

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

In the Matter of the Application and Petition )	
Of the Office of the Public Counsel )	
Requesting the Commission Promulgate )	File No. WX-2019-0380
Rules Pertaining to the Affiliate )	
Transactions of Water Corporations. )	

**MAWC’S RECOMMENDATION**

Missouri-American Water Company (MAWC or Company) provides the following recommendation in response to the Office of the Public Counsel’s (OPC) *Application and Petition For Promulgation of Rules* and the *Order Directing Staff to Investigate and File Recommendation* issued by the Missouri Public Service Commission (Commission):

**SUMMARY**

The Commission already has the opportunity examine, and does examine, MAWC’s affiliate transactions within MAWC’s rate cases. Promulgating as a rule the proposed administrative requirements and restrictions adds little or no value to the Commission or MAWC’s customers and fails to satisfy the Section 536.041 and 536.175.4 requirements in that doing so would impose an unnecessary regulatory burden where a less restrictive, more narrowly tailored, process accomplishes the same purpose.

**PROCEDURAL BACKGROUND**

On June 4, 2019, the Office of the Public Counsel filed a petition, pursuant to Section 536.041, RSMo, asking the Commission to promulgate a rule pertaining to affiliate transactions of water corporations. In response, the Commission issued its *Order Directing Staff to Investigate and File Recommendation* wherein the Commission directed its Staff to file a recommendation as

to whether the Commission should proceed with a rulemaking by July 5, 2019, and directed that any other person or entity wishing to offer a recommendation also do so by July 5, 2019.

## **STATUTES**

Section 536.041, RSMo, allows any person to petition a state agency requesting the adoption, amendment, or repeal of any rule. That section further requires the agency to submit a written response to the rulemaking petition within sixty days of receipt of the petition, indicating its determination of whether the proposed rule should be adopted. Similarly, Commission Rule 4 CSR 240-2.180(3)(B) requires the Commission to respond to a petition for rulemaking by either denying the petition in writing, stating the reasons for its decision, or initiate a rulemaking in accordance with Chapter 536, RSMo.<sup>1</sup>

Section 536.041 also requires the agency to offer a concise summary of the agency's "findings with respect to the criteria set forth in subsection 4 of section 536.175." The criteria in subsection 4 are designed to guide the agency's review of its existing rules under the periodic review process required by that statute. The criteria require the agency to consider whether the rule is properly drafted to be consistent with the language and intent of the authorizing statute; whether the rule imposes an unnecessary regulatory burden; and whether a less restrictive, more narrowly tailored, or alternative rule could accomplish the same purpose.<sup>2</sup>

## **OPC PROPOSAL**

The draft rule that has been provided by OPC seeks to apply the existing electric and gas affiliate transaction rules for the first time to large water corporations (those having 8,000 or more

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<sup>1</sup> *In the Matter of the Application and Petition of Missouri-American Water Company*, Order Denying Petition, File No. WX-2013-0267, p. 2-3 (January 3, 2013).

<sup>2</sup> *Id.*

customers). MAWC understands it is the only large water utility in Missouri to which this draft rule would apply.

The expansion of these rules to MAWC would impose an “additional and unnecessary regulatory burden” where a “less restrictive” process “could accomplish the same purpose.” This is because any concerns regarding MAWC’s affiliate transactions can, and are, currently addressed in the context of MAWC’s general rate proceedings.

### **AFFILIATE TRANSACTIONS ARE EXAMINED IN GENERAL RATE CASES**

MAWC’s affiliate transaction are fully audited and auditable by the Staff of the Commission (Staff), the Office of the Public Counsel, and other parties today. These issues have been raised, examined, and resolved in past MAWC general rate cases.

In fact, MAWC affiliate transactions have been scrutinized in all of its general rate cases, including its most recent such case – Case No. WR-2017-0285. As a part of those cases, the Company has provided studies to support the reasonableness of service company costs in the context of its rate cases.

No rate case adjustments were proposed in Case No. WR-2017-0285 for improper affiliate transactions or cost allocations to MAWC.

### **WATER UTILITIES ARE DIFFERENT**

Affiliate transaction rules are not necessary for water corporations in the same way they may apply to electric and gas corporations. In many cases, the gas and electric companies have transactions with affiliates that compete with other, unregulated entities in the marketplace. These transactions may consist of natural gas and power purchases and sales, including electric power supply agreements, capacity supply agreements, energy swaps and energy products, and transmission services.

To determine whether the affiliate rules should be applied to additional industries, it is helpful to review why the Commission promulgated such rules in regard to electric and natural gas utilities. In *State ex rel. Atmos Energy Corporation, et al. v. Public Service Commission, et al.*, 103 S.W.3d 753 (Mo. 2003), the Missouri Supreme Court recited the Commission's intent and purpose as follows:

In its brief, the PSC explained that the rules are a reaction to the emergence of a profit-producing scheme among public utilities termed "cross-subsidization," in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers. See *United States v. Western Elec. Co.*, 592 F. Supp. 846, 853 (D.D.C. 1984) ("As long as a [public utility] is engaged in both monopoly and competitive activities, it will have the incentive as well as the ability to 'milk' the rate-of-return regulated monopoly affiliate to subsidize its competitive ventures....") To counter this trend, the new rules - and in particular, the asymmetrical pricing standards - prohibit utilities from providing an advantage to their affiliates to the detriment of rate-paying customers.

*Id.* at 763-764 (emphasis added). This description of intent and purpose was again relied on by the Missouri Supreme Court in the more recent *OPC v. MoPSC and Atmos Energy Corporation*, 409 S.W.3d 371, 377 (Mo. 2013).

The situation described by the Commission and the Court is not present. The only water corporation to which these rules would apply - MAWC - is very much a traditional water utility. It provides service only within the state of Missouri and has no "profit-producing" "non-regulated" subsidiaries. Further, MAWC has no "profit-producing" "non-regulated" affiliated entities to which it provides, or from which it receives, goods or services.

The vast majority (if not all) of MAWC's transactions with affiliates are for corporate support, including its purchases of professional services from the service company and its access to debt markets through its financing affiliate. The overwhelming evidence in past rate cases shows that MAWC is procuring these services from its affiliates at costs that are well below what

it would otherwise incur if it had to purchase those services from unaffiliated, third parties or employ full-time employees to provide those services to MAWC.

The circumstances surrounding MAWC are not similar to those upon which the Commission relied in adopting the affiliate transaction rules that are applicable to Missouri electric and gas corporations.

### **COST ALLOCATION MANUAL**

There is no need for MAWC to create a new cost allocation manual. MAWC currently provides to the Staff its service company's Billing and Accounting Manual (BAM). This manual is a set of criteria, guidelines and procedures for the service company cost allocations to MAWC and its affiliates.<sup>3</sup> The costs of support services, including wages, employee benefits, professional services, and other expenses, are based on, or are an allocation of, actual costs incurred. The BAM provides sufficient information to support cost allocation among affiliates.

### **OPC EXAMPLES**

OPC cites the home protection services of an American Water Works Company subsidiary and a New Jersey Board of Public Utilities audit in support of its petition.

The home protection services described by OPC are provided by American Water Resources (AWR). These services are provided by AWR to individuals both within and without American Water state service territories. MAWC performs no advertising, billing or collection functions for AWR. AWR issues have been scrutinized in MAWC's rate cases and adjustments made where appropriate and MAWC's conduct modified where appropriate. This is a good example of the oversight provided by the existing rate case process.

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<sup>3</sup> A copy of the Billing and Accounting Manual was also provided as an attachment to the Rebuttal Testimony of James Jenkins in Case No. WR-2017-0285.

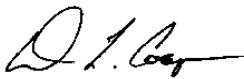
The New Jersey Board of Public Utilities audit to which OPC refers is also of limited value in this matter. That audit was filed over eight (8) years ago, on December 20, 2010, and primarily appeared to review information associated with calendar year 2009 (now ten (10) years old). An audit of this vintage is not persuasive of much of anything.

### CONCLUSION

Because the Commission already has the opportunity examine, and does examine, MAWC's affiliate transactions within MAWC's rate cases, adding the administrative requirements and restrictions in the proposed rule adds little or no value to the Commission or MAWC's customers and fails to satisfy the Section 536.041 and 536.175.4 requirements in that it would impose an unnecessary regulatory burden where a less restrictive, more narrowly tailored, process accomplishes the same purpose.

**WHEREFORE**, MAWC respectfully recommends that the Commission consider these comments and, thereafter, deny the OPC's *Application and Petition For Promulgation of Rules*.

Respectfully submitted,



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