

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

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| In the Matter of the Application of |) | |
| Missouri-American Water Company for an |) | <u>File No. WU-2017-0351</u> |
| Accounting Order Related to Property |) | |
| Taxes in St. Louis County and Platte County |) | |

POST- HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Post Hearing Brief*, states as follows:

Missouri-American Water Company ("MAWC") filed this request for an accounting authority order ("AAO") to collect approximately \$4.8 million in 2017 and \$2.7 million in 2018,¹ amounts representing the difference in tax liability from prior years in the counties of Platte and St. Louis County. Under applicable accounting standards and Commission precedent, AAO requests are evaluated using a two-pronged test. An item or event must be an extraordinary and non-reoccurring expense or event, or not an ordinary cost of business, to be eligible for deferral.² Only if the item is deemed extraordinary does the materiality aspect apply, which is, whether the impact of the event or expense would amount to a 5% impact on net annual income.³ Increases in property taxes are one of the most ordinary, reoccurring changes in costs that a utility can incur. Because MAWC's request does not meet the extraordinary standard, there is no need to address the materiality aspect of the request, and the Commission should deny MAWC's request.

¹ MAWC'S *Statement of Position*, filed October 30, 2017.

² Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p 3, lines 10-23.

³ "[A]n item should be more than approximately 5 percent of income...Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary" State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of Missouri, 858 S.W.2d 806, 810 (Mo. Ct. App. 1993).

ARGUMENT

Should the Commission grant MAWC the Accounting Authority Order it has requested in this case?

No, MAWC has not met the standards for an AAO and therefore the Commission should deny MAWC's request.

At the outset, Commission guidance regarding AAOs suggests any cost deferral to be booked under Account 186 must be extraordinary and significant. The Uniform System of Accounts ("USOA") for Class A Water Utilities, Instruction 7 states:

Those items related to the effects of events and transactions which have occurred during the period and which are not typical or customary business activities of the company shall be considered extraordinary items. Commission approval must be obtained to treat an item as extraordinary.⁴

In simpler terms, to qualify, an event or transaction should be non-reoccurring as well as not a business activity of a type that the company would be expected to regularly engage.

The St. Louis County property tax is not extraordinary

MAWC first argues that the 20-year life methodology used by St. Louis County is extraordinary, as MAWC had been paying taxes under a 7-year life span methodology.⁵ It should be noted at the outset that St. Louis County is not changing their tax methodology as MAWC claims. In 2007, a statutory change was made that changed the Modified Accelerated Cost Recovery System ("MACRS") from a 7-year recovery life

⁴ See Uniform System of Accounts for Class A Water Utilities, National Association of Regulatory Utility Commissioners, pg. 16 (1996).

⁵ Ex. 1, Direct Testimony of John Wilde, p. 4, lines 21-23.

span to a 20-year recovery life span.⁶ St. Louis County did not decide, in 2017, to change how St. Louis County assessed MAWC. St. Louis County is only ensuring that MAWC is reporting using the correct recovery period.⁷ St. Louis County is simply requiring MAWC rectify a mistake made in calculating its taxes.⁸ Labeling St. Louis County's actions as a "dramatic, drastic shift"⁹ in policy is misleading, as MAWC had been under obligation, as a sophisticated self-reporting utility, to use the correct MACR life.¹⁰ The appropriate MACRS class life is outlined as part of the Federal Internal Revenue Service code, which MAWC is also obligated to follow.¹¹ MAWC has correctly assessed its property under the 20-year life span in the other 23 counties in which it operates.¹² This fact makes it unlikely that using a 20-year life span is a dramatic, extraordinary shift, unexpected by MAWC. Rather, it is evident that utilizing a 20-year life is an ordinary, reoccurring part of assessing taxes for MAWC, thus not appropriate for an AAO. The evidence presented by Ms. Suzanne Strain on behalf of St. Louis County clearly refutes any argument that St. Louis County's use of a 20-year life span was a sudden, extraordinary policy change requiring an AAO.¹³

Even for actual changes in taxing methodology, Staff does not find actions taken to change the parameters of how utility assets are assessed by taxing authorities to be

⁶ As an abbreviated explanation, the longer the indicated asset life, the lower the depreciation rate. The lower the depreciation rate, the higher the property taxes assessed on property.

⁷ Tr. 1; 181:13-18.

⁸ *Id.* 19-21.

⁹ Ex. 5, Surrebuttal Testimony of Brian W. LaGrand, p. 5, lines 9-14.

¹⁰ Tr. 1; 182:18-25-183:1.

¹¹ *Id.* 181:22-25-182:1-2.

¹² Ex. 3, Staff Data Request.

¹³ See Tr. 1: pages 171-204.

extraordinary, as the term is used in Commission precedent. Changes in taxing methodology or increases in tax rates should be considered as part of the ordinary discretion available to those bodies, and should not be considered inherently extraordinary in nature.¹⁴ Therefore, as it applies to the Platte County move to a 50-year life span, this move is merely part of the ordinary discretion for the Platte County taxing authority, and not extraordinary. Commission precedent has previously stated the following as the standard for extraordinary:

Those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company.... Accordingly, they will be events and transactions of significant effect that would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business¹⁵

Paying taxes is an ordinary, customary business activity of all companies. Paying higher taxes due to changes in taxing methodology, higher assessments, or increases in taxable assets is also a reoccurring reality of business. These increases are not unusual or non-reoccurring, such as an “Act of God”, a new regulation requiring a costly environmental upgrade, or an unusual, non-reoccurring action taken due to policy considerations. The latter are the classic examples of extraordinary events that impact utility operations.¹⁶ Because such events are so extraordinary and unusual, the associated costs are not included in rates on an ongoing basis, sparking the need for the deferral accounting to recognize these costs without impacting a utility’s financial

¹⁴ Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p. 8, lines 8-11.

¹⁵ ***State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm’n of Missouri***, 858 S.W.2d 806, 810 (Mo. Ct. App. 1993).

¹⁶ Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p. 3, lines 16-19.

statement.¹⁷ However, taxes are such an ordinary business expense that some level is built into rates at all times. Many expense items that MAWC incurs are subject to increases in cost, some due to changes in cost calculations. Property taxes are just one such example, among items such as postage, union wages, and a myriad of others. Property taxes, like all of those above-mentioned items, are incurred annually, and have a level baked into rates, making them ordinary and reoccurring, thus failing the extraordinary prong of the AAO standard.

The Platte County property tax does not meet the AAO standard

Under Staff's view of the ordinary discretion available to taxing authorities, Platte County's shift to a 50-year life span is not extraordinary, for all the reasons stated above regarding a local taxing authority's discretion. Nevertheless, if the Commission found that move to a 50-year life span was extraordinary, MAWC's request would still not meet the standards required for an AAO. Platte County's movement to a 50-year life span is not a transaction or event tied to St. Louis County's 20-year life span requirement. As the Office of Public Counsel's ("OPC") tax expert, Mr. John Riley, asserted during the evidentiary hearing, these are two separate transactions.¹⁸ To qualify for an AAO, the St. Louis County transaction has to be both extraordinary and material.¹⁹ Similarly, to qualify for an AAO, the Platte County transaction has to be both extraordinary and material.²⁰ The transaction involving Platte County's impact on

¹⁷ Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p. 3, lines 20-22.

¹⁸ Tr. 1; 161:22-24, 163:12-14.

¹⁹ *Id.* 164:23-25-164:1.

²⁰ *Id.* 164:11-17.

earnings is only \$400,000 annually for *both* 2017 and 2018.²¹ The transaction involving Platte County does not meet the materiality threshold, and therefore an AAO is not appropriate. MAWC cannot, even assuming its argument regarding the alleged extraordinary nature of the Platte County change is accepted, piecemeal the material impact from the St. Louis County transaction with the transaction relating to Platte County's move to a 50-year life span.²² St. Louis County's transaction is not extraordinary and is thus inappropriate for an AAO. Similarly, Platte County's is, at the very least, not material, and is therefore not appropriate for an AAO.

MAWC argues that the increases in tax liability are extraordinary because of their impact. This puts the cart before the horse. An event or transaction must be extraordinary first and material second.²³ Many transactions and events have a material impact on utilities, but without an unusual, nonrecurring, or extraordinary quality to them, significant impact on earnings alone is not enough to grant an AAO. For instance, a large plant addition, such as a new treatment facility or a new generating facility, could dramatically increase property taxes.²⁴ This dramatic increase could be material, but would not be extraordinary, nor has the Commission ever granted an AAO for increases in property taxes due to new plant.²⁵ Granting AAOs based on the materiality of the

²¹ Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p. 6, line 5.

²² Tr. 163:19-22.

²³ Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p. 3, lines 10-23.

²⁴ Tr. 154:23-25-155:1-6.

²⁵ *Id.* 7-10.

costs in question would transform the use of AAOs in this jurisdiction to a safeguard for utility earning levels.²⁶

ADDITIONAL ISSUES RAISED BY OPC

Finally, as Staff believes the only issue in front of the Commission - is should MAWC receive the AAO it has requested - Staff has limited its brief to salient points necessary for the Commission to make its decision on that issue. However, as brief response to OPC's additional issues, Staff restates the following.

If granted, when should the deferred debit amortization begin?

If the AAO is granted, Staff recommends that MAWC be ordered to start amortizing any deferral authorized in this proceeding by no later than April 1, 2018.

If granted, should the Commission AAO Order direct MAWC to create a regulatory asset or simply allow MAWC to defer the expenses as a miscellaneous deferred debit to USOA Account 186?

In Staff's opinion, the Commission should order MAWC to record any deferred costs in NARUC USOA Account 186 Miscellaneous Deferred Debits per Commission rules.

CONCLUSION

The Commission should not grant the AAO MAWC has requested in this case. The movement to a 15-year and a 20-year life from a 7-year life for certain assets by the St. Louis County tax authority is not extraordinary. This change is not unusual or non-reoccurring, such as an "Act of God," a new regulation requiring a costly

²⁶ Ex. 6, Rebuttal Testimony of Mark Oligschlaeger, p. 8, lines 21-23.

environmental upgrade, or an unusual, non-reoccurring action taken due to policy considerations. Since property taxes are incurred on an annual basis, making them ordinary and reoccurring, and since St. Louis County will begin assessing property in the same manner as MAWC's 23 other counties, MAWC's property taxes for St. Louis County are not extraordinary. Platte County's move to a 50-year life is more unusual, but on its own does not meet the materiality guideline of 5% impact on earnings to receive an AAO.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will issue its findings of fact and conclusions of law as recommended by the Staff herein; and granting such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Nicole Mers

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 22nd day of November 2017, to all counsel of record.

/s/ Nicole Mers