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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

March 9, 2023

Jefferson City, Missouri

Volume X

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

RON PRIDGIN, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE

SCOTT T. RUPP, CHAIRMAN  
JASON R. HOLSMAN,  
GLEN KOLKMEYER,  
COMMISSIONERS

REPORTED BY:  
Tracy Taylor, CCR No. 939

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1 JUDGE PRIDGIN: Good morning. We are on  
2 the record. This is the evidentiary hearing in File  
3 Number WR-2022-0303. It's in the matter of the  
4 Missouri-American Water Company's request for  
5 authority to implement general rate increase for water  
6 and sewer service provided in Missouri service areas.

7 I am Ron Pridgin. I am the Regulatory  
8 Law Judge assigned to preside over this hearing.  
9 We're beginning on March 9th, 2023 in the Governor  
10 Office Building and the time is 9:00 a.m.

11 I would like to get entries of appearance  
12 from counsel, please. And let me get -- begin with  
13 Missouri-American Water Company.

14 MR. COOPER: Thank you, Judge. Dean  
15 Cooper from the law firm of Brydon, Swearngen and  
16 England on behalf of Missouri-American Water Company.  
17 Also appearing on behalf of Missouri-American Water  
18 Company are Rachel Niemeier and Timothy Luft of the  
19 Company.

20 JUDGE PRIDGIN: Mr. Cooper, thank you.  
21 On behalf of the Staff of the Commission,  
22 please.

23 MS. BRETZ: Karen Bretz for Staff,  
24 B-r-e-t-z. Do you need our address?

25 THE COURT REPORTER: No.

1 JUDGE PRIDGIN: Ms. Bretz, thank you.

2 On behalf of the Office of Public  
3 Counsel, please.

4 MS. VANGERPEN: Lindsay VanGerpen on  
5 behalf of OPC.

6 JUDGE PRIDGIN: Ms. VanGerpen, thank you.

7 And I think a few parties have asked to  
8 be excused, so -- hopefully I'll remember which ones,  
9 but just in case, let me go through all the parties.

10 On behalf of the Consumer Council of  
11 Missouri, please.

12 MR. COFFMAN: Good morning, Your Honor.  
13 John B. Coffman on behalf of the Consumers Council of  
14 Missouri.

15 JUDGE PRIDGIN: Mr. Coffman, thank you.

16 I think Liberty has asked to be excused,  
17 but just in case, on behalf of Liberty Utilities  
18 Company? On behalf of the City of St. Joseph,  
19 Missouri? And they may have asked to be excused too.  
20 On behalf of Midwest Energy Consumers Group.

21 MR. OPITZ: Good morning, Your Honor.  
22 Tim Opitz on behalf of Midwest Energy Consumers Group.

23 JUDGE PRIDGIN: Mr. Opitz, thank you.

24 On behalf of Missouri Industrial Energy  
25 Consumers, please.

1 MS. PLESCIA: Diana Plescia of the law  
2 firm of Curtis, Heinz, Garrett and O'Keefe, 130 South  
3 Bemiston in Clayton, Missouri 63105.

4 JUDGE PRIDGIN: Ms. Plescia, thank you.  
5 On behalf of the Public Water Supply  
6 District Number 2 of Andrew County.

7 MR. FISCHER: James F. Fischer, Fischer  
8 and Dority, PC. Our address is 2081 Honeysuckle Lane,  
9 Jefferson City, Missouri 65109.

10 JUDGE PRIDGIN: Mr. Fischer, thank you.  
11 On behalf of the City of Riverside,  
12 Missouri, please.

13 MR. BEDNAR: Joe Bednar of the law firm  
14 Spencer Fane, 304 East High Street, Jefferson City  
15 Missouri 65101.

16 JUDGE PRIDGIN: Mr. Bednar, thank you.  
17 On behalf of Sunnydale Properties,  
18 please.

19 MS. BELL: This is Stephanie Bell with  
20 Ellinger and Bell. The address is 308 East High,  
21 Suite 300, Jefferson City, Missouri 65101.

22 JUDGE PRIDGIN: Ms. Bell, thank you.

23 And I believe Triumph Foods has asked to  
24 be excused -- or just simply e-mailed last night and  
25 asked to be excused, but just in case, Triumph Foods,

1 LLC? Have I overlooked anyone?

2 All right. Hearing nothing, I did  
3 receive an amended list of issues, I believe that was  
4 Monday. And then I talked with some counsel from  
5 Missouri-American and Public Counsel and I understand  
6 you may want to stray from that list of issues.

7 Does -- does counsel have an announcement  
8 for me before we go to opening statements?

9 MR. COOPER: Yes, Your Honor. Consistent  
10 with -- with what we'd mentioned previously, I think  
11 we'd like to go ahead and proceed with the Affiliate  
12 Transactions Rules that's called for today as the  
13 first issue.

14 And then we'll ask for a relatively short  
15 recess, probably an hour or 90 minutes, to have some  
16 discussions before we move on to rate design and class  
17 cost of service, if the Commission would be willing to  
18 grant us that.

19 JUDGE PRIDGIN: All right. Mr. Cooper,  
20 thank you. Does any counsel have either any objection  
21 or any comment to Mr. Cooper's proposal?

22 I'm hearing nothing from counsel. I  
23 understand then you would -- the parties would only  
24 give miniature opening statements on each issue and we  
25 would begin with opening statements on affiliate

1 transactions; is that correct?

2 MR. COOPER: Correct, Your Honor.

3 JUDGE PRIDGIN: And I would hear from, I  
4 assume, Missouri-American, Staff and Public Counsel.  
5 And I don't mind to hear openings from anybody else,  
6 but just to save time, does anyone else wish to make  
7 an opening statement on those issues?

8 MR. BEDNAR: No, Your Honor.

9 JUDGE PRIDGIN: Hearing nothing, okay.

10 I believe then, Mr. Cooper, or whoever is  
11 going to give the opening, you may proceed when you're  
12 ready, sir.

13 MR. COOPER: Thank you, Your Honor.

14 As -- as you're well aware, the issue 3A is the issue  
15 that we're talking about here in regard to affiliate  
16 transactions. And that identifies two questions for  
17 the Commission decision.

18 The first, should the -- should  
19 Missouri-American Water Company be required to file a  
20 Cost Allocation Manual with the Commission? And two,  
21 should the Commission open a new rulemaking docket in  
22 order to draft Affiliate Transaction Rules for water  
23 and sewer companies?

24 As to the Cost Allocation Manual, we do  
25 not believe there's a need for additional requirements



1 associated with the CAM for the company. As part of  
2 the Stipulation and Agreement in Case Number  
3 WR-2003-0500, the Company agreed to provide and has  
4 provided a CAM to Staff and OPC by March 16th of each  
5 year.

6 That CAM contains a set of criteria,  
7 guidelines and procedures for the service company,  
8 cost allocations to Missouri-American Water Company  
9 and its affiliates. The cost of support services,  
10 including wages, employee benefits, professional  
11 services and other expenses, are based on or are an  
12 allocation of actual costs incurred.

13 If there is some significance to the  
14 filing of the CAM as opposed to just merely providing  
15 it to OPC and -- and Staff, Missouri-American can  
16 certainly file its CAM each year in EFIS in this rate  
17 case docket until such time as Missouri-American's  
18 next general rate case is completed.

19 However, I think that -- that any idea  
20 that such CAM should be approved by the Commission  
21 by -- by comparison to rules that have been  
22 promulgated for other industries is not likely to lead  
23 to any beneficial outcome.

24 As to the request for a new rulemaking  
25 docket, Missouri-American affiliate transactions to

1 the -- to include those with American Water Service  
2 Company and American Water Capital Corp. are  
3 scrutinized in all of Missouri-American's rate cases,  
4 to include this one.

5 In fact, you may remember that as part of  
6 its direct, and its rebuttal testimony for that  
7 matter, Missouri-American provided testimony related  
8 to the necessity and reasonableness of the cost of  
9 services provided by the service company and whether  
10 Missouri-American was charged the lower of cost or --  
11 or market value. Other parties were able to challenge  
12 this testimony during the course of this hearing.  
13 Again, Missouri-American does not believe that there's  
14 a reason for an Affiliate Transaction Rule as to water  
15 and sewer corporations at this time.

16 Now, having said this, should the  
17 Commission decide to further consider an Affiliate  
18 Transactions Rule for water and sewer, there is a  
19 pending case related to Affiliate Transaction Rules,  
20 File Number AW-2018-0394, which we believe is the most  
21 appropriate venue to resolve any issue of  
22 applicability of the rules to water and sewer  
23 utilities. Missouri-American will -- will plan to  
24 address these matters further in its briefs on the  
25 issue.

1                   That's all I have at this time, Your  
2 Honor.

3                   JUDGE PRIDGIN:   Okay.   Mr. Cooper, thank  
4 you.

5                   Do we have any Bench questions for  
6 Missouri-American?

7                   COMMISSIONER HOLSMAN:   No questions,  
8 Judge.

9                   JUDGE PRIDGIN:   Thank you, Commissioner.  
10 Any --

11                  CHAIRMAN RUPP:   Hey, Judge, this is  
12 Commissioner Rupp.

13                  JUDGE PRIDGIN:   Mr. Chairman, when you're  
14 ready, sir.

15                  CHAIRMAN RUPP:   Yeah.   Thank you.   So can  
16 you just briefly explain why Staff -- you know,  
17 Staff's proposal if we did an Affiliate Transaction  
18 Rule of -- of opening, you know, the docket, versus  
19 OPC's what they have put forth, why you believe that  
20 one is better than the other?

21                  MR. COOPER:   Better -- Chairman, to --  
22 better to continue the existing case as opposed to  
23 opening a new case?   I do think that --

24                  CHAIRMAN RUPP:   Yes.

25                  MR. COOPER:   I do think that the existing

1 case, there have been several documents filed in that  
2 case. Missouri-American had filed a document in that  
3 case outlining some of its positions on the issues.  
4 And so I think there is some -- some work that's been  
5 done there that would not have to be repeated if -- if  
6 we continued in that docket.

7 CHAIRMAN RUPP: So it's more of a  
8 duplicative process than it is a policy decision?

9 MR. COOPER: I -- I would say that's  
10 right, yes, Chairman.

11 CHAIRMAN RUPP: Great. Thank you.

12 JUDGE PRIDGIN: Any other Commissioner  
13 questions?

14 Mr. Cooper, I think I have a quick  
15 question. Is there anything unique about  
16 Missouri-American compared to other large gas or  
17 electric utilities that would make it unnecessary for  
18 it not to be subject to affiliate transaction cases?

19 MR. FISCHER: Well, and -- and we can go  
20 into some more detail when -- when we brief this, but  
21 I think the history of the -- you know, the Natural  
22 Gas and the Electric Affiliate Transactions Rules had  
23 a lot to do with -- at least at that time, sort of a  
24 breakdown of what had previously been vertically  
25 integrated industries.

1           You know, on the electric side you were  
2 starting to have some -- some different generation  
3 options, transmission options, which of course, has  
4 continued in both instances in the electric industry.  
5 Natural gas, the way that gas is traded and -- and  
6 some of the other aspects of that industry had turned  
7 in a way that there were more business affiliations  
8 that were -- were developing and -- and more -- more  
9 competition.

10           I don't think you have that in the water  
11 and the sewer -- and the sewer industry. It continues  
12 to be, such as it is, vertically integrated in terms  
13 of where the water supply comes from, how it gets to  
14 the customers. It's generally the same company  
15 that's -- that's doing that and there's not a lot of  
16 third-party competition for those functions.

17           JUDGE PRIDGIN: All right, Mr. Cooper.  
18 Thank you.

19           Any further Bench questions for  
20 Missouri-American?

21           All right. Mr. Cooper, thank you.

22           MR. COOPER: One more thing before I step  
23 down --

24           JUDGE PRIDGIN: Yes.

25           MR. COOPER: -- Your Honor. We had

1 talked about -- at least in the issues list, the  
2 parties, amongst themselves, had -- had waived cross  
3 on the witnesses. And -- and given that and not  
4 knowing how this is going to play out from here, I  
5 would like to at least go ahead and offer  
6 Mr. LaGrand's direct, rebuttal and surrebuttal  
7 testimony, which has been marked as Exhibits 13, 14  
8 and 15 for identification.

9 JUDGE PRIDGIN: All right. Mr. Cooper,  
10 thank you. Exhibits 13, 14 and 15 have been offered.  
11 Any objections?

12 Hearing no objections, Exhibits 13, 14  
13 and 15 are admitted into evidence.

14 (Company Exhibits 13, 14 and 15 were  
15 received into evidence.)

16 MR. COOPER: Thank you, Your Honor.

17 JUDGE PRIDGIN: Mr. Cooper, thank you.

18 Opening statement on behalf of Staff.

19 Ms. Bretz, when you're ready.

20 MS. BRETZ: Good morning. May it please  
21 the Commission. My name is Karen Bretz and I'm here  
22 for Commission Staff. Missouri-American filed a  
23 general rate case on July 1st, 2022 requesting  
24 additional water and sewer revenues.

25 The parties filed a Non-Unanimous

1 Stipulation last Friday, March 3rd, which should  
2 resolve all issues except affiliate transactions,  
3 class cost of service and rate design. I'll deal with  
4 affiliate transactions now and I will provide brief  
5 opening statements for the class cost of service and  
6 rate design portions of the hearing.

7           The parties listed in their list of  
8 issues two subparts to the affiliate transactions  
9 issue. The first is whether Missouri-American should  
10 be required to file a Cost Allocation Manual, or CAM,  
11 with the Commission; and second, should the Commission  
12 open a new rulemaking docket in order to draft  
13 Affiliate Transactions Rules for water and sewer.

14           For background, there are Commission  
15 rules that apply to electric and gas utilities. The  
16 electric utility rules are located at 20 CSR  
17 4240-20.015 and the gas rules are located at 20 CSR  
18 4240-40.015. There are none for water and sewer.  
19 Dr. Marke, OPC's economist, explains in his direct  
20 testimony historically why this is the case.

21           I will briefly touch on what an affiliate  
22 transaction is. It's defined in the rules, but in a  
23 nutshell, it's a transaction for the purchase of goods  
24 or services between a regulated utility and another  
25 entity; in other words, an affiliate, both of which

1 are under common control.

2 Our rules for electricity and gas do not  
3 say that affiliate transactions are, per se, bad, but  
4 in order to protect utility ratepayers, the  
5 unregulated utility must not receive preferential  
6 treatment at the regulated utility's expense.

7 The concern is that the unregulated  
8 affiliate may try to pass costs onto the regulated  
9 utility, which are ultimately borne by the -- borne by  
10 the ratepayers.

11 Our rules require electric and gas  
12 utilities to annually file a CAM with the Commission  
13 which describes how costs are allocated between the  
14 regulated utility and the unregulated affiliate.

15 The Affiliate Transactions Rules require  
16 electric and gas utilities to file an -- an Affiliate  
17 Transactions Report -- this is separate from the  
18 CAM -- by every March 15th. This report must list  
19 affiliate -- affiliated entity's goods and services  
20 the utility provided and received from the affiliated  
21 entity, amounts of the transactions, et cetera.

22 These are two different documents. Most  
23 utilities file both documents in EFIS as a  
24 Noncase-Related Query under the Resources tab.

25 Although Commission rules do not require



1 Missouri-American to file a CAM annually, as -- as  
2 Missouri-American counsel just stated,  
3 Missouri-American is required to file one by every  
4 March 16th pursuant to a Commission-approved  
5 Stipulation and Agreement in Missouri-American's 2003  
6 rate case.

7                   These CAMs contain an Affiliate  
8 Transactions Report. Missouri-American files these  
9 cases -- or files these documents in EFIS.

10                   The Missouri-American CAM contains  
11 guidelines and procedures for how the American Water  
12 Works Service Company allocates costs to  
13 Missouri-American and its other affiliates. It  
14 describes how the costs and support services, such as  
15 wages, employee benefits, professional services and  
16 other expenses are allocated to other American Water  
17 subsidiaries.

18                   Therefore, in response to the first  
19 question, whether American -- Missouri-American should  
20 be required to file a CAM with the Commission, Staff  
21 says no. Missouri-American is already required to  
22 annually file a claim -- file a CAM according to the  
23 2003 stipulation, and it's doing that. No party has  
24 indicated that what Missouri-American is filing is  
25 insufficient. There is no reason to impose this

1 duplicative requirement.

2           The second question is should the  
3 Commission open a new rulemaking docket in order to  
4 draft Water and Sewer Affiliate Transactions Rules.  
5 Staff's position is that the Commission should  
6 continue to work from the existing file, AW-2018-0394,  
7 to draft new Affiliate Transactions Rules.

8           For background, Staff moved to open  
9 AW-2018-0394 in June of 2018 as a working case to  
10 review and consider re-writing Affiliate Transactions  
11 Rules. Also in June 2018, Staff moved to open a  
12 related working case, AW-2018-0393, to draft new rules  
13 regarding the treatment of customer information.

14           There are currently rules regarding the  
15 treatment of electric and gas utilities' customer  
16 information, but there are none for water and sewer.

17           Staff agrees that new Affiliate  
18 Transactions Rules are needed and that they must  
19 include water and sewer utilities. It is likely that  
20 not only will Missouri-American be required to follow  
21 these rules, but also Liberty and Confluence Rivers.

22           The status of these dockets is that Staff  
23 has an internal draft of new Affiliate Transactions  
24 Rules. Staff needs to finish the forms required by  
25 the Secretary of State, finalize the draft rules in

1 the docket regarding the use of customer information,  
2 and then move forward with a formal rulemaking.

3 Starting this process all over again, as  
4 OPC requests, will put the brakes on the current work  
5 and delay new rules even more. In its Position  
6 Statement, OPC states that Water and Sewer Affiliate  
7 Transactions Rules can be created by switching out the  
8 word "water" for "electricity and gas."

9 Staff's position is that a more holistic  
10 approach is necessary. The current electric and gas  
11 rules are confusing in some places. So while Staff is  
12 working to add Water and Sewer Affiliate Transactions  
13 Rules, it is also a clarifying and streamlining  
14 existing Affiliate Transactions Rules.

15 For example, there is confusion regarding  
16 the CAM versus the Affiliate Transactions Report,  
17 which I mentioned earlier. The draft affiliate rules  
18 attempt to clarify the difference. Further, the  
19 current rules do not specify when the Commission must  
20 approve the CAM; they simply refer to a  
21 Commission-approved CAM. The draft rules describe how  
22 the Commission approves CAM when a utility must come  
23 back for approval.

24 There's also been confusion regarding how  
25 utilities document cost for affiliate transactions.

1 And Staff is working to address that too in the draft  
2 rules.

3 All in all, simply substituting the words  
4 "water and sewer" into existing rules will perpetuate,  
5 if not amplify, current confusion. It will also not  
6 accomplish the additional clarifications and  
7 corrections proposed in the drafts in AW-2018-0394.

8 The parties have agreed to waive  
9 cross-examination, if this is satisfactory to the  
10 Commission. Kim Bolin, who is director of the Staff's  
11 Financial and Business Analysis Section, submitted  
12 testimony on this issue and is available to answer her  
13 questions.

14 At this time I would ask for her test- --  
15 her rebuttal testimony to be entered, which is marked  
16 as Staff's Exhibit 115.

17 JUDGE PRIDGIN: Exhibit 115 has been  
18 offered. Any objections?

19 Hearing none, Exhibit 115 is admitted  
20 into evidence.

21 (Staff Exhibit 115 was received into  
22 evidence.)

23 MS. BRETZ: Thank you.

24 JUDGE PRIDGIN: Ms. Bretz, thank you.

25 Does the Bench have any questions for

1 Ms. Bretz?

2 COMMISSIONER HOLSMAN: I just have one  
3 quick question.

4 JUDGE PRIDGIN: Commissioner, when you're  
5 ready, sir.

6 COMMISSIONER HOLSMAN: Just curious, how  
7 granular does the affiliate transactions get? Are we  
8 talking about, you know, this -- this list is going to  
9 have office supplies that you bought from, you know,  
10 Office Max? Or are we talking about just services  
11 that affect the service -- water service?

12 MS. BRETZ: I'm not sure about that  
13 exactly entirely how -- how it's working in -- in this  
14 case. But that is -- that is an issue, of course.  
15 Kim Bolin is available to answer questions on that  
16 if --

17 COMMISSIONER HOLSMAN: I'm just -- just  
18 curious.

19 MS. BRETZ: I mean, I can't imagine, as a  
20 practical matter, that we're going to get down to if  
21 you go to Office Max to buy an ink cartridge, that  
22 you're going to have to get different -- you know,  
23 different bids and --

24 COMMISSIONER HOLSMAN: Are these -- are  
25 these affiliate transactions companies that have had

1 to register or become -- you know, through a process  
2 that, you know, they can be included in that?

3 MS. BRETZ: I am not sure if that's  
4 included in the -- the current rule.

5 COMMISSIONER HOLSMAN: Okay.

6 MS. BRETZ: If there's --

7 COMMISSIONER HOLSMAN: Just curious.

8 MS. BRETZ: Yeah, I'm not sure. I can  
9 address that on briefing.

10 COMMISSIONER HOLSMAN: Thank you so much.

11 MS. BRETZ: Thank you.

12 COMMISSIONER HOLSMAN: Thank you, Judge.

13 JUDGE PRIDGIN: Commissioner, thank you.  
14 Any further Bench questions for

15 Ms. Bretz?

16 Hearing none, Ms. Bretz, thank you.

17 MS. BRETZ: Thank you.

18 JUDGE PRIDGIN: Opening statement from  
19 Public Counsel. Ms. VanGerpen, when you're ready.

20 MS. VANGERPEN: Your Honor, I'm just  
21 waiting on my PowerPoint. Okay. I think it's ready.

22 Good morning and may it please the  
23 Commission. My name is Lindsay VanGerpen and I  
24 represent the Office of the Public Counsel.

25 I'd like to start this morning by looking

1 at how long it took to create some of the most iconic  
2 works of art in the world. So first, I'd like to  
3 start with Mount Rushmore. Built into the Black Hills  
4 of South Dakota, involving the efforts of over  
5 400 people who removed over 800 million pounds of rock  
6 using dynamite, jack hammers, and later chisels and  
7 nails -- or hammers and chisels, took about 14 years.

8           Next, the Colosseum. Believed to have  
9 been built as a gift to the Roman people, it once  
10 stood about four stories high and could hold more than  
11 50,000 people for its gladiator games. Experts think  
12 it took about ten years.

13           Next, the ceiling of the Sistine Chapel.  
14 A breathtaking collection of more than 30 thirty  
15 frescoes, painstakingly planned and painted by  
16 Michelangelo. Took about four years.

17           But Affiliate Transaction Rules  
18 applicable to large water utilities in Missouri, at  
19 least 19 years and counting.

20           And all the Commission has to do is use  
21 its existing Affiliate Transaction Rules and change  
22 the words "electric, gas or steam heating" to "water."  
23 Now, that's a bit of a mouthful for what is a  
24 relatively simple process so I'll call that Just Add  
25 Water.

1           This is not new territory for the  
2 Commission. This is the same process that the  
3 Commission used in drafting the Gas Affiliate  
4 Transaction Rules. Those rules became effective in  
5 the year 2000, 23 years ago.

6           So now I'd like to briefly walk through  
7 the timeline that led us to where we are today. This  
8 story begins in at least October 2003. Then,  
9 Ms. Kimberly Bolin, an employee of the OPC at the  
10 time, submitted testimony that raised concerns with  
11 Missouri-American's affiliate transactions in its 2003  
12 general rate case.

13           In the Stipulation and Agreement that  
14 ended that case, Staff, OPC and Missouri-American  
15 agreed to use their best efforts to see that a rule  
16 regarding affiliate transactions is promulgated by the  
17 Commission no later than April 16th, 2005. Ultimately  
18 that effort ended when the parties could not reach an  
19 agreement.

20           In its filed memorandum, Staff described  
21 the parties' disagreement and recommended that the  
22 Commission proceed with promulgation of an Affiliate  
23 Transaction Rule for water utilities.

24           Now, let's flash forward. The case that  
25 brings us here today is now the third



1 Missouri-American case in which Dr. Geoff Marke has  
2 filed testimony requesting that the Commission  
3 promulgate Affiliate Transaction Rules applicable to  
4 certain water utilities.

5           Between the first time that Dr. Marke  
6 submitted testimony on this issue and the second, the  
7 OPC has twice initiated rulemaking dockets asking the  
8 Commission to promulgate Affiliate Transaction Rules  
9 applicable to water.

10           In both cases, the OPC proposed rules  
11 that simply changed "electric, gas or steam heating"  
12 to "water." One of those petitions was withdrawn out  
13 of respect for Staff's working group docket, and the  
14 other was denied after Staff suggested that it could  
15 quickly file draft rules in that working group docket.

16           Since that -- since the time that Staff,  
17 Missouri-American and OPC agreed to promulgate  
18 Affiliate Transaction Rules, the Commission has also  
19 opened two -- which should really be three -- working  
20 group cases related to affiliate transactions. One of  
21 those cases, the case related to Affiliate Transaction  
22 Rules applicable to smaller water utilities, is now  
23 closed.

24           The other, which both counsel for  
25 Missouri-American and counsel for Staff have

1 referenced, considers important and, in some cases,  
2 controversial changes to the existing Affiliate  
3 Transaction Rules. That case has been sitting idle,  
4 without any substantive action for nearly three years.

5           The third, which is not pictured on this  
6 slide, but was mentioned by counsel for Staff, is the  
7 working group docket considering a role related to  
8 customer information, the privacy of customer  
9 information.

10           Now, here we are nearly 18 years past the  
11 deadline agreed to by Staff, Missouri-American and OPC  
12 for promulgation of Affiliate Transaction Rules  
13 applicable to water. And the Commission still has not  
14 promulgated Affiliate Transaction Rules for Missouri's  
15 large water utilities.

16           Even if Staff were to file revised draft  
17 rules in the working docket, which it sounds like they  
18 may do soon, based on prior action in that case, it is  
19 likely that it would be at least several months before  
20 the Commission would consider the draft rule in a  
21 rulemaking docket.

22           This is longer than it took to build  
23 Mount Rushmore or the Colosseum or for Michelangelo to  
24 paint the ceiling of the Sistine Chapel. And all the  
25 Commission has to do is just add water. The draft

1 rules accomplishing this task have twice been filed  
2 before the Commission in rulemaking dockets.

3 Now, you might be wondering why is this  
4 important? Why is the OPC bringing this up again in  
5 this general rate case? The answer: Unregulated  
6 affiliate transactions can be detrimental for  
7 ratepayers.

8 The Missouri Supreme Court recognized  
9 this in upholding the Commission's enactment of the  
10 Electric, Gas and Steam Heating Affiliate Transaction  
11 Rules in the Atmos case that sat in on this slide.  
12 Those rules are the same ones that the OPC asked the  
13 Commission to consider applying to water.

14 Further, dating back at least 19 years to  
15 Ms. Bolin's testimony in 2003, there have been  
16 concerns with Missouri-American's affiliate  
17 transactions. As shown in Ms. Schaben and Dr. Marke's  
18 testimony in this case over 19 years later, those  
19 concerns still exist.

20 Finally, even in this case, Staff has  
21 said that it agrees that water or sewer utilities with  
22 over 8,000 customers should have Affiliate Transaction  
23 Rules.

24 I would like to conclude this morning by  
25 looking at exactly what the OPC is asking for here.

1 The OPC is ask -- simply asking the Commission to open  
2 a rulemaking docket to consider doing what it has done  
3 before. The OPC is asking the Commission in that  
4 docket to just add water to the Commission's current  
5 Affiliate Transaction Rules. The OPC has already  
6 prepared those draft rules and twice filed them before  
7 the Commission in rulemaking dockets.

8 Now, it is equally important to consider  
9 what the OPC is not asking the Commission to do. We  
10 are not asking the Commission to make an either/or  
11 decision here. The -- this is not a question of  
12 whether the Commission should either open a rulemaking  
13 docket to just add water or continue the working group  
14 dockets.

15 No, we are asking the Commission to do  
16 both. The Commission can consider -- continue the  
17 working group dockets and consider the important and  
18 substantive changes to the Affiliate Transaction Rules  
19 that -- that counsel for Staff mentioned. And if  
20 Staff files those revised rules, the OPC will review  
21 them and file its comments accordingly. We remain  
22 committed to working in those working group dockets.

23 However, at the same time, the Commission  
24 can open a new -- new rulemaking docket to consider  
25 Affiliate Transaction Rules that simply replace

1 "electric, gas or steam heating" with "water."  
2 Because that docket should proceed expeditiously --  
3 again, it's the same thing the Commission did 23 years  
4 ago for gas utilities -- this would ensure that large  
5 water companies, including Missouri-American, are  
6 subject to Affiliate Transaction Rules while the  
7 Commission considers broader changes to those rules  
8 overall.

9                   What the OPC's asking for is simple;  
10 unlike sculpting Mount Rushmore or building the  
11 Colosseum or painting the ceiling of the Sistine  
12 Chapel. Twenty-three years ago the Commission did the  
13 same thing that the OPC is asking it to do here when  
14 it enacted the Gas Affiliate Transaction Rules.

15                   The Commission should open a rulemaking  
16 docket and expeditiously consider draft rules that  
17 just add water. And I would be happy to answer any  
18 questions.

19                   JUDGE PRIDGIN: Ms. VanGerpen, thank you.  
20 Do we have any Bench questions for Public  
21 Counsel?

22                   CHAIRMAN RUPP: Hey, Judge, this is  
23 Commissioner Rupp.

24                   JUDGE PRIDGIN: When you're ready,  
25 Mr. Chairman.

1 CHAIRMAN RUPP: So very good  
2 presentation. Would you say this is like the epitome  
3 of the Commission kicking the can down the road?

4 MS. VANGERPEN: Good morning, Chairman.  
5 To be blunt, yes, it is.

6 CHAIRMAN RUPP: I would tend to agree  
7 with that. Thank you.

8 JUDGE PRIDGIN: Mr. Chairman, thank you.  
9 Any further Bench questions for  
10 Ms. VanGerpen?

11 MR. HOLSMAN: Good job.

12 JUDGE PRIDGIN: All right.  
13 Ms. VanGerpen, thank you.

14 Does any other counsel wish to make an  
15 opening statement on this issue?

16 MS. VANGERPEN: And Your Honor --

17 JUDGE PRIDGIN: Ms. VanGerpen?

18 MS. VANGERPEN: I -- I apologize to  
19 interrupt.

20 JUDGE PRIDGIN: That's all right.

21 MS. VANGERPEN: I -- I would like -- as  
22 it's been mentioned, the parties have agreed to waive  
23 cross on this issue. And so I would like to enter  
24 into evidence Dr. Geoff Marke's direct and surrebuttal  
25 testimonies, which have been marked as OPC Exhibits

1 200 and 201.

2 JUDGE PRIDGIN: Exhibits 200 and 201 have  
3 been offered. Any objections?

4 Hearing none, Exhibits 200 and 201 are  
5 admitted into evidence.

6 (OPC Exhibits 200 and 201 were received  
7 into evidence.)

8 MS. VANGERPEN: Thank you.

9 JUDGE PRIDGIN: All right. Thank you.

10 And I don't believe any other parties  
11 have an opening statement on this issue; is that  
12 correct? All right. And I understand parties have  
13 waived cross-examination of these witnesses. I will  
14 have a few questions for Ms. Bolin, but let me give  
15 the Bench an opportunity if they have any other  
16 questions for any other witnesses on this issue.

17 All right. Hearing nothing, Ms. Bolin,  
18 if I could trouble you to take the stand. And then  
19 after I'm done with questioning, I will give the  
20 opportunity to other counsel to ask questions.

21 If you could raise your right hand to be  
22 sworn, please.

23 (Witness sworn.)

24 KIMBERLY BOLIN, being first duly sworn, testified as  
25 follows:

1 QUESTIONS BY JUDGE PRIDGIN:

2 Q. Thank you. You may have a seat. Could I  
3 get you to -- I'm sorry. Do you have your pre-filed  
4 testimony with you?

5 A. Yes, I do.

6 Q. Could you turn to page 24 of your  
7 rebuttal, please? And let me know when you're there.

8 A. I am there.

9 Q. Could you confirm on that page that you  
10 indicate that Staff is committed to proposing new  
11 rules for review in AW-2018-0394 in the near future?

12 A. Yes.

13 Q. Can you tell me how long Staff needs to  
14 finish its workshop process and file Revised Draft  
15 Affiliate Transaction Rules, including a rule for  
16 water and sewer utilities with over 8,000 customers?

17 A. I can't give you an exact date, but we do  
18 have a draft ready of our changes to the rules. We're  
19 in the process of filling out the forms required by  
20 the Secretary of State and then we will submit it to  
21 the Governor.

22 Q. So -- and it's okay if you don't know the  
23 answer. So are you thinking this is going to take  
24 longer than six months?

25 A. No.



1 Q. Okay. What objection, if any, does Staff  
2 have with the most recent versions of the draft rules  
3 filed in AW-2018-0394?

4 A. Could you repeat the question?

5 Q. Sure. What objection or what problems,  
6 if any, does Staff have with the -- the current draft  
7 rules filed in AW-2018-0394?

8 A. Oh, we have taken the other parties'  
9 comments and we are trying to incorporate what --  
10 their comments into the rules. We -- we are looking  
11 at different -- we did take their comments into  
12 consideration and that's what we're cleaning up.

13 Q. All right. Ms. Bolin, thank you.

14 JUDGE PRIDGIN: First, let me see if we  
15 have any further Bench questions for Ms. Bolin?  
16 Hearing none, does any counsel wish to cross Ms. Bolin  
17 on -- on the questions I asked?

18 MS. VANGERPEN: Yes, Your Honor. But  
19 could we have just a moment, please?

20 JUDGE PRIDGIN: Certainly.

21 MS. VANGERPEN: Thank you.

22 CROSS-EXAMINATION BY MS. VANGERPEN:

23 Q. Good morning, Ms. Bolin.

24 A. Good morning.

25 Q. You would agree with me that the Draft

1 Affiliate Transaction Rules that are currently pending  
2 in the workshop docket do not include a Customer  
3 Privacy Protection section; is that correct?

4 A. I believe that's in the other docket.

5 Q. So that is a separate docket?

6 A. Yes.

7 Q. And you would agree with -- to clarify,  
8 is Staff's upcoming proposal, will that include the  
9 Customer Privacy Protection?

10 A. I do not believe it does.

11 Q. Does Staff believe having Affiliate  
12 Transaction Rules without a customer privacy rule is  
13 problematic?

14 A. I don't know that we do at this point.

15 Q. So customers would have no privacy rule  
16 in place at all?

17 A. We would like to have a privacy rule also  
18 worked on, but right now our main concern is the  
19 Affiliate Transaction Rules.

20 Q. But wouldn't replacing the currently  
21 applica- -- let me rephrase that.

22 You would agree with me that the current  
23 Affiliate Transaction Rules include some protections  
24 for customers privacy?

25 A. It may. I -- I'll have to go back and

1 review those in detail.

2 Q. And in -- if -- if the Commission were to  
3 promulgate the -- the Affiliate Transaction Rule  
4 currently pending, it would eliminate even the  
5 Customer Privacy Protection that's currently included?

6 A. Could you quote me to the spot in the  
7 current Affiliate Transaction Rules that has the  
8 customer privacy data?

9 Q. If you give me just one moment, I can get  
10 that for you. I apologize for the delay there,  
11 Ms. Bolin.

12 Using the Electric Affiliate Transaction  
13 Rule as an example, which is located at 20 CSR  
14 4240-20.015, it is under subsection two, which is  
15 entitled Standards, which -- and then subsection C it  
16 begins specific customer information.

17 A. I've seen it.

18 Q. And so you would agree with me that if  
19 the Draft Affiliate Transaction Rule that is currently  
20 pending in the working group docket that does not  
21 include a Customer Privacy Protection standard is  
22 enacted in place of this rule, customers would have no  
23 protection for their -- for their customer  
24 information?

25 A. I believe we have a section that

1 addresses customer information.

2 Q. And to clarify, you mean in the draft --

3 A. Yes.

4 Q. -- rules?

5 A. In the draft rule.

6 Q. And then could you explain what then the  
7 role of the other working group docket is which  
8 considers the Customer Information Privacy Rule?

9 A. I would have to get into more details in  
10 that docket and I've not reviewed it recently.

11 Q. So Ms. Bolin, I just -- I want to be  
12 clear. Is -- is there a customer privacy section  
13 included in the draft rule?

14 A. There is a rule about customer  
15 information in the draft rule. There is a section on  
16 that.

17 Q. In the new draft rule?

18 A. Yes, there is. Under --

19 Q. And has -- has that been filed with the  
20 Commission?

21 A. The version that was filed on  
22 September 16th, 2019 has a section about if a customer  
23 requests information from the covered utility about  
24 goods and services, the covered utility may provide  
25 information about the affiliate, but must inform the

1 customer that regulated services are not tied to the  
2 use of an affiliate provider, and the other service  
3 providers may be available. The covered utility may  
4 provide reference to service providers or commercial  
5 listings, but not required to do so.

6 That is the section we have in there.

7 Q. Thank you, Ms. Bolin. And I believe that  
8 com- -- or that mirrors what is currently sub E of 2  
9 in the --

10 A. Yes.

11 Q. -- electric --

12 A. Yes, it does.

13 Q. -- rule?

14 So you would agree with me that there is  
15 nothing that mirrors sub C?

16 A. There is not right now in the one that  
17 was filed on September 16th.

18 Q. And is that what is currently being  
19 considered in the other working group docket?

20 A. I'm assuming it is. I have not examined  
21 that working docket in a while.

22 Q. And to clarify, Staff -- is Staff  
23 planning to file draft rules in that working group  
24 docket simultaneously with the draft rule?

25 A. Not simultaneously with this draft rule,

1 but we will be filing them soon.

2 Q. And do you have a timeline on that?

3 A. No, I do not.

4 Q. And Ms. Bolin, you would agree with me  
5 that there is a difference between a working group  
6 docket and a rulemaking docket, correct?

7 A. I'm not quite sure on the difference  
8 between the two.

9 Q. Are you aware that rulemaking dockets are  
10 subject to statutory timelines?

11 A. I am not aware of that.

12 MS. VANGERPEN: No further questions,  
13 Your Honor.

14 JUDGE PRIDGIN: Ms. VanGerpen, thank you.  
15 Any further cross for Ms. Bolin? Any  
16 redirect?

17 MS. BRETZ: Just briefly.

18 REDIRECT EXAMINATION BY MS. BRETZ:

19 Q. Is Staff -- just to clarify, you're aware  
20 that Staff is working on draft rules in -- for  
21 consumer protection --

22 JUDGE PRIDGIN: Use your microphone.

23 MS. BRETZ: I'll start over. Thank you.

24 BY MS. BRETZ:

25 Q. You're aware that Staff is working on

1 draft -- on promulgating draft rules in a working  
2 docket having to do with consumer protections and  
3 that's Docket AW-2018-0393?

4 A. I'm aware that we have been working on  
5 it.

6 Q. If you had some time to other staff -- to  
7 talk with other Staff members, would that help you  
8 remember that we should move forward with both dockets  
9 at the same time?

10 A. I'm not sure on that. I'm not as  
11 familiar with that docket as this docket.

12 Q. So you don't have an opinion whether both  
13 dockets should move forward --

14 A. No.

15 Q. -- at the same time?

16 MS. BRETZ: Okay. Nothing else.

17 JUDGE PRIDGIN: Ms. Bretz, thank you.

18 If there are no further questions? All  
19 right. Ms. Bolin, thank you very much. You may be  
20 excused.

21 What I understand the parties would like  
22 to do is -- is they would like to break and discuss  
23 rate design and class cost of service. And I believe  
24 Mr. Cooper mentioned like roughly an hour, hour and a  
25 half. Would a recess until roughly 11:15 this morning

1 suffice for the parties?

2 MR. COOPER: I believe so, Your Honor.

3 JUDGE PRIDGIN: All right. Is there  
4 anything further from counsel or from the Bench before  
5 we stand in recess until 11:15?

6 All right. Hearing nothing, we will  
7 stand in recess until 11:15 this morning. Thank you  
8 very much. We are off the record.

9 (A recess was taken.)

10 JUDGE PRIDGIN: All right. Good morning.  
11 We are back on the record. Counsel requested a recess  
12 until 11:15 to discuss some matters and I'm showing  
13 the time is now 11:16.

14 Does counsel have an announcement for me?

15 MR. COOPER: We do, Judge. We believe  
16 that we have reached an agreement in principle as to  
17 the class cost of service and rate design issues that  
18 would have been otherwise tried today, and would ask  
19 that you further suspend the hearing to allow us to  
20 pull that Stipulation Agreement together to be filed.

21 JUDGE PRIDGIN: Thank you, Mr. Cooper.

22 Does -- does anyone either have any  
23 objection or further comment on Mr. Cooper's  
24 announcement?

25 All right. Hearing none, before I



1 suspend the schedule, let me see -- if there are any  
2 Commissioners listening in, if they have any -- any  
3 questions or comments before we adjourn today's  
4 hearing?

5 CHAIRMAN RUPP: Hey, Judge, this is  
6 Commissioner Rupp.

7 JUDGE PRIDGIN: Mr. Chairman, when you're  
8 ready, sir.

9 CHAIRMAN RUPP: Thank you. Thank you.  
10 So the potential stipulation would resolve all of the  
11 rest of the issues for the case?

12 MR. COOPER: It -- it would not resolve  
13 that affiliate transaction issue that we had opening  
14 statements on this morning.

15 CHAIRMAN RUPP: So -- but it would -- it  
16 would take everything besides what we discussed this  
17 morning?

18 MR. COOPER: Correct. Yes, Your Honor.

19 CHAIRMAN RUPP: The generalized agreement  
20 that you guys have tentatively put together, where  
21 does -- where does that agreement come down to on  
22 statewide rate?

23 MR. COOPER: Well, I'm hesitating because  
24 it's not in writing yet. There -- I -- it will --  
25 well, let me stop just for a second. Does any party

1 object to me saying where it's going to land? I don't  
2 think they will.

3 It -- it will not result in a full single  
4 tariff pricing rate across the state, Chairman. It  
5 will -- it will maintain, to some extent, the  
6 St. Louis County district and the other-than-St. Louis  
7 County district. Although I will say there will be  
8 some elements within there where rates will be the  
9 same between those two districts.

10 CHAIRMAN RUPP: Judge, can you just give  
11 me a moment just to think for a second?

12 JUDGE PRIDGIN: Absolutely.

13 MR. FISCHER: Mr. Chairman, this is Jim  
14 Fischer. I represent the sales for resale and I would  
15 say their rate B is a single tariff.

16 CHAIRMAN RUPP: All right, Judge. Yeah.  
17 I don't have any objections obviously to mucking up  
18 the -- the progress that all the parties had made. I  
19 just had -- I just had a lot of questions on certain  
20 things that I would have enjoyed having a chance to  
21 talk to the various different witnesses that were  
22 here.

23 But I have a feeling that my line of  
24 questioning would -- would possibly throw wrenches  
25 into a lot of hard work that's -- that's been done.

1 So out of an abundance of caution, I will just thank  
2 everybody for their hard work working together.

3 And -- and if they're able to come to a  
4 stipulation that the parties can agree to, they  
5 typically are usually in the best interest of  
6 ratepayers so I'm not going to ask any further  
7 questions at this time, Judge.

8 JUDGE PRIDGIN: Mr. Chairman, thank you.  
9 Are there any further questions or remarks from the  
10 Bench?

11 COMMISSIONER HOLSMAN: No, thank you,  
12 Judge. Just wanted to say thank you for all the hard  
13 work.

14 JUDGE PRIDGIN: Commissioner Holsman,  
15 thank you.

16 COMMISSIONER KOLKMEYER: This is  
17 Commissioner Kolkmeier. I have no questions. Thank  
18 you, Judge.

19 JUDGE PRIDGIN: Commissioner Kolkmeier,  
20 thank you.

21 I -- I will certainly suspend the  
22 remainder of the hearing schedule and look forward to  
23 a stipulation on class cost of service and rate  
24 design.

25 I would alert the parties -- and I'm sure

1 this is no surprise to you -- the Commission may want  
2 to schedule an On-the-Record Presentation to question  
3 the parties on the revenue requirement stipulation and  
4 on the rate design, class cost of service stipulation.  
5 So keep an eye out for that in the future.

6 So that would appear to conclude today's  
7 business unless there's something further from counsel  
8 or from the Bench?

9 All right. Hearing nothing, that  
10 concludes today's hearing. Thank you very much. We  
11 are off the record.

12 (WHEREUPON, the proceedings were  
13 concluded at 11:23 a.m.)

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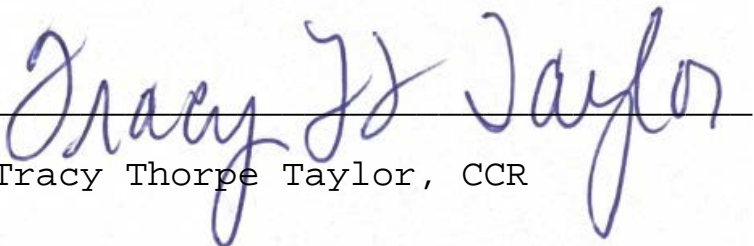
OPC:

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## CERTIFICATE OF REPORTER

1  
2  
3 I, Tracy Thorpe Taylor, CCR No. 939, within the  
4 State of Missouri, do hereby certify that the  
5 testimony appearing in the foregoing matter was duly  
6 sworn by me; that the testimony of said witnesses was  
7 taken by me to the best of my ability and thereafter  
8 reduced to typewriting under my direction; that I am  
9 neither counsel for, related to, nor employed by any  
10 of the parties to the action in which this matter was  
11 taken, and further, that I am not a relative or  
12 employee of any attorney or counsel employed by the  
13 parties thereto, nor financially or otherwise  
14 interested in the outcome of the action.

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16   
17 Tracy Thorpe Taylor, CCR  
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