

**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 et al.

**REPLY BRIEF OF
MISSOURI INDUSTRIAL ENERGY CONSUMERS**

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Comes now the Missouri Industrial Energy Consumers (“MIEC”) and for its initial post-hearing brief states as follows:

A. INTRODUCTION

Like the Initial Brief of the MIEC, this Reply Brief will address the issue of the assignment of lead service line replacement costs and the issue of whether the Commission should maintain the current three-district pricing structure or make the leap to Single Tariff Pricing.¹ Although a number of parties in addition to Missouri American Water Company (“MAWC” or the “Company”) support Single Tariff Pricing, the other parties’ arguments are duplicative of MAWC’s, so this Reply Brief will only address MAWC’s on the issue of the appropriate water district structure. Finally, this brief will address MAWC’s late abandonment of its position that there should be two zones for Rate J customers.

B. ASSIGNMENT OF LEAD SERVICE LINE REPLACEMENT COSTS

Only four parties address the question of how lead service replacement costs should be spread to customers: the MIEC, the Office of the Public Counsel (“OPC”), the Staff and the

¹ MAWC uses the term “Consolidated Tariff Pricing,” but since the current three-district pricing structure already features significantly consolidated pricing, this brief will use the term “Single Tariff Pricing” to describe the fully consolidated approach advocated by MAWC and others.

Company. In its Initial Brief, the MIEC explained why the cost of each lead service line replacement can and should be directly assigned to the class that particular served, and detailed both the evidence supporting that position and the dearth of evidence supporting any other treatment. In their initial briefs, none of the parties present any significant argument in favor of any treatment other than the direct assignment proposed by the MIEC.

In its Initial Brief, OPC stated:

However, Public Counsel is generally supportive of continuation of the principles of cost causation unless the Commission orders a single-tariff, in which case it would reject cost causation principles for purposes of designing rates. In that instance, Public Counsel does not see why industrial customers should be shielded from these costs.²

OPC's position is essentially that if the Commission chooses not to follow cost-causation principles with respect to establishing Single Tariff Pricing, it should abandon cost causation principles entirely. This position cannot really be taken seriously. It is hard to imagine that in all future cases for all utilities, OPC will take the position that all costs should be allocated without any regard for cost causation. In this case, even if the Commission finds policy reasons in favor of Single Tariff Pricing to be more important than cost causation principles, such a finding does not mean that cost causation is no longer relevant or important. And the policy arguments in support of Single Tariff Pricing advanced by the parties who support it do not apply to lead service line replacement costs. If the Commission decides to do something with lead service line replacement costs, it must find reason to do so based on the record in this case. There is some evidence to support abandoning cost causation to establish Single Tariff Pricing (although weak), but there is **no** evidence to support abandoning cost causation with respect to lead service line replacements.

² OPC Brief, page 33

That is a point also clearly recognized by the Staff in its Initial Brief. Staff addressed the assignment or allocation of lead service line replacement costs among classes only in the context of a request by Chairman Hall to do so.³ The Staff concludes:

Upon review of the available record, there are no facts in the record that suggest whether any members of Rate B or Rate J may have lead service lines. If any industrial or sale for resale customers in Rate B or Rate J have LSLs, then despite difference in costs of replacement from Rate A or Rate J, there would be a basic underlying fact shared among the classes. Without that fact, to place sharing of some of the LSR costs upon Rate B and Rate J customers, the Commission would need to determine that the public policy implications greatly outweighed any counter-considerations. Without sufficient fact, the support for that policy decision is problematic.⁴

While the Commission does indeed have broad discretion to weigh factors other than cost causation in setting rates, that discretion is not unlimited. A decision spreading the costs of lead service line replacements to customers in all classes and all districts would be completely untethered from any party's position and to any evidence in this case. Such a decision, in this case on this record, would be unsupported by competent and substantial evidence, arbitrary and capricious, and an abuse of the Commission's discretion.

The only other party to address the proper assignment of lead service line replacement costs was the Company. In its brief, the company does not take issue with MIEC's proposed direct assignment approach. Indeed MAWC devotes just a few sentences to the issue:

Allocation of the LSLR costs will be adequately addressed by the accounting MAWC has recommended. As described below, the Company has proposed to record customer-owned LSLR restoration costs in Account 345 - Services. In a cost of service study, this account is allocated based on something called "Factor 9," which allocates costs based on the relative cost of service by size and customer classification. (Exh. 16, Heppenstall Reb. RD, p. 16) A factor based on the weighted number of services is a fair way to allocate these costs. (Id. at p. 17)⁵

³ As noted in MIEC's Initial Brief, the Staff position is in support of MIEC's proposed direct assignment of the costs of lead service line replacement costs.

⁴ Staff Initial Brief, pages 35-36; citation omitted.

⁵ MAWC Initial Brief, page 10.

MAWC makes no attempt to distance itself from the testimony at the hearing of its witness Heppenstall that direct assignment is better than allocation when possible, nor does it make any argument that it is not possible to directly assign lead service line replacement costs. Indeed, it does not even discuss any alternatives. It simply offers that its proposed allocation is fair. “Fair” is a relative concept, not an absolute one. The Factor 9 allocator may be more fair than complete socialization, but the Factor 9 allocator is a far cry from what even MAWC acknowledges is the most fair: direct assignment.

C. APPROPRIATE WATER DISTRICT STRUCTURE

In reviewing the briefs and the positions of the parties, the Commission should be mindful that almost all of the parties, including the MIEC, have skin in the game. Those parties that would benefit from a return to the eight-district structure support that change. Those that would benefit from Single Tariff Pricing advance policy reasons in support of that end. MAWC would see a substantial decrease in administrative and other costs from Single Tariff Pricing, and those decreases would go straight to the bottom line until the next rate case. The only two parties who do not have a specific monetary interest in the outcome of this issue are the Staff and OPC. The Staff’s only constituency is the Commission itself, and Staff serves to advise the Commission on the best course of action on all issues. OPC’s constituency is the public in general. It should be very compelling to the Commission that the only two parties without a financial stake, and whose only purpose is to see that the public interest is best served, support maintaining the current three-district structure.

Although MAWC and the other parties that stand to gain if the Commission adopts Single Tariff Pricing advance a number of arguments in support of that position, most of the

arguments were anticipated and have already been addressed in MIEC's Initial Brief. And as noted in the introduction of this brief, none of the other Single Tariff Pricing proponents offer any argument that is not also made by MAWC. Accordingly, this brief will address certain of MAWC's arguments, to the extent that they have not already been adequately addressed in MIEC's Initial Brief, in the order in which they appear in MAWC's Initial Brief.

MAWC's first argument in support of Single Tariff Pricing, at pages 23-24, is that it allows costs to be spread over a larger base. MAWC provides an illustration of spreading the costs of the new Parkville treatment plant investment to all customers, which does indeed show that the math works out to a lower cost to each customer charged. But it ignores the inequity of such a result. The vast majority of MAWC's customers will never be able to use a drop of water from that plant, but MAWC's approach would have them paying almost a dollar a month for it, and that payment will be required for decades.⁶ Another illustration shows just how inequitable this proposal is, and just how far afield it would take the Commission from its role as an economic regulator. A recent article in Newsweek⁷ noted that the cost of four rolls of toilet paper in Hawaii is \$6, but just \$3.86 in Washington. If the same supplier sold toilet paper in both states, it could lower the cost of the toilet paper in Hawaii by charging its Washington customers more. Of course this would never happen; prices for toilet paper are set by the market and the Washington customers would just go buy their toilet paper from another supplier. But it illustrates how badly the Commission would be distorting its role as an economic regulator if it were to force the captive customers of MAWC to do something that no customer in a

⁶ The amount of the payment will change over time from rate increases, depreciation and other factors, but under Single Tariff Pricing, non-benefitting customers will continue to pay for the plant until it is completely depreciated.

⁷ <http://www.newsweek.com/most-expensive-place-live-us-hawaii-toilet-paper-costs-more-628977>

competitive market would ever do. The Commission's role as a regulator is to act as a surrogate for competition, but the wholesale forced subsidization that would be caused by Single Tariff Pricing would be the antithesis of market discipline. Instead it would be a massive market distortion.

MAWC next raises an argument that, because the operation of each of its water systems follows the same broad outlines, the prices should be the same, regardless of how much the costs to operate those systems differ. Although none of the arguments in favor of Single Tariff Pricing are particularly strong, this one is perhaps the weakest. One could make the same arguments about MAWC and Spire Missouri, Inc.: they both “pump their [product] through transmission lines to distribution areas that include mains, booster pump stations and storage facilities. All of the areas provide [product] to individual customers through a service line and meter.”⁸ According to the strained logic of this argument, it would be perfectly reasonable to just average out the costs of providing service to all of Spire's customers and all of MAWC's customers and charge them all the same rate. That is to say, there really is no logic to this argument. Utility service has never been priced based on “equivalence of service.” Indeed, that phrase and that concept do not ever appear in the literature on utility regulation. This Commission is a creature of statute and has only those powers specifically given to it by the Legislature. In general, those powers establish the Commission as an economic regulator with authority to impose cost-of-service regulation on monopoly utilities. Nothing in its statutory charter gives the Commission the power to simply throw “cost of service” regulation out the window and instead adopt “equivalence of service” regulation.

⁸ MAWC Initial Brief, page 24.

MAWC claims that its Single Tariff Pricing proposal will allow it to purchase under-performing water utilities.⁹ But nothing in the record lends any support to this argument. Indeed the only evidence is that there have been no under-performing water utilities that MAWC did not purchase because it did not have Single Tariff Pricing, and that the current pricing structure allows MAWC to absorb these systems just as well as Single Tariff Pricing. This argument was addressed in MIEC's Initial Brief at page 9.

MAWC's next argument, at page 26 of its Initial Brief, is that Single Tariff Pricing somehow will promote economic development. MAWC correctly notes that regional and global competition is intense. But the notion that enforced cross-subsidies and market distortions will enhance Missouri's ability to compete in this environment is badly misplaced. As a representative of industrial customers, the MIEC would argue that the exact opposite is true: a system of regulation that does not distort and disguise the cost of providing utility service will enhance Missouri's ability to compete in these regional and global markets.

Finally, MAWC announces at page 28 of its Initial Brief that it no longer supports the position on Rate J that it has espoused throughout this entire case. MAWC says, without any citations to the record that actually support its new position,¹⁰ that "the move to fully consolidated rates for Rate[...]J would not be as significant as initially filed..."¹¹ Because of the timing of MAWC's decision to interject a new contested issue into the case at such a late stage of the proceeding, there is no evidence at all to support MAWC's claim about the significance of this change of position. As noted in MIEC's Motion to Strike, this change would indeed be very significant. Had there been an opportunity to address the question in testimony,

⁹ Ibid., at page 26.

¹⁰ MAWC's change of position is the subject of MIEC's Motion to Strike filed on April 6. MAWC's citations were discussed in that motion and that discussion will not be repeated herein.

¹¹ MAWC Initial Brief, page 28.

the MIEC would have been able to show how dramatic and punitive this change would be. Since the record is closed, there is no such testimony. But more to the point, there is no testimony to support MAWC's claim that this change is insignificant. The Commission should refuse to consider a new contested issue so late in the case, but even if it does consider this issue, it should find that there is no evidentiary support for a finding that a full consolidation of Rate J would not have a significant impact on Rate J customers.

D. CONCLUSION

For the reasons set forth herein, the Commission should: 1) order that the costs of lead service line replacements be directly assigned to the customer classes that the replaced lines served; 2) maintain the current three-district rate structure; and 3) decline to fully consolidate Rate J into a single rate even if it adopts Single Tariff Pricing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 9th day of April, 2018, to all counsel of record.

/s/ Lewis Mills

