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-2017-0285

PUBLIC COUNSEL'S OBJECTION AND RESPONSE
TO MAWC'S PROCEDURAL SCHEDULE

COMES NOW the Office of the Public Counsel ("Public Counsel" or "OPC") and for its *Objection and Response to MAWC's Procedural Schedule* states:

I. Introduction

1. On August 24, 2017, Missouri-American Water Company ("MAWC"), refused to join the reasonable *Non-Unanimous Joint Proposed Procedural Schedule* filed by the Commission's Staff ("Staff"), Public Counsel, and the City of Joplin on behalf of, and with the agreement of, Midwest Energy Consumers Group ("MECG"), Missouri Industrial Energy Consumers ("MIEC"), the City of Warrensburg, the City of Jefferson City, the City of St. Joseph, Consumers Council of Missouri, the Utility Workers Union of America Local 335, and the City of Riverside (Doc. No. 57).

2. Instead, MAWC filed its own proposed procedural schedule seeking to radically deviate from the Commission's rate case process and restrict the full administrative review of its requested rate increase to the disadvantage of all other parties. Public Counsel OBJECTS to MAWC's requested schedule and variance.

3. Importantly, MAWC has requested an extensive list of policy changes and potentially unlawful risk-shifting mechanisms in this case including, but not limited to: consideration of unknown and speculative cost and revenue forecasts, a "revenue stabilization mechanism", single tariff pricing for water, projections for purported declining consumption, "cloud

computing", and possible consideration of two separate accounting authority orders MAWC has requested in separate dockets. It is the company seeking these measures at their own decision: MAWC chose to raise the many policy issues both inside and outside of this case and the state nor any intervenor should be disadvantaged by a schedule that constricts discovery or process. It bears mentioning some of these issues are so untested that two electric utilities intervened so that they may advocate positions. Taking into consideration all the issues to be addressed, assuming MAWC's procedural deviations had any merit this is among the worst possible cases to implement MAWC's suggestions.

II. MAWC's requested deviations

4. First, MAWC seeks to shorten the audit of its case by nearly seven weeks by requiring non-company parties to file rebuttal on November 30 rather than January 17. Second, MAWC seeks to muddle the testimony by combining the revenue requirement rebuttal testimony with the rate design/class cost of service rebuttal testimony. Third, MAWC seeks to subject the Missouri regulatory process to the undefined schedules of out-of-state witnesses. Each of these requests is unsupported by any reasonable or proper purpose and should be rejected.

5. It is likely MAWC knows its proposals to depart from accepted past practice and the Commission's rules are absurd. Why, then, does the company unreasonably and unnecessarily seek to depart from Commission practice? Perhaps MAWC is purposefully putting forward absurd issues in furtherance of a calculated strategy of attrition, i.e. knowing the Commission will reject MAWC's absurd and unlawful requests, asking anyway, and then inviting the Commission to also reject otherwise reasonable items raised by the Staff, OPC, or other parties out of a distorted sense of "balance". If MAWC succeeds in misleading the Commission down that path, customers lose whether the Commission accepts or rejects MAWC's schedule and

terms. The Commission, of course, should recognize and reject any such attempts to pervert the administrative process and regulatory oversight.

A. MAWC's attempt to shorten the audit of its case by seven weeks

6. The company seeks a variance from the Commission's rules in an attempt to require other parties to file rebuttal testimony at the same time they file direct testimony. First, the company does not allege there is good cause to depart from the Commission's regulations because there is none. The best arguments MAWC can come up with to support its request to give non-company parties a truncated period to review and respond to the company's case are (1) the company files direct 5 months before other parties, (2) the current process results in parties "talking past" one another and does not "provide the Commission with defined issues to address in the hearing", and (3) it will "provide for more meaningful conversations between the parties, testimony that focuses on the issues in dispute, and, where necessary, a cleaner hearing record for the Commission." Each MAWC argument is devoid of substance.

1. Time period between company direct and non-company direct

7. MAWC states "there is no reason that non-Company parties should be unable to examine and respond to the Company's direct case over a five month period" (Doc. No. 58, p.4). MAWC's suggestion is disingenuous. Clearly there is a reason – it takes time to prepare a case. The company can take all the time it wants in preparing its case prior to filing; all other parties are limited.

8. Non-company parties do not begin developing their own cases-in-chief until *after* the company has filed. Doing so takes time, in part, because the company holds all the information other parties will need to develop their cases. Parties need time to – among other things – develop data requests, wait for the responses, review the responses, submit follow-up data

requests as necessary, wait for the follow-up responses, process the information to develop issues, and then write testimony.

9. Furthermore, some regulatory stakeholders must apply and wait for intervention to be granted before beginning the foregoing process as parties to the case. Some parties have the additional step of needing to seek out, and hire, expert witnesses. In *this* case, a considerable period of that time was spent responding to the company's test-year proposal, including preparing for, and participating in, oral arguments. In summary, the company's suggestion that "[t]here is no reason" non-company parties need more time to examine and respond to the company's direct testimony is absurd.

2. MAWC's assertions that parties are "talking past" one another and do not "provide the Commission with defined issues to address in the hearing".

10. The Company attempts to support its radical departure from Commission regulations and practice with unsupported statements and conclusions. First, MAWC asserts that under the current process, "parties end up 'talking past' one another" (Doc. No. 58, p. 5). No examples or other facts to support this conclusion are offered. In fact, the Commission's rules at 4 CSR 240-2.130(7) provide the order of testimony to be offered by parties and ensures parties do not "talk past" one another. As recently explained by the Commission, these "regulations allow any party sponsoring a witness to file prepared testimony in the following sequence: direct, which sets forth the witness' evidence; rebuttal from other parties, which sets addresses the direct; and surrebuttal from the sponsoring party, which addresses the rebuttal. That sequence gives any witness the last word on their own evidence." (*See* Order Granting Motion to Strike, Case No. ER-2016-0156, p. 3). The Company's statement addresses a fictional problem and is devoid of substance.

11. Second, MAWC's suggestion that parties are failing to "provide the Commission with defined issues to address at hearing" is similarly without substance (Doc. No. 58, p. 5). The procedural schedule presented by Public Counsel in this case provides that parties will present the Commission with both a list of contested issues (February 14) and statements of position (February 20). These filings will present the Commission with defined issues requiring Commission determination as well as each party's position. Notably, MAWC fails to explain how offering non-company parties a truncated audit period would accomplish either of its purported goals. Because the current procedural process provides a clear sequence of testimony and deadlines to identify issues to be determined, the assertions raised by MAWC have no merit and should be dismissed by the Commission.

3. MAWC's assertion that its schedule will "provide for more meaningful conversations between the parties, testimony that focuses on the issues in dispute, and, where necessary, a cleaner hearing record for the Commission."

12. Incredibly, MAWC suggests the Commission should order a truncated audit process because it "should provide for more meaningful conversations between the parties" (Doc. No. 58, p. 5). Exactly *how* the company's proposal would accomplish this is not explained. The suggestion that ordering the company's schedule and variance to the Commission's regulations to which *no other party agrees* will facilitate "meaningful conversations" borders on delusion given MAWC's adversarial positions on traditionally non-controversial issues, including the test year and the presently disputed procedural schedule.

13. Similarly, MAWC does not explain what testimony it believes is not focused on disputed issues. If the company means that its process will reduce the issues in dispute, there is no explanation offered how its proposal requiring non-company parties to rebut the company's testimony seven weeks sooner would so do. Perhaps non-company parties will identify fewer

issues due to less time to examine and audit the company's direct filing. However, reducing issues by avoiding scrutiny of some areas is not a trade-off with any benefit to customers or the public interest generally; it is a detriment. The Company's assertions that its proposal would "provide for more meaningful conversations" and will focus "the issues in dispute" are absurd and should be rejected by the Commission.

B. MAWC's attempt to muddle the testimony by combing the revenue requirement rebuttal testimony with the rate design/class cost of service rebuttal testimony

14. The company seeks to combine the filing deadlines for revenue requirement rebuttal and rate design/class cost of service rebuttal. The only justification offered by the company for this deviation is that "[s]plitting testimony (especially rebuttal testimony) into revenue requirement and rate design pieces filed sometimes weeks apart is an unnecessary complication, which results in confusion and delay and clutters the testimony order." (Doc. No. 58, p. 4). The company's purported reason is nonsense.

15. As an initial matter, not even the company disputes the need for separate deadlines for revenue requirement direct testimony (to determine, colloquially, "how big is the pie") and rate design/class cost of service testimony (to determine "how the pie is sliced"). While many parties may raise certain revenue requirement issues in direct testimony the intervenors rely on the Staff's revenue requirement report when developing class cost of service/rate design recommendations (as does the Staff's own rate design team). The brief time period between those filing deadlines provides parties the opportunity and ability to present informed testimony about *how* the revenue requirement should be allocated to customers.

16. Because these dates for direct testimony are separate, if the company prevails at getting the rebuttal testimony deadlines combined, parties will have less time to evaluate the other

parties' class cost of service/rate design proposals before being required to respond. The bottom line is that MAWC – as long as it gets to collect its increased revenue – may not particularly care how the rate increase is collected from customers.[1] However, the determination of how the cost is allocated among customers is of great interest to various non-company intervenors who may take very different positions. The separation of rebuttal testimony logically provides time for the various parties, including the company, to evaluate and address the proposals offered by non-company parties.

17. Moreover, combining the two different kinds of testimony into a single filing testimony will create *more* confusion, not less. For example, with separate rebuttal deadlines the Commission can reasonably expect to read one round of testimony about operating expenses, return on equity, depreciation, and other items that make up the overall annual cost to provide service to customers. Shortly thereafter, the Commission can expect to be presented testimony about billing determinates, number of customers in a class, and other items that attempt to explain how much each customer class should pay. Under the normal rate case schedule two rebuttal testimony deadlines clearly separate the categories. The separate filings for rebuttal are particularly important as the first, and only, opportunity to respond to other parties' direct cases.[2] The Company's proposal would jumble the issues into one filing muddling which witnesses were responding to another's testimony. The Commission should reject MAWC's unnecessary and counter-productive request to abandon the clear division between testimonies.

C. MAWC's attempt to subject the Missouri regulatory process to the undefined schedules of out-of-state witness.

[1] The possible exception being that utilities will typically support higher mandatory minimum monthly customer charges that shift risk onto customers and away from utility shareholders.
[2] No party requests to separate surrebuttal testimony into two filings in this case.

18. MAWC seeks an order that data requests served after noon be deemed served as of the next business day. The rationale offered by the company is that "[b]ecause the time zone location of many MAWC witnesses, late afternoon service takes away a day of processing time on normal days and, on Fridays, essentially takes away 2 days of processing time." (Doc. No. 58, p. 5).

19. First, MAWC's claim that serving data requests after noon takes away a day of processing time ignores the impact of the Commission's rules on the computation of time. Commission Rule 4 CSR 240-2.050(1) specifies, in part, when "computing any period of time prescribed or allowed by the Commission, the day of the act, event, or default shall not be included". Therefore, regardless of whether the data request is served at 8:00 am or 11:59 pm, the day the data request is issued does not count against the time to respond.

20. Second, MAWC operates in Missouri and should expect that the regulators and intervenors will issue discovery throughout the business day. Whether MAWC hires out-of-state regulatory witnesses to offer inflated cost of capital estimates or relies on corporate witnesses from the east coast rather than utilizing local experts with knowledge of Missouri is entirely the company's choice. However, to the extent MAWC chooses to do so, it should not disadvantage other parties by subjecting the discovery process to the time zone of the witness. Notably, many of MAWC's witnesses *are* based in Missouri and so the company's rationale has zero application to at least some of its witnesses. If the company is claiming the location of witnesses prevents timely responses it should allege the facts including where the witness is located and time zone. MAWC failed to offer any fact explaining why data requests served after noon require an entire additional day to respond. Furthermore, the procedures offered by the non-company parties also

address the company's concern about shorter response times as the case proceeds by providing that certain response time periods are counted based on business days rather than calendar days.

21. Lastly, MAWC suggests its proposal will benefit all parties. Public Counsel notes that no other party joined the company's filing. This fact makes MAWC's claim ring hollow. Rather than endorse the company's proposal all other parties to the case supported the normal process followed in other cases or chose to remain silent. The Commission should reject MAWC's self-serving and unnecessary proposal to delay providing responses to data requests.

III. Proposal by non-utility parties

22. As mentioned above, Staff, Public Counsel, and the City of Joplin jointly filed a procedural schedule on behalf of, and with the agreement of, MECG, MIEC, the City of Warrensburg, the City of Jefferson City, the City of St. Joseph, Consumers Council of Missouri, the Utility Workers Union of America Local 335, and the City of Riverside. The schedule and procedures offered by the parties are consistent with the Commission's regulations and widely-accepted past practice.

23. As the Commission is aware, Public Counsel opposed intervention of the electric utilities in this water rate case. However, since the Commission granted intervention, when considering MAWC's requested schedule, the Commission should note the approach taken by the electric utilities and outcomes achieved by those companies. Kansas City Power & Light Company ("KCPL") joined other parties in filing a joint procedural schedule (ER-2016-0285, Doc. No. 52, Jointly Proposed Procedural Schedule and Procedures). Public Counsel supported that schedule in a separate filing (Case No. ER-2016-0285, Doc. No. 53, Public Counsel's Statement of Support for Jointly Proposed Procedural Schedule and Procedures). In its own rate case, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") joined the parties in filing a

reasonable procedural schedule (Case No. ER-2016-0179, Doc. No. 78, Jointly Proposed Procedural Schedule and Procedures).

24. Both cases had separate filing dates for Rebuttal. Both cases had DR response times similar to those requested by non-company parties here. Both cases had non-company parties file rebuttal testimony according to the Commission's regulations. In other words, KCPL and Ameren Missouri agreed to all of the procedures MAWC portrays as problematic.

25. Examining the cases illustrates that these provisions certainly did not prevent the parties from having meaningful conversations or processing the cases. KCPL's case ultimately proceeded to a hearing but the company and certain parties (including Public Counsel) were able to resolve approximately twenty issues through a stipulation and agreement (ER-2016-0285, Doc. No. 257, Non-Unanimous Partial Stipulation and Agreement). The Ameren Missouri Case settled entirely (ER-2016-0179, Doc. No. 235, Unanimous Stipulation and Agreement). The settlement permitted the company's rate increase to go into effect on April 1, 2017 two months sooner than the predicted date – a significant benefit to the company's shareholders (ER-2016-0179, Doc. No. 246, Order Approving Compliance Tariff Sheets). Clearly, the electric utilities' were capable of managing the existing procedural process. MAWC, despite its current protests, has also managed to work within the Commission's filing framework in the past. The procedural schedule and process proposed by the non-utility parties in this case has been demonstrated to be an effective way to process a rate case and should be adopted here.

IV. Conclusion

26. MAWC proposes a procedural schedule designed to limit discovery and the administrative review of its case to the detriment of all the parties to this case and its customers. The Commission should reject MAWC's attempt to deviate from the Commission's regulations

and accepted administrative procedures and, instead, order the reasonable schedule and provisions in the *Non-Unanimous Joint Proposed Procedural Schedule*..

WHEREFORE Public Counsel submits this *Objection and Response to MAWC's Procedural Schedule* and asks the Commission to issue an order establishing a procedural schedule consistent with the *Non-Unanimous Joint Proposed Procedural Schedule*.

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 1st day of September 2017.

/s/ Tim Opitz