

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

In the Matter of Missouri-American Water)
Company’s Request for Authority to Implement)
General Rate Increase for Water and Sewer)
Service Provided in Missouri Service Areas.)

Case No. WR-2022-0303

STAFF’S POST-HEARING REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through counsel, and files *Staff’s Post-Hearing Reply Brief*.

ARGUMENT

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

The Office of the Public Counsel (“OPC”) agrees that Missouri American Water Company (“MAWC”) already has a Cost Allocation Manual (“CAM”). However, OPC states that in this case, MAWC should be required to file another CAM because “its CAM lacks any enforceable standards and, thus, provides minimal protection, if any.”¹ OPC only offers the 2021 American Water Works Company, Inc. (“AWWC”)’s² sale of American Water Resources Company (“AWRC”) to an unrelated, unregulated third party as an example of why MAWC’s current CAM is deficient.³ But as Staff explained in its initial brief, affiliate transactions rules and a CAM would not have applied to this transaction.⁴

Moreover, OPC had the opportunity in this rate case to argue imprudence for anything that it believed should be denied ratemaking treatment due to MAWC violating

¹ Ex. 200, *Direct Testimony of Geoff Marke*, 4:7-9 and OPC’s *Initial Brief*, P. 13, FN 10.

² AWWC is MAWC’s parent company.

³ Ex. 200, *Direct Testimony of Geoff Marke*, 7:11-8:10.

⁴ *Staff’s Initial Post-Hearing Brief*, P. 4-6.

the terms of its CAM. But OPC did not cite any imprudence based upon the CAM. For these reasons, MAWC should not be required to file a second CAM as part of this case.

2. Should the Commission open a new rulemaking docket in order to draft affiliate transactions rules for water and sewer?

As Staff explained in its initial brief, in June 2018 Staff opened a working case, which is Case No. AW-2018-0394, to consider rewriting the affiliate transactions rules. At the same time, Staff opened Case No. AW-2018-0393, which is a related working case to consider drafting new rules regarding the protection of customer information. The direction of Case No. AW-2018-0394 is to clarify the current affiliate transactions rules and add provisions for water and sewer utilities with more than 8,000 customers. The direction of Case No. AW-2018-0393 is to take the consumer information protections from the current affiliate transactions rules and draft new rules.⁵

In his prefiled testimony, Dr. Marke recommends that the Commission close Case No. AW-2018-0394 and open a new water and sewer rulemaking docket that moves to a formal rulemaking the rules Staff proposed in Case No. WR-2003-0500. These draft rules mirror current electric and gas affiliate transactions rules by substituting the word “water” for “electric” and “gas” from the current electric and gas affiliate transactions rules,⁶ consistently with OPC’s slogan at the hearing to “just add water.” However, at the hearing and in its briefing, OPC takes a new position, which is to recommend that the Commission open a new water and sewer affiliate transactions formal rulemaking docket

⁵ *Id.* at P. 6-7.

⁶ Ex. 200, *Direct Testimony of Geoff Marke*, 13:12-16. These draft rules are attached to Exhibit 200 as Attachment 6. They were filed in Case No. WR-2003-0500 on September 16, 2005 as EFIS item number 397.

in order to promulgate the rules Staff proposed in WR-2003-0500 and at the same time maintain the current working cases (Case Nos. AW-2018-0394 and AW-2018-0393).⁷

OPC's reasoning for its updated recommendation seems to be due to its misguided belief that otherwise, there will be a lapse in time when the consumer protections of 20 CSR 4240-20.015(2)(C) are not in force. This regulation provides that specific customer information shall be released to other entities only with the customer's consent. OPC writes in its initial brief that it is unclear whether Staff will move both working cases forward simultaneously to formal rulemakings. OPC is concerned that if Staff requests that the Commission open an affiliate transactions formal rulemaking case before it requests a consumer protection formal rulemaking, the affiliate transactions rules will be promulgated first, which will include repealing 20 CSR 4240-20.015(2)(C). Then, until the consumer protection rules are promulgated, consumers will be without the protections in those rules.⁸

OPC points to this exchange at the March 9, 2023 hearing as evidence that it is unclear that the affiliate transactions rules and the consumer protection rules will move forward at the same time:

Q (Ms. VanGerpen). And to clarify, Staff – is Staff planning to file draft rules in that working group docket simultaneously with the draft rule?

A (Ms. Bolin). Not simultaneously with this draft rule, but we will be filing them soon.⁹

OPC interprets Ms. Bolin's statement to mean that Staff may not request that the Commission open the affiliate transactions and customer protection formal rulemaking

⁷ Tr. 69:8-70:8 and OPC's *Initial Brief*, P. 9-10.

⁸ OPC's *Initial Brief*, P. 11.

⁹ Tr. 78:14-79:1.

dockets at the same time.¹⁰ Ms. Bolin responded to a confusing question, because neither Staff nor the Commission will file draft rules “with the draft rule.” Ms. Bolin likely meant that Staff will not file draft rules simultaneously in the current working case (Case No. AW-2018-0394) and the soon-to-be-opened rulemaking docket. There is no reason for Staff to request that the Commission open a formal rulemaking docket for affiliate transactions rules and at a later time, request another formal rulemaking docket for consumer protection rules. This is inconsistent with the development of the rules in the two working cases, in which the rules developed concurrently. Staff will move both sets of rules through formal rulemaking at the same time.

OPC’s recommendation is unlikely to attain the result OPC seeks, which is to expeditiously promulgate affiliate transactions rules for water and sewer utilities.¹¹ Under the most optimistic scenario, promulgating new rules generally requires eight months. Before the Commission can commence a formal rulemaking, it must obtain Governor’s Office approval,¹² which may require one or two months, but there is no timeframe within which the Governor’s Office must respond to a request for approval. Once Governor’s Office approval is obtained, the Commission can open a rulemaking case and direct the Secretary of the Commission to file the proposed amendments with the Secretary of State for publication in the Missouri Register. The formal rulemaking process – from the Commission directing publication of draft rules in the Missouri Register to the effective date of new regulations – requires a minimum of six months.¹³ Therefore, the total time

¹⁰ OPC’s *Initial Brief*, P. 11.

¹¹ *Id.* at 10 and Tr. 70:2-8.

¹² Executive Order 17-03 (Jan 10, 2017).

¹³ See the Secretary of State’s rulemaking calculator, located at [Missouri Secretary of State: AdRules Timeline Calculations \(mo.gov\)](https://www.sos.mo.gov/AdRules/TimelineCalculations).

from start to finish is generally eight months, although as stated above, approval from the Governor's Office may extend this.

If immediately after the effective date of the order in this case (May 31, 2023), the Commission commences a rulemaking for new water and sewer affiliate transactions rules based on the current electric and gas rules, new affiliate transactions rules may be in effect during January 2024, at the earliest. But for the reasons described in Staff's initial brief, these rules will contain the same issues as the current electric and gas affiliate rules.¹⁴ To solve this, OPC proposes that the parties continue working on Case Nos. AW-2018-0394 and AW-2018-0393 so that once the first water and sewer affiliate transactions rules are effective, the Commission will turn around and commence additional formal rulemakings and rescind the rules just passed.¹⁵ This process will require another eight months, at a minimum. Therefore, this redundant exercise is a waste of resources and is the epitome of administrative inefficiency, particularly when MAWC is filing a CAM and any party has been free to propose an adjustment in MAWC's rate case for prudence related to deviance from this CAM, which OPC did not.

Staff agrees with OPC that affiliate transactions rules are needed for all utilities with more than 8,000 customers. Staff further agrees with OPC that the affiliate transactions and customer information protection working dockets (Case Nos. AW-2018-0394 and AW-2018-0393) need to move to formal rulemakings. But OPC's recommendation at hearing and in its initial brief to promulgate two consecutive affiliate transactions rules will only prolong the process, as well as be administratively inefficient and burdensome. It does not make sense to use the "just add water" water

¹⁴ *Staff's Initial Post-Hearing Brief*, P. 7-8.

¹⁵ Tr. 69:8-70:8 and OPC's *Initial Brief*, P. 9-10.

and sewer affiliate transactions rules as a placeholder while the current draft rules are brought to formal rulemakings. For these reasons, the Commission should not open a new rulemaking docket to promulgate OPC's "just add water" affiliate transactions rules.

ISSUES RAISED AT THE HEARING

At the March 9, 2023 hearing, Commissioner Holsman asked counsel how granular the draft affiliate transactions rules are, specifically whether affiliate transactions rules apply to everyday purchases, such as office supplies.¹⁶ When MAWC purchases office supplies from an unrelated third party supplier, affiliate transactions rules do not apply, because MAWC and the unrelated third party are not affiliates.¹⁷

If, on the other hand, MAWC receives office supplies through its service company, American Water Works Service Company, Inc. ("AWSC"), affiliate transactions rules would apply, because MAWC and AWSC are affiliates. If AWSC provides office supplies to MAWC at AWSC's cost, there are no affiliate transactions rules issues because MAWC is not providing a financial advantage to an affiliate. But if AWSC charges MAWC a fee above AWSC's cost, the office supplies' cost must be the lesser of their fair market value or MAWC's fully distributed cost to provide the same supplies. This is true under the current rules¹⁸ and the proposed rules. So in response to Commissioner Holsman's question, if MAWC purchases office supplies at Office Max, affiliate transactions rules do not apply. On the other hand, if MAWC receives office supplies from an affiliate, the draft affiliate transactions rules would apply regardless of the dollar amount, because neither

¹⁶ Tr. 62:6-24.

¹⁷ The current electric and gas affiliate transactions rules define an affiliated entity as "any ... corporation, service company, corporate subsidiary ... which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electric [or gas] corporation." 20 CSR 4240-20.015(1)(A) and 20 CSR 4240-40.015(1)(A).

¹⁸ 20 CSR 4240-20.015(2)(A) and 20 CSR 4240-40.015(2)(A).

the current electric and gas rules nor the draft rules, which include water and sewer utilities, have a minimum dollar amount.

Commissioner Holsman also asked whether there is a process for affiliates to register.¹⁹ Under the current and draft affiliate transactions rules, there is no process for affiliates to register, but regulated utilities must annually provide a list of affiliated entities, a list of goods and services provided to and received from affiliates, a list of all contracts entered into with affiliates, etc.²⁰

WHEREFORE, Staff files this reply brief for the Commission's information and consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to all counsel of record on this 14th day of April, 2023.

/s/ Karen E. Bretz

¹⁹ Tr. 62:24-63:2.

²⁰ 20 CSR 4240-20.015(4) and 20 CSR 4240-40.015(4).