

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

In the Matter of Missouri-American Water	)	
Company’s Request for Authority to Implement	)	<b>File Nos. WR-2022-0303</b>
General Rate Increase for Water and Sewer	)	<b>SR-2022-0304</b>
Service Provided in Missouri Service Areas	)	

**MAWC REPLY TO RESPONSES TO MOTION TO ESTABLISH  
TEST YEAR, TRUE-UP DATE AND DISCRETE ADJUSTMENTS**

COMES NOW Missouri-American Water Company ("MAWC" or the "Company"), and in reply to the Office of the Public Counsel ("OPC") and the Staff of the Missouri Public Service Commission ("Staff") Responses filed on July 29, 2022 to MAWC’s *Motion to Establish Test Year, True-Up Date, and Discrete Adjustments* filed on July 1, 2022 ("*Motion*"), respectfully states as follows to the Missouri Public Service Commission ("Commission"):

MAWC requests the Commission deny the relief requested by OPC and Staff with respect to MAWC’s *Motion* and issue its Order adopting a test year for use in this case comprised of the twelve months ended June 30, 2022, as trued-up through December 31, 2022, with discrete adjustments through the operation of law date.<sup>1</sup>

**I. Summary**

MAWC proposes in this case to use a historical test year consisting of the twelve months ended June 30, 2022, with a true-up period ending December 31, 2022, plus certain discrete adjustments beyond the true-up period through the date new rates are anticipated to take effect in this case. While they do not oppose the historical test year and true-up periods, OPC and Staff oppose MAWC’s proposed inclusion of discrete adjustments beyond December 31, 2022. That

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<sup>1</sup> MAWC’s use of May 31, 2023 in its Motion was an approximation of the operation of law date. MAWC’s proposal is to use the operation of law date for this case - May 28, 2023.

opposition appears based, in part, on a misunderstanding of the difference between an adjustment period such as MAWC has proposed in this case and a future test year. In addition, as addressed below, OPC requests that the Commission exclude from its Order the categories of information subject to true-up.

MAWC's proposed discrete adjustment period is drawn from the Commission's Orders establishing the test year and adjustment periods in MAWC's last two general rate cases, allowing for specific, discrete adjustments following the end of the traditional 6-month true-up period. Specifically, the Commission stated:

The parties shall use a test year of the 12-months ending December 2019, with an update period of the six months ending June 2020, and a true-up period of the six months ending December 2020. The true-up process and hearing will be for the sole purpose of updating various known and measurable cost of service components to December 31, 2020. Additionally, the parties may make specific (discreet) adjustments to the June 30, 2020, known and measurable revenue requirement calculation.

*In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase*, Order Setting Test Year and Adopting Procedural Schedule, File No. WR-2020-0344 (August 26, 2020), at 4. The Commission made a similar finding in its Order dated August 9, 2017 in WR-2017-0285. *In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase*, Order Regarding Test Year, File No. WR-2017-0285, at 3. Through this language, the Commission appears to recognize that an adjustment period longer than the standard true-up period may be appropriate. MAWC's proposal in this case merely seeks to extend the adjustment period for specific discrete items by five months.

## **II. Legal Argument**

### **A. MAWC's Request to Include Discrete Adjustments is Distinguishable from a Future Test Year**

The OPC's argument against MAWC's proposed discrete adjustment period can be distilled to the mischaracterization of the proposal as "a disguised request for a future test year." OPC Response at 6. The OPC then concludes that since the Commission has rejected past future test year proposals, it must reject MAWC's proposal in this case. This argument fails for three reasons: (1) the Commission can deviate from prior decisions; (2) the proposal is not a future test year; and (3) the proposal is consistent with the Commission's past direction regarding adjustments beyond the true-up period.

### **1. Prior Commission Orders are not Binding on this Proceeding**

Even if the Commission had ruled previously on a proposal such as MAWC's discrete adjustments in this case (which it has not), the Commission is not strictly bound by those prior rulings. An administrative agency is not bound by *stare decisis*, nor are agency decisions binding precedent on the Missouri courts. *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003). The mere fact that an administrative agency departs from a policy expressed in prior cases which it has decided is no ground alone for a reviewing court to reverse the decision. *Columbia v. Mo. State Bd. of Mediation*, 605 S.W.2d 192, 195 (Mo. App. 1980). As discussed below, the ruling requested by MAWC from the Commission in this case has nothing to do with prior disallowance of a future test year and is entirely consistent with the Commission's previous guidance on the question of adjustments.

### **2. MAWC is not Seeking a Future Test Year in this Proceeding**

In both of MAWC's 2017 and 2020 rate cases, MAWC requested that the Commission establish rates based on a future test year covering the first year that new rates were expected to be in effect. Had MAWC requested a future test year in this case, the proposed revenue requirement would have included utility plant investments and expenses from June 2023 through

May 2024 – one year beyond the date rates will take effect in this case. In this case, MAWC has requested the Commission establish rates based on a historical test year ending June 30, 2022, with a true-up period ending December 31, 2022, and further limited and specifically identified adjustments through the operation of law date. The changes included in MAWC’s proposed discrete adjustments will be in effect by the time rates take effect. The proposal involves no implementation of rates calculated to recover expenditures not yet made, only adjustment of the historical test year figures for known and measurable subsequent or future changes over an 11-month period instead of a 6-month period.

**3. MAWC Seeks Limited Authority to Include Certain Enumerated Discrete Adjustments Beyond the True-Up Period, Consistent with the Commission’s Orders in MAWC’s 2017 and 2020 Rate Cases**

The Commission used the words “Additionally” and “specific (discreet)” in its August 26, 2020 Order. That is what is proposed here: additional, discrete adjustments beyond the true-up period. MAWC has limited the scope and time period for these adjustments, extending them a mere five months from the date of the true-up and ensuring they will all be realized prior to new rates taking effect.

The OPC contends that MAWC’s proposal does not comply with the 2017 and 2020 Orders because “MAWC proposes that only MAWC be allowed to include the adjustments” and “MAWC makes no mention of any other party’s ability to propose adjustments.” OPC Response at 5. This argument is based on a logical fallacy. The fact that MAWC’s Motion does not mention what other parties may propose does not prevent those parties from making their own proposals. It is not MAWC’s burden to present the OPC’s or other parties’ positions. Nowhere does MAWC state that other parties are precluded from proposing further adjustments. MAWC fully expects that will be

the case, as in any other rate case. Each party bears the responsibility of supporting its proposals in this case.

It is also a logical fallacy to suggest that because the Commission's prior Orders do not identify the adjustments that any party may propose, the Commission may not here authorize the inclusion of the categories of adjustments proposed by MAWC. *See* OPC Response at 5-6. The 2017 and 2020 Orders do not preclude MAWC's request to establish the discrete adjustment period; and that request does not preclude the parties' opposition to those adjustments. What MAWC requests is that the parties be required to manifest such opposition in their filed cases, and not have the discrete adjustments dismissed outright as outside the permissible scope of this proceeding. Indeed, the language of the 2017 and 2020 Orders ensures that the question of the inclusion of certain discrete adjustments be reached on the merits, and not simply dismissed at the outset as beyond the traditional true-up period.

Finally, the absence of an "end date" in the Commission's prior Orders does not render MAWC's request non-compliant with those Orders. *See* OPC Response at 6. If the Commission had intended to limit the discrete adjustment period to some specific timeframe, it could have. An adjustment period beyond a historical test year, combined with the known and measurable standard, is bedrock utility law. *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757, 767 (Mo. App. W.D. 2016); *see also* *State ex rel. Praxair, Inc. v. Pub. Serv. Comm'n*, 328 S.W.3d 329, 332 n.2 (Mo. App. W.D. 2010). The Commission's decision in 2017 and 2020 to allow the adjustment period to extend longer than six months supports MAWC's proposal and the Commission's ability to adopt various methods of mitigating regulatory lag, something the Commission has previously acknowledged is within its charge. *See In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, 2002 Mo. PSC LEXIS 418,

\*4-6 (GR-2002-356) (Mo. P.S.C. March 19, 2002) (“Both the ‘test year as updated’ and the true-up are devices employed to reduce regulatory lag, which is ‘the lapse of time between a change in revenue requirement and the reflection of that change in rates.’”). It is difficult to imagine any meaningful purpose behind the Commission’s language in the August 26, 2020 Order if not to permit MAWC and other parties to propose adjustments beyond the end of the true-up period. The Courts have previously acknowledged that the true-up process is helpful in addressing the goal of establishing a “reasonable expected level of earnings, expenses and investments” **“at a time as close as possible to the period when the rates in question will be in effect.”** *In re Kansas City Power & Light Company*, 26 Mo. P.S.C. (N.S.) 104, 110 (1983) (emphasis added). The language in the Commission’s August 26, 2020 Order reflects this goal and the need to extend the adjustment period to a time closer to when the rates will be in effect. The Commission appeared to recognize that failure to examine the items identified in the discrete adjustments would be the true failure to consider “all relevant factors” in setting rates as it is charged to do under Section 393.270.4, RSMo.<sup>2</sup>

While OPC argues that the discrete adjustments are overly broad (they “capture nearly every major cost component of a rate case”) and are therefore no different from a future test year (without acknowledgement of the obvious timing difference), what MAWC has proposed is actually more defined and limited than what the Commission has previously provided in its 2017 and 2020 Orders.

Moreover, OPC’s description of the proposed discrete adjustments is disingenuous about the inherent limitations MAWC included in the proposal. For example, the exclusion of WSIRA-eligible capital items is a legitimate acknowledgement that while there will be some lag between

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<sup>2</sup> While OPC complains that revenues have been excluded, MAWC’s case in chief actually includes forecasted revenues through the operation of law date.

in-service dates of WSIRA-eligible plant and recovery through the WSIRA mechanism, MAWC deems it a reasonably balanced approach to wait to seek recovery on those post-true-up capital items through the WSIRA mechanism. In addition, MAWC's proposed discrete adjustments include items for which changes could be to the benefit of customers. *See* Direct Testimony of Wesley Selinger, at 21. For example, for operating expenses the Company is proposing reductions to Fuel & Power, Waste Disposal, Other Post-Employment Benefits, Rents, and Uncollectibles. All discrete adjustments would only be made if they are known and measurable and would be dependent on the level of the cost at that time. If the actual contracted pricing for another expense were less than estimated, MAWC would propose the adjustment with the lower cost, which would benefit all customers.

OPC suggests that a better solution than the modest extension of the adjustment period which the Commission itself has suggested, is for MAWC to wait to file its rate case so that the items within the discrete adjustments would fall within the historical test year and true-up period. Not only is this contrary to what the Commission's own orders recommend, but it fails to recognize that such an approach does nothing but exacerbate the problem of regulatory lag for investments made within the historical test year and true-up period actually presented in this case to which the OPC and Staff have agreed. This is especially true for a water and sewer utility that has constant and ongoing investments in its infrastructure. The reality is that no utility can ever perfectly time a rate case to completely eliminate regulatory lag, and so regulators throughout the country have looked at other ways to alleviate the inevitable delay between when costs are incurred and when rates go into effect. The Commission's suggestion of discrete adjustments is one such mechanism. Others include the WSIRA, which MAWC excluded from the proposed discrete adjustments, acknowledging that the mechanism helps mitigate the issue of delayed recovery for WSIRA-

eligible projects that are placed in service after the true-up period in a general rate case. The driving principle is that rates should reflect as closely as possible a representation of a utility's operations at the time they are in effect. *See In re Kansas City Power & Light Company*, 26 Mo. P.S.C. (N.S.) 104, 110 (1983).

**B. MAWC's Proposed Discrete Adjustments Satisfy the "Used and Useful" and "Known and Measurable" Standards, as well as the "Matching Principle" and Section 393.270.4 RSMo**

The underpinnings of Staff's objection to MAWC's proposed discrete adjustment period are demonstrably not present within MAWC's proposal. Staff expressed concerns that including adjustments beyond the true-up period would violate (i) the used and useful standard, (ii) the known and measurable standard, (iii) the matching principle, and (iv) Section 393.270.4, RSMo. Each of these premises is false, and Staff's recommendation that the Commission deny MAWC's request for discrete adjustments through May 31, 2023 is therefore unfounded.

As MAWC's proposal demonstrates, the discrete adjustments relate to known and measurable changes that will be effective or in service (in the case of capital expenditures) prior to the date the rates are to take effect.<sup>3</sup> This is, in fact, the primary difference between MAWC's proposal in this case and a future test year, as discussed above.

As described in the Direct Testimony of Wesley Selinger and MAWC's Accounting Schedules, the adjustments are known and measurable. For example, the discrete adjustments for chemicals expense will be based on contracted prices that will be in effect by January 1, 2023. As another example, the discrete adjustments for labor and benefit expenses will be based on wage rates that are known in February 2023 and benefits costs that will be known before the end of 2022.

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<sup>3</sup> LaGrand DT, pp.6-7; Schedule BWL-3.



Moreover, MAWC's discrete adjustments for capital investments relate solely to those projects that will be in service, i.e., used and useful, prior to the operation of law date.

It was the "matching principle" that drove MAWC's prior arguments for future test years, which were opposed by Staff and other parties and ultimately rejected by the Commission in favor of the idea of specific (discrete) adjustments *in addition to* the true-up. MAWC Motion to Establish Future Test Year, File No. WR-2020-0344 (June 30, 2020); August 26, 2020 Order; August 9, 2017 Order. Those Orders represent an express departure from a perfect matching principle. The parties who opposed the future test year approach (which embodies the matching principle) should be estopped from arguing now that the opportunity to propose discrete adjustments (which the Commission expressly authorized) should be denied because it does not perfectly satisfy the matching principle.

As raised by Staff, and perhaps more important than perfect matching, is the Commission's consideration of all relevant factors to establish "reasonable expected level of earnings, expenses and investments" "**at a time as close as possible to the period when the rates in question will be in effect.**" *In re Kansas City Power & Light Company*, 26 Mo. P.S.C. (N.S.) 104, 110 (1983) (emphasis added). The language in the Commission's August 26, 2020 Order reflects this goal and the need to extend the adjustment period to a time closer to when the rates will be in effect. The Commission appeared to recognize that failure to examine the items identified in the discrete adjustments would be the true failure to consider "all relevant factors" in setting rates as it is charged to do under Section 393.270.4, RSMo. Staff's Response does not articulate in what way MAWC's proposal deviates from the Commission's charge under the statute, and MAWC asserts that its proposal in fact assists the Commission in meeting this statutory obligation.

**C. Neither Staff nor the OPC have Justified their Recommendation that the Commission Depart from its Position in Past Cases and Disallow MAWC's Proposed Discrete Adjustments**

As for the Staff's request that it have the "opportunity to review MAWC's proposed discrete adjustments in the broader context of this rate case and to address them in its testimony" [Staff Response at 2], nothing in MAWC's proposal precludes Staff from providing testimony on the merits of MAWC's proposed adjustments. However, the decision as to whether such adjustments should be dismissed out of hand as beyond the scope of this proceeding must occur now. A distinction must be made between the Commission's Order at the outset of this case establishing the test year and adjustment period and the ultimate Order establishing the actual revenue requirement on which rates will be set. MAWC asks the Commission to determine that the time period and scope of proposed adjustments are appropriate as proposed. Whether MAWC met its burden in supporting such adjustments is for the Commission's final determination.

Once stripped of the false equivalency to a future test year proposal, the OPC's opposition is unsupported. The Commission should Order this case to proceed on the basis of the historical test year, true-up period and discrete adjustment period as presented by MAWC.

**D. MAWC's Unopposed Test Year and True-Up Periods Should be Adopted as Filed**

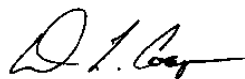
As noted above, neither Staff nor OPC object to MAWC's proposed test year or true-up period. However, OPC does request that the Commission not include in its Order the categories of information that should be covered by the true-up. Staff, on the other hand, agrees with MAWC's list and simply seeks to reserve the right to true-up additional items as it sees appropriate. After examining the entirety of the parties' responses to MAWC's Motion, the reservation of other parties' rights to make their own proposals as to which adjustments are appropriate, whether in the true-up period or the period ending with the operation of law date should have been where this

issue began and ended. The Commission need not omit from its Order those categories of adjustments MAWC proposed in order for the parties to propose their own adjustments or oppose MAWC's. Despite certain allegations in the OPC and Staff Responses, MAWC has not proposed that the Commission foreclose the parties from opposing or proposing adjustments, whether in the 6 months following the end of the historical test period or the 11 months following the end of the historical test period. MAWC has simply requested that the Commission permit its proposed adjustments to be considered in calculating the revenue requirement on which rates will be based. Notably, neither Staff nor the OPC identified categories of adjustments they believe are inappropriate for inclusion in the discrete adjustment period or categories of adjustments MAWC has not proposed, but they would like to see included in the discrete adjustment period.

### **III. Conclusion**

For the foregoing reasons, the Commission should reject the requests of the Staff and OPC to deny its proposed discrete adjustment period. The Commission should proceed to issue its Order adopting a test year for use in this case comprised of the twelve months ended June 30, 2022, as trued-up through December 31, 2022, with discrete adjustments through the operation of law date of May 28, 2023, consistent with MAWC's *Motion to Establish Test Year, True-Up Date and Discrete Adjustments*.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on August 8, 2022, to the following:

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