

**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 REPLY TO STAFF AND OPC RESPONSES**

**COMES NOW** Missouri-American Water Company (“MAWC”) and, as its *Reply to Staff and OPC Responses*, states as follows to the Missouri Public Service Commission (“Commission”):

1. Per the parties’ request, the Commission previously established a procedural schedule whereby the parties are to provide their individual responses to the Commission’s *Order Directing Filing* by February 4, 2022 and have the opportunity to respond to these filings by February 14, 2022. MAWC provides herein a reply to the responses filed by the Staff of the Commission (“Staff”) and the Office of the Public Counsel (“OPC” on February 4, 2022.

2. The *Order Directing Filing*, among other things, requested that the parties provide their “positions on what legal authority the Commission has to grant the requested variance of the tariff.” Both Staff and OPC took the position that the Commission does not have authority to grant the requested waiver/variance. However, they also noted that the Commission would have such authority, where the tariff generally provided for the possibility of such waiver or variance from the tariff

- “The filed tariff doctrine is not violated when customers are put on notice through a variance or waiver provision that part of the tariff may be adjusted in the future,<sup>10</sup> and it is not uncommon for Commission-regulated utilities to contain such a provision.<sup>11</sup> Accordingly, a variance provision in MAWC’s tariff would put its customers on notice

that in the future, provisions of its tariff may change. However, MAWC’s tariff contains no such provision.” *Staff Response to Order Directing Filing*, p. 4).

- “In determining that a provision allowing variances from a rule in a company’s tariff did not invalidate the tariff rule, the Missouri Supreme Court stated that ‘[w]ithout some such provision in the rule the [C]ommission could not authorize the company to make an exception in the application of its approved rule.’ *State ex rel. Kennedy v. Pub. Serv. Comm’n*, 42 S.W.2d 349, 353 (Mo. 1931) (citation omitted).” *The Office of the Public Counsel’s February 4, 2022 Response to the Commission’s January 18, 2022 Order Directing Filing*, p. 5.

3. As identified in the *Reply of DCM Land, LLC to Parties’ Responses to Commission’s January 18, 2022 Order Directing Filing* (p. 4), General provision “C” of the MAWC tariff, as found on Sheet R 9 (Appendix A), states as follows:


C. The Company may, subject to the approval of the Commission, prescribe additional rates, rules or regulations or to alter existing rates, rules or regulations as it may from time to time deem necessary or proper.

4. Given this tariff provision permitting variance from the tariff, “subject to the approval of the Commission,” the request in this case is not contrary to Staff and OPC’s interpretation of *State ex rel. Kennedy v. Pub. Serv. Comm’n*, 42 S.W.2d 349, 353 (Mo. 1931). Whether one utilizes the theory described by MAWC and DCM in their initial responses, or the theory argued by Staff and OPC, this Commission has the legal authority to grant the requested variance of the tariff.

**WHEREFORE**, Missouri-American respectfully requests the Commission consider this

Reply and issue such orders as should find to be reasonable and just.

Respectfully submitted,



Dean L. Cooper, Mo. Bar #36592  
BRYDON, SWEARENGEN & ENGLAND  
P.C.  
P.O. Box 456  
Jefferson City, MO 65102-0456  
Telephone: (573) 635-7166  
dcooper@brydonlaw.com

Timothy W. Luft, Mo. Bar #40506  
Corporate Counsel  
**MISSOURI-AMERICAN WATER  
COMPANY**  
727 Craig Road  
St. Louis, MO 63141  
(314) 996-2279 telephone  
(314) 997-2451 facsimile  
timothy.luft@amwater.com

**ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY**

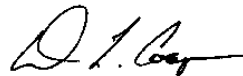
**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 14<sup>th</sup> day of February 2022, to:

Missouri Public Service Commission  
[staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov)  
[karen.bretz@psc.mo.gov](mailto:karen.bretz@psc.mo.gov)

Office of the Public Counsel  
[opcservice@opc.mo.gov](mailto:opcservice@opc.mo.gov)  
[Lindsay.VanGerpen@opc.mo.gov](mailto:Lindsay.VanGerpen@opc.mo.gov)  
[nathan.williams@opc.mo.gov](mailto:nathan.williams@opc.mo.gov)

Sue A. Schultz  
[sschultz@sandbergphoenix.com](mailto:sschultz@sandbergphoenix.com)



Missouri-American Water Company  
Name of Issuing Corporation

For

Missouri Service Area  
Community, Town or City

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Rules And Regulations Governing The Rendering of  
Water Service

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Rule 2 GENERAL

- A. Every Customer, upon completing an application for any service rendered by the Company, or upon taking of water service, shall be considered to have expressed consent to be bound by these rates, rules, and regulations.
- B. The Company's Rules and Regulations governing rendering of service are set forth in these numbered sheets. The rates and charges applicable to appropriate service(s) are set forth in these Rules and Regulations.
- C. The Company may, subject to the approval of the Commission, prescribe additional rates, rules or regulations or to alter existing rates, rules or regulations as it may from time to time deem necessary or proper.
- D. At the effective date of these revised Rules and Regulations, all new facilities, construction contracts, and written agreements shall conform to these Rules and Regulations in accordance with the statutes of the State of Missouri and rules of the Commission. However, nothing in these revised Rules and Regulations shall require reconstruction or alteration of existing facilities, contracts, or written agreements to provide conformance either at the effective date or thereafter, excepting where such alteration is mutually agreeable between the Company and the Customers involved, or is considered necessary by the Company.
- E. Unless specifically authorized by the Company, in writing, Customers supplied with water by the Company will not be permitted to resell, redistribute, or resupply water for use by others. This includes not permitting others to use or have access to hose connections or other attachments.
- F. The properly authorized agents of the Company shall have the right to enter upon the premises of the Customer at all reasonable times for the purpose of inspecting any Company-owned devices or appurtenances, or devices owned by the Customer used in connection with this service, or for compliance with these rules. Refusal to grant such access may result in discontinuance of service.
- G. Normal business hours for the office where Customers may have a need to conduct business will generally be from 8 a.m. to 5 p.m. Monday through Friday excluding holidays. Based on local operation's business needs, the office may be closed for a period of up to one hour from noon to 1 p.m.
- H. Payment of water bills:
  - 1. Payments shall be made by mail, at authorized sub pay stations, by electronic funds transfer, or by credit card. +
  - 2. In addition to any and all other charges due to the Company, the Customer will be charged an item fee for each check or electronic funds transfer returned to the Company for insufficient funds (NSF) or +

\* Indicates new rate or text  
+ Indicates change

DATE OF ISSUE: November 1, 2013

DATE EFFECTIVE: December 1, 2013

ISSUED BY: Frank Kartmann  
name of officer

President  
title

727 Craig Road, St. Louis, MO 63141  
address