

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

In the Matter of the Application of Missouri-)
American Water Company for a Certificate)
of Convenience and Necessity Authorizing it)
to Install, Own, Acquire, Construct, Operate,)
Control, Manage and Maintain a Water)
System and Sewer System in and Around the)
City of Eureka, Missouri)

Case No. WA-2021-0376

RESPONSE TO STAFF’S REQUEST TO REOPEN THE RECORD

COMES NOW the Office of the Public Counsel (the “OPC”) and offers this response to the Staff of the Public Service Commission of the State of Missouri’s (“Staff”) Request to Reopen the Record (the “Request to Reopen the Record”). (Doc. 84).¹ Because Staff has identified additional evidence relevant to this matter, satisfied the substantive requirements of 20 CSR 4240-2.110(8), and set forth good cause for the Commission to grant a waiver from the timing requirements of the rule, the OPC supports Staff’s request to reopen the record.

As the basis for its Request to Reopen the Record, Staff points to public comments submitted to the Public Service Commission of the State of Missouri (the “Commission”) after the OPC, Staff, and Missouri-American Water Company (“MAWC,” and collectively, the “Parties”) completed briefing, but before the Commission issued a decision. (*See, e.g.*, Request to Reopen the Record ¶¶ 1, 5, Doc. 84). Staff states that the comments describe a situation in which residents of the Arbors subdivision, located in Eureka, will pay for their water system twice if MAWC acquires the system—once through a Community Improvement District assessment and once through their water-service rates. (*See, e.g., id.* ¶¶ 5, 6, 8). In its Request to Reopen the Record, Staff identifies its proposed additional evidence and explains why it did not offer the evidence at

¹ References to document numbers represent the document numbers assigned in the Electronic Filing Information System (“EFIS”).

the hearing. (*Id.* ¶¶ 6–11). Staff submits four attachments to support its additional evidence. (*See id.* Exs. 1–4).

Staff also acknowledges that the Commission’s rule pertaining to requests to reopen the record requires a party to file such a request before parties file briefs. (*Id.* ¶ 2). However, Staff asserts that good cause exists to support a waiver of this timing requirement. (*Id.* ¶¶ 2–5). Staff avers that the Arbors’ residents’ potential double payment directly affects statements made during the evidentiary hearing, arguments raised in briefing, and is, therefore, relevant to the case. (*See, e.g., Id.* ¶¶ 3–5). Staff also specifies that individuals have submitted comments addressing this potential double payment after the Parties’ submitted their briefs. (*Id.* ¶¶ 2, 5).

The Commission’s rule regarding requests to reopen the record describes the substantive and timing requirements of such a request. Specifically, the rule states:

A party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing a motion to reopen the record for the taking of additional evidence. The motion shall assert the justification for taking additional evidence including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

20 CSR 4240-2.110(8). The Commission’s rules also include a general waiver provision that allows the Commission to grant a “variance from or waive any rule or provision of a rule promulgated by the [C]ommission upon a finding of good cause.” 20 CSR 4240-2.205.

The OPC supports Staff’s Request to Reopen the Record. The OPC agrees that Staff’s additional evidence addressing whether residents of the Arbors subdivision will pay twice for their water system is relevant to this matter. For instance, this additional evidence affects how the proposed transaction relates to the “public interest”—a primary consideration for the Commission

in this case. *See, e.g., State ex rel. Elec. Co. v. Atkinson*, 204 S.W. 897, 899 (Mo. banc 1918). In its Request to Reopen the Record, Staff described the material changes of fact, its proposed additional evidence, and explained why the evidence was not offered during the hearing. Therefore, Staff has satisfied the substantive requirements of a request to reopen the record as set forth in 20 CSR 4240-2.110(8).

Further, Staff has identified good cause for the Commission to grant a waiver from the timing requirement applicable to requests to reopen the record. Specifically, good cause exists because this evidence affects issues in this case and it became apparent after customers filed comments in EFIS, which occurred after the Parties submitted briefing. Therefore, good cause exists to grant a variance from the timing requirements of 20 CSR 4240-2.110(8).

Because Staff has identified additional evidence that affects this matter, satisfied the substantive requirements of 20 CSR 4240-2.110(8), and good cause exists for the Commission to grant a variance from the timing requirements of the rule, the OPC supports Staff's Request to Reopen the Record.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission grant Staff's Request to Reopen the Record and schedule a procedural conference as Staff described in the Request to Reopen the Record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 15th day of April 2022.

/s/ Lindsay VanGerpen