

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

In the Matter of the Application of)	
Missouri-American Water Company for an)	<u>File No. WU-2017-0351</u>
Accounting Authority Order Related to Property)	
Taxes in St. Louis County and Platte County)	

ST. LOUIS COUNTY’S POST-HEARING BRIEF

COMES NOW St. Louis County and presents its post-hearing brief to the Missouri Public Service Commission (hereinafter “Commission”) as follows:

I. Introduction

On June 29, 2017, Missouri-American Water Company (hereinafter “MAWC”) filed its Application and Motion for Waiver with the Commission, and it alleged that St. Louis County and Platte County utilized different calculations of Modified Accelerated Cost Recovery Services (hereinafter “MACRS”) that significantly increased the assessed value of MAWC’s property and its property tax obligation. Doc. #1, para. 5, pg. 3. MAWC alleged that

“The change in practice being implemented by the referenced counties results from unusual and extraordinary actions of government officials that are beyond the control of MAWC’s management. The changes the counties are making to their property tax assessment methodologies were unpredictable . . .”

Doc. #1, para. 9, pg. 4. On June 30, 2017, the Commission issued its order relating to MAWC’s application, which has led to the Hearing before the Commission on November 8, 2017.

What gave rise to MAWC’s application for an AAO was the fact that St. Louis County had discovered that MAWC had been using a 7 year recovery period to assess its distributable assets located in St. Louis County while using a 20 year recovery period to assess its distributable assets located in the remaining 23 counties of Missouri. As a result, Suzanne Strain, the personal property manager for St. Louis County Assessor’s Office, notified MAWC

that it would have to transition to a 20 year recovery period for its distributable assets located in St. Louis County by 2018 in order to be in compliance with Section 137.122 R.S.Mo. Ex. 12, para. 11 and Ex. 14. MAWC argued that the change would significantly increase the value of its property in St. Louis County and its tax liability.

A number of issues have been presented to the Commission regarding MAWC's motion for an AAO. The first and foremost issue is as follows:

"1. Should the Commission grant MAWC the Accounting Authority Order it has requested."

MAWC's position to the issue is yes. MAWC has reasoned that St. Louis County's action in changing the recovery period was extraordinary because for the past 10 years, St. Louis County had used the 7 year recovery period, that the change was not a minor change in methodology of how property taxes were assessed, and the change was material as it increased MAWC's property tax expense by an estimated \$7.5 million, approximately 9.6% of MAWC's 2016 net income. Doc. #35, pg. 2.

The parties that have responded to MAWC's issue include the Office of the Public Counsel, the Staff of the Missouri Public Service Commission, Midwest Energy Consumers' Group and St. Louis County, and their position to the issue is no. Some of the reasoning presented by those opposed to the AAO are as follows:

1. Payment of property taxes is most predictable and ordinary of expenses and that St. Louis County did not make any changes to the calculation of the MACRS. Office of Public Counsel, Doc. #34, pgs. 1-2;
2. The transitional movement from to a 15 year and a 20 year life from a 7 year life is not extraordinary, not unusual, such as an "Act of God." Staff of the Missouri Public Service Commission, Doc. 36, pg. 1;
3. St. Louis County relied on MAWC, as a self-reporting utility, to accurately assess its property located in St. Louis County as required under Section 137.340 R.S.Mo.; that MAWC was misreporting its assets located in St. Louis County for 10 years using the 7 year recovery period while using the 20 year recovery period for the remaining 23 counties in Missouri; and MAWC knew that St. Louis County required MAWC to

depreciate its “06 acquisitions . . . using the new recovery schedules.” St. Louis County, Doc. 37, pgs. 1-2.

II. Legal Authority

The purpose of an AAO is to “. . . allow a utility company to defer certain expenses to Account 186 under the Uniform System of Accounts for possible recovery later.” State ex rel Office of Public Counsel v. Missouri public Service Commission, 301 S.W.3d 556, 560 (Mo. App. 2009). In order to obtain an AAO, the party seeking the order must establish that the cost is both extraordinary and material. In Matter of Kansas City Power And Light Company’s Request For Authority To Implement A General Rate Increase For Electric Service v. Missouri Public Service Commission, 509 S.W.3d 757, 769 (Mo. App. 2016). The Uniform System of Accounts defines an extraordinary item as

“ . . . [t]hose items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company . . . To be considered as extraordinary under the above guidelines, an item should be more than 5 percent of income, computed before extraordinary items.”

Office Of The Public Counsel v. Public Service Commission of Missouri, 858 S.W.2d 806, 810 (Mo. App. 1993).

In regards to St. Louis County, the basis of MAWC’ motion for an AAO is the fact that for 10 years St. Louis County had “assessed MAWC’s property at 7 year recovery period.” See MAWC’s Exhibit 1, pg. 4, lns. 14 – 19 and Ex. 5, pg. 6, lns. 11 – 18. MAWC characterizes St. Louis County’s change in recovery period from a 7 year recovery period to a 20 year recovery period as an unpredictable, drastic departure from prior assessment methodologies. See MAWC’s Ex. 1, pg. 8, lns. 14 – 20 and Ex. 5, pg. 5, lns. 7 – 16.

John S. Riley testified before the Commission as a tax expert and he provided the following testimony:

“Q. Okay. As a tax expert, would you say that St. Louis County’s going from a 7-year recovery period to a 20-year recovery period as an extraordinary event?

A. No, I don’t find that extraordinary.

Q. Why?

A. Well, it’s my understanding that the change from 7 years to 20 years was a – not a change in methodology, it was a change in recognition. So I don’t find it to be an extraordinary event.”

Transcript, pgs. 161, lns. 22 - 25 and pg. 162, lns. 1 – 10. Despite MAWC’s characterization of St. Louis County directing MAWC to change the recovery period for its distributable assets located in St. Louis County from a 7 year recovery period to a 20 year recovery period as a drastic change in methodology, Mr. Riley correctly characterizes the change as a change in recovery period as mandated by Section 137.122 R.S.Mo. Tr. pg. 162, lns. 5 – 6. Ms. Strain testified that St. Louis County was not changing how taxes are assessed, but rather making sure MACW was using the correct recovery period, rectifying a mistake that was made in the calculation of the depreciation of MAWC’s assets. Tr. pg. 181, lns. 13 – 21.

St. Louis County’s assessment practice of MAWC’s assets in a 20 year period of recovery “would match the current assessment practices of all other 23 Missouri counties in which the Company operates.” Exhibit 6, pg. 7, lns. 11 – 12. In its report of a result for its personal property to the IRS, it was acknowledged that MACW uses the “class life related to the 20 year MACRS.” Tr. pg. 38, lns. 23 – 25 & pg. 39, lns. 1 – 10. As such, St. Louis County’s action in using the 20 year recovery period does not meet the “Commission’s past criteria for deeming certain events to be extraordinary,” in that it is a typical and customary business practice of MAWC and the 20 year recovery period was to have been applied statewide. Exhibit 6, pg. 8, lns. 1 – 2. Section 137.122 R.S.Mo., the MACRS class lives, was adopted to make the recovery period of equipment fair and equitable across the state rather than leaving it to an

assessor's determination what factors should be used to value an asset. Tr. pg. 184, lns. 21 – 25 & pg. 185, lns. 1 – 9. However, MAWC was not going to transition the 20 year recovery period for St. Louis County until instructed to do so by St. Louis County. Tr. pg. 44, lns. 12 – 16.

St. Louis County started following the MACRS schedule in 2007. Tr. pg. 176, lns. 10 – 16. In an email dated March 19, 2007, Karen Leahy instructed Tammy Frost, MAWC's tax representative with Sansone, that the 2006 acquisitions were to be depreciated using "the new recovery schedules." MAWC's Ex. 2 (ST_JWR-PROPERTY TAX AAO_SCHEDULE 4-Case No. WU-2017-0351. Ms. Strain took the email to mean that Tammy Frost was asking Karen Leahy if MAWC should use the MACRS schedule to which Ms. Leahy said yes MAWC should use the new MACRS schedule. For whatever reason, MAWC chose to ignore Karen Leahy's directive and filed its distributable assets using the 7 year recovery period and not the 20 year recovery period as required under 137.122 R.S.Mo.

With 40,000 business accounts, St. Louis County has to rely upon the businesses to correctly report the rate that they are using covers the correct recovery period. Tr. pg. 180, lns. 18 – 22. It is the responsibility of the assessor for calculating the depreciation of MAWC's equipment used in gathering and treatment of water, but as a self-reporting utility, MAWC is responsible in filing its listing with the assessor the actual estimated value of the equipment as required by Section 137.340 R.S.Mo. Ex. 12, para. 18. St. Louis County had no way of knowing if the information that MAWC filed with the assessor was actually MAWC's cost for the equipment; St. Louis County has to trust that the taxpayer is telling the truth. Tr. pg. 201, lns. 17 – 25 & pg. 202, lns. 1 – 3.

III. Conclusion

MAWC's motion for an AAO does not relate to an extraordinary cost. St.

Louis County's requirement that MAWC use the 20 year recovery period after 10 years of reporting the distributing equipment using the 7 year recovery period was following Section 137.122 R.S.Mo., and MAWC was using the 20 year recovery period in reporting the value of its distributing assets in 23 Missouri counties. Further, although the change in the recovery period for MAWC is material in 2017, arguably it is not material in 2018, being only 3 ½% of MAWC's net income. See Ex. 11, and Tr. pg. 167, lns. 6 – 25, pg. 168, lns. 1 – 25 and pg. 169, lns. 1 – 15.

WHEREFORE, St. Louis County submits its Post-Hearing Brief and asks the Commission to deny MAWC's AAO motion.

Respectfully submitted

PETER J. KRANE
COUNTY COUNSELOR

By/s/ Robert E. Fox, Jr.
Robert E. Fox, Jr. 27103
Associate County Counselor
41 S. Central Avenue
St. Louis, Missouri 63105
(314) 615-7028
(314) 615-3732 FAX
rfox@stlouisco.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 22nd day of November, 2017.

/s/ Robert E. Fox, Jr.
Robert E. Fox, Jr.