that make it possible to update rate filings as actual data for the later months of the test year become available. J. Michael Harrison, an administrative law judge with the New York PSC, explained in his 1979 article some

[5] When non-Company parties do not address the Company's case-in-chief, they offer newly proposed revenue requirements based on Company data but without sufficient information for the Company to reconcile their proposal to the Company's original case. This results in multiple data sets without clear reconciliations between the data sets and a complex record that can be difficult to follow. This complexity can be minimized by requiring non-Company parties to address the Company's case-in-chief in their direct cases.

grounds for dissatisfaction with hybrid test period experiments:

> Parties charged with testing or contesting a utility's rate case presentation were faced with figures and issues that changed and shifted through all phases of the case. Even after their direct evidentiary presentations were made, these parties were faced with a required reevaluation of their positions and the possibility that a host of new issues would be created by emerging actual data.
>
> The commission staff, which in New York bore the brunt of this burden, faced an almost impossible task of analyzing new data, even as its case went to the administrative law judge or commission for decision. It became clear that the value of the already completed hearings was being seriously undermined.

J. Michael Harrison, "Forecasting Revenue Requirements", *Public Utilities Fortnightly*, March 1979, p. 13.

10. Similarly, when 83 Ill. Admin. Code Part 287 was first adopted, utilities in Illinois had a choice of three test years: historic, current and future. However, the Commission Staff complained about the use of current test years because of the updating that occurred during the case, claiming that basically the Staff had to "start all over again" with each update.

11. Accordingly, data provided during an update or for a true-up period should be considered a calibration point by which the parties can evaluate the accuracy of the Company's case-in-chief against its actual data. In addition, if the Commission moves toward a future test year in future cases, it should consider reducing the number of "test periods" (here, potentially in play will be the 1) historic, 2) update, 3) true-up, and, 4) future) as a way to simplify the process and reduce the multiple layers of numbers before the Commission.

12. Lastly, Staff expresses confusion as to MAWC's statement that that under the Company's proposal it would "provide a 'full response to all issues . . . in rebuttal testimony.'"[6] Staff asks "Would the Company rebut all of the direct cases-in-chief presented by the parties, and

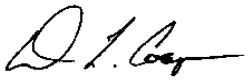
sur-rebut non-Company rebuttal, all in the same testimony?" [7] In short, the answer is "yes," in that all of MAWC's rebuttal testimony would be responsive to the other parties' direct testimony.

13. Again, there is no real purpose for a Staff, or any other party, to distinguish between its "case-in-chief" and its rebuttal testimony. Both essentially respond to the Company's direct case. Thus, whether the Company is responding to the parties' cases-in-chief or to parties' "rebuttal," the Company is providing testimony that responds to the other parties' positions.

14. MAWC's proposal that non-Company parties respond to MAWC's direct testimony and case-in-chief that has been on file since June 30, 2017, in their direct testimony is a reasonable approach to the rate case process that will streamline responsive testimony and provide a written record that presents the actual issues for Commission decision.

WHEREFORE, MAWC respectfully requests the Commission to issue its order adopting MAWC's proposed procedural schedule and, if necessary, granting the variance described in MAWC's Motion for Variance.

Respectfully submitted,



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[6] Staff Sugg., p. 4, para. 13.
[7] Staff Sugg., p. 4, para. 13.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on September 1, 2017, to the following:

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