

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

In the Matter of the Joint Application of)
Missouri-American Water Company and DCM)
Land, LLC, for a Variance from the Company’s) **File No. WE-2021-0390**
Tariff Provisions Regarding the Extension of)
Company Mains.)

MAWC’S RESPONSE TO ORDER DIRECTING FILING

COMES NOW Missouri-American Water Company (“MAWC”) and, as its *Response to Order Directing Filing*, states as follows to the Missouri Public Service Commission (“Commission”):

INTRODUCTION

1. On October 14, 2021, the Commission issued an *Order Granting Variances, Granting Waiver, and Granting Expedited Treatment* granting the requested waivers. Subsequently, the Commission issued an *Order Granting Application for Rehearing* on October 27, 2021.

2. The parties jointly filed a *Joint Motion for Clarification* on November 22, 2021, and, thereafter, the Commission issued its *Order Directing Filing* directing the parties to respond to certain requests for additional information and positions. Per the parties’ request, the Commission established a procedural schedule whereby the parties are to provide their individual responses to the Commission’s *Order* by February 4, 2022 and have the opportunity to respond to these filings by February 14, 2022.

3. MAWC provides its individual response to that *Order Directing Filing* herein.

ADDITIONAL QUESTIONS

4. In paragraph 1 of the *Order Directing Filing*, the Commission poses a series of questions related to the extension that is the subject of this matter. Attached hereto as Appendix A is an affidavit providing MAWC's responses to those questions.

LEGAL AUTHORITY

5. The *Order Directing Filing* also requests that the parties provide their "positions on what legal authority the Commission has to grant the requested variance of the tariff." MAWC addressed the Commission's authority on pages 2-3 of its Brief filed on September 16, 2021.

6. Commission Rule 20 CSR 4240-2.060(4) provides a mechanism to seek "variances or waivers from commission rules and tariff provisions." (emphasis added) Certain information is required by the rule, which was supplied by the Joint Applicants in this case.

7. Staff's position that the Commission does not have the authority to grant a waiver or variance from a filed and approved tariff was based on a single court case from 1931 - *State ex rel. Kennedy v. Public Service Commission*, 42 S.W2d 349 (Mo. 1931).

8. *Kennedy* predates the enactment of Section 386.250(6), RSMo. which authorized the Commission to adopt rules that prescribe the conditions for billing for public utility service, was first adopted in 1939. *See* Revised Statutes of Missouri 1929, §5136. The Commission's adoption of 20 CSR 4240-2.060(4), thereafter, codified the procedure by which the Commission would exercise the Commission's authority, as described by the *Kennedy* court, to grant a variance or waiver, rather than requiring each and every tariff to include a statement that would allow for the Commission to grant such a waiver.

9. Certainly, the Commission has believed that it had such authority for many years. Numerous examples of the Commission granting waiver or variances from tariff provisions may

be found, to include in the following cases – GE-2016-0142, WO-2008-0301, EE-2006-0124, EE-2003-0282, GR-2001-461, GR-2000-520, and, GO-98-500.

10. MAWC will likely respond to the arguments of other parties at the time contemplated by the procedural schedule herein. However, should the Commission believe that it is unable to waive or vary an existing tariff, but that otherwise good cause exists for the proposed treatment of DCM’s project, MAWC believes the Commission certainly could order MAWC to file a tariff permitting the requested treatment.

HISTORY OF EXTENSION POLICY

11. Finally, the *Order Directing Filing* requests information concerning “why Missouri-American Water Company’s extension policy for St. Louis County is different from all its other service territory.” The reason for this is due to both the history of the Company and the various proposals and decision related to consolidated pricing over the years.

12. MAWC has been a public utility in Missouri for many years. In fact, the corporation was formed in 1879¹, prior to the Commission’s formation in 1913. However, it did not provide service in St. Louis County, Missouri, until American Water Works Company purchased the parent of St. Louis County Water Company in 1999,² and then St. Louis Water Company was subsequently merged into MAWC on December 31, 2001.³ After the merger, St. Louis County continued to maintain its own separate tariff book for some time.

13. The Company proposed in Case No. WR-2010-0131 that the tariffed Rules, Regulations and Conditions of Service be consolidated into one consistent tariff document. Consolidation did not take place at that time; but, as a result of the Stipulation and Agreement in

¹ Originally as the “St. Joseph Water Company.”

² See Case No. WM-99-224.

³ See Case No. WM-2001-309.

that case, a number of task forces or groups were established to work collaboratively to develop a consolidated set of tariffs, to study existing main extension rules, and to review residential fire sprinkler service. Parties worked diligently over a period of about a year and in late June of 2011 reached agreement on a consolidated set of rules and regulations to be submitted to the Commission for approval. (*See Direct Testimony of Dennis R. Williams, Case No. WR-2011-0337 (June 30, 2011)*).

14. A part of this collaboration specifically concerned Main Extensions. The Commission's Report and Order issued June 16, 2010, in Case No. WR-2010-0131, among other things, directed that a "collaborative group consisting of MAWC, Public Counsel, Staff, interested Signatories, governmental agencies, municipalities and industry groups or associations will be established to study existing main extension rules and attempt to develop new, reasonable terms and conditions."

15. Beginning on July 22, 2010, representatives of Staff, MAWC, City of Riverside, City of Joplin, Ag Processing, City of St. Joseph, Warrensburg and Office of the Public Counsel began a series of meetings to discuss the need, procedure and options for new or reasonable terms and conditions for the existing main extension rules and the possibility of a consolidated tariff. (*See Report of Main Extension and Consolidated Tariff Collaborative Groups, Case No. WR-2010-0131 (July 1, 2011)*).

16. As a result of those meetings and discussions, the Collaborative Groups agreed to language contained in the Consolidated Tariff, attached as Exhibit A to the Report. Those sheets included the distinction between the St. Louis County metro area and the remainder of the state that is at issue in this case.

17. MAWC had originally filed proposed tariff sheets in Case No. WR-2010-0131 seeking to remove the distinction between St. Louis County and the remainder of the state. (See Consolidated Rule and Regulations filed November 19, 2009).

18. Staff witness James Merciel commented on the extension rules and, in addition other things, indicated that:

Standardization of Company Participation amounts could result in [sic] some service areas such as St. Louis County, resulting in a greater increase in rate base, and thus higher future rates in those areas. The Company could instead invest those funds in other needed improvements, resulting in better and more reliable service, for the same increase in rate base.

(Rebuttal Testimony of James A. Merciel, Jr., p. 7, Case No. WR-2010-0131 (April 15, 2010)).

19. Mr. Merciel went on to recommend as follows:


At this point, my recommendation is to develop a consolidated extension rule with a Company Participation amount that is customized for each service area, based on the practice presently in use and approved in existing tariffs. However, I believe that the concerns of the municipalities, who are interested in new development in their areas, should be taken into consideration.

(*Id.*)

20. The tariff sheets resulting from the collaboration among the parties in Case No. WR-2010-0131 (the same sheets at issue in this case) were filed on August 26, 2011 and became effective October 15, 2011.⁴

WHEREFORE, Missouri-American respectfully requests the Commission consider this *Response* and issue such orders as should find to be reasonable and just.

Respectfully submitted,



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**MISSOURI-AMERICAN WATER
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⁴ See Tracking No. JW-2012-0085 and Case No. WR-2010-0131.

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**ATTORNEYS FOR MISSOURI-AMERICAN
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 4th day of February 2022, to:

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