BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program.	))))	File No. WU-2017-0296

OFFICE OF THE PUBLIC COUNSEL'S POST-HEARING BRIEF

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COMES NOW the Office of the Public Counsel ("Public Counsel" or "OPC") and presents its post-hearing brief to the Missouri Public Service Commission ("Commission") as follows:

I. Introduction

1. Missouri-American Water Company's ("MAWC" or "company") plan to replace customer-owned lead service lines may be a waste of $180,000,000. The company failed to prove that full lead service line replacement results in lower water lead levels. The company failed to prove that full lead service line replacement results in lower blood lead levels. The evidence in the record demonstrates full lead service line replacement is no better at achieving either lower water lead levels or lower blood lead levels than the partial service line replacement the company has been doing for decades.

2. Despite the company's failure to prove that its plan to spend $180,000,000 replacing lead service lines is better than the partial replacement is has done for decades, Public Counsel has worked to develop an outline for a pilot program as a legal way for the company to continue replacing customer-owned lead service lines while stakeholders (including those state agencies tasked with addressing water quality and monitoring blood lead levels, the Department of Natural Resources and Department of Health and Senior Services respectively) address the issues – including the necessity and efficacy of full lead service line replacement.

3. The company's claims that this case is only about deferral authority are disingenuous. MAWC can defer costs into NARUC USOA Account 186, Miscellaneous Deferred Debits without the Commission issuing an Accounting Authority Order ("AAO").[1] *Every* witness testifying on the accounting treatment agreed.

4. OPC's Chief Accountant Mr. Charles Hyneman, a Certified Public Accountant in the State of Missouri, testified that a utility is never required to get permission from the Commission to book or to defer a cost to Account 186 (Tr. Vol. 2, p. 310). This testimony was corroborated by the testimony of both the Commission's Staff ("Staff") and company. The Staff's witness Ms. McMellen testified that neither the Uniform System of Accounts nor generally accepted accounting principles ("GAAP") require a company to obtain an order from the Commission prior to booking costs to Account 186 (Tr. Vol. 2, p. 257). Similarly, though less decisively, MAWC witness Mr. LaGrand testified that he was unaware of anything in GAAP that requires a finding of extraordinary before a company can book costs to Account 186 (Tr. Vol. 2, p. 179). Mr. Lagrand further testified he did not believe anything in GAAP requires the company to seek approval to defer costs into Account 186 (Tr. Vol. 2, p. 179). Yet, despite the foregoing consensus, MAWC still seeks an order permitting it to defer costs into Account 186 (Tr. Vol 2, p. 158). The company's request begs the question: what is the company really seeking the Commission to order?

5. First, MAWC seeks implicit permission from the Commission to continue violating its approved tariff sheets and implicit forgiveness from the Commission for having violated its tariff

[1] Since the Commission cannot make a ratemaking decision in this case, Public Counsel does not comment on whether including all or a portion of any costs deferred by the company in future rates would be prohibited retro-active or single-issue ratemaking. *See generally State* ex rel. *Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41 (Mo. 1979).

since January 2017. It does so by presenting a petition focused solely on the company's ability to pass these costs onto all customers through higher rates to be determined in a later rate case. Rather than offering any citation to authority permitting its on-going pipe replacement actions, the company incorrectly contends its tariff neither requires nor prohibits the company's actions (MAWC Statement of Positions, Doc. No. 36, p. 3). Then, attempting to support its flawed premise, MAWC compares replacing customer-owned service lines to "restoration costs" incurred repairing sidewalks and lawns it has disturbed performing work on utility pipes (*Id*). The comparison is inapt. Importantly, the company likely has a legal obligation to repair customer-owned property it damages; no legal obligation requires (or authorizes) the company to replace customer-owned lead service lines. In fact, the company's tariff is unequivocal in stating those pipes are the responsibility of the customer. Whether it is installation, construction, maintenance or replacement, if the work is performed on a customer-owned pipe the customer owner is responsible.

6. Second, MAWC seeks an order from the commission giving the company permission to re-classify the status of money spent replacing customer-owed property (in violation of its tariff) by placing certain costs into an intermediary account (Account 186). As explained above, the company does not need an order from the Commission to do so. However, MAWC seeks this order to probe the mindset of the Commission as to how its members view the actions the company has taken. The company's intention to recover these deferred costs in rates is undisputed. MAWC witness Mr. Lagrand explained that the company is asking to re-classify any costs deferred into Account 186 and ultimately move them to Account 345 in its pending rate case (Tr. Vol. 2, p. 159). Notably the company's proposal re-classifies the money spent replacing customer-owned service

lines into one account (in this case) and then re-classifies that account into another different account (in the rate case). Each step obscures the undisputed fact that the company does not own and is not required to replace customer-owned service lines.

7. During the evidentiary hearing, the company's own witnesses admitted the company does not have an ownership interest in the property at issue. In the following exchange between Commissioner Kenney and MAWC witness Mr. Aiton discusses ownership of the service lines:

> Q (by Commissioner Kenney): So who owns that pipe now?
> A (by Mr. Aiton): As far as we're concerned, they still own that pipe.
> Q: So then it's not plant and service, right?
> A: Not currently. Again, that -- that would be the determination in the rate case.
> Q: But, I mean, if it's not -- if you don't own it, how can you claim it as plant in service?
> A: That's one of the reasons we're here to discuss that and get some indication from the Commission.

(Tr. Vol. 2, p. 208). Another MAWC witness, Mr. Naumick, agreed that premise plumbing owned by the customer is the responsibility of that homeowner (Tr. Vol. 2, p. 138). However, when it comes to customer-owned service lines, Mr. Naumick does not recognize that those pipes, too, are the responsibility of the homeowner. Instead, MAWC chose to begin replacing these pipes without resolving outstanding issues regarding the legality, necessity, and efficacy of its actions.

8. Insofar as the company wants an indication about the future classification of these costs, OPC witness Mr. Hyneman testified it would be totally inappropriate to book costs incurred replacing customer-owned service lines into Account 345 because doing so would violate numerous accounting principles (Tr. Vol. 2, p. 312). Staff witness Ms. McMellen agreed it would be inappropriate to record costs spent on customer-owned service lines in account 345 because it is not the responsibility of the company (Tr. Vol. 2, pp. 258-59).

9. Having decided to spend money it knew it could not recover from ratepayers – a choice made by company management alone – and having failed to achieve statutory authorization for its actions from the legislature, MAWC seeks to establish public policy under the guise of an accounting case. No action from the Commission is necessary for MAWC to defer costs to Account 186 and so the Commission should reject the company's petition for an AAO. Furthermore, the Commission *should not* use accounting authority orders as a means to endorse public policy positions and *cannot* inoculate the company from tariff violations by issuing an AAO. Importantly, should the company management decide to defer these costs into Account 186 the rate treatment, if any, will be determined in the company's pending rate case.

10. Since the company has undertaken its program to replace customer-owned lead service lines, Public Counsel has worked to examine the legal, policy, and accounting aspects of the program. To aid the Commission in its decision, Public Counsel has presented a list of issues for the Commission to consider when making its determination in this case as detailed below.

II. Does MAWC's tariff permit the company to replace customer-owned service lines?

11. No. MAWC's current and proposed practice violates a number of the company's commission-approved tariff provisions. The company began replacing customer-owned service lines in January of 2017 without making any demonstration whether the program was legal, without demonstrating whether the program was necessary, and without providing any cost/benefit analysis.

12. As an initial matter, it is well established that "'[a] tariff is a document which lists a public utility services and the rates for those services.'" *State* ex rel. *Mo. Gas Energy v. Pub. Serv. Comm'n,* 210 S.W.3d 330, 337 (Mo. App. W.D. 2006)(quoting *Bauer v. Sw. Bell Tel. Co*., 958

S.W.2d 568, 570 (Mo. App. E.D. 1997)). In other words, the tariff contains parameters delineating the obligations between, and among, the utility, the commission, and the customers. Importantly, any validly adopted tariff "has the same force and effect as a statute, and it becomes state law." *PSC v. Mo. Gas Energy*, 388 S.W.3d 221, 227 (Mo. App. W.D 2012)(quoting *State* ex rel. *Mo. Gas Energy*, 210 S.W.3d at 337 (Mo. App. W.D. 2006)). Section 386.270 RSMo, states that tariffs approved by the Commission "shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter."

13. MAWC's Commission-approved tariff contains a number of provision's contrary to the company's ongoing program replacing certain customer-owned water service lines with the stated intent to socialize the cost to all other customers and permit MAWC shareholders to earn a return in the process. Troublingly, even though the company's own petition references certain tariff provisions, no request for relief from those tariff provisions is sought. Instead, the company incorrectly contends its tariff neither requires nor prohibits the company's actions (MAWC Statement of Positions, Doc. No. 36, p. 3). Then, as noted above, MAWC attempts to support its flawed premise, by comparing replacing customer-owned service lines to "restoration costs" incurred repairing sidewalks and lawns it has disturbed performing work on utility pipes. The Commission must reject the company's invitation to disregard the plain language of the Commission-approved tariff provisions as it relates to the customer's service lines.

14. As it relates to this case, MAWC's tariff at PSC MO No. 13 Sheet No. R 6-R7 defines "Service Line" and the scope of "Customer's Service Line". When examining a tariff, the Commission should bear in mind Missouri courts will analyze a tariff as they do a statute; "if a tariff is clear and unambiguous, [the Court] cannot give it another meaning." (*State* ex rel.

Associated Natural Gas Co. v. Public Service Commission, 37 S.W.3d 287, 293 (Mo. App. W.D. 2000). "'In determining whether the language of a tariff is clear and unambiguous, the standard is whether the tariff's terms are plain and clear to one of ordinary intelligence.'" (*Id*.)(quoting *Allstates Transworld Vanlines, Inc. v. Southwestern Bell Telephone Co.*, 937 S.W.2d 314, 317 (Mo. App. E.D. 1996)).

15. MAWC's filed tariffs plainly explain its customer's responsibilities relating to the service lines the company began replacing in January 2017. As PSC MO No. 13 Original Sheet No. R. 12, Rule 4.C makes clear "Any change in location and/or size of an existing service connection and/of service line requested by the customer shall be made at the Customer's expense." Tariff sheet PSC MO No. 13 Original Sheet No. R 12, Rule 4.I requires that "[f]or service at a new location, *a replacement service,* or additional service at an existing location, *applicant shall pay, in advance,* a service connection charge in accordance with approved tariff charges or as provided in these rules" (emphasis added). PSC MO No. 13 Original Sheet No. R. 12, Rule 4.J states, in part, "[t]he Customer's Water Service Line shall be installed by the Customer at that Customer's expense." When a service connection or service line is installed by the company "[t]he company will hold title to all such service connections, Service Lines and meter box installations installed by the company." (*See* PSC MO No. 13, 1st Revised Sheet No. R. 14, Rule 4.N). MAWC tariff sheet PSC MO No. 13 1st Revised Sheet No. R 16, Rule 6.B specifically addresses "all new or replacement Water Service Lines". At B.2 of the same tariff sheet, the law requires for all service areas (delineated separately in the tariff section based on customer ownership) that "the Customer shall be responsible for construction and maintenance of the Customer's water service line…". Tariff sheet PSC MO No. 13 1st Revised Sheet No. R 17.F demands "[c]ustomers at their own expense

shall make all changes in their Customer Water Service Line required by changes of grade relocation of mains, or other causes." On the same sheet paragraph H requires that "[r]epairs or maintenance necessary on the Customer Water Service Line or on any pipe or fixture in or upon the Customer's premise … **shall be the responsibility of the Customer**." (Emphasis added). Because the foregoing tariff provisions are clear and unambiguous in describing both the company's and customers' rights and responsibilities, the Commission must reject the company's position that it may voluntarily replace customer-owned service lines and pass those costs onto other customers.

Each of the foregoing tariff provisions and the company's actions are summarized in the table below:

	Tariff provision	**Company's actions**
1.	PSC MO No. 13 Original Sheet No. R. 12, Rule 4.C makes clear "Any change in location and/or size of an existing service connection and/of service line requested by the customer shall be made at the Customer's expense."	Company is assuming the cost of replacing customer-owned service lines.
2.	Tariff sheet PSC MO No. 13 Original Sheet No. R 12, Rule 4.I requires that "[f]or service at a new location, *a replacement service*, or additional service at an existing location, *applicant shall pay, in advance*, a service connection charge in accordance with approved tariff charges or as provided in these rules" (emphasis added)	Company is assuming the cost of replacing customer-owned service lines without requiring advance payment.
3.	PSC MO No. 13 Original Sheet No. R. 12, Rule 4.J states, in part, "[t]he Customer's Water Service Line shall be installed by the Customer at that Customer's expense."	Company is assuming the cost of replacing customer-owned service lines.

4.	PSC MO No. 13, 1st Revised Sheet No. R. 14, Rule 4.N states: When a service connection or service line is installed by the company "[t]he company will hold title to all such service connections, Service Lines and meter box installations installed by the company."	Schedule BA-SR3 purports to be an agreement between MAWC and the company wherein MAWC "will install a Customer connecting line from the Installation to Customer's residence." Adding the caveat "[t]he Customer connecting line is currently and will continue to be owned and maintained by Customer."
5.	MAWC tariff sheet PSC MO No. 13 1st Revised Sheet No. R 16, Rule 6.B specifically addresses "all new or replacement Water Service Lines". At B.2 of the same tariff sheet, the law requires for all service areas (delineated separately in the tariff section based on customer ownership) that "the Customer shall be responsible for construction and maintenance of the Customer's water service line…".	Company is assuming the cost of replacing customer-owned service lines.
6.	Tariff sheet PSC MO No. 13 1st Revised Sheet No. R 17.F demands "[c]ustomers at their own expense shall make all changes in their Customer Water Service Line required by changes of grade relocation of mains, or other causes."	Company is assuming the cost of replacing customer-owned service lines in connection with main replacement projects.
7.	Tariff sheet PSC MO No. 13 1st Revised Sheet No. R 17.H requires that "[r]epairs or maintenance necessary on the Customer Water Service Line or on any pipe or fixture in or upon the Customer's premise … **shall be the responsibility of the Customer**." (Emphasis added).	Company is assuming the cost of replacing customer-owned service lines.

8.	PSC MO No. 13 1st Revised Sheet No. R 9, Rule 2.D requires that all "written agreements shall conform to these Rules and Regulations in accordance with the statutes of the State of Missouri and rules of the Commission."	Company asks its customers to sign forms containing provisions contrary to the approved tariff (those forms can be found attached to MAWC witness Aiton's pre-filed surrebuttal as Schedule BA-SR3, pp. 3-8).
9.	PSC MO No. 13 Original Sheet No. R 10, Rule 2.K provides that "[n]o employee or agent of the Company shall have the right or authority to bind it by any promise, agreement or representation contrary to the letter or intent of these Rules and Regulations of law."	Company asks its customers to sign forms containing provisions contrary to the approved tariff (those forms can be found attached to MAWC witness Aiton's pre-filed surrebuttal as Schedule BA-SR3, pp. 3-8).
10.	PSC MO No. 13 Original Sheet No. R 11, Rule 3 defines the parameters surrounding MAWC's liability.	Schedule BA-SR3, p. 7 *extends* MAWC's (and its customers) liability with an additional putative agreement wherein MAWC "warrants the workmanship of its installation of its installation of the Customer service line for a period of 12 months ... [.]"
11.	PSC MO No. 13 Original Sheet No. R 11, Rule 3.F prohibits the company from entering agreements that assume or assign liability contrary to the parameters in the tariff.	Form agreements include language attempting to limit liability to the company when, in fact, the agreements expose the company to *greater* liability.

16. As stated above, the company does not request reprieve from these obligations or otherwise request any modification. Based on the documents attached to MAWC witnesses' testimony, Public Counsel infers the company's putative solution is to ask that customers sign a contract affecting payment obligations to replace their service lines (at least a few customers have declined) as well as having the company assume liability for replacing the customer-owned service line (Ex. 9, Schedule BA-SR3, pp. 3-8). Schedule BA-SR3 is a contract that purports to reflect an agreement wherein MAWC "warrants the workmanship of its restoration [for determining whether lead service lines are at a location] …for a period of two months … with the Company's liability limited to the cost of repairing … [.]" Schedule BA-SR3 purports to be an agreement between MAWC and the company wherein MAWC "will install a Customer connecting line from the Installation to Customer's residence." Adding the caveat "[t]he Customer connecting line is currently and will continue to be owned and maintained by Customer." (*Id*). However, the same document *extends* MAWC's (and its customers) liability with an additional putative agreement wherein MAWC "warrants the workmanship of its installation of its installation of the Customer service line for a period of 12 months ... [.]" (*See* Ex. 9, Schedule BA-SR3, p. 7). These contracts do not resolve MAWC's tariff violations. In fact, the company's decision asking its customers to sign these documents violates its tariff in two additional ways.

17. First, MAWC's tariff unambiguously requires that all "written agreements shall conform to these Rules and Regulations in accordance with the statutes of the State of Missouri and rules of the Commission." (PSC MO No. 13 1st Revised Sheet No. R 9, Rule 2.D). Furthermore, the general provisions of the company's tariff provide that "[n]o employee or agent of the Company shall have the right or authority to bind it by any promise, agreement or representation contrary to

the letter or intent of these Rules and Regulations of law." (PSC MO No. 13 Original Sheet No. R 10, Rule 2.K). The agreements utilized by MAWC in furtherance of its program are contrary to the current tariff.

18. Second, the form agreements include language attempting to limit liability to the company when, in fact, the agreements expose the company to *greater* liability. MAWC tariff sheet PSC MO No. 13 Original Sheet No. R 11, Rule 3 defines the parameters surrounding MAWC's liability. Rule 3.F prohibits the company from entering agreements that assume or assign liability contrary to the parameters in the tariff (*See* PSC MO No. 13 Original Sheet No. R 11). When MAWC increases its liability it places a greater burden and risk on its customers from whom MAWC would seek to recover any payments made under the liability terms.

19. Since January 2017 MAWC has been violating its Commission-approved tariff. As the Commission is aware, a tariff has the same force and effect as a statute and that it becomes state law when approved by the Commission (*See State* ex rel. *Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 477 (W.D. Ct. App. 2013). The Company has not asked for any relief that would resolve the current violations as required by Section 386.270 RSMo and has, instead, focused only on recovering the money associated with the project.

III. Has MAWC demonstrated the necessity of replacing customer-owned lead service lines?

20. No. As an initial matter, MAWC, as the applicant bears the burden of proof. Here, the company has not offered testimony demonstrating the necessity of replacing customer-owned lead service lines. In fact, the overwhelming and uncontroverted evidence presented during the hearing

casts doubt on the necessity of replacing customer-owned lead service lines in MAWC's service territory.[2]

21. The company's witnesses testified there is no legal or regulatory requirement to replace the customer-owned lead service lines (*See* Tr. Vol. 2, p. 166, Mr. LaGrand stating "[b]ut to my knowledge, there's not a regulatory requirement"; Ex. 25). Mr. Aiton testified the lead and copper rule does not require replacement of the customer-owned lead service lines (Tr. Vol. 2, p. 199). Certainly, the lead and copper rule requires the company to meet standards regarding lead content in water. However, MAWC's Mr. Aiton and Mr. Naumick both testified the company is in compliance with the lead and copper rule requirements (Tr. Vol. 2, pp. 147, 200). This testimony confirmed the Commission Staff's recent report the "Overview of lead in Missouri's drinking water", stating that all of the water utilities regulated by the Public Service Commission, including MAWC, are presently in compliance with the Lead and Copper Rule (*See* Ex. 14, p. 11). Importantly, the company does not plan to go back and replace all prior partial replacements because they are in a stable condition (Tr. Vol. 2, p. 128). Simply put, the evidence shows there is no inherent risk to water quality from the existence and continued use of lead service lines.[3]

22. Rather than asserting that lead line replacement is necessary, the company offers merely that the project may reduce "potential exposure to lead in drinking water" that may increase as a result of disturbances caused by the company's main replacement program (*See* Naumick Direct,

[2] OPC's proposed outline for a pilot program would provide the company an opportunity to continue replacing customer-owned lead service lines while it explores whether the company's project is necessary.

[3] The Staff Counsel's irresponsible farce during opening statements suggesting the contrary is not supported by evidence in the record and risks creating a public panic with wide-reaching consequences. Public Counsel witness Dr. Marke offered testimony describing how property values were impacted after the Flint water crisis (Ex. 16, p. 44).

Ex. 1, pp. 11-12). However, the Commission can infer that the risk is not significant because although the company has stated it would avoid partial service line replacements if possible, Mr. Naumick testified the company would, in some circumstances, resume partial lead line replacements (Tr. Vol. 2, p. 127). Furthermore, it is not clear that "full"[4] replacement is superior to partial replacement. Importantly, the evidence shows the potential increase exists whether it is a partial replacement or a "full" replacement (*See* Ex. 16, p. 34 stating "[w]hether you remove the lead line partially or fully it is still being "broken" and thus subject to the potential for elevated levels of lead exposure"). Documents provided by the company confirm the foregoing conclusion of OPC witness Dr. Marke (*See* Ex. 21C, Attachment p. 2). Importantly, the evidence in this case shows the potential for temporarily elevated lead levels will subside relatively quickly. MAWC's Mr. Naumick testified that the predominating research is that partial replacements will return to a stable condition in hours or days (Tr. Vol 2, p. 129). The only different timeframe offered in this case was by Staff's witness who, upon cross-examination, admitted his estimate was "a wild guess" (Tr. Vol. 2, p. 249).

23. The evidence in this case shows no recognizable difference in lead levels between conducting a partial lead service line replacement compared to a "full" lead service line replacement. The Staff's witness offers an alternative reason it supports "full" lead service line replacement because "the existence of LSLs are considered a major risk of possible leaching of lead into the drinking water" (Ex. 13, p. 2). Staff's putative concern[5] about leaching caused by unbalanced water chemistry, as it

[4] MAWC witness Mr. Naumick testified there may be circumstances when the full line is not replaced (Tr. Vol. 2, p. 123).

[5] Staff's testimony recognizes the company is not proposing to replace all lead service lines and is, apparently, unconcerned about the potential for leaching in existing partial replacement (*See generally* Ex. 13, p. 6).

relates to MAWC's system, is unfounded. MAWC will continue to treat its water appropriately. Mr. Naumick testified the company does not intend to stop treating its water (Tr. Vol. 2, p. 126). Mr. Aiton testified he was involved in the decision making on treating water at Missouri-American and could not envision a scenario where the company would go for months without treating its water (Tr. Vol. 2, pp. 201-02). Spending hundreds of millions of dollars to address the potential for a temporary increase in lead levels that the company's own witness testified lasted for "a matter of hours or days" should not be undertaken without careful consideration of the costs and benefits – especially when the result is the same under partial or full replacement.

24. Consider the worst-case scenario. In the Flint, Michigan water crisis the water system was subjected to prolonged exposure to untreated water (Ex. 16, p. 40). Based on media coverage, one might have expected a spike in blood lead levels to all-time highs. However, as shown in the table below, the percentage of children with elevated blood lead levels in the City of Flint was less than the State of Michigan as a whole during the water crisis.

Table 4: Reprint of incidence of elevated blood levels (≥5 µg/dL) among children less than 6 years of age in Michigan, Genesee County and the city of Flint[82]

		Michigan	Genesee County	Flint
10/1/2015 to 01/20/2017	Total tested for lead*	186,112	13,333	7,482
	Number of test results ≥5 mcg/dL	6,647	239	191
	Percent of test results ≥5 mcg/dL	3.6%	1.8%	2.6%
4/1/2014 to 01/20/2017	Total tested for lead*	332,797	18,783	9,288
	Number of test results ≥5 mcg/dL	12,331	411	294
	Percent of test results ≥5 mcg/dL	3.7%	2.2%	3.2%
1/1/2016 to 01/20/2017	Total tested for lead*	157,175	11,708	6,637
	Number of test results ≥5 mcg/dL	5,722	212	172
	Percent of test results ≥5 mcg/dL	3.6%	1.8%	2.6%

(Ex. 16, p. 41). The impact of prolonged exposure to untreated corrosive water on water lead levels in homes with lead service lines in Flint is not certain. Dr. Marke testified that "the concentration of elevated water lead levels in Flint, Michigan followed a power law distribution where a small number

of locations accounted for a disproportionate amount of the elevated lead levels" and continued "[i]importantly, the cause of that increased lead exposure in water samples, in some cases, may be attributable to lead-based premised plumbing and/or fixtures not necessarily (or just) lead service lines." (Ex. 16, pp. 31-32). The inconclusive impact on water and blood lead levels stemming from the worst –case scenario in terms of water treatment should give the Commission pause before it grants a blank-check to MAWC for its program.

25. In the testimony of Dr. Marke, Public Counsel has raised a number of concerns regarding the company's approach to lead service line replacement. As explained in the testimony of OPC witness Marke, the issue of lead line replacements cuts across public health, scientific, technical, and legal arenas and should not be viewed as an engineering exercise alone. Where MAWC has failed to establish a corollary between their proposal and a reduction in blood and water lead levels, offices tasked to address blood lead levels (such as the Missouri Childhood Lead Poisoning Prevention Program) have identified contamination sources other than service lines where remediation projects can actually improve health conditions. For example, OPC witness Dr. Marke testified "[a]ccording to the Missouri Department of Health and Senior Services ("MO DHSS"), the primary lead hazard to children in Missouri is deteriorated lead-based paint (Ex. 15, p. 6 citing to the Missouri Department of Health and Senior Services (2016) Missouri Childhood Lead Poisoning prevention program Annual Report for Fiscal Year 2015). Spending $180,000,000 to replace lead water service lines is an opportunity cost that could be better spent elsewhere. The Company's proposal falls short in addressing the multitude of issues presented by a plan to remove customer-owned lead service lines.

26. OPC's proposed pilot program presents a path forward to address the issues – including the necessity and efficacy of full lead service line replacement – while permitting the Company to continue replacing lead service lines as the pilot is conducted. OPC's proposed pilot study from its direct testimony provides the framework to facilitate the substantive research, planning and communication to mitigate known risks and to anticipate and plan for the otherwise unintended consequences that are undoubtedly linked to this complex, decade(s)-long policy reform.

IV. What is the cost of MAWC's proposed program to replace customer-owned lead service lines?

27. Public Counsel does not know the cost of the program. More importantly, MAWC does not know either. Instead, the company asks for a "blank check" without demonstrating the necessity of the project or developing any kind of cost-benefit study. In testimony, Public Counsel has challenged the company's estimates of both the number of lead service lines and the cost to replace each line. In their surrebuttal testimonies, MAWC witnesses Naumick and Aiton admit the company's estimate of lead service lines is not perfect (Ex. 3; Ex. 9) when the company's estimated the average per customer cost jumped from $3,000 per customer to $6,000 per customer (*See* Ex. 9, p. 4). Based on the company's initial and renounced cost estimate (30,000 lines at $3,000), MAWC's initial proposed program would cost ratepayers $90,000,000. Now, with the Company's new estimate of $6,000 average replacement cost, assuming the service line estimate is accurate, the cost *explodes* to $180,000,000.[6] Even the new per household cost estimates have failed to accurately represent the actual replacement costs to homes in St. Louis County, which regularly exceed the revised estimate by thousands of dollars (*See* Ex. 13, p. 7; Ex. 13, Schedule JAM-R6).

[6] 30,000 x $6,000 = $180,000,000.

This is not a trivial amount of money for customers to bear, especially considering that MAWC is currently seeking to increase the rates of its customers in the St. Louis area by 45%. OPC's estimates presented by Dr. Marke, based on the information provided by MAWC, say replacing lead service lines in Missouri approaches two billion dollars as shown in the table below:

Table 1: Projected Lead Service Line Replacement Costs in Company Application.

Source	# of Service Lines	MAWC low/high Estimated Cost	Total Cost
MAWC territory estimate	30,000	$3,000 per unit	$90,000,000
MAWC territory estimate	30,000	$5,500 per unit	$165,000,000
AWWA territory estimate	330,000	$3,000 per unit	$990,000,000
AWWA territory estimate	330,000	$5,500 per unit	$1,815,000,000

(Ex. 16, p. 14). This truth that the company seeks a blank check is self-evident when considering, after OPC and other parties raised substantive cost concerns, the company never sought cost caps on per customer basis or on total project costs.

28. These costs, when combined with the fact that MAWC has not demonstrated a need to replace these service lines, underscore the importance of performing a cost-benefit study to explore all available options. Public Counsel's proposed pilot program offers an opportunity to do so while continuing to replace the lead service lines while the study is conducted. For example, considering that both partial and full lead line replacement potentially elevates lead exposure in the short-term would, a "point of use" lead-free water filter represent a reasonable alternative? Lead-free water filters have also been historically utilized by the EPA at federally designated Superfund sites found in Missouri's old lead belt (*See* Ex. 16, p. 15; Ex. 16, Schedule GM-2). Today, lead-free water filters cost approximately $50 (Ex. 16, p. 14). If water filters are appropriate in federally designated superfund sites, certainly it should be an option considered to address the mere potential for

temporarily increased water lead levels. Through OPC's proposed pilot program and collaborative study, the company would have an opportunity to identify alternative solutions that could produce *superior* public benefits at a fraction of the price.

29. Public Counsel's pilot program proposes an annual cost-cap *double* what the company projects to spend in 2017 to accommodate the company's stated intent to replace more lines in the future[7](Tr. Vol 2, p. 28). The reasonable budget parameters proposed by OPC will permit the company to continue replacing customer-owned lead service lines for the duration of the study and ensure that customers are protected from unnecessary rate increases.

V. Should the Commission grant MAWC the Accounting Authority Order it has requested in this case?

30. No. First, as explained above, the company's proposal does not address the fundamental question of its legal ability to replace customer-owned service lines. Second, as a matter of policy, the company's proposed plan focuses only on the engineering aspect of replacing customer lines without demonstrating any cost-benefit analysis or addressing any of the feasibility and policy considerations raised in the testimony of OPC witness Dr. Marke. Third, to the extent MAWC is seeking an order determining the "probability of rate recovery" the Commission can only make rate determinations in a rate case and so cannot grant the AAO requested by MAWC.

31. As explained during the hearing, and in the pre-filed testimony of OPC witness Hyneman no action from the Commission is necessary for MAWC to defer costs to Account 186. The

[7] To the extent MAWC can demonstrate it requires more money than double what it has spent so far annually in order to fund lead line replacement during the pilot, OPC would consider a counter-proposal. The company's assumption of 3,000 replacements annually to support its projected costs based only on dividing the estimated total number of lines by the company's desired 10 year completion date is insufficient to justify any increase (*See* Ex. 4, p. 5).

Commission *should not* use accounting authority orders as a means to endorse public policy positions when the company has not demonstrated the necessity or provided a cost/benefit analysis. Furthermore, the Commission *cannot* inoculate the company from tariff violations by issuing an AAO because the company's existing Commission-approved tariff has the same force and effect as a statute and the company has not asked for any relief that would resolve the current violations as required by Section 386.270 RSMo (*See State* ex rel. *Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 477 (W.D. Ct. App. 2013); Section 386.270 RSMo). Importantly, should the company management decide to defer these costs into Account 186 the rate treatment, if any, will be determined in the company's pending rate case. The Commission should reject the company's petition for an AAO.

VI. If the Commission grants an AAO, what carrying costs should be utilized in regard to the balance of the costs deferred?

32. The monthly carrying costs to be charged to Account 186 should be the American Water Works Company's ("AWWC") current short term debt rate (Ex. 18, p. 15). OPC witness Mr. Hyneman testified that it is common for the Commission to require short-term debt costs to be applied to utility projects. He noted two prominent examples: (1) the Commission ordered Kansas City Power & Light Company to include its short-term debt rate as the financing cost of its off-system sales tracker during the period of its experimental regulatory plan and (2) the Commission requires that any under- or over-collection of fuel and purchased power costs included in the fuel adjustment clause ("FAC") tracker be accrued with a short-term debt interest rate (Ex. 18, pp. 12-13).

33. Furthermore, the Commission should order the short-term debt interest rate because it is the first cost applied to utility construction projects (Ex. 18, p. 13). This is a practice required by

the Commission, as well as FERC, in the allowance for funds used during construction formula (*Id*). On this point, Public Counsel agrees with the Staff's recommendation (Ex. 12, p.3). The AWWC short term debt rate should be used because MAWC does not issue its own debt, and so, the parent company's rate should be used (Ex. 12, p. 4).

VII. If the Commission grants an AAO, what is the starting date of the amortization of the deferred account?

34. The amortization of the deferred amounts should begin immediately in order to match the incurrence of the costs to the benefit received from the incurrence of the costs (Ex. 18, p. 11). The proper treatment for deferred costs is for the amortization expense to begin immediately or very soon after the project starts (Ex. 18, p. 12). Delaying the amortization to a date significantly later than the date the benefit occurs (as the company proposes) is the true distortion of the matching principle and should be rejected (Ex. 18, p. 12).

VIII. If the Commission grants an AAO, does the Commission classify any deferred cost related to this application as a "deferred debit" per NARUC USOA Account 186, or does the Commission make a determination that the deferred costs are a "regulatory asset", as defined by generally accepted accounting principles?

35. Based on the comments of MAWC Counsel during its opening statement, Public Counsel understands the company is no longer asking the Commission to issue an order with language authorizing a "regulatory asset" and does not ask the Commission to make a GAAP regulatory asset determination in this case (Tr. Vol 2, p. 19). The company's position statement also included the position that "[t]he identified costs should be recorded in NARUC account 186 Miscellaneous Deferred Debits. The Commission need not make a regulatory asset determination." (MAWC Statement of Positions, Doc. No. 36, p. 3).

36. Public Counsel opposes the company's requested AAO. However, if the Commission grants an AAO it should permit the company to classify the deferred cost as "deferred debit" to be recorded in NARUC USOA Account 186. Under GAAP, in order for MAWC to record the deferred costs as a "regulatory asset" company management must determine the deferred costs are probable of rate recovery (Ex. 18, pp. 1-3). The Commission cannot make rate determinations outside of a rate case and so it should not grant an AAO classifying the deferred amounts as a "regulatory asset".

IX. Conclusion

37. MAWC can already defer costs into Account 186 without a Commission order. No witness testified otherwise. However, if the company wants to continue replacing customer-owned lead service lines, it must seek a legal basis to do so and provide the Commission with the policy and evidentiary support for such a program. MAWC has failed to do either. Instead the company has focused only on cost-recovery for expenses it incurred violating its tariff.

38. If the Commission wants to enable MAWC to continue replacing customer-owned lead service lines, only Public Counsel provides legal basis to do so (See Ex. 14, Ex. 15, and Ex. 16). Only Public Counsel provides the Commission with relevant facts and an evidentiary basis for a decision (*Id*). Only Public Counsel has attempted to examine carefully the multiple policy issues presented by the company's plans. Importantly, OPC's proposed pilot program presents a path forward to address the issues – including the necessity and efficacy of full lead service line replacement – while permitting the Company to continue replacing lead service lines as the pilot is conducted (Ex. 17, Ex. 18).

WHEREFORE Public Counsel submits its Post-hearing Brief and asks the Commission to deny the company's AAO petition.

Respectfully,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 19th day of October 2017:

/s/ Tim Opitz