

**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 REPLY BRIEF**

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COMES NOW Missouri-American Water Company (“MAWC”, “Missouri-American,” or “Company”), and provides this Reply Brief to the Missouri Public Service Commission (“Commission”).

## INTRODUCTION

This Reply Brief addresses the *Initial Brief* of the Office of the Public Counsel (“OPC”) and the *Staff’s Initial Post-Hearing Brief* of the Staff of the Commission (“Staff”) regarding the remaining matters before the Commission for consideration:

- 1) Cost Allocation Manual – Should MAWC be required to file a Cost Allocation Manual with the Commission?  
  
and
- 2) New Rulemaking Docket – Should the Commission open a new rulemaking docket in order to draft affiliate transactions rules for water and sewer?<sup>1</sup>

Missouri-American addresses each issue below, in turn, and will show that both questions should be answered in the negative.

## **AFFILIATE TRANSACTIONS RULES**

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

This issue should be denied because Missouri-American, pursuant to an earlier, Commission-approved Stipulation and Agreement<sup>2</sup>, already submits a Cost Allocation Manual (“CAM”) with the Staff of the Commission and OPC. Any additional order on this topic is unnecessary and, in the context of general rate case, is beyond Missouri’s existing statutory rulemaking framework.

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<sup>1</sup> Both issues were 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.

In fact, OPC's *Initial Brief* acknowledged that any new or additional obligation for Missouri-American to file a CAM could only be sought in accordance with a new affiliate transaction rule that might be promulgated by the Commission.

In its *Initial Brief*, OPC agreed:

... [I]f the Commission promulgates affiliate transactions rules that “add[] the word ‘water’ before the word ‘corporation’” it would necessarily require MAWC to file a yearly CAM before the Commission, much like the electric, gas, and steam heating utilities.<sup>3</sup>

OPC went on to acknowledge that a rulemaking proceeding would be required:

To ensure that MAWC's CAM is subject to the same requirements as the CAM of other regulated utilities, the Commission should require MAWC to file a CAM **after** it promulgates affiliate transactions rules applicable to large water and sewer utilities.<sup>4</sup>

As described in Missouri-American's Initial Brief, the Company has previously agreed to provide, and continues to provide, a CAM to the Staff of the Commission and OPC by March 16th of each year. This is the result of a Commission-approved Stipulation and Agreement. In this case, no party is recommending changes should be made to the current process of Missouri-American submitting a CAM each year. Further, the issue of any new or different obligation associated with Missouri-American's CAM appears to not be ripe for decision in this rate case, as Section 536.021, RSMo, provides in part that “[n]o rule shall hereafter be proposed, adopted, 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 final order of rulemaking . . . .” No notice of proposed rulemaking was filed with the Secretary of State in this case. As a result, the Commission may not promulgate a rule in this rate case.

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<sup>2</sup> Exh. 14, LaGrand Reb., p. 25.

<sup>3</sup> OPC Initial Brief, p. 13 (emphasis added).

<sup>4</sup> OPC Initial Brief, p. 13, FN. 10 (emphasis added).

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

This issue should also be answered in the negative. Issues with the existing CAM requirements are a good place to start to respond to OPC’s request that the Commission promulgate a new affiliate transaction rule that uses the existing electric and natural gas affiliate transaction rules<sup>5</sup> and merely replaces “electric” and “natural gas” with “water.”

Staff acknowledges that there are shortcomings to the existing CAM requirements for electric and natural gas corporations:

For example, 20 CSR 4240-20.015(2)(E) and 20 CSR 4240-40.015(2)(E) require electric and gas utilities to annually file a CAM. Commission rules 20 CSR 4240-20.015(3)(D) and 20 CSR 4240-40.015(3)(D) mention a “commission-approved CAM,” but there are no approval procedures for the Commission to follow.<sup>6</sup>

Not only is there no description of the approval procedures, but there is also only a limited description of what the CAM must include. The existing rules for electric and gas state that the “corporation will use a commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods.”<sup>7</sup> This has led to many disagreements as to what is required to be included in the CAM, and merely adopting the language found in the affiliate transaction rules in place for electric and gas utilities and applying it to certain water utilities would further this existing challenge.

This ambiguity is the reason, at least in part, that some of the electric and natural gas CAM approval processes have taken years to complete (when they have even been completed).<sup>8</sup> It is also a primary reason that the OPC’s proposal that the Commission do “both” – make “changes to the

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<sup>5</sup> 20 CSR 4240-20.015 (electric) and 20 CSR 4240-40.015 (natural gas)

<sup>6</sup> Staff’s Initial Post-Hearing Brief, p. 7 (emphasis added).

<sup>7</sup> 20 CSR 4240-20.015(3)(D) (electric) and 20 CSR 4240-40.015(3)(D) (natural gas).

<sup>8</sup> The first CAM approval order was issued on August 14, 2013 in File No. GC-2011-0098, approximately 14 years after the Rules were adopted. *See also* Commission Case No. AO-2012-0062 (Empire), GO-2012-0322 (Summit

Commission’s current affiliate transactions rules in the working group case *and* open a rulemaking docket to expeditiously adopt affiliate transactions rules that simply change the word ‘electric,’ ‘gas,’ or ‘steam heating’ to ‘large water’ and ‘large sewer’<sup>9</sup> – is not likely to move the CAM approval issue forward in any appreciable way. Simply applying a rule that has not yet created a good process for electric or natural gas utilities to a new industry (water), likely will create additional delays in approval of any resulting CAM. This further supports Missouri-American’s argument that a new approach to its CAM is not necessary or appropriate. Additionally, any new affiliated transactions rule applicable to water utilities should be thoroughly vetted -- not just created by replacing “electric” and “natural gas” with “water” – to include the consideration of input based on the experience of applying the current electric and natural gas affiliate transactions to those utilities.

Moreover, the reasons OPC gives to support its position as to Missouri-American are dated and inapplicable to the current operations of Missouri-American. Those reasons are concerns raised in a rate case approximately 20 years ago related to American Water Resources (“AWR”), and concerns OPC raised in this case about the sale of AWR.<sup>10</sup> It also references the concerns expressed in its testimony in this case.<sup>11</sup>

Missouri-American responded to those concerns in the testimony of Missouri-American witness John Watkins.<sup>12</sup> Among other things, Mr. Watkins explained that there have been no affiliate transactions<sup>13</sup> between Missouri-American and AWR in approximately 20 years:

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Natural Gas of Missouri), and Cases No. ER-2016-0179/EO-2017-0176 (Ameren).

<sup>9</sup> OPC Initial Brief, pp. 9-10.

<sup>10</sup> OPC Initial Brief, pp. 8-9. OPC also states that it “is not asking the Commission to impose its proposed disallowance” related to logo similarity. OPC Initial Brief, p. 9. MAWC would point out that the disallowance issue was settled by the parties as a result of the Stipulation and Agreement filed on March 3, 2023.

<sup>11</sup> OPC Initial Brief, p. 9, FN. 7.

<sup>12</sup> Exh. 43, Watkins Reb., pp. 6-12; Exh. 44, Watkins Sur., pp. 10-11.

<sup>13</sup> “[T]ransaction for the provision, purchase or sale of any information, asset, product or service, or portion of any

MAWC has not provided customer information to AWR for almost two decades and the circumstances upon which information was shared in 2003 were identified and ultimately resolved in the context of the Company’s 2003 base rate case (Case No. WR-2003-0500).<sup>14</sup>

Further, no Missouri-American customer information is exchanged between AWR and Missouri-American or AWR and American Water.<sup>15</sup> Lastly, “MAWC has no existing on-bill billing agreement with AWR, nor does it provide any on-bill billing service on behalf of AWR.”<sup>16</sup>

Perhaps more importantly in regard to OPC’s arguments, Missouri-American never had an ownership interest in AWR and AWR is no longer an affiliate of Missouri-American, as AWR has been sold by American Water.<sup>17</sup> There are no facts related to AWR that would support the promulgation of a large water and large sewer affiliate transaction rule that would essentially apply only to Missouri-American. Even if there were facts to support it, no such rule can be promulgated within the context of a rate case.

## **CONCLUSION**

As explained in Missouri-American’s Initial Brief, there is no reason to promulgate affiliate transaction rules for the water and/or sewer industries in Missouri, and the Commission should answer both remaining issues that make up Issue 3a in the negative. However, 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

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product or service, between a regulated . . . corporation and an affiliated entity. . . .” 20 CSR 4240-20.015(1)(B) and 20 CSR 4240-40.015(1)(B).

<sup>14</sup> Exh. 43, Watkins Reb., p. 9; *See* Stipulation and Agreement, Case No. WR-2003-0500, “settling all Revenue Requirement issues in this case.”

<sup>15</sup> Exh. 43, Watkins Reb., p. 8.

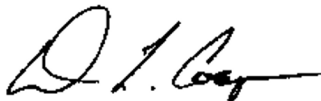
<sup>16</sup> Exh. 43, Watkins Reb., p. 7.

<sup>17</sup> *See* Exh. 43, Watkins Reb., p. 6 (“In December 2021, American Water sold its interest in American Water

sewer utilities, given the previous filings in that working case.<sup>18</sup> Lastly, there is no reason to alter the current submission of the Company's CAM.

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

Respectfully submitted,



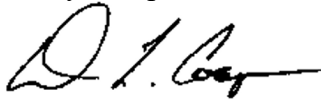
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**CERTIFICATE OF SERVICE**

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 14<sup>th</sup> day of April 2023.



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Resources, LLC.”).

<sup>18</sup> Exh. 14, LaGrand Reb., p. 26; Exh. 15, LaGrand Sur., p. 26.