BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water	)	
Company's Request for Authority to Implement	)	Case No. WR-2017-0285
General Rate Increase for Water and Sewer	)	Case No. SR-2017-0286
Service Provided in Missouri Service Areas.	)	

MAWC'S REPLY BRIEF

William R. England, III, MBE#23975
Dean L. Cooper, MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
P.O. Box 456
Jefferson City, MO 65012
(573) 635-7166
dcooper@brydonlaw.com

Timothy W. Luft, MBE# 40506
MISSOURI-AMERICAN WATER COMPANY
727 Craig Road
St. Louis, MO 63141
(314) 996-2279
tim.luft@amwater.com

ATTORNEYS FOR MISSOURI-AMERICAN WATER COMPANY

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COMES NOW Missouri-American Water Company (MAWC, Missouri-American, or Company), and, for its Reply Brief states as follows to the Missouri Public Service Commission (Commission):

1. INTRODUCTION

Initial Briefs were filed by the Staff of the Commission (Staff), the Office of the Public Counsel (OPC), and the Missouri Department of Economic Development (DE), Missouri Industrial Energy Consumers (MIEC), Public Water Supply Districts Nos. 1 and 2 of Andrew County, Jefferson City, City of Riverside and City of Joplin, City of Warrensburg, Consumers Council of Missouri, and the City of St. Joseph. The fact that MAWC does not respond to each and every statement contained in those briefs should not be taken as acquiescence as to the matters not addressed. Rather, MAWC's decision simply reflects the fact that those matters were adequately addressed in its Initial Brief.

2. The Commission should grant MAWC's lead service line replacement (LSLR) program, as proposed by the Company.

MAWC's proposal is based on the following fact -- the one pathway of human exposure that a water utility can resolve is the removal of lead service lines and that is what MAWC is proposing to do in conjunction with its main replacement and relocation projects. The Company is recommending the replacement of lead service lines because of the potential risk of elevated lead levels when the service line is disturbed. As testimony in this case and the Company's Initial Brief explains, the most cost-effective, efficient and responsible way to address this potential risk is to replace the lead service line at the time of the disruption or, in other words, as the Company is performing main replacements.

As such, the investment required to perform lead service line replacements should be treated like any other capital investment made by the Company. Doing so will allow the proposed LSLR program to move forward in a responsible and efficient manner. If, however, the Commission were to adopt proposals to preclude any return on this investment, or to limit the Company's return to something less than the weighted average cost of capital, it would remove the incentive to invest in this important public-health initiative and clearly establish that such investments should be at the bottom of MAWC's priorities. If MAWC does not receive its weighted average cost of capital on this expenditure, MAWC will do its best to avoid areas with lead service lines and postpone main replacement projects with known lead service lines to avoid increasing the risk of potential exposure to lead associated with a partial replacement.

a. While there is no legal requirement to replace customer-owned lead service lines, doing so as proposed by the Company is appropriate.

OPC's Initial Brief seems to miss the mark in that it seems fixated on "rebutting" phantom allegations that MAWC has legal responsibility to replace the customer-owned lead service lines. MAWC does not claim that there is any legal requirement that it replace customer-owned lead service lines.

In fact, MAWC would agree with the line of cases suggesting that neither the state nor federal governments can constitutionally force MAWC to replace lead service lines. This was the basic holding of the *American Water Works Ass'n v. EPA*[1] case cited by OPC. (OPC Ini. Brf., p. 9)[2] As

[1] 40 F.3d 1266 (D.C. Cir. Ct. of App. 1994).

[2] One factual matter needs to be corrected. OPC suggests that the American Water Works Association is an affiliate of Missouri American Water. (*Id*. ("At least one other affiliate of Missouri American Water . . . .")) It is not.

stated above, MAWC certainly agrees that there is no current legal or regulatory requirement that it make such replacements. MAWC's proposed LSLR program is based on the potential risks associated with lead service lines and the opportunity to replace those lines in an efficient manner. Among other things, OPC argues the Company's LSLR program is not warranted because the Company currently provides safe and adequate service, lead pipes are not the primary source of lead contamination in the State of Missouri and there is no current lead contamination crisis in the state. Although the Company's treatment and sampling efforts have effectively reduced potential lead exposure from drinking water, as the research regarding potential exposure to lead has been further developed and refined, the Company has determined it should take additional steps to further mitigate the risk of potential customer exposure to lead in drinking water.

As explained in testimony and in the Company's Initial Brief, full LSLR is preferred over partial LSLR.[3] By removing the entire lead service line from active operation, a source of lead will

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American Water Works Association is described as follows:

> The American Water Works Association is an international, nonprofit, scientific and educational society dedicated to providing total water solutions assuring the effective management of water. Founded in 1881, the Association is the largest organization of water supply professionals in the world.
>
> Our membership includes over 3,900 utilities that supply roughly 80 percent of the nation's drinking water and treat almost half of the nation's wastewater. Our nearly 50,000 total memberships represent the full spectrum of the water community: public water and wastewater systems, environmental advocates, scientists, academicians, and others who hold a genuine interest in water, our most important resource.

https://www.awwa.org/about-us.aspx

[3] OPC alleges that there is no difference between partial and full lead service line replacements in regard to water lead levels. (OPC Ini.Brf., p. 19-20) As explained throughout the Company's AAO proceeding and this case, that is not the case. The primary basis of OPC's claim is a hearsay statement testified to by OPC witness Marke suggesting that there is no statistical difference between partial and full replacements. When asked about OPC witness Marke's claim, MAWC witness Naumick explained that certainly the pilot programs being discussed were based on full replacements, so they were not designed to test the partial/full difference and there would be no data one way or the other in regard to a

be removed, further reducing the potential for exposure to lead in the drinking water supplied to customers. MAWC's proposal is not based on an allegation of legal requirement, but rather a suggestion that proceeding in the manner proposed is responsible, reasonable, and prudent.

b. <u>The Commission has the authority to approve the Company's LSLR Program as proposed by MAWC.</u>

OPC erroneously cites certain court cases to argue that there is no legal authority for the Company's proposed LSLR Program.

First, OPC cites the *State ex rel Utility Consumers Council of Missouri, Inc. V. Pub. Serv. Comm'n*[4] ("*UCCM*") case in support of its allegation that the "Missouri Supreme Court has struck down the Commission decisions that permit utilities to implement programs that are without supporting authority." (OPC Ini.Brf., p. 6) *UCCM* concerned an early version of a fuel adjustment clause of Missouri electric utilities. What the Supreme Court struck down in *UCCM* was periodic changes in utility rates outside of a general rate case without consideration of all relevant factors. It has no application in this case.

OPC cites *American Water Works Ass'n v. EPA*[5] and *Bass v. Ledbetter*[6] both for the premise that customer-owned service lines are not within the "control" of the public utility and suggests that this is somehow contrary to the Company's current proposal. In fact, MAWC agrees that customer-owned service lines are not within the Company's control and, therefore, as found by these cases,

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comparison. (Tr. 338, Naumick) More importantly, Mr. Naumick testified that OPC witness Marke's suggestion is contrary to his knowledge as he is aware of a "multitude of external research by universities and others showing . . . the higher prevalence and persistence of lead after a partial as compared to after a full service line" replacement. (Tr. 338-339, Naumick)

[4] 585 S.W.2d 41 (Mo banc).

MAWC could not be forced by a Commission order to replace such lines. However, that is not the situation at hand. Here, MAWC has proposed a replacement program for customer-owned lead service lines that is voluntary on the part of the utility. The Commission's decision as to how the costs involved with such voluntary program will be treated for ratemaking purposes is a far different situation than that at hand in *American Water Works Ass'n* and *Bass*.

OPC then cites the Commission's Report and Order in ET-2016-0246[7] (the "*Ameren*" case) for the premise that the Commission lacks the statutory authority to regulate the replacement of customer-owned lead service lines and that the cost for doing so cannot be included in rates. MECG made a similar argument during the Company's LSLR AAO case (using a case that followed shortly after[8]), and the Company explained that MECG's argument was flawed in more than one respect. The same is true here.

First, the structure of the water corporation definition is different from the electrical corporation definition reviewed in the *Ameren* or *KCPL* case (collectively, the "EV Cases"). An "electrical corporation" includes those ". . . owning, operating, controlling or managing any *electric plant*. . . ." Section 386.020(15), RSMo (emphasis added). This gives the subsequent definition of "electric plant" utilized by the Commission (Section 386.020(14), RSMo) in the EV Cases case import as to electrical corporations.

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[5] 40 F.3d 1266 (D.C. Cir. Ct. of App. 1994).
[6] 363 S.E.2d 760 (Ga. Sup. Ct. 1988).
[7] Report and Order, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval Of a Tariff Setting a Rate for Electric Vehicle Charging Stations*, Case No. ET-2016-0246 (issued April 19, 2017).
Charging Stations
[8] Report and Order, *In the Matter of Kansas City Power & Light Company,* Case No. ER-2016-0285 (issued May 3, 2017) ("*KCPL*" case).

No such linkage exists between a water corporation and the "water system". Section 386.250(3), RSMo provides that the Commission's jurisdiction shall extend to "[t]o all water corporations, and to the land, property, dams, water supplies, or power stations thereof and the operation of same within this state." Section 386.025(58) defines a "water corporation" as follows:

> "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

MAWC does all of the things specified in the definition above and it is a water corporation. Therefore, the Commission's jurisdiction to grant the Company's requested relief is not limited by this definition to a "water system."

In addition, the most significant aspect of the EV Cases regarding the Commission's lack of jurisdiction over the charging stations was completely unrelated to the water statutes. The Commission found that "EV charging stations are not 'electric plant' as defined in the statute because they are not used for furnishing electricity for light, heat or power," as required by the electric plant definition. No similar concept or situation is present either in regard to the Company, water corporations in general, or the replacement of lead service lines. In fact, if viewed from that lens, the opposite is true: customer-owned service lines are necessary for the furnishing of water service to customers. Without it, water service would not be delivered to their homes or businesses.

c. MAWC's tariff does not prohibit it from replacing customer-owned lead service lines.

OPC alleges that MAWC's lead service line replacement program is not authorized by its

tariff. (OPC Ini.Brf., p. 11) However, the question is not whether the replacement is "authorized" by MAWC's tariffs, but rather whether the program is prohibited by any of the Company's tariff provisions. None of the tariff provisions cited by OPC prohibits the Company's actions.

Moreover, examining the tariff provisions cited by OPC (OPC Ini.Brf., p. 12-14) reveals that the matter at hand may be distinguished from the situations addressed by those tariff provisions:

	OPC Cited Tariff Provision	**Distinguishing Factor/Response**
1	PSC MO No. 13, Original Sheet No. R. 12, Rule 4.C	States what the Company will not be "required" to do. It does not prohibit any conduct and refers to matters "requested by the Customer," which is not the case here.
2	PSC MO No. 13, Original Sheet No. R 12, Rule 4.I	Specifically applies to an "Applicant." There is no "Applicant" in this situation as that term is defined in the Tariff.
3	PSC MO No. 13, Original Sheet No. R. 13, Rule 4.J	Refers to installation of a service line, not replacement.
4	PSC MO No. 13, 1st Revised Sheet No. R. 14, Rule 4.N	Describes a situation outside St. Louis County where the Company owns the service line and "shall make the replacement at its own expense."
5	PSC MO No. 13 1st Revised Sheet No. R 16, Rule 6.B	The only reference to "replacement of Water Service Lines" concerns material and construction requirements. The specific sub-section cited by OPC concerns "construction and maintenance," not replacements.
6	PSC MO No. 13, 1st Revised Sheet No. R 17, Rule 6.F	Refers to "changes" in the "Customer Water Service Line required by changes of grade, relocation of mains, or other causes." There is no "change" to the line in this case. The line is being replaced.
7	PSC MO No. 13, 1st Revised Sheet No. R 17, Rule 6.H	Refers specifically to "repairs or maintenance," not replacement.
8	PSC MO No. 13, 1st Revised Sheet No. R 9, Rule 2.D	There is no indication that MAWC's forms are contrary to the letter or intent of the tariffs or law.
9	PSC MO No. 13, 1st Revised Sheet No. R 10, Rule 2.K	There is no indication that MAWC's forms are contrary to the letter or intent of the tariffs or law. If OPC believes that this

		provision means there must be express authorization for any agreement executed by MAWC's employees, MAWC would not even be able to contract for the purchase of chemicals, as those contracts are also not expressly provided for in the tariff.
10	PSC MO No. 13, 1st Revised Sheet No. R 11, Rule 3	Rule 3 limits MAWC's liability in regard to civil suits. It does not control the Company's conduct.
11	PSC MO No. 13, 1st Revised Sheet No. R 11, Rule 3.F	Rule 3.F limits MAWC's liability for the actions of its employees. Again, it does not control the Company's conduct.

If the Company's actions are not prohibited by the tariff, they are permitted, unless found to be unlawful for some other reason. No prohibition has been identified.

OPC is nevertheless "*astonished* that the Company has failed to submit amendments to its tariff to authorize this program. . . ." (OPC Ini.Brf., p. 11) (emphasis added) Of course, the tariff sheets that are the subject of this case were filed on June 30, 2017, five months before the Commission decided the lead service line accounting authority order case. Because the rate case tariff sheets were suspended as of July 12, 2017, there has been no opportunity to file additional tariff sheets. While MAWC does not believe that tariff sheets specific to the LSLR program are required, it certainly does not object to filing such if directed by the Commission.

d. MAWC's investment in replacing customer-owned lead service lines should be treated like the rest of the Company's capital investment.

The Staff has recommended that the costs associated with the replacement of customer-owned lead service lines be booked to Account 186, utilizing a carrying cost at the short term debt rate, and amortized over 10 years, with the unamortized balance included in rate base. (Staff Ini.Brf., p. 14-15) OPC argues, of course, for no recovery. However, in the alternative to that position, OPC

suggests that the costs should be amortized over 65 years, with no rate base treatment of the unamortized balance. (OPC Ini.Brf., p. 34) OPC's alternatives do not support the continuation of the Company's LSLR Program.

MAWC appreciates Staff's recommendation as it does suggest that a return of and on is warranted. Staff witness McMellen explained that it is Staff's typical approach to provide rate base treatment of the unamortized balance of regulatory assets where they relate to a project the Staff agrees needs to be done. (Tr. 444, McMellen) The very nature of Account 186 deferrals adds uncertainty to the ultimate recovery of such amounts and would not allow the Company to fully commit to the necessary investment. (Tr. 318, Jenkins; Exh. 21, Jenkins Sur., p. 49) While inclusion of costs in Account 186 provides an opportunity for future recovery, that opportunity necessarily comes with a level of uncertainty as to how the Commission is going to treat those costs on a going-forward basis (both as to return of and return on), as no determination is made until the next rate case. (Tr. 318, Jenkins; Tr. 438, McMellen) It is one thing to accept that risk as it relates to the amounts of LSLR costs MAWC experienced in 2017. It would be a much greater risk if MAWC were to accelerate the replacements as proposed. The uncertainty will not allow the Company to commit to replacements on a scale necessary to address replacements as part of its ongoing main replacement program, which is the most cost-effective, efficient, and responsible way to address the health and safety concerns associated with lead service lines.

Further, proposals to limit MAWC's return on this investment to its short-term debt rate or eliminate it entirely should be rejected. MIEC witness Collins provided a good explanation of this situation at the hearing. He stated "I would think that the company would want to earn a return on that investment. If they're going to . . . invest the capital into that infrastructure, I would think that

they would expect that a return should be earned on that." (Tr. 894, Collins) Mr. Collins is correct. If the Commission does not provide the Company with an overall return on this investment that recognizes that dollars are raised by both equity and debt (*i.e.,* its weighted average cost of capital), MAWC will do its best to avoid areas with lead service lines and postpone main replacement projects with known lead service lines to avoid increasing the risk of potential exposure to lead associated with a partial replacement. (Exh. 2, Aiton Reb., Sched. BWA-3 (p. 4)) This can be costly and disruptive to customers and the community. (*Id.*) Planned pipe replacements are much less costly on a unit cost basis than the costs of increasing pipe breaks, service disruptions, property damages, health risks from potential drinking water contamination during pipe breaks, related community opportunity costs related to community health and economic development, and the steep increase in future pipe replacements resulting from prior deferrals of the replacements. (*Id.* at p. 4-5) If the Commission does not authorize a return of and a return on, at the weighted average cost of capital, the costs of replacing customer-owned lead service lines, it will have the necessary impact of putting mains serving customers with lead service lines at the bottom of replacement priorities In contrast, adopting MAWC's recommendation would treat these costs like any other capital investment and thereby provide both the added expectation of recovery and return to allow this program to be one of the Company's priorities.

e. <u>Water filters are not the solution.</u>

OPC hits only briefly on the issue of filters in its brief. OPC provides the seemingly simple statement that "[MAWC witness Aiton went on to agree that, to the extent there is any risk with disturbances, a low-cost filter could mitigate against temporary risk." (OPC Ini.Brf., p. 23) This treatment of filters ignores a much more thorough discussion of filters that has taken place.

MAWC has already studied the possible use of filters and explained why it believes that they are not a preferred approach for several reasons. (Exh. 135, Tr. 135-137, Naumick)

First, relying on a filter and leaving the lead service line in place fails to address the root cause of the issue. A lead service line is an obvious pathway of potential exposure to lead. The line in this circumstance remains in place and continues to be utilized for the provision of water. (Exh. 135, Tr. 136, Naumick) DE witness Hyman had a similar opinion as to this issue in that he described the use of filters as a "problematic solution" in that it depends on the set up and upkeep of the filter and, ultimately does not get rid of the source of the problem. (Tr. 471, Hyman)

Second, because the lead service line remains in place and in use, the filter options do not represent an apples to apples comparison to line replacement. With the pitcher-type filters, there is a limit to the filter's use of about 100 gallons. (Exh. 135, Tr. 136, Naumick) Thus, it must be replaced very frequently, adding to the cost. More significantly, if it is not replaced in a timely manner, the filter can have a breakthrough and actually be worse in terms of the lead contamination than the water prior to filter use. (*Id.*) This places great responsibility on the customer to remain constantly vigilant. Lastly, these types of filters are not a "whole-house" solution. If the pitcher is in the refrigerator, people may not take that pitcher to other rooms where water may be drunk, such as the bathroom (for brushing teeth). (Exh. 135, Tr. 137, Naumick)

Tap-specific filters have similar issues to the pitcher filter in terms of changing of filters and consequences associated with the failure to do so. In addition, it has an additional disadvantage in that it cannot be moved, even if the customer is so inclined. Moreover, there are operational problems with the tap filters in regard to the ability to correctly and adequately install them. (Exh. 135, Tr. 150-151, Naumick)

Lastly, while a whole-house filter option is available, it comes at a much higher price tag than the pitcher or tap-specific filter. It also still requires the continued vigilance of the customer to timely and correctly change the filter, or its benefit is muted. (Exh. 135, Tr. 137, 151-152, Naumick)

It is for these reasons that filters are not a good or permanent solution to the problems presented by lead service lines.

f. OPC throws additional arguments against the wall to see if any stick. MAWC asserts, they should not.

i) OPC's allegations regarding American Water Resources ("AWR") have no basis in fact and serve only as a distraction from the real issue being considered by the Commission.

In numerous places in its Initial Brief, OPC makes factual assertions (without any evidentiary support)about an unregulated subsidiary of American Water (MAWC's parent) that offers a service line protection program. Essentially, OPC states as fact that MAWC "has a financial incentive to encourage ratepayers to act as insurers by replacing service lines that its affiliate would otherwise have to pay a claim on." (OPC Ini.Brf., p. 4) This allegation is based on OPC's erroneous allegation of fact that "the Company's affiliate currently sells insurance on customer-owned service lines throughout the Company's service territory." (OPC Ini.Brf., p. 4)

The introduction of this contrived issue at the briefing stage, without a stitch of substantive evidence to support the allegations or to provide an opportunity for a debate of the issues raised, does a disservice to the Commission's process and the lead service line subject matter. While there are certainly valid policy issues to be discussed, the existence of the AWR service line protection program does not raise any of them.

OPC's allegations about the service line protection program are 1) not based on any evidence in the record, nor any reasonable inference therefrom; and, 2) just plain wrong. For an organization that represents the LSLR issue "is about truth," (Tr. 256, OPC Opening) OPC's claim is way wide of the mark.

The evidence in this case concerning the service line protection plan offered by AWR is extremely limited:

1) OPC witness Marke notes its existence in regard to his proposal for affiliate transaction rules (Exhibit 203, Marke Dir., p. 14-15);

2) MAWC witness Jenkins, at the evidentiary hearing, acknowledges the existence of the program, indicates it is offered in Missouri *outside of St. Louis County*, but notes that he has no direct knowledge of its development or details regarding the program (Tr. 294-295, 305-307, Jenkins); and,

3) MAWC witness Jenkins acknowledges that MAWC has been discouraged from any interaction with AWR in prior rate cases. (Tr. 317-318, Jenkins)

There is ***no evidence*** that the service line protection program is offered "throughout the Company's service territory." For example, ine protection is provided to St. Louis County residents by the county government pursuant to state statute (Section 66.405, RSMo) and County ordinance (Sections 502.195 and 1112.020, et seq. (Ord. No. 20299, 12-14-00; and, Ord. No. 20943, 6-4-02)). Thus, approximately 340,000 of MAWC's approximately 460,000 Missouri customers have no need for the AWR service line protection program.

There is ***no evidence*** as to how many service line protection plans have been contracted for in Missouri, how many of those are for MAWC customers (the plans are offered to customers of any

water provider), and how many of those customers have lead service lines.

There is ***no evidence*** as to the circumstances under which the AWR service line protection program would replace a lead service line. For example, there is record evidence that St. Louis County's line repair program discussed above will only replace lines that have a leak. (Tr. 389, Aiton).

There is ***no evidence*** as to how the AWR protection plan is financed and risks are protected. For example, depending to what extent reinsurance is utilized in the structure of the business, payments of claims may have no impact on profits.

As to a related allegation, there is absolutely ***no evidence*** that "the Company is *literally* seeking to use its regulated activity as a surety for its non-regulated activity." (OPC Ini.Brf., p. 8) (emphasis added) While showing a misunderstanding of the word "literally," OPC also is wrong in that there is *literally* ***no evidence*** of any connection between MAWC's activities and those of AWR.

ii) <u>OPC illogically claims that the Company's LSLR activities constitute a "taking".</u>

OPC argues that the LSLR program "appears to be violating the Constitutional and statutory standards relating to condemnation of customer-owned property." (OPC Ini.Brf., p. 16-17) OPC bases this allegation on the three partial lead line replacements discussed in Exhibit B to *Stipulation of Fact Related to True-Up and Motion to Suspend True-Up Procedural Schedule* ("Stipulation of Fact") filed with the Commission on March 26, 2018. As an initial matter to the extent these situations created an issue, it would be a civil matter. More importantly, OPC's allegation defies logic. As has been repeatedly discussed in this case, a routine part of its main replacement program is the restoration of customer property. (Exh. 125, Merciel Sur., p. 8) To argue that any time the Company restores or replaces any portion of customer property that it disturbs or damages constitutes

a "taking" would have MAWC, and all utilities, in a perpetual state of defending against condemnation claims.

iii) OPC also attempts to mislead the Commission into thinking that the Company has not been forthcoming during this proceeding. That is not the case.

MAWC disputes OPC's allegation that the lead service line replacement data was "dumped" for the first time "the day before testimony was due." (OPC Ini.Brf., p. 26) Staff witness McMellen testified at the hearing on March 6, 2018, that she had previously reviewed the provided LSLR information for replacements through June 30, 2017. (Tr. 442, McMellen) She also testified that she had already been given numbers through December 31, 2017, but had yet to verify those numbers. (*Id.*) This is consistent with the Commission's schedule in this case and the fact that parties included numbers through the update period (June 30, 2017) in their early rounds of testimony, and true-up data (dated through December 31, 2017) was provided by the Company, per the Commission's order, around January 31, 2018. What OPC did not have until the day before true-up testimony was due was the Company's summary of this data, which the Company provided in an apparently misguided effort to be helpful.

The Commission should not be persuaded by OPC's unsupported or misleading allegations.

g. Lead Service Line Replacement Costs can be appropriately allocated.

MAWC has proposed that if costs are booked to Account 345 – Services, that allocation of those costs to classes be performed utilizing Factor 9 – a factor based on the weighted number of services. (Exh. 16, Heppenstall Reb. RD, p. 16-17) Both the Missouri Industrial Energy Consumers ("MIEC") and the Public Water Supply Districts of Andrew County ("Water Districts") have argued

for direct assignment of the costs to classes of customers. (MIEC Ini.Brf., p. 2-5; Water Districts Ini.Brf., p.3-4) OPC seems generally supportive of direct assignment with a caveat if single tariff pricing is adopted. (OPC Ini.Brf., p. 33)

Staff agrees that direct assignment is better, where possible. (Staff Ini.Brf., p. 34) But also states that where direct assignment is not possible, assignment via a factor is appropriate. (*Id.*)

In this case, the line replacements that are included in the regulatory asset sought to be recovered are all residential replacements. Regardless of whether recovery were by assignment to Account 345, or through an amortization of a 186 deferral, MAWC does not object to assignment of these costs exclusively to Rate A for purposes of this case.

On a going-forward basis, MAWC can maintain the identity of the customer class so that this issue may be addressed in the next case. If the Commission orders that such costs be booked to Account 345 as proposed by the Company, MAWC has already indicated that it will create a subaccount so that a 65 year depreciation rate may be applied to these costs. As suggested by MIEC witness Collins (Tr. 898-899, 902, Collins), in order to maintain the class identity of the replacement costs, MAWC is willing to set up accounting to separately track the appropriate customer class.

3. WATER RATE DESIGN

a. <u>Single Tariff Pricing is Lawful</u>

The Commission has the lawful authority to consolidate rates, including the authority to establish a uniform statewide rate. The Cities of St. Joseph, Jefferson City and Warrensburg (Coalition Cities) argue that the Companies' and Staff's rate design proposals violate long-standing legal principles of "used and useful" and "cost causation." (Initial Post-Hearing Brief of St. Joseph,

Missouri, pp. 3-5)[9] However, the Coalition Cities fail to cite any statutory or case law authority that supports their position. Their sole authority is the testimony of their witness Michael McGarry, who is not an attorney. More significantly, the Coalition Cities' position is directly contrary to the long-standing statutory and case law of this State. The Coalition Cities conveniently ignore the 2017 decision of the Missouri Court of Appeals, Western District, in OPC's appeal of the Company's last rate case (WR-2015-0301). There, after a thorough analysis of Section 393.130, RSMo., and the Court decisions interpreting that statute, the Court of Appeals concluded:

> The plain language in Section 393.130.3 does not forbid the Commission from adopting a consolidated tariff pricing structure wherein several water systems are combined to create a single water district wherein all customers, regardless of their water system, pay for the cost of service for the entire water district and none of these cases cited by OPC support its position that this type of Consolidated Tariff Pricing structure runs afoul Section 393.130.3's prohibition against granting an undue or unreasonable preference or advantage to a locality.

(*Missouri Public Service Commission v. Office of Public Counsel*, 526 SW3d 253, 265.)

Of particular significance was the Court of Appeals' reliance on the Missouri Supreme Court's 1958 en banc decision in the case of *State ex rel. City of West Plains v. Public Service Commission* (310 SW2d 925):

> "It is clear . . . that the [Supreme] court concluded that the Commission had the statutory authority to spread the cost of service to all of the telephone company's customers. It is instructive to note, similar to MAWC, the telephone company in *City of West Plains* had multiple exchanges spread throughout the State so that 'many of the various exchanges were relatively far removed from the localities of other exchanges in Western's systems." (526 SW3d 264, citations

[9] It is rather disingenuous for the cities of St. Joseph and Warrensburg to claim that consolidated rates are unlawful when the City of St. Joseph supported full Single Tariff Pricing in Company's 2000 rate case and the City of Warrensburg supported Staff's consolidated rate proposal in Company's last rate case.

omitted)

Clearly, the Commission has the legal authority to establish a consolidated, statewide rate structure pursuant to Section 393.130.3, RSMo., as long as it does not result in undue or unreasonable preference or advantage to any locality. As was discussed in MAWC's Initial Brief and will be discussed further below, adoption of Single Tariff Pricing in this case will not result in an undue or unreasonable preference or advantage to any particular locality.

b. Single Tariff Pricing is Cost Based

The Company's proposal to adopt a fully consolidated or single tariff rate for its various customer classes is cost based. The costs of providing service to each of the enumerated customer classes (e.g., Rate A, Rate B, Rate J, etc.) are based on the statewide Class Cost of Service Study prepared and submitted by Company witness Heppenstall in this case. (Exh. 15, Heppenstall Dir., Sched. CEH-1) No party took serious issue with Ms. Heppenstall's study.[10] Consequently, for the Coalition Cities and others to argue that the Company's position violates the principle of cost causation is simply not true. The Company's single tariff rates are based on statewide costs associated with serving each customer class. The Coalition Cities argue that costs established at a district level are somehow more accurate than those developed at a state level and, therefore, some cities would be unjustly forced to subsidize the rates of customers in other parts of the State. (Initial Post-Hearing Brief of St. Joseph, Missouri, p. 5) However, there is no evidence in this case to determine what the district specific costs are and, thus, the Coalition Cities' conclusion regarding unjust subsidization lacks any basis in fact. Indeed, when the Commission examined the district

[10] MIEC witness York took issue with Ms. Heppenstall's factor for allocating purchased power costs to the Rate J customer class, but in general she agreed with Ms. Heppenstall's study. (Exh. 506, York Dir., p. 2)

specific costs of the Company in its last rate case (WR-2015-0301), it found that the annual cost to serve a residential customer is fairly consistent across the eight districts, despite the inherent differences in the water systems making up those districts. (Report and Order, p. 12) The Court of Appeals affirmed the Commission's finding and stated as follows:

> "Busch's testimony that the cost of capital is the same throughout those various water systems operated by MAWC and McDermott's testimony explaining that the cost of regulatory compliance is fairly static among water systems, when considered together, support the Commission's finding of fact that the cost to provide service to a residential customer is fairly consistent among the eight water districts in existence at the time the instant rate case was filed."

(526 SW3d 268)

The evidence in this case supports a similar conclusion. Company witness Heppenstall determined the annual cost to serve residential customers in the Company's three districts was fairly consistent, calculating an average cost to serve a residential customer in Districts 1, 2 and 3 to be $618.98, $628.39, and $511.11, respectively. (Exh. 16, Heppenstall Rebuttal, p. 14) Taking into consideration the imprecise nature of cost allocations, it is clear that the cost of providing service in Company's three districts is not so disparate as to warrant a finding that fully consolidated rates will result in an undue or unreasonable preference or advantage to any particular locality. There is certainly no evidence to suggest that District 1 (which includes St. Louis County) is paying "massive subsidies" to the other districts. (MIEC Brief, p. 6) In fact, the cost to serve a residential customer in District 1 is only 52 cents higher than the statewide average cost (i.e., $618.98 for District 1 versus the statewide average of $618.47).

Staff attempts to characterize its three-district approach as a hybrid rate design, implying it is a middle ground between the two "extremes" of Single Tariff Pricing and District Specific

Pricing. (Staff Brief, p. 20) Yet in practical terms, Staff's proposal is effectively Single Tariff Pricing since under Staff's own proposal, District 1 includes 84% of the Company's total customers. Calling that "hybrid," as Staff does, is a distinction without much difference. For all intent and purpose, moving from Staff's three-district rate structure to the Company's proposed Single Tariff Pricing is not as great a move as Staff (and those parties supporting Staff's proposal) would have the Commission believe.

c. <u>Single Tariff Pricing Does Not Create an Incentive to Overspend on Infrastructure</u>

Opponents of Single Tariff Pricing raise the specter that the Company will have a greater incentive to overspend on infrastructure. (OPC Brief, pp. 34-36; Consumer Council of Missouri Brief, p. 1; Coalition Cities Brief, pp. 8-9) This same concern was raised in the Company's last rate case and the Commission found that any such concern would be adequately addressed by requiring the Company to annually file a five-year capital expenditure plan. Since its last case, the Company has filed two five-year capital expenditure plans and it is Staff's opinion that continuing the filing of the yearly five-year capital plan will give parties sufficient opportunity to review the expenditures, to examine changes from year to year, and to better address or protect against any potential over-investment that can incur under a consolidated pricing approach. (Staff Brief, p. 28)

More importantly, there is absolutely no evidence that the Company has engaged (or will engage) in overspending on its infrastructure. Significantly, when this issue was raised by OPC in its appeal of the Company's last rate case, the Missouri Court of Appeals concluded:

> "Busch explained the benefit of the five-year capital expenditure plan: '[I]t gives the parties an opportunity to understand what the – – what [MAWC] is proposing to do and to maybe make suggestions in a

> manner to find maybe a better or at least a lower cost alternative than what [MAWC is] thinking about.' OPC's argument to the contrary is merely speculative. There is no evidence in the record to support OPC's argument that MAWC will engage in unnecessary investment or that the five-year capital expenditure plan adopted by the Commission's Report and Order will be ineffective"

(526 SW3d 271-272)

The record in this case requires the same conclusion. There is absolutely no evidence that MAWC will engage in unnecessary investment or that the five-year capital expenditure plan will be ineffective if the Commission decides to take the final step and fully consolidate rates on a statewide basis.

In fact, the instant record demonstrates that the Company's capital expenditure plans are not driven by the rate design determined by the Commission. In responding to questions from Chairman Hall, Company witness Jenkins testified that there is no difference in the Company's projected plans for improvements under a Single Tariff Pricing method versus a three-district pricing method. The overriding driver of the Company's capital expenditure plan is the level of investment that it needs to make to continue to provide safe and adequate service. (Tr. 623-624)

The Coalition Cities further speculate that prudence reviews are unlikely to result in Commission disallowances of the cost of a project that is already in the ground and being used. (Initial Post-Hearing Brief of St. Joseph, Missouri, pp. 8-9) As an example, they state that efforts to disallow some of the constructions costs of the St. Joseph water treatment plant in the 2000 rate case were unsuccessful. What the Coalition Cities fail to acknowledge is that those efforts to disallow certain construction costs related to the St. Joseph treatment plan were not credible. In that case, the OPC and the St. Joseph Intervenors offered the testimony of two consulting engineers who

challenged the prudence of the Company's decision to build the St. Joseph treatment plan, contending that a better option would have been to renovate the old plant. After a thorough airing of the issue, the Commission found that OPC and St. Joseph Intervenors' witnesses lacked "credibility" and were "unpersuasive." (Report and Order, Case WR-2000-281, issued August 31, 2000, p. 44) The Coalition Cities' concerns regarding the effectiveness of prudence reviews, like their concerns regarding overspending, are purely speculative and unsupported by the record.

d. The Infrastructure System Replacement Surcharge (ISRS) is No Impediment to Single Tariff Pricing

OPC notes that the only customers in MAWC's service territory eligible for an ISRS, pursuant to Section 393.1003, RSMo., are those that live in St. Louis County. OPC then argues that because the ISRS is only applicable to St. Louis County that Joplin and St. Joseph will not be exposed to costs from District 1 recovered under the ISRS. (OPC Initial Brief, pp. 38-39) OPC is wrong. OPC neglects to mention the fact that MAWC may not collect an ISRS for a period exceeding three years unless it has filed for or is the subject of a new general rate proceeding. (§393.1003.3, RSMo.) At the time of that general rate proceeding, the ISRS is then rolled into base rates. (§393.1006.6, RSMo.) Thus, under a Single Tariff Pricing rate design, those ISRS costs will be borne by all customers of the Company and not just those in St. Louis County. (Tr. 608-609)

OPC also fails to acknowledge that the ISRS is a capital attraction mechanism that, through more timely cost recovery, allows the Company to replace its infrastructure in St. Louis County at a more rapid pace than it can in other areas of the state. As a result, the St. Louis County ratepayers are receiving the benefit of more rapid replacement of their aging infrastructure than customers in other parts of the state and the temporary assessment of a surcharge to recover those costs is a

reasonable tradeoff for that benefit. (Tr. 610)

e. The Rate Impacts Resulting From Single Tariff Pricing Do Not Create an Undue or Unreasonable Preference for Any Locality

OPC states that under Staff's customer charge, while the difference for residential rates between District Specific and Single Tariff Pricing may appear nominal, the increases in the rates of commercial customers are upwards of 25% to 30%. (OPC Brief, p. 37) It is curious that OPC would concern itself with the impact of commercial customers (who are able to recover some or perhaps all of their increase from rates they charge to their customers) and ignore the impacts on the residential customers that will result from maintaining the existing three districts. As noted by the Cities of Riverside and Joplin, despite very little capital investment in District 3, Staff's three-district proposal, which OPC supports, would result in more than a 45% increase in the volumetric rate of District 3. Moreover, if the Commission adopts Staff's and OPC's proposal to maintain three districts, with no change in the customer charge, average residential customers with monthly usage of 5,000 gallons, will see increases of 19.1% to 25.4% in Districts 2 and 3 respectively. On the other hand, under Single Tariff Pricing, with changes to the customer charge as proposed by the Company, average residential customers will see a decrease of 10.5% and 2.6% in Districts 2 and 3 respectively. (Intervenors City of Riverside and City of Joplin's Initial Brief, pp. 2-3) The table below demonstrates the dollar impacts of the two rate design scenarios on a residential customer using 5,000 gallons per month, including a $10.00 monthly fixed charge as proposed by the Company.

All rates shown monthly equivalent	District 1 Monthly	District 1 Quarterly	District 2 Monthly	District 3 Monthly
Current Customer Rate	**36.03**	**28.15**	**39.02**	**34.04**
Rate Under Staff Proposal	**39.58**	**31.70**	**46.46**	**42.70**
Increase/(Decrease) from Current Rate	*3.56*	*3.56*	*7.44*	*8.66*
Rate Under Company Proposal	**34.94**	**34.94**	**34.94**	**34.94**
Increase/Decrease from Current Rate	*(1.09)*	*6.79*	*(4.08)*	*0.90*
Company Proposal vs. Staff Proposal	***(4.64)***	***3.24***	***(11.52)***	***(7.76)***

Note: Company proposal includes consolidated tariffs and a $10.00 monthly fixed charge

As can be seen from this table, Staff's proposed rate design would result in increases ranging from $3.56 per month for District 1 customers, to $8.66 per month for District 3 customers. The Company proposal would actually reduce rates for District 2 and for District 1 monthly customers, provide a slight increase of $0.90 per month to District 3 customers, and increase District 1 quarterly customers $6.79 per month (on a monthly-equivalent basis). The Parties have expressed concern about the size of the increase to District 1 quarterly customers, however, Staff's proposal, which OPC , MIEC , and Consumers Council support, would result in larger increases for residential customers in District 2 and District 3 than what the Company is proposing for District 1 quarterly customers. Why is an increase of $6.79 per month in St. Louis deemed unacceptable, while monthly increases of $7.44 in St. Joseph and $8.66 in Joplin are broadly supported? Compared to Staff's proposal, the Company's proposal would save District 2 customers $11.52 per month, District 3 customers $7.76 per month and District 1 monthly customers $4.64 per month. The proposed rate for District 1 quarterly customers is $3.24 per month more that Staff's proposed rate design, or about 10 cents per day.

The fact of the matter is that rates are increasing as a result of the Stipulation on Revenue Requirement. There will be some customers who experience a greater increase than others, but

under the Company's proposal to fully consolidate rates the individual rate increases will not be as great as under Staff's proposal, particularly with respect to the average residential customer.

f. <u>The Commission Should Not Revert Back to District Specific Pricing</u>

The Coalition Cities urge the Commission to return to the eight rate districts that existed prior to the Report and Order in Case No. WR-2015-0301, arguing that the eight-district rate structure best reflects the actual cost of service (particularly the capital costs) of each of MAWC's service areas. (Initial Post-Hearing Brief of St. Joseph, Missouri, p. 11) The return to the eight-district rate structure is neither appropriate nor feasible given the record in the instant case. The Coalition Cities note that Public Counsel supported the eight-district rate design in the Company's previous case, but fail to acknowledge that Public Counsel now admits its position in the prior case was "wrong." (Tr. 686) Coalition Cities also note that MIEC witness Brian Collins states he does not oppose an eight-district proposal, but ignore the fact that MIEC "strongly supports the middle approach" proposed by Staff in this proceeding. (MIEC Initial Brief, p. 5) There is simply no policy or factual basis in the current record to support a return to District Specific Pricing. All of the reasons cited by the Coalition Cities for District Specific Pricing were raised and fully debated in the Company's last case. The Commission resoundingly rejected a District Specific Pricing approach and made the clear policy choice to begin consolidation of rates within the MAWC serving areas. More significantly, there is no evidence in the current record upon which the Commission could make a determination regarding the appropriate cost-based rates for any districts or localities other than the three districts that the Company currently serves. As Public Counsel witness Marke remarked, "There is no data in the current case to go back and retrospectively establish eight districts . . . that boat's sailed, essentially." (Tr. 699)

g. The Commission Should Not Implement a Rate Offset Mechanism or Establish a Collaborative to Develop Such a Mechanism

The Commission should decline to establish a rate offset mechanism as proposed by the Coalition Cities. First, the Coalition Cities' proposal lacks any specifics as to how such a mechanism would work. As MIEC correctly notes, the Coalition Cities' offset mechanism has not been developed beyond a general theoretical concept, noting that the Coalition Cities' witness McGarry admits, "there are many nuances with respect to timing, cost allocation, and rate design that need to be worked out." Accordingly, there is nothing concrete that can be adopted in this case to implement an offset mechanism. (MIEC Brief, p. 9)

Second, the offset mechanism is contrary to the Commission's policy decision in the Company's last case to establish uniform rates that meet the needs of the customers no matter where they happen to live, or how recently the infrastructure in their area was installed or replaced. (Report and Order, p. 27) Despite the Coalition Cities' protestations to the contrary, their offset mechanism is simply a roundabout way to reestablish some form of District Specific Pricing. As Staff noted:

> "if the intent is for all service areas to receive offset treatment, then the offset mechanism is merely a way to undercut and defeat Commission-ordered single tariff or consolidated pricing."

(Staff Initial Brief, p. 27)

In addition, the Commission should decline the Coalition Cities' request to establish a workshop or collaborative to develop an offset mechanism. Notwithstanding the fact that an offset mechanism is contrary to the Commission's clear policy decision to consolidate rates, Staff notes that such a mechanism is of questionable legality, as it appears to run afoul of the prohibitions against retroactive ratemaking and undue or unreasonable discrimination. (Staff Initial Brief, pp. 27-

28) The parties should not be required to expend time and effort in a workshop or collaborative pursuing a mechanism that is contrary to the clear policy directive of this Commission and is of questionable legal validity.

h. The Company's Proposed Customer Charge is Reasonable and Cost-Based

Staff opposes the Company's proposal to reduce its customer charge in order to facilitate the conversion of its quarterly billed customers to monthly billing as AMI meters are installed. Staff indicates that it has concerns that not all customers will receive AMI meters for two years from the effective date of rates in this case and that if quarterly billed customers are moved to a $30.00 customer charge, from the current $22.35 charge, that those customers will experience an increase in the customer charge. Staff, therefore, recommends that MAWC wait two-plus years to adjust its customer charge and move its quarterly billed customers to a monthly billing cycle to allow for installation of AMI meters and better consideration of the capital expenditures associated with those meters. (Staff Initial Brief, p. 31)

There is no reason to postpone the movement of quarterly billed customers to monthly billing. Staff acknowledges the Company has already installed between 100,000 and 150,000 AMI meters. Waiting two or more years to convert quarterly billed customers to monthly billing simply denies those customers the benefits of monthly billing. Those benefits include the ability for customers to manage their household budgets, as well as allow quarterly billed customers the option of paying bills under the Company's budget billing plan once they are converted to monthly billing. (Exh. 11, Clarkson Dir., p. 22) It is also a bit nonsensical for the Staff to complain that quarterly billed customers will experience an increase in their customer charge if they are moved to monthly billing when most customers are going to experience a rate increase as a result of the revenue

requirement Stipulation in this case.

More importantly, an increase in the quarterly customer charge is supported by Staff's own cost study. Staff calculates that the customer costs associated with quarterly billing is $28.23, or $9.41 a month for a 5/8" meter. (Exh. 137) Thus, an increase in the quarterly customer charge is warranted, given Staff's own Cost of Service Study. The Company's proposal to implement a $10.00 customer charge for a 5/8" meter is only $0.59 above costs indicated in Staff's cost study. Alternatively, if the Commission chose to lower the customer charge to $9.00 a month (or $27.00 a quarter) it would be below the cost as indicated by Staff's cost study and still allow the Company to begin to convert its quarterly billed customers to monthly billing. Accordingly, the Commission should not postpone the movement of quarterly billed customers to monthly billing and delay the benefits associated with that move.

4. ADDITIONAL SCENARIO

At hearing, the Commission asked the parties to respond to the following scenario: (1) the recovery of the lead service line AAO costs; (2) over a five year amortization period; (3) where those costs are currently booked and future costs will continue to be booked into account 186; and (4) those costs will receive rate base treatment when recovered and carrying costs at MAWC's long term debt rate until they are recovered; and, (5) adopting single tariff pricing with a (6) customer charge of eight or nine dollars; where (7) the lead service line replacement costs were spread across customers. (Tr. 927-929)

MAWC proposed to replace lead service lines when other water infrastructure, such as mains, are being replaced and the service lines are disturbed. This is a cost-effective and well-supported approach to addressing the issue. As stated herein, MAWC continues to believe that it

should receive a return of and on the costs it expends to replace customer-owned lead service lines. The return on should be computed at the equivalent of MAWC's weighted average cost of capital. If it is not, the treatment essentially creates a disincentive for MAWC to expend these funds, given its needs for capital in Missouri.

MAWC has proposed to include these costs in rate base through the "Services" account (Account 345) as part of *restoration* costs of construction, like repairing a sidewalk or replacing pavement. Doing so would provide MAWC with a traditional return of and on the investment, like any restoration costs included in plant accounts. This approach aligns the interest of the public and the utility by cost-effectively replacing lead service lines over time to mitigate any potential negative health effects for Missouri citizens.

Proposals to reduce the return on the Company's investment to below the weighted average cost of capital will work to undermine the program by incenting the utility to avoid, when it can, areas that have lead service lines. MAWC submits that this approach harms customers by lengthening the time lead service lines will be in operation in Missouri and subjecting them to the increased costs and disruption caused by delaying main replacement. As explained above, if the Commission denies MAWC recovery of its weighted average cost of capital on the costs of replacing customer-owned lead service lines, it will have the necessary impact of putting mains serving customers with lead service lines at the bottom of replacement priorities.

The remainder of the items identified in this section have been addressed above and in MAWC's Initial Brief.

WHEREFORE, MAWC respectfully requests the Commission consider this Reply Brief.

Respectfully submitted,

___//S// William R. England III ________
William R. England, III, MBE#23975
Dean L. Cooper, MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
P.O. Box 456
Jefferson City, MO 65012
(573) 635-7166 telephone
dcooper@brydonlaw.com

Timothy W. Luft, Mo Bar 40506
MISSOURI-AMERICAN WATER COMPANY
727 Craig Road
St. Louis, MO 63141
(314) 996-2279
Timothy.Luft@amwater.com

ATTORNEYS FOR MISSOURI-AMERICAN WATER COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on April 9, 2018, to the following:

Office of the General Counsel staffcounselservice@psc.mo.gov jacob.westen@psc.mo.gov	Office of the Public Counsel opcservice@ded.mo.gov ryan.smith@ded.mo.gov
Stephanie Bell/Marc Ellinger sbell@bbdlc.com mellinger@blitzbardgett.com	William D Steinmeier wds@wdspc.com
John B Coffman john@johncoffman.net	David Woodsmall david.woodsmall@woodsmalllaw.com
Marc Poston marc.poston@ded.mo.gov	Edward F Downey/Lewis Mills efdowney@bryancave.com lewis.mills@bryancave.com
Joshua Harden Joshua.Harden@stinson.com	Greg A Campbell/Emily Perez gcampbell@hammondshinners.com eperez@hammondshinners.com
Mark W Comley comleym@ncrpc.com	Joseph P Bednar jbednar@spencerfane.com
Leland B Curtis lcurtis@chgolaw.com	Robert Hack/Roger W Steiner rob.hack@kcpl.com roger.steiner@kcpl.com
James M Fischer/Larry W Dority jfischerpc@aol.com lwdority@sprintmail.com	James B Lowery/Wendy Tatro lowery@smithlewis.com AmerenMOService@ameren.com

__//S// Dean L. Cooper___________