

**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**

**SUGGESTIONS IN OPPOSITION  
TO MISSOURI-AMERICAN’S MOTION FOR VARIANCE**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its *Suggestions in Opposition to Missouri-American’s Motion for Variance*, states the following:

1. On August 24, 2017, Missouri-American filed its *Motion to Establish Procedural Schedule And, if Necessary, Motion for Variance (Motion for Variance)*, requesting the Commission adopt a procedural schedule that is contrary to 4 CSR 240-2.130(7), a standard of practice described within the Commission’s Chapter 2 rules of Practice and Procedure.

2. Requesting variance of 4 CSR 240-2.130(7), Missouri-American seeks, among other things, to have the Commission direct Staff and other non-Company parties “to respond to MAWC’s direct testimony in the non-Company ‘direct testimony.’”<sup>1</sup>

3. Staff objects to a variance of 4 CSR 240-2.130(7).

**Argument**

4. Commission regulation 4 CSR 240-2.130 describes the Commission procedures around the presenting and taking of evidence upon the record. Subsection 7

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<sup>1</sup> WR-2017-0285, EFIS Item No. 58, MAWC’s *Motion to Establish Procedural Schedule, and, if necessary, Motion for Variance*, p. 4, ¶ 10.

specifically addresses the filing and nature of prepared testimony. Specifically, 4 CSR 240-2.130(7) states that:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) **Direct testimony** shall include all testimony and exhibits **asserting and explaining that party's entire case-in-chief;**

(B) **Where all parties file direct testimony,** rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. **A party need not file direct testimony to be able to file rebuttal testimony;**

(C) **Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case;** and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony. (Emphasis added).

5. Missouri-American primarily argues that the variance is necessary because "there is no reason that non-Company parties should be unable to examine and respond to the Company's direct case over a five month period."<sup>2</sup>

6. Missouri-American's statement glosses over the reason that is the basis of the different filing deadlines. During the time between the Company and non-Company Direct Testimony filings, *Staff is conducting a complete, thorough, and necessary audit of Missouri-American's books and records.*

7. Staff uses this extensive audit to prepare a full and separate "case-in-chief" that it presents to the Commission for consideration, pursuant to 4 CSR 240-2.130(7)(A).

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<sup>2</sup> EFIS Item No. 58, *MAWC's Motion to Establish Procedural Schedule, and, if Necessary, Motion for Variance*, p. 4, ¶ 10.

8. Nothing in 4 CSR 240-2.130(7) requires that different parties' Direct Testimony must be filed at the same time. There is a simple, practical reason behind this practice.

9. When Staff presents its case-in-chief, it must do so, according to the Commission's practice rules (4 CSR 240-2.130(7)(A)), by providing all testimony and exhibits that assert and explain its position. Staff cannot, either legally or practically speaking, put on a direct case *without* the information to which the Company is already privy at the start of the case.

10. Staff is not the Company. It does not have at its fingertips prior to the outset of the case all of the data, documents, accounting information, transaction history, invoices, work orders, engineering reports, etc. that the Company maintains and relies upon for its direct case. This informational imbalance between what Missouri-American knows and uses from a time before a rate case begins, and what Staff and other non-Company parties must learn through the course of the case with discovery, is called "information asymmetry."

11. The effects of information asymmetry are stark with the following consideration: the Company has no time restriction for when it files its direct case. Missouri-American can take whatever time it wants to review underlying data and prepare its direct materials. Conversely, the Staff must conduct an audit to learn the underlying data, and prepare and present a direct case within a definitive statutory time-frame. With its *Motion for Variance*, the Company now seeks to *combine* the functions of that limited amount of time, and as a result further shorten the time for Staff to put on *both* a direct case and file rebuttal testimony.

12. Further, there is no guarantee that a party can obtain necessary information *prior* to the start of a rate case. In *In re Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, Case No. GR-2017-0215, the Commission issued an order denying the Office of the Public Counsel's *Motion to Compel* for discovery that it propounded upon Laclede after the 60-day notice, but prior to Laclede filing its direct case. In denying the motion, the Commission held that:

The 60-day notice filing does not itself institute a case, and indeed, a case may never be instituted. Thus, the 60-day notice filing should not be interpreted to allow Public Counsel, *or any other potential party*, to get a head start on case related discovery.<sup>3</sup> (Emphasis added).

Nevertheless, even if Staff obtained all of the necessary information for the audit *prior* to the start of a rate case, there would still be a practical delay between the receipt of that information and the completion of a full, thorough and objective audit.

13. Combining direct and rebuttal into a single filing does not create a “cleaner hearing record” for the Commission, but may instead do the opposite. The Company asserts that by combining non-Company direct and rebuttal testimony, Missouri-American could provide a “full response to all issues . . . in rebuttal testimony.”<sup>4</sup> However, practically speaking, what that means and how it would function is unclear. Would the Company rebut all of the direct cases-in-chief presented by the parties, and sur-rebut non-Company rebuttal, all in the same testimony? To be able to follow the arguments in such a combined response, the Company’s rebuttal testimony would need to identify whether it was rebuttal or surrebuttal and to which direct or rebuttal it would

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<sup>3</sup> *In re Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, Case No. GR-2017-0215, EFIS Item No. 7, *Order Regarding Motion to Compel Discovery*, p. 4.

<sup>4</sup> WR-2017-0285, EFIS Item No. 58, *MAWC's Motion to Establish Procedural Schedule, and, if Necessary, Motion for Variance*, p. 4, ¶ 1

be responsive.

14. At any rate, the combined direct and rebuttal approach offers Missouri-American two surrebuttal-like opportunities to refute non-Company positions, while no such benefit exists to the non-Company parties.

15. With the Company's added confusion of combining direct and rebuttal testimony, it is not surprising that the Company would also request combining the revenue requirement and rate design rebuttal testimonies. Due to the analysis required in addressing competing rate design proposals, as well as maintaining clear threads of argument, Staff prefers to keep revenue requirement and rate design rebuttals separate. However, of all of the Company's proposals, joining the revenue requirement and rate design rebuttal together is the least disruptive.

16. Finally, the Company is not disadvantaged by the current process. First, the current process works. Second, the Company is on notice as to what items will likely be contested upon reading Staff's direct case. In both the *Non-Unanimous Joint Proposed Procedural Schedule*<sup>5</sup> and the Company's proposed Procedural Schedule<sup>6</sup> are dates for Technical Conferences immediately after parties file direct testimony, to allow the parties to narrow the issues. Points of contention are further narrowed by rebuttal and surrebuttal. Finally, issues coalesce into clear questions for hearing when the parties file an "Issues List" that identifies the questions the Commission must decide. The parties then, prior to hearing, file "Position Statements" on those issues, so that the Commission knows ahead of the hearing the parties' various arguments regarding a particular issue.

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<sup>5</sup> See, EFIS Item No. 57.

<sup>6</sup> See, EFIS Item No. 58, Appendix A.

## Conclusion

17. The Staff's role before the Commission is to serve as a neutral, independent party, presenting Staff's recommended resolution of a question before the Commission, as well as presenting viable alternatives with supporting analyses and documentation, as applicable. That requires the Staff to conduct a full and thorough audit, so that the Staff may present a case-in-chief for its recommended resolution. Due to information asymmetry, the Staff does not have access to the necessary data required to produce that case until a rate case begins. This necessarily creates a delay in filing separate direct testimony. By collapsing Staff's direct and rebuttal testimony, the Commission would deny Staff the ability to fully develop its case-in-chief and provide thoughtful rebuttal testimony, provide Missouri-American two opportunities to refute non-Company direct and rebuttal testimony without a corresponding benefit to non-Company parties, and compound the effects of information asymmetry onto non-Company parties.

**WHEREFORE**, Staff respectfully requests the Commission issue an order denying Missouri-American's *Motion for Variance*, and grant any further relief that is just and reasonable under the circumstances.

Respectfully Submitted,

**/s/ Jacob T. Westen**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and or counsel of record on this 28<sup>th</sup> day of August, 2017.

**/s/ Jacob T. Westen**