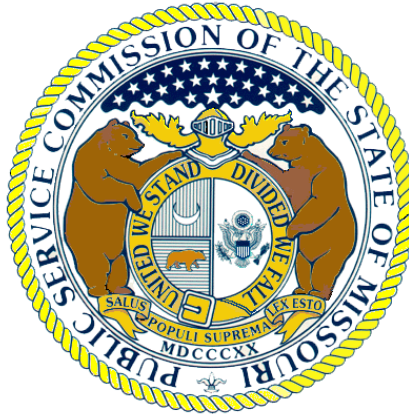


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



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

REPORT AND ORDER

Issue Date: November 30, 2017

Effective Date: December 10, 2017

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REPORT AND ORDER

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REGULATORY LAW JUDGE: Ronald D. Pridgin. Deputy Chief

Procedural History

On May 12,¹ Missouri-American Water Company (“MAWC”) filed an application seeking an accounting authority order (“AAO”) for the cost of replacing the customers’ portion of MAWC’s lead service lines. The Commission granted applications to intervene filed by: Missouri Industrial Energy Consumers (“MIEC”), Midwest Energy Consumers Group (“MECG”), Consumers Council of Missouri (“CCM”), and the Missouri Department of Economic Development (“DED”).

The Commission held an evidentiary hearing on September 27. Initial post-hearing briefs were filed on October 19, with reply briefs submitted on October 30.

Findings of Fact

1. The Commission finds that any given witness’ qualifications and overall credibility are not dispositive as to each and every portion of that witness’ testimony. The Commission gives each item or portion of a witness’ testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific

¹ Calendar references are to 2017, unless otherwise noted.

weight and credibility decisions throughout this order as to specific items of testimony as is necessary.²

2. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.³

3. MAWC is a Missouri corporation in good standing. MAWC serves approximately 463,700 water customers, and approximately 12,400 sewer customers. MAWC is a “water corporation”, “sewer corporation” and “public utility” regulated by the Commission.⁴

4. A water service line is a pipeline through which water flows into a customer's premise. The water service line connects a utility-owned water main that is part of a water distribution pipeline system throughout the water utility's service area to a customer's premise. For most customers, the water main is near or under a street.⁵

5. In most cases, the water utility owns the portion of the water service line between the water main and a point at or near the property line. At this location, there is often a utility-owned water meter. The remaining portion of the water service line is owned by the customer. However, in St. Louis County, customers own the entire water service line between the water main and the premise.⁶

² Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony”. *State ex rel. Pub. Counsel v. Mo. Pub. Serv. Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

³ An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Mo. Office of Pub. Counsel v. Pub. Serv. Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

⁴ Application, ¶1-2 (filed May 12, 2017)

⁵ Ex. 11, pp. 2-3.

⁶ *Id.* at 3.

6. MAWC proposes to replace the entire lead portion of service lines in St. Louis County from the newly installed water main to the customer's home when service lines containing lead are discovered.⁷

7. The advantage of full lead service line replacement ("LSLR") is that it does not cause the increased risk of lead contamination exposure that would be caused by partial LSLR. The Environmental Protection Agency recommends full LSLR.⁸

8. MAWC is embarking upon the LSLR program because lead is a naturally occurring metal that is harmful if inhaled or swallowed, particularly to children and pregnant women. Lead exposure can cause a variety of adverse health effects. For example, lead exposure can cause developmental delays in babies and toddlers and deficits in the attention span, hearing and learning abilities of children. It can also cause hypertension, cardiovascular disease and decreased kidney function in adults. The most common sources of lead exposure are paint and dust, but lead can also be found in drinking water. Recent events, including those in Flint, Michigan, have heightened concern about the presence of lead in drinking water.⁹

9. MAWC has a program to replace water mains throughout its service areas. The main replacement is prioritized by considering a variety of factors, including the condition of the main, gauged by a combination of leaks or breaks in the line, pressure and flow conditions, and pipe age and material. MAWC also coordinates with local municipalities to replace mains in conjunction with road projects. It is during this regular main replacement process that MAWC anticipates replacing the lead service lines. Under

⁷ Ex. 4, p. 4.

⁸ Ex. 13, p. 4.

⁹ Ex. 1, p. 6.

the LSLR Program, when the Company encounters lead service lines during a main replacement project, it will replace the lead portion of the service line.¹⁰

10. The Commission has maintained a policy of limiting AAOs to costs associated with extraordinary events. "Extraordinary events" are those that are unusual in nature and infrequent in occurrence.¹¹

11. The LSLR Program costs MAWC is proposing to defer are extraordinary because these costs are incurred to replace customer owned service lines. It is not a normal utility policy or practice to replace or repair property that is not owned by the utility.¹² Once the lead service lines are replaced, the problem will not recur because the lead will not remain in the lines.¹³

12. The Commission has considered the materiality of costs compared to net income to determine whether the costs are extraordinary. The standard the Commission has used in past AAO cases was the costs must be at least five percent of net income to be considered material.¹⁴

13. The cost for the LSLR is estimated to be about 11.5% of MAWC's 2016 net income.¹⁵

14. The extraordinary circumstance in this case is the public health issue of lead in MAWC's water distribution system.¹⁶

15. If the Commission decided to deny MAWC's application for an AAO, MAWC would stop the LSLR program.¹⁷

¹⁰ Ex. 7, p. 5.

¹¹ Ex. 12, pp. 2-3.

¹² Id.

¹³ Ex. 1, pp. 10-12; Ex.

¹⁴ Ex. 17, pp. 4-5.

¹⁵ Ex. 5, p. 3.

¹⁶ Ex. 4, p. 7.

¹⁷ Tr. Vol. 2, p. 141.

16. The timeframe for the AAO for the LSLR Program runs from January 1, 2017 through May 31, 2018.¹⁸

17. MAWC has acquiesced to applying its short-term debt rate to the carrying costs associated with this AAO.¹⁹

18. The appropriate account to which MAWC should book this AAO is NARUC Account 186, with ratemaking treatment not addressed in this case but in MAWC's pending general rate case, which will likely result in new rates being established in May, 2018.²⁰

Conclusions of Law

The Commission can "prescribe uniform methods of keeping accounts, records and books, to be observed by . . . water corporations[.]"²¹ The Commission can also, "after hearing, . . . prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."²² Water corporations must use the Uniform System of Accounts (USoA) issued by the National Association of Regulatory Utility Commissioners (NARUC) in 1973 and revised in July 1976.²³

The USoA, in its General Instruction No. 7, specifically states:

It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments....Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.

¹⁸ Id. at p. 182.

¹⁹ Tr. Vol. 2, p. 158.

²⁰ Ex. 12, p. 4; Ex. 18, p. 2; Ex. 6, p.3; Tr. Vol. 2, p. 158, 179.

²¹ Section 393.140(4) RSMo.

²² Section 393.140(8) RSMo.

²³ Commission Rule 4 CSR 240-50.030(1)

The Uniform System of Accounts defines “extraordinary items” as:

[t]hose items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company.... Accordingly, they will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business.... To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.²⁴

Decision

Applying the facts to the pertinent law, the Commission finds that MAWC qualifies for the AAO it seeks. The costs for the LSLR are material, unusual and infrequent and, therefore, extraordinary. Thus, those costs meet the traditional standard the Commission has applied in deciding AAO cases. The public policy related to lead in drinking water and its adverse health effects is particularly persuasive in this case. MAWC’S LSLR Program adheres to the recommended method of lead removal and eliminates the risk of lead containment that exists with partial lead pipe replacements. This material and extraordinary LSLR Program is appropriate for an AAO.

²⁴ State ex. rel. Office of the Pub. Counsel v. Pub. Serv. Comm’n of Mo., 858 S.W.2d 806, 810 (Mo. App. 1993).

The other issues some parties have raised, such as regulatory asset treatment of the costs, alleged tariff violations, and the necessity of the LSLR itself, can be addressed in MAWC's pending rate case. Indeed, an AAO is simply approval to defer costs, the ultimate recovery of which may be considered in a future rate case. The recovery of those costs is in no way guaranteed by the Commission granting an AAO.²⁵

THE COMMISSION ORDERS THAT:

1. The application for an Accounting Authority Order filed by Missouri-American Water Company is granted as further specified herein.
2. Missouri-American Water Company is granted authority to defer and book to Account 186 the costs of all customer-owned lead service line replacements made from January 1, 2017 through May 31, 2018, using its short-term borrowing rate as its carrying cost.
3. Missouri-American Water Company may defer and maintain these costs on its books until the effective date of the Report and Order in its pending general rate case, with any amortization beginning with the effective date of that Report and Order.
4. Nothing in this Order shall be considered a finding by the Commission of the value or prudence for ratemaking purposes of the properties, transactions and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.

²⁵ Id. See also *State ex. rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 301 S.W.3d 556, 567-68 (Mo. App. W.D. 2009); *Missouri Gas Energy v. Mo. Pub. Serv. Comm'n*, 978 S.W.2d 434, 438 (Mo App. W.D. 1998).

5. All other requests for relief not specifically granted are denied.
6. This order shall become effective December 10, 2017.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 30th day of November, 2017.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 30th day of November 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 30, 2017

File/Case No. WU-2017-0296

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.