

**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-2022-0303**

**STAFF’S INITIAL POST-HEARING BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), through counsel, and files *Staff’s Initial Post-Hearing Brief*.

**PROCEDURAL BACKGROUND**

On July 1, 2022, Missouri-American Water Company (“MAWC”) filed a tariff letter and tariff sheets to implement a general rate increase for water and sewer service. The tariff sheets were issued on July 1, 2022, with effective dates of July 31, 2022. These sheets propose to produce \$99.6 million in annual additional water and sewer revenues, or a 25.7% increase over revenues authorized in MAWC’s last general rate case<sup>1</sup> and subsequent Water and Sewer Infrastructure Rate Adjustment (“WSIRA”) cases.<sup>2</sup> On July 13, 2022, the Missouri Public Service Commission (“Commission”) suspended the tariff sheets for a period of 120 days plus an additional six months, until May 28, 2023.

On August 5, 2022, the Commission granted the unopposed applications to intervene of the The Empire District Electric Company (“Empire”); Midwest Energy Consumers Group (“MECG”); Missouri Industrial Energy Consumers (“MIEC”); Public Water Supply District No. 2 of Andrew County (“PWSD#2”); City of Riverside, Missouri (“Riverside”); City of St. Joseph, Missouri (“St. Joseph”); Sunnydale Properties;

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<sup>1</sup> Case No. WR-2020-0344.

<sup>2</sup> Case Nos. WO-2021-0428 and WO-2022-0176.

and Triumph Foods, LLC. The Commission granted the opposed application to intervene of Consumers' Council of Missouri ("CCM") on November 9, 2022.

The Commission, on August 17, 2022, established a test year of the 12 months ending June 30, 2022, trued-up through December 31, 2022; stated that the parties may submit discrete adjustments through May 31, 2023; and adopted a procedural schedule. Six local public hearings were held in person and via WebEx. On February 27, 2023, the Commission suspended the procedural schedule, based upon MAWC's motion,<sup>3</sup> which stated that MAWC, Staff, and the Office of the Public Counsel ("OPC"), reached an agreement in principle to the case's revenue requirement and that MAWC was not aware of any objection.

MAWC, Staff, OPC, CCM, MEEG, and St. Joseph filed a stipulation on March 3, 2023 resolving all issues, except class cost of service, rate design, and affiliate transactions rules. The other parties are not signatories to this stipulation but did not object to it. This stipulation provides that the signatories agree to a revenue requirement increase of approximately \$95 million, which includes approximately \$50.3 million collected through the WSIRA mechanism.

Staff, OPC, CCM, MEEG, MIEC, and PWSD#2 filed a stipulation on March 8, 2023 resolving cost of service and rate design. On March 10, 2023, MAWC, Staff, OPC, CCM, MEEG, MIEC, PWSD#2, Riverside, and St. Joseph filed a stipulation resolving cost of service and rate design. The other parties are not signatories to this stipulation but did not object to it. The parties intend the March 10 stipulation, which includes MAWC, to supersede the March 8 stipulation. MAWC timely objected to the March 8 stipulation.

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<sup>3</sup> MAWC filed the motion on behalf of itself, Staff, OPC, Empire, MEEG, MIEC, Riverside, and Sunnydale Properties.

On March 9, 2023, the parties held an evidentiary hearing on the affiliate transactions rules issue. The affiliate transactions rules issue has two subparts. The first is whether MAWC should be required to file a cost allocation manual (“CAM”) and the second is whether the Commission should open a new rulemaking docket in order to draft affiliate transactions rules for water and sewer.

On March 29, 2023, the parties presented the March 3 and March 10 stipulations to the Commission and responded to questions. The Commission has taken the stipulations under advisement.

## **ARGUMENT**

### **1. Should MAWC be required to file a Cost Allocation Manual with the Commission?**

OPC recommends that the Commission order MAWC to create and file a new CAM “that is guided by existing standards for other regulated utilities, informed by stakeholder input, and approved by the Commission.”<sup>4</sup> Staff and MAWC’s opinion is that the Commission should not order MAWC to file a CAM in this case, because the Commission ordered MAWC to annually file a CAM in its 2003 rate case, and MAWC is filing its CAM on an annual basis.<sup>5</sup> OPC has not described how MAWC’s current CAM is insufficient. Furthermore, as discussed in the second section of this brief, MAWC filing a second CAM would be premature, because Staff is working to promulgate water and sewer affiliate transactions rules.

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<sup>4</sup> Ex. 200, *Direct Testimony of Geoff Marke*, 13:7-9.

<sup>5</sup> Ex. 14, *Rebuttal Testimony of Brian W. LaGrand*, 25:11-26:2.

For background, parties – including MAWC, Staff, and OPC – filed a stipulation in MAWC’s 2003 rate case which states that MAWC shall provide an updated CAM to Staff and OPC each March 16:

7. Cost Allocation Manual (CAM). The Company will provide the Staff and OPC by March 16<sup>th</sup> of each year its updated CAM. The CAM will include the information that was provided as a schedule to Mr. Grubb’s Direct Testimony in this case. The information in the CAM will be updated each year. If any allocation factor should change during the year, this change will be provided to the Staff and OPC. Also included in the CAM will be reports that are routinely prepared on a monthly basis. Any report that is prepared specifically for the CAM would only have to be prepared on an annual basis. The reporting has been agreed to by the Company, Staff and OPC. These reports would be available monthly if requested by Staff in the context of a general rate case. Staff’s CAM requirement regarding monthly expense detail would not be required as part of the annual filing of the CAM. This information would be available as part of a future general rate case.<sup>6</sup>

The Commission approved this stipulation on April 6, 2004.<sup>7</sup> MAWC annually files a CAM and affiliate transactions report document. This document lists affiliates, describes goods and services provided to and received from affiliates, provides overhead cost pools, describes how American Water Works Service Company allocates and bills costs to MAWC and its other affiliates, contains copies of internal agreements, etc.<sup>8</sup>

To illustrate why it believes a second MAWC CAM is needed, OPC discusses the 2021 American Water Works Company (“AWWC”)’s<sup>9</sup> sale of American Water Resources

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<sup>6</sup> *Stipulation and Agreement as to Revenue Requirement*, WR-2003-0500 (Feb 24, 2004).

MAWC, Staff, and OPC were signatories to a nonunanimous stipulation in MAWC’s following rate case, which included nearly identical language. *Nonunanimous Stipulation and Agreement*, WR-2007-0216 (Aug 9, 2007). The Commission approved this stipulation on October 4, 2007. *Report and Order*, WR-2007-0216 (Oct 4, 2007).

<sup>7</sup> *Order Approving Stipulations and Agreements*, WR-2003-0500 (Apr 6, 2004).

<sup>8</sup> MAWC’s CAMs can be found in EFIS as a Non-Case Related Query under the Resources tab at the top of the EFIS homepage.

<sup>9</sup> AWWC is MAWC’s parent company.

Company (“AWRC”) <sup>10</sup> to an unrelated, unregulated third party.<sup>11</sup> Specifically, Dr. Marke takes issue that

MAWC customers were not compensated from this sale or the continued agreement for [the third party entity] to take advantage of the regulated utility’s brand recognition that caused an unfair and harmful competitive advantage relative to existing or potential competitors.<sup>12</sup>

AWWC is unregulated, therefore in the above quote Dr. Marke must refer to MAWC as the regulated utility. However, there is no evidence that MAWC had an ownership interest in AWRC’s brand recognition. It is unreasonable to suggest that MAWC ratepayers should be compensated for AWWC’s sale of a subsidiary when there is no evidence that MAWC ratepayers contributed MAWC resources to the subsidiary.<sup>13</sup>

Further, the purpose of affiliate transactions rules is to prevent a regulated utility from providing a financial advantage to an affiliate when it purchases or sells good or services.<sup>14</sup> When AWWC owned AWRC, AWRC and MAWC were affiliates, because at that time AWRC and MAWC shared a common owner.<sup>15</sup> OPC does not explain what goods or services MAWC sold to or bought from AWRC, or how affiliate transactions rules

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<sup>10</sup> AWRC provides homeowners and landlords with numerous “protection programs” for electric, gas, water, and sewer lines; heating and cooling systems; water heaters; etc. According to its website, AWRC operates in 43 states and Washington, D.C. with more than 2 million service line contracts. [Home Service Line Warranties | American Water Resources \(awrusa.com\)](#)

<sup>11</sup> Ex. 200, *Direct Testimony of Geoff Marke*, 7:11-8:10.

<sup>12</sup> *Id.* at 8:7-10.

<sup>13</sup> OPC witness Angela Schaben states that it appears that MAWC ratepayer information is being used to benefit AWWC and subsidize non-regulated operations. AWRC is sending advertising mailings to MAWC customers, and according to the terms of the AWWC – AWRC sale, AWWC receives a portion of AWRC revenues from new and existing MAWC customers. As evidence of this, Ms. Schaben provides a redacted 2021 mailing from AWRC to a MAWC customer. However, MAWC stated in response to a data request that a MAWC customer list has not been provided to AWRC since 2003. *Direct Testimony of Angela Schaben*, 5:8-21. An equally – if not more – plausible explanation for this letter is that AWRC merged MAWC’s publically-available service area data with any database containing resident address information.

<sup>14</sup> *Direct Testimony of Angela Schaben*, 4:12-13.

<sup>15</sup> Affiliated entity is defined at 20 CSR 4240-20.015(1)(A) and 20 CSR 4240-40.015(1)(A) as “any person, including an individual, corporation, service company, corporate subsidiary ... which directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated [utility].”

would have prevented harm to MAWC customers. The sale of an affiliate does not automatically trigger the affiliate transactions rules.

In summary, affiliate transactions rules would not have applied anyway to the AWWC – AWRC sale. OPC reliance on this transaction as evidence why the Commission should order MAWC to file a second CAM is misplaced. Because MAWC has been filing CAMs and absent any showing that they are inadequate, the Commission should not order MAWC to file an additional CAM in this case.

**2. Should the Commission open a new rulemaking docket in order to draft affiliate transactions rules for water and sewer?**

OPC recommends that the Commission close Case No. AW-2018-0394 and open a new WX water rulemaking docket that adopts the rules Staff forwarded in Case No. WR-2003-0500. These draft rules mirror current electric and gas affiliate transactions rules by adding the word “water.”<sup>16</sup> Staff agrees with OPC that affiliate transactions rules are needed for water and sewer utilities with more than 8,000 customers. However, Staff disagrees with OPC that simply adding the word “water” is a solution, because Staff is aware of needed clarifications to the current electric and gas affiliate transactions rules.<sup>17</sup> MAWC disagrees that water and sewer utilities should be subject to affiliate transactions rules, but it agrees with Staff that Case No. AW-2018-0394 should be used to resolve the issue.<sup>18</sup>

For background, Staff moved to open Case No. AW-2018-0394 in June 2018 as a working case to review and consider rewriting and writing affiliate transactions rules for

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<sup>16</sup> Ex. 200, *Direct Testimony of Geoff Marke*, 13:12-16. These draft rules are attached to Exhibit 200 as Attachment 6.

<sup>17</sup> Ex. 115, *Rebuttal Testimony of Kimberly K. Bolin*, 23:20-24:9.

<sup>18</sup> Ex. 15, *Surrebuttal Testimony of Brian W. LaGrand*, 26:6-10.

electric and gas utilities and for water and sewer utilities with more than 8,000 customers.<sup>19</sup> At the same time, Staff moved to open a related working case, Case No. AW-2018-0393, to draft new rules regarding the treatment of customer information. The Commission opened a working case in both dockets, ordered notice be sent to all Missouri utility stakeholders, and invited written comments.<sup>20</sup> Staff hosted a workshop, and the Commission ordered Staff to file draft rules by September 16, 2019.<sup>21</sup> In all, stakeholders and OPC filed two rounds of comments, with parties responding to each other, and Staff filed three draft rules. On February 26, 2020, the Commission invited stakeholders to file comments regarding the estimated costs that would be incurred to comply with Staff's proposed rules, which parties responded to.<sup>22</sup>

Staff's approach to the affiliate transactions docket has been to address implementation issues in the existing rules at the same time that it promulgates new water and sewer rules. As attractive as substituting the words "water and sewer" for "gas" and "electric" might appear in order to create new water and sewer rules, doing this would only perpetuate concerns with existing rules. For example, 20 CSR 4240-20.015(2)(E) and 20 CSR 4240-40.015(2)(E) require electric and gas utilities to annually file a CAM. Commission rules 20 CSR 4240-20.015(3)(D) and 20 CSR 4240-40.015(3)(D) mention a "commission-approved CAM," but there are no approval procedures for the Commission to follow.

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<sup>19</sup> The Commission's rules currently contain affiliate transactions sections for electricity and gas utilities. The electric affiliate transactions rules are located at 20 CSR 4240-20.015, and the gas rules are located at 20 CSR 4240-40.015. There are no rules for water and sewer utilities.

<sup>20</sup> *Order Opening a Working Case to Consider New and Revised Rules Regarding Affiliate Transactions and HVAC Affiliate Transactions*, AW-2018-0394 (July 11, 2018) and *Order Opening a Working Case to Consider a New Rule Regarding the Treatment of Customer Information*, AW-2018-0393 (July 11, 2018).

<sup>21</sup> *Order Directing Staff to File a Draft Rule*, AW-2018-0394 and AW-2018-0393 (July 17, 2019).

<sup>22</sup> *Order Requesting Cost of Compliance Responses*, AW-2018-0394 and AW-2018-0393 (Feb 26, 2020).

Additionally, 20 CSR 4240-20.015(4)(B) and 20 CSR 4240-40.015(4)(B) discuss an annual report describing affiliate transactions activities during the prior year. There is some confusion about the difference between this this report and the CAM, which the draft rules clarify. There is also confusion regarding how utilities document costs for affiliate transactions, and Staff addresses this in the draft rules. And finally, the current rules appear in both the electric and gas sections. The draft rules consolidate affiliate transactions rules into one place, in 20 CSR 4240-10, which is consistent with the mandates of Executive Order 17-03 to consolidate and streamline regulations and make them more user-friendly.

As the undersigned counsel explained in her opening statement at hearing, the status of these dockets is that Staff has an internal draft of new affiliate transactions rules. Staff must complete the forms required by the Secretary of State, finalize draft rules in Case Nos. AW-2018-0393 and AW-2018-0394, and then move both forward with formal rulemakings.<sup>23</sup> Starting the process over from the beginning, as OPC requests, will put the brakes on current work and delay the implementation of new rules. And significantly, it will negate the participation of stakeholders and OPC who expended resources to participate in rulemaking workshops and provide feedback and comments to assist Staff get the draft rules to this stage.

It should be seen from the efforts of Staff, OPC, utilities, and other interested parties in these rulemaking dockets that drafting new affiliate transactions rules for water and sewer is more complicated than “just add[ing] water.”<sup>24</sup> The Commission should not open another docket for the drafting of water and sewer affiliate transactions rules.

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<sup>23</sup> Tr. 59:22-60:2.

<sup>24</sup> *Id.* at 64:24-25.

**WHEREFORE**, Staff files this initial brief for the Commission's information and consideration.

Respectfully submitted,

**/s/ Karen E. Bretz**

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**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing have been electronically mailed to all counsel of record on this 31<sup>st</sup> day of March, 2023.

**/s/ Karen E. Bretz**