**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 Accounting Order Related to Property Taxes in St. Louis County and Platte County | ) ) ) ) | **File No. WU-2017-0351** |

**THE OFFICE OF THE PUBLIC COUNSEL'S REPLY BRIEF**

COMES NOW the Office of the Public Counsel ("Public Counsel" or "OPC") and presents its reply brief to the Missouri Public Service Commission ("Commission") as follows[1]:

**Introduction**

1. The Commission should deny Missouri-American Water Company's ("MAWC") request for an Accounting Authority Order ("AAO") relating to its tax obligations in St. Louis County and Platte County. Importantly, these are separate tax obligations assessed by two unrelated taxing authorities on separate sides of the State. MAWC's attempt to blend the two tax events for purposes of an AAO are inappropriate and should be rejected. Moreover, regardless of whether the tax obligations due in St. Louis and Platte Counties are viewed separately or together, they are not extraordinary and material.

**The tax obligations due in St. Louis and Platte Counties are not a single event**

2. In its initial brief, MAWC claims that the purported change in tax assessment methodology in these counties arises from a "single and identifiable event." In support of its position, MAWC alleges that the single event is "recent State Tax Commission decisions involving Ameren and Laclede Gas" (MAWC Br. p. 10). The Commission should note that MAWC's example of the

[1] Any issue or argument treated in Public Counsel's Post-Hearing Brief not addressed specifically below is hereby adopted and incorporated as if set forth fully herein.

"single and identifiable event" is not a single event – it is at least two separate decisions. In a footnote, MAWC cites to three decisions with dates ranging from October 2015 to September 2017 (MAWC Br. p. 10). Multiple cases in separate counties over a period of two years does not support the proposition that a single extraordinary event caused a change in tax assessment methodology for St. Louis (recall, St. Louis County disputes MAWC's assertion that it changed its methodology) and Platte counties. Instead, this series of occurrences suggests that counties taking action to adjust assessment methodologies is a common and recurring situation.

3. Furthermore, if these cases could be considered a single event that caused the increased tax obligations in St. Louis and Platte counties, the event would have occurred outside the current period. The 1973 National Association of Regulatory Utility Commissioners ("NARUC") uniform systems of accounts ("USOA") for class A water companies, as revised in 1976, General Instruction No. 7 requires that extraordinary items be "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" (Ex. 10, pp. 4-5). Cases occurring as far back as 2015 are not an event in the current period.

4. In Case No. ER-2014-0258, the Commission denied rate recovery of an AAO, in part, because the company in that case (Ameren Missouri) had an intervening rate case (*In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service*, Report and Order, Case No. ER-2014-0258, p. 43). If MAWC is correct that tax decisions in separate counties issued as far back as October 2015 are the "single event" leading to its tax obligations in this case, MAWC had an intervening rate case where property taxes would have

been considered (Case No. WR-2015-0301)[2] and so the company could have expected its tax obligations to change and planned accordingly. However, its management did not develop a plan. Put simply, MAWC's tax obligations in St. Louis County and Platte County are two unrelated tax events. Properly viewed, one event is related to the tax obligation in St. Louis County and the other is related to the tax obligation in Platte County.

**The separate increased tax obligations due in St. Louis County and Platte County are not extra-ordinary and material**

5. When evaluating AAO applications, the initial inquiry the Commission should make is "whether the costs sought to be deferred are indeed extraordinary." *See In the Matter of Missouri Public Service and St. Joseph Light & Power, Divisions of UtiliCorp United, Inc*., 11 Mo.P.S.C.3d 600, 602-3 (2002). If they are not, the inquiry ends. *Id*. In its Report and Order in Case No. EU-2012-0027, the Commission defined "extraordinary item" as "an item that pertains to an event that is extraordinary, unusual and infrequent, and not recurring." *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, File No. EU-2012-0027, Report and Order, p. 3. Further, as mentioned above, the NARUC USOA General Instruction No. 7 requires that extraordinary items be "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" (Ex. 10, pp. 4-5). MAWC's request fails to meet these standards. The evidence in the record is that these property tax expenses are recurring and typical business activities of the company. Property

[2] The Report and Order in that case was issued May 26, 2016. See EFIS Case No. WR-2015-0301 Doc. No. 413)

taxes, when considered as a category of cost, are routine and ongoing, and should be considered to be among the most predictable and "ordinary" of costs incurred by a utility (Ex. 6, p.7).

*Changes in methodology are not unusual and can be expected*

6. Changes in methodology are normal and, to a certain extent, expected. As Public Counsel pointed out in its initial brief this is supported by the testimony of Staff and company witnesses. Staff witness Mr. Oligschlaeger testified that "actions taken to change the parameters of how utility assets are assessed by taxing authorities should be considered as part of the ordinary discretion available to those bodies, and should not be considered to be inherently extraordinary in nature" (Ex. 6, p. 8). MAWC's own witness, Mr. Wilde, testified that the company can expect an assessor to exercise judgment and discretion in the method of determining the value of taxable property, stating "[i]f you look at the statute, it's not like a you shall use this. It just tells you that this is a method. It also tells the assessor that they have discretion, if they don't feel that gets them to true value, to do something different." (Tr. Vol. 1, p. 65). When an assessor can reasonably be expected to exercise discretion relating to methodology, circumstances when an assessor does so can hardly be described as an unusual or non-recurring event. Furthermore, as discussed above, the company's arguments in its initial brief pointing out several tax cases over a period of nearly two years also suggests that counties taking action to adjust assessment methodologies is a common and recurring situation not an extraordinary one.

*To the extent that the county assessors independently changed a method (in St. Louis County, the assessor did not change) MAWC should have foreseen and planned for the changes*

7. The tax obligation in St. Louis County is not an increase due to an unexpected or unusual change in tax policy by the assessor (Tr. Vol. 1, p. 181). The company was simply reporting taxes

incorrectly in St. Louis County for years. It is irrelevant in this case to assign putative blame for the form of past filings to either the Company or the assessor's office.[3] The company is not challenging the assessment it must pay. Instead, the Commission should consider who should bear the increased cost, ratepayers or shareholders. The ratepayers had no part in the company's decisions regarding its tax filings. The obligation to properly file taxes rested solely on MAWC management who should have foreseen any changes and planned accordingly. In such a situation, ratepayers should not be made insurers of the Company's profit levels through an AAO.

8. MAWC had been using the correct 20-year recovery period in those all other counties "for years" (Tr. Vol. 1, p. 182). Thus, the "event" causing MAWC to seek an AAO for St. Louis County was due to an error the Company made on its property tax assessment filing; one that it did not make in other county tax assessment filings. Based on the Company reporting taxes differently in 23 other counties than it did in St. Louis County, Staff's Mr. Oligschlaeger testified "at the very least there should have been some anticipation" that the tax treatment in St. Louis County might change in the future (Tr. Vol. 1, p. 144). But, again, the company management made no plans to transition the way it self-reported its tax filings until the county forced compliance. (Tr. Vol. 1, p. 44). Despite knowing of a potential change as far back as 2007, the company or the company's consultant did not even discuss a transitional period with St. Louis County until this year. (Tr. Vol. 1, p. 40). Had the Company developed a plan, MAWC management – to the extent the increased tax obligation would have a material impact on the Company's revenues – could have timed a

[3] The evidence shows the County was accommodating. In fact, going so far as to establish a transition schedule for MAWC's property tax assessments. (Ex. 16) (One email stating "using this schedule will still cause the assessments to rise for 2017, but will not be such a big jump as if we used a straight 20 yr schedule."

transition to the different tax methodology around a rate case. Failure to prepare a transition plan and time it appropriately is a choice made by MAWC management and is no basis for the Commission to approve extraordinary accounting treatment.

**The impact of the tax obligations in St. Louis and Platte Counties does not necessarily meet the Commission's 5% materiality guide**

9. These tax obligations are not related to the same event. Insofar as the tax obligation in St. Louis County is concerned, MAWC presents the Commission with a misleading percentage that mismatches the increased tax obligation for a period greater than one year to the company's revenues from 2016. OPC witness Mr. Riley performed an analysis to break down the tax obligation into separate 2017 and 2018 amounts (Ex. 10, p. 3; Ex. 11). For 2017, the impact was 6.2%. (Ex. 11). For the 2018 period, Mr. Riley calculated the impact to be 3.5%, well below the 5% threshold. (Ex. 11). Regardless of whether or not the Commission considers the tax obligation in St. Louis County to be "material," an AAO is not appropriate for items that are not extraordinary. Granting AAOs based solely or largely upon the materiality of the costs in question would inappropriately transform the use of AAOs to a primary purpose of safeguarding utility earnings levels. (Ex. 6, p. 8). As explained above, the increased tax obligation due in St. Louis County is not an extraordinary event and so no AAO is appropriate.

10. The increase to MAWC's tax obligation in Platte County is not material (Ex. 6, p. 6). The transaction involving Platte County's impact on earnings is only $400,000 annually for *both* 2017 and 2018. *Id*. As Staff points out in its initial brief, the Commission requires a transaction to be both extraordinary and material. (Staff Br. p. 5). The obligation in Platte County does not satisfy that standard and so the commission should not grant an AAO for MAWC's tax obligations in Platte County.

**Conclusion**

11. The increases to MAWC's tax obligations in St. Louis County and Platte County are not extraordinary and material as defined by the NARUC USOA or Commission practice. As a result, these expenses do not meet the Commission's longstanding deferral standard. Therefore, the Commission should reject the Company's requested AAO.

WHEREFORE Public Counsel submits its Reply Brief and asks the Commission to deny the Company's AAO application.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 1st day of December 2017:

**/s/ Lera L. Shemwell**