

<b>Exhibit No.:</b>	_____
<b>Issue(s):</b>	Rate Case Expense/Expense Lag for Income Tax
<b>Witness/Type of Exhibit:</b>	Riley/Surrebuttal
<b>Sponsoring Party:</b>	Public Counsel
<b>Case No.:</b>	WR-2022-0303

**SURREBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

Submitted on Behalf of the Office of the Public Counsel

**MISSOURI-AMERICAN WATER COMPANY**

CASE NO. WR-2022-0303

February 8, 2023

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**SURREBUTTAL TESTIMONY**

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**JOHN S. RILEY**

**MISSOURI-AMERICAN WATER COMPANY**

**CASE NO. WR-2022-0303**

1 **Q. What is your name and business address?**

2 A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

3 **Q. Are you the same John S. Riley who prepared and filed direct and rebuttal testimony in**  
4 **this case on behalf of the Office of the Public Counsel?**

5 A. Yes.

6 **Q. What is the purpose of your surrebuttal?**

7 A. I will address four things. First, I address rate case expense items that Missouri American  
8 Water Company (“MAWC” or the “Company”) has not sufficiently supported and Staff has  
9 not addressed in testimony. Second, I recommend the Commission accept Staff’s policy of  
10 normalizing the accepted amount of rate case expense and disregard the Company’s  
11 recommendation to include the cost in rate base and amortize the balance. Third, I maintain  
12 my position that unique circumstances provided to MAWC through legislation gives credence  
13 to my position that rate case expense should be split 2/3 to the Company and 1/3 to the  
14 customers. Finally, I address that in Staff’s updated EMS run, the expense lag for federal  
15 income taxes is not set at the Commission established 365 days.

1 **RATE CASE EXPENSE**

2 **Q. What adjustments to rate case expense has Staff made in this case?**

3 A. I do not believe Staff has testified to any rate case expense adjustments in this case. Staff  
4 witness Ashley Sarver has stated and reiterated the position that the rate case expense should  
5 be shared 50/50 between customers and the Company. Neither Ms. Sarver nor Ms. Courtney  
6 Horton challenge any expenses that the Company has included in the case.

7 **Q. What costs do you recommend the Commission disallow?**

8 A. I recommend the Commission disallow the “unamortized” portion of the rate case expense  
9 from MAWC’s last rate case, Case Number WR-2020-0344, and the additional legal expenses  
10 for this rate case from the law firm Barnes & Thornburg LLP.

11 **Q. In rebuttal testimony, Mr. Brian LaGrand points out that of the annual unamortized**  
12 **portion from the last rate case \$23,497 is for a depreciation study. Will you make an**  
13 **adjustment for this annual amount?**

14 A. Yes. The depreciation study is a legitimate expense that should be included in the revenue  
15 requirement in this case. But, labeling it as a “rate case expense” is a misnomer. The rate  
16 case expense agreed to in the last rate case, Case Number WR-2020-0344, was to be spread  
17 over three years.<sup>1</sup> The cost of the depreciation study was to be spread over five years. The  
18 depreciation study expense should have been identified and separated in the last case. An  
19 annual amount of \$23,497 should be included in this case to account for the depreciation

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<sup>1</sup> WR-2020-0303, MAWC Statement of Positions, Rate Case Expense, page 26; Company Rate Case Expense Workpapers.

1 study. The remaining items categorized as rate case costs from the last case should be borne  
2 by the Company.

3 **Q. The Company takes issue with Staff’s normalization methodology. Do you agree with**  
4 **the Company’s “amortization” methodology?**

5 A. I agree with Staff’s normalization method. Because there is a level of rate case expense in  
6 every case, normalization should be the method of recognizing it in rates.

7 Company witness Brian LaGrand indicated that he would prefer to record a regulatory asset  
8 and amortize it over three years. I would be concerned if he intended to include the expense  
9 in rate base.<sup>2</sup> In that case, the Company would be asking for a rate of return (“ROR”) on its  
10 unamortized expenses that are unamortized because it abbreviated the expected rate  
11 period.

12 **Q. Mr. LaGrand stated in rebuttal that you offered no evidence of imprudence when**  
13 **considering the \$150,000 outside counsel as unnecessary.<sup>3</sup> Why do you argue that the**  
14 **added expense is unnecessary?**

15 A. There is evidence that the \$150,000 expense is unnecessary. Answers to Staff data requests  
16 indicate that MAWC only utilized Brydon Swearngen & England PC in its most recent  
17 case<sup>4</sup>. There was no other law firm. The last case ended with a settlement as did the three  
18 others before it. Barnes & Thornburg, LLP is based out of Indiana with no offices in  
19 Missouri<sup>5</sup>. As Mr. LaGrand has pointed out in his direct testimony, the Company has

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<sup>2</sup> LaGrand rebuttal, p. 14 “company’s approach would defer the \$300,000 to a regulatory asset.” (Emphasis added).

<sup>3</sup> LaGrand rebuttal, p. 19, lines 6-9.

<sup>4</sup> Confidential Spreadsheet from Staff Data Request 0122, Schedule JSR-S-01.

<sup>5</sup> Btlaw.com/locations.

1 settled its prior four cases. MAWC has not identified any reason to employ a second law  
2 firm when the primary law firm has completed its prior cases and has not demonstrated the  
3 need for additional legal representation.

4 **Q. Mr. LaGrand has stated that your statement “there is little adverse regulatory lag” is**  
5 **“absolutely untrue.”<sup>6</sup> He stated that you ignored the lag from investments and points**  
6 **out that there is lag even in the WSIRA filings. How do you respond?**

7 A. There will always be some level of lag. As I will point out later, MAWC raised issues in this  
8 case that are new and purely for its benefit. Mr. LaGrand has also failed to acknowledge  
9 several key points of funding for the Company. For instance, he does not mention that Staff  
10 built in an amount of income tax in the last rate case’s revenue requirement and that amount  
11 is still being applied to current rates<sup>7</sup>. Further, he does not mention that the Company pays  
12 no income tax yet collects a pretax ROR on the Water and Sewer Infrastructure Replacement  
13 Adjustment (“WSIRA”) revenue requirement. With both of these the Company is allowed  
14 additional funds for expenses that do not have to be paid. Nor does he point out that the parent  
15 company, American Water Works Company, Inc. (“AWWC”), pays MAWC for reducing the  
16 consolidated company’s taxable income. Mr. LaGrand also does not mention that the  
17 distressed properties that the Company has purchased<sup>8</sup>, have established rates in place without  
18 having to file an additional rate case. Preexisting rates certainly reduce regulatory lag.

19 Further, Mr. LaGrand also does not mention that the level of cash working capital (“CWC”)  
20 needed by the Company is negative, which indicates that ratepayers are initially funding the  
21 needed cash first.

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<sup>6</sup> LaGrand rebuttal, p 17, line 18.

<sup>7</sup> Staff’s final Accounting Schedules in WR-2020-0344 indicated that the Company had ~\$29 million in unspent income tax in the test year and Staff calculated ~\$20 million for the midpoint of the rate case.

<sup>8</sup> Please refer to my rebuttal concerning the Purcell purchase.

1           Therefore, MAWC recognizes additional income through a WSIRA rate change every six  
2           months, current rates from the purchased properties, income taxes built into rates, and  
3           collecting payments from AWWC through a tax agreement. MAWC has a substantial amount  
4           of free cash flow that should negate a great deal of adverse regulatory lag.

5           **Q.    You still argue for the Commission to allocate 2/3 of the accepted rate case expense to**  
6           **the Company and a 1/3 to the ratepayer. What is the logic behind this?**

7           A.    The Company has complete control over timing, content, and methodologies proposed when  
8           it files its rate case. More than 2/3 of this case is for MAWC's benefit. MAWC chose to  
9           return for a rate increase a year earlier than what OPC anticipated when it agreed to a three  
10          year normalization period for rate case expense. The Company has proposed an extended test  
11          year and included the cost of witnesses to argue this new issue for the Company's benefit. It  
12          also seeks "Discrete Adjustments," yet it did not propose additional revenues to match.  
13          MAWC is proposing "deferred depreciation" and "capitalization of post in-service carrying  
14          costs". These are two new arguments that solely benefit the Company. MAWC proposes a  
15          new "production cost tracker" also another Company only benefit. The Company also  
16          sponsors a witness for a "Revenue Stabilization Mechanism" ("RSM"). We also have the  
17          usual ROR witness. This is an extensive list of issues, most benefiting the Company only.

18          **Q.    You mentioned favorable legislation provided to MAWC. Can you explain this benefit?**

19          A.    The WSIRA legislation that provides interim (between general rate cases) rate relief is a huge  
20          benefit. Let's keep in mind that between WR-2020-0344 and WR-2022-0303 there is only a  
21          two year gap, yet the Company completed three WSIRA cases in that timeframe. Those three  
22          cases have supplied the Company nearly \$54 million in revenue requirement<sup>9</sup> since the last

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<sup>9</sup> LaGrand direct testimony, Table BWL-6, page 20, LaGrand rebuttal page 18, line 5.

1 case. Electric utilities have the Fuel Adjustment Clause to *recoup* costs between rate cases,  
2 but MAWC is provided a rate base rate of return with income tax funding included. Between  
3 expenses specifically incurred for the Company's benefit and a continual increase of funds  
4 between rate cases, MAWC should bear 2/3 of the rate case expense.

5 **Q. As Staff witnesses have pointed out, 50/50 sharing is the established norm. Why should**  
6 **the Commission step away from that standard in this case?**

7 A. The Commission can and should accept the specific 2/3 Company and 1/3 ratepayer split  
8 because the Commission would be setting just and reasonable rates under the particular facts  
9 of this case. However, if the Commission finds the 50/50 sharing more appropriate, then I  
10 encourage them to disallow the expenses that purely benefit the Company and then apply a  
11 50/50 division.

12 **Q. What should be the adjustment to rate case expense in this case?**

13 A. The prior rate case expense should be disallowed as well as the \$150,000 for a second law  
14 firm. The remaining cost of the depreciation study, \$70,491, should be normalized over three  
15 more years, therefore, \$23,497 should be built into rates. Finally, the Company should bear  
16 2/3 of the remaining cost, while the ratepayers should bear only 1/3. With an expected  
17 expense of \$740,000, the ratepayer should be responsible for a \$246,666 which is \$82,222  
18 normalized over three years.

19 **INCOME TAX EXPENSE AND CWC CALCULATIONS**

20 **Q. You have argued that income tax expense should be reduced to zero. Would that action**  
21 **result in a CWC income tax balance of zero?**

22 A. Yes it would. Zero multiplied by anything is zero. However, if the Commission decides that  
23 there should be some level of income tax built into the revenue requirement, then a 365 day



1 expense lag should be applied to the CWC balance to be consistent with the Commission  
2 ruling on unpaid income tax in the Spire general rate case, Case No. GR-2021-0108.

3 **Q. Has Staff changed this calculation in its Accounting Schedules?**

4 A. No. Staff maintains the standard Internal Revenue Service (“IRS”) quarterly payment  
5 scenario even though answers to its DR 0169 and to OPC’s DR 1303, mentioned in my Direct  
6 Testimony, indicate that MAWC receives money from American Water Works Company,  
7 Inc. (“AWWC”) instead of paying quarterly payments to a taxing authority.

8 **Q. Has Staff provided any documentation or explanation as to why it has ignored past  
9 Commission rulings<sup>10</sup> on this subject?**

10 A. I have not read any explanation from Staff.

11 **Q. Mr. LaGrand insinuates that without the tax sharing payments from the parent  
12 company, MAWC should record a net operating loss and apply a deferred tax asset to  
13 rate base. Is this a viable alternative?**

14 A. No. It has been established that a net operating loss (“NOL”) is a tax return item<sup>11</sup> and  
15 MAWC does not file stand-alone federal tax returns. The 2021 consolidated federal income  
16 tax return for AWWC did not record an NOL. AWWC may adjust its Tax Allocation  
17 Agreement so payments are not shared but the subsidiaries—including MAWC—could not  
18 record an NOL to substitute for the payments. The point of this argument is that MAWC does  
19 not owe any federal income tax. The Commission should either not apportion any in the

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<sup>10</sup> Case No. GR-2021-0108, Report & Order, Cash Working Capital issue, page 27-31.

<sup>11</sup> Case No. WO-2019-0184, Report & Order, page 6, first line: “an NOL is a tax return adjustment and not a regulatory item.”

1 revenue requirement or, if it does, then the Commission should apply a 365 day expense lag  
2 to the expense to be consistent with its ruling in Case No. GR-2021-0108.

3 **Q. Does this conclude your surrebuttal testimony?**

4 A. Yes it does.

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

In the Matter of the Application of Missouri-	)	
American Water Company's Request for	)	
Authority to Implement General Rate Increase	)	Case No. WR-2022-0303
for Water and Sewer Service Provided in	)	
Missouri Service Areas	)	

**AFFIDAVIT OF JOHN S. RILEY**

STATE OF MISSOURI    )  
                                  )    ss  
COUNTY OF COLE     )

John S. Riley, of lawful age and being first duly sworn, deposes and states:


1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.
  
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
  
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
John S. Riley  
Utility Regulatory Supervisor

Subscribed and sworn to me this 8<sup>th</sup> day of February 2023.



TIFFANY HILDEBRAND  
My Commission Expires  
August 8, 2023  
Cole County  
Commission #15637121

  
\_\_\_\_\_  
Tiffany Hildebrand  
Notary Public

My Commission expires August 8, 2023.