

**BEFORE THE PUBLIC SERVICE COMMISSION
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)
Service Provided in Missouri Service Areas.)

**MOTION OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS TO STRIKE A
PORTION OF THE INITIAL BRIEF MISSOURI AMERICAN WATER COMPANY**

Comes now the Missouri Industrial Energy Consumers ("MIEC") and for its Motion to Strike a Portion of the Initial Brief of Missouri American Water Company (“MAWC” or the “Company”) states as follows:

1. In its Initial Brief, MAWC stated:

In its initial filing, the Company proposed to maintain uniform statewide customer charges by meter size for all its Rate A customers. In addition, it proposed uniform volumetric rates for the residential and non-residential customer classes (i.e., residential, small commercial and industrial and other public authorities) and two volumetric rates for Rate B (sale for resale) and Rate J (large industrial) (i.e., one rate for District 1 and another rate for Districts 2 and 3 combined). As a result of the stipulation in this case, which significantly reduced the total revenue requirement for the Company from approximately \$369,000,000 as contained in its initial filing, to the \$318,000,000, contained in the stipulation, the Company determined that the move to fully consolidated rates for Rates B and J would not be as significant as initially filed **and it now proposes to implement consolidated rates for those two rate groups as well.**¹

MAWC gives a number of cites to the record to support this 11th hour change of position, which will be discussed in detail below. There is no testimony whatsoever to support it – no prefiled testimony and no testimony at the evidentiary hearing – nor is there any probative evidence that supports it.²

¹ MAWC Initial Brief, pages 27-28; emphasis added.

² Staff Exhibit 136 can be viewed as showing the effect of this late change, but that is simply an illustrative exhibit designed to show the general difference between the Staff’s three-district approach and MAWC’s consolidated pricing approach. None of the witnesses who addressed it

2. MAWC's first citation to the record in support of its change of position on Rate J is to Exhibit 15, Heppenstall Direct Testimony, pages 10-11. Far from supporting a complete consolidation of Rate J, that testimony supports the position on Rate J that the Company took in this case all the way through – in testimony, in settlement discussions, and at the hearing³ – that “a volumetric rate for ... Rate J for two rate zones” was appropriate. Of critical importance is the fact that no party disputed MAWC's proposal to implement a two-zone Rate J, and so it was never treated as a contested issue.

3. The next citation that MAWC provides is to MAWC witness Heppenstall's Surrebuttal Testimony. At the cited page of that testimony, Ms. Heppenstall does not even mention Rate J, but simply expresses the Company's willingness to consider full consolidation of Rate B. In fact, both of the last two citations provided by MAWC in its Initial Brief only address Rate B. At page 601 of the transcript, counsel for the public water supply districts of Andrew County asked MAWC witness Jenkins to confirm that Exhibit 136 showed a complete consolidation of Rate B. And at pages 642-643 of the transcript, counsel for the public water supply districts of Andrew County asked MAWC witness Heppenstall about Rate B. In total, MAWC cites two pieces of prefiled testimony and two brief exchanges at the evidentiary hearing. The only one of these four that even addresses Rate J supports the appropriateness of “a

mentioned consolidating the Rate J rates, and nothing in the exhibit itself addresses the consolidation of Rate J rates. It is not competent and substantial evidence on which the Commission can rely to find that complete consolidation of Rate J would be in the public interest.

³ At the evidentiary hearing, an attorney for the Company vaguely alluded to a full consolidation but never actually stated that the Company had changed its position: “the Company feels that with that reduction in revenue requirement that it is not as large a step to consolidate rate J and rate B on a full -- on a statewide basis. So, that's what you will see in the exhibit that we've handed out.” (Transcript, page 545) None of the witnesses at the hearing addressed full consolidation of Rate J; the only mention is an attorney's oblique reference.

volumetric rate for ... Rate J for two rate zones.”⁴ Moreover, in its Statement of Position, MAWC cited to this exact same piece of testimony, giving no indication that its position had changed.

4. The MIEC is prejudiced by MAWC’s last second change of position. Had MAWC provided testimony supporting full consolidation, the MIEC would have had the opportunity to provide counter testimony. The only justification in MAWC’s Initial Brief (at page 28) is that “the move to fully consolidated rates for Rates B and J would not be as significant as initially filed....” While this is simply argument in a brief and does not constitute competent and substantial evidence, the MIEC could have – and certainly would have – provided compelling evidence of the lack of any benefit and the substantial harm caused by such consolidation to counter MAWC’s claim had it been made at a more appropriate time in the proceeding. By waiting until after the filing of testimony was complete, or arguably even after the evidentiary record was entirely closed, to change its position on this critical issue, MAWC has precluded the MIEC from offering any countervailing evidence. If the Commission countenances the change of position, it will be depriving the MIEC of due process and the opportunity for a fair hearing.

WHEREFORE, the MIEC respectfully requests that the Commission: 1) strike the sentence at pages 27-28 of MAWC’s Initial Brief that says:

As a result of the stipulation in this case, which significantly reduced the total revenue requirement for the Company from approximately \$369,000,000 as contained in its initial filing, to the \$318,000,000, contained in the stipulation, the Company determined that the move to fully consolidated rates for Rates B and J would not be as significant as initially filed and it now proposes to implement consolidated rates for those two rate groups as well;

⁴ Exhibit 15, Heppenstall Direct, pages 10-11.

2) decline to consider full consolidation of Rate J as a contested issue in this case; and 3) grant such other relief as the Commission finds reasonable in the circumstances.

Respectfully submitted,

BRYAN CAVE, LLP

By: /s/ Lewis Mills

Lewis R. Mills, #35275
Edward F. Downey, # 28866
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
Telephone: (573) 556-6620
Facsimile: (573) 556-6630
E-mail:
lewis.mills@bryancave.com
efdowney@bryancave.com

Diana M. Vuylsteke, # 42419
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
E-mail: dmvuylsteke@bryancave.com

Attorneys for the Missouri
Industrial Energy Consumers

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 6th day of April, 2018, to all parties on the Commission's service list in this case.

/s/ Lewis Mills