

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

In the Matter of Missouri-American Water)
Company’s Request for Authority to Implement) **File No. WR-2022-0303**
General Rate Increase for Water and Sewer)
Service Provided in Missouri Service Areas.)

MAWC’S INITIAL BRIEF

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COMES NOW Missouri-American Water Company (MAWC, Missouri-American, or Company), and, as its Initial Brief concerning the remaining issue (*Affiliate Transactions*) presents two sub-issues for the Commission’s consideration. MAWC states as follows to the Missouri Public Service Commission (Commission) in support of its position on this issue:

INTRODUCTION

The following stipulations have been filed by the parties and may be treated as unanimous in accordance with Commission Rule 20 CSR 4240-2.115: Stipulation and Agreement (March 3, 2023); and Stipulation and Agreement as to Rate Design and Class Cost of Service (March 10, 2023). These stipulations were presented to the Commission at an on-the-record proceeding on March 29, 2023.

The remaining rate case issue for the Commission’s consideration and decision are the two sub-issues identified in Issue 3a (“Affiliate Transaction Rules”) of the *List of Issues, List and Order of Witnesses, Order of Opening, and Order of Cross-Examination* filed in this case on February 16, 2023. MAWC will address this remaining issue in the following pages.

AFFILIATE TRANSACTIONS RULES

Cost Allocation Manual – Should MAWC be required to file a Cost Allocation Manual with the Commission?

As part of the Stipulation and Agreement in Case No. WR-2003-0500 approved on April 6, 2004, the Company agreed to provide, and continues to provide, a Cost Allocation Manual (CAM) to the Staff of the Commission and the Office of the Public Counsel (OPC) by March 16th of each year.¹ That CAM contains criteria, guidelines and procedures for the Service Company cost

¹ Exh. 14, LaGrand Reb., p. 25.

allocations to MAWC and its affiliates.² The costs of support services, including wages, employee benefits, professional services, and other expenses, are based on, or are an allocation of, actual costs incurred.³ Therefore, this obligation already exists and MAWC is committed to continue compliance as previously stipulated.

OPC's proposal in this case has elements of rulemaking outside of the statutorily prescribed process. Section 536.021, RSMo, provides in part that no rule shall hereafter be made, amended or rescinded by any state agency unless such agency shall first file with the secretary of state a notice of proposed rulemaking and a subsequent order of rulemaking. Any rule, or amendment or rescission thereof, made after January 1, 1976, shall be void unless made in accordance with the provisions of this section. Given that this is a general rate case, the Commission must avoid rulemaking by processes other than that found in Chapter 536, RSMo.

New Rulemaking Docket – Should the Commission open a new rulemaking docket in order to draft affiliate transactions rules for water and sewer?

MAWC affiliate transactions are scrutinized in all of MAWC's rate cases, including this one. In fact, MAWC provided in this case the testimony of Patrick Baryenbruch related to the necessity and reasonableness of the cost of services provided by the Service Company and whether MAWC was charged the lower of cost or market value.⁴ Other parties were able to review and challenge both issues.⁵

OPC argues that the Commission should “just add water” by promulgating a new rule that uses the existing electric and natural gas affiliate transaction rules⁶ and merely replaces “electric” and “natural gas” with “water.” This ignores, however, the circumstances in the electric and natural

² *Id.*

³ *Id.*

⁴ Exh. 1, Direct Testimony of Patrick L. Baryenbruch and Exh. 2, Rebuttal Testimony of Patrick L. Baryenbruch.

⁵ See Exh. 14, LaGrand Reb., p. 26.

⁶ 20 CSR 4240-20.015 (electric) and 20 CSR 4240-40.015 (natural gas)

gas entities that brought about those affiliate transactions rules. In many cases, the gas and electric companies have transactions with affiliates that compete with other, unregulated entities in the marketplace. These transactions may consist of natural gas and power purchases and sales, including electric power supply agreements, capacity supply agreements, energy swaps and energy products, and transmission services.

This can be seen by looking no further than the first sentence of the “Purpose” as reflected in the electric and natural gas affiliate transaction rules⁷ – “This rule is intended to prevent regulated utilities from subsidizing their nonregulated operations.”

The OPC, in supporting the initial electric affiliate transaction rule, suggested as follows:

In recent years there has been a national as well as local Missouri trend for electric utilities to become more diversified. In some instances, the diversification has been into "energy-related" product lines and services - such as energy conservation products and appliance sales and service. In other instances, the diversification has been to unrelated - or only distantly related - goods and services such as home security or facilities-based telephony services.⁸

This situation does not exist in the water industry. MAWC does not have unregulated electric generation (or water supply or sewer treatment), unregulated transmission (or pipeline) companies, gas (or water) marketers.

The majority (if not all) of MAWC’s transactions with affiliates are for corporate support, including its purchases of professional services from the service company and its access to debt markets through its financing affiliate. The evidence in both this case and in past rate cases shows that MAWC is procuring these services from its affiliates at costs that are well below what it would otherwise incur if it had to purchase those services from unaffiliated, third parties or employ full-time employees to provide those services to MAWC.

⁷ 20 CSR 4240-20.015 and 20 CSR 4240-40.015

⁸ Office of the Public Counsel Initial Comments, *Affiliate Transaction Rulemaking for Electrical Utilities*, Case No EX-99-442, p. 1 (July 1, 1999).

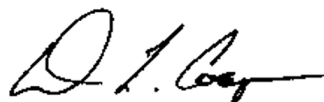
In fact, the electric and natural gas affiliate transaction rules contain an exception related to transactions such as those in which MAWC engages in regard to the Service Company. The rules define “Corporate support” to mean “joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.”⁹ Such functions are then excepted from the rules that would otherwise prohibit preferential treatment.¹⁰

CONCLUSION

There is no reason to promulgate affiliate transaction rules for the water and/or sewer industries in Missouri. MAWC continues to provide a yearly CAM. Having said this, should the Commission decide to further consider an affiliate transactions rule for water and sewer, there is a pending case related to affiliate transaction rules (File No. AW-2018-0394), which is the most appropriate venue to resolve any issue of applicability of the affiliate transactions rules to water and sewer utilities, given the previous filings in that working case.¹¹

WHEREFORE, MAWC respectfully requests the Commission consider this Initial Brief.

Respectfully submitted,



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⁹ 20 CSR 4240-20.015(1)(D) and 20 CSR 4240-40.015(1)(D).

¹⁰ 20 CSR 4240-20.015(2)(B).

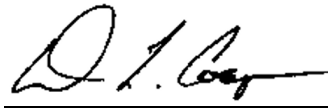
¹¹ Exh. 14, LaGrand Reb., p. 26; Exh. 15, LaGrand Sur., p. 26.

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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 to all counsel of record this 31st day of March 2023.



D. J. Coyle