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March 14, 2013

VIA ELECTRONIC MAIL

Mr. Jim Busch
Missouri Public Service Commission
Jefferson City, Missouri
jim.busch@psc.mo.gov

RE: *WW-2013-0347 - ECAM Rulemaking*
Staff Draft- March 8, 2013

Dear Jim:

I am writing on behalf of Missouri-American Water Company (MAWC). MAWC personnel have reviewed the Staff Environmental Cost Adjustment Mechanism (ECAM) Rulemaking Draft forwarded to us by your e-mail message of March 8, 2013. This letter is intended to be MAWC's written response to the referenced draft.

We understand that the basic structure of the Staff's draft rule comes from the electric environmental cost recovery rule that was promulgated by the Public Service Commission (Commission) in 2009 (4 CSR 240-20.091). MAWC has a general concern that the Staff's approach to the ECAM – attempting to compute an “environmental revenue requirement” from which the rule would attempt to compare “ECAM qualifying environmental costs” – is unnecessarily complicated, confusing and likely unworkable for the water industry.

MAWC previously expressed this concern at the February 28, 2013 workshop. We appreciate that the Staff has made an effort to address these concerns through the proposed language for 4 CSR 240-50.050(1)(C). However, the primary difficulty - one which may be insurmountable utilizing the Staff's structure - is that most of a water corporation's expensed costs and a huge percentage of its major capital projects concern compliance with federal, state or local law pertaining to the regulation or protection of health, safety and the environment. This situation makes the water industry different from the electric industry and begs a different approach from that used by the Commission in the electric environmental cost recovery mechanism.

The “environmental revenue requirement” is defined in the “proposal” language as follows:

(C) The environmental revenue requirement shall be comprised of the following:

1. *All expensed costs* (other than taxes and depreciation associated with capital projects) *that but for timing of incurrence would meet the definition of “ECAM qualifying environmental costs”* as set forth in Section (1)(A) and that are included in the water utility’s revenue requirement in the general rate proceeding in which the ECAM is established; and
2. The costs (i.e., the return, taxes, and depreciation) of any major capital projects placed in service within the last ten years of the date the water utility files a general rate proceeding in which the ECAM is established that but for timing of incurrence would meet the definition of “ECAM qualifying environmental costs” as set forth in Section (1)(A). The costs of such capital projects shall be those identified on the water utility’s books and records as of the last day of the test year, as updated, utilized in the general rate proceeding in which the ECAM is established;

(emphasis added).

The revenue requirement could include expenses for licensed operators (which would be ECAM qualifying costs, “but for timing.” It could also include a water treatment plant placed into service in the last ten years, because such a plant would be ECAM qualifying, “but for timing of incurrence.”

The “ECAM qualifying environmental costs,” on the other hand, are defined as follows:

(A) ECAM qualifying environmental costs means prudently incurred costs, both capital and expense, occurring after the later of the last day of the test year or last day of the true-up period in a water utility’s most recent rate case, and which meet the following conditions:

1. The imposition of any federal, state or local law (including, without limitation, common law, statutes, ordinances, or regulations) pertaining to the regulation or protection of health, safety, and the environment for which compliance is required after the later of the last day of the test year or last day of the true-up period in the Company’s most recent rate case; or
2. Any permit, license, agreement, or order developed or issued for which compliance is required after the last day of the test year or last day of the true-up period in the Company’s most recent rate case in response to any federal, state or local law (including, without limitation, common law, statutes, ordinances, or regulations) pertaining to the regulation or protection of health, safety, and the environment; or

3. Changes in the natural environment beyond the water utility's control that cause noncompliance with any federal, state law, local law (including, without limitation, common law, statutes, ordinances, or regulations) or permit, license, agreement or order pertaining to the regulation or protection of health, safety, and the environment.

4. Are not available for inclusion in any approved Infrastructure System Repair Surcharge as defined in 4 CSR 240-3.650;

5. Do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility.

This is something different than the revenue requirement. Expenses related to licensed operators would likely not qualify as ECAM qualifying environmental costs, because they would be incurred as a result of long standing environmental requirements. Likewise, a water treatment plant constructed only because of the age or condition of an existing plant would likely not be an ECAM qualifying environmental cost, as again, where it was for the purpose of complying with long existing environmental standards.

The periodic adjustment to the ECAM is described as follows:

(B) The ECAM rate adjustment shall reflect a comprehensive measurement of changes in revenue requirement due to any federal, state or local laws, permits, licenses, agreements, or orders that impact ECAM qualifying environmental costs as defined in Section (1)(A) in either a positive or negative manner. The periodic adjustments shall be limited to the expense items and the capital projects that are used to determine the environmental revenue requirement in the previous general rate proceeding for the period the ECAM is in effect.

It is unclear what this means. To the extent the draft rule may be attempting to compare the almost all-encompassing environmental revenue requirement with the more limited qualifying costs that must be associated with new environmental laws and requirements, it creates an "apples to oranges" comparison as it seeks to measure changes in costs by looking at two different types of costs. In other words, qualifying expenses and capital reflected in the revenue requirement of the rate case in which the ECAM is established are defined much more broadly than they would be when incurred subsequent to the initial rate. If that distinction is not intended, it is unclear what purpose is served by the environmental revenue requirement and what is meant by this ECAM rate adjustment paragraph.

MAWC would suggest that its approach to the ECAM – treating it more like the Infrastructure System Replacement Discharge by zeroing out the charge in rate cases and only attempting to track qualifying costs on a going forward basis – is a more appropriate and manageable way to handle the issue for water utilities. The Staff's proposed rule could be amended to replicate this approach by making the following changes:

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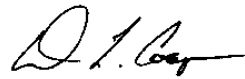
- Amend section (1)(A)1 as follows:
 - (1)(A) - The imposition after the later of the last day of the test year or last day of the true-up period in the Company's most recent rate case of any federal, state or local law (including, without limitation, common law, statutes, ordinances, or regulations) pertaining to the regulation or protection of health, safety, and the environment for which compliance is required;
- And,
- Delete Section (1)(C) and related references to the "environmental revenue requirement."

Thank you for your work with this proposed rule and your consideration of these comments. MAWC remains interested in discussing with Staff possible solutions to this issue and any other matters of interest in regard to the proposed ECAM rule.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

Cc: E-Mail List for Staff draft associated with MoPSC File No. WW-2013-0347