

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

In the Matter of Missouri-American Water Company    )  
Request for Authority to Implement a General Rate    )  
Increase for Water and Sewer Service Provided in    )  
Missouri Service Areas.                                    )  
**Case No. WR-2015-0301**

**STAFF’S NOTICE REGARDING DISCOVERY CONFERENCE**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and pursuant to ¶15 of the parties’ *Joint Proposed Procedural Schedule*, filed on September 16, 2015, and the Commission’s *Order Adopting Procedural Schedule and Order Regarding Discovery Conferences*, both issued on September 23, 2015, hereby advises the Regulatory Law Judge and all parties that the Staff will take up the objections of Missouri-American Water Company (“MAWC”) to its Data Requests (“DRs”) Nos. 0187, 0189, 0191, and 0196 at the Discovery Conference scheduled for October 6, 2015, at 10:00 A.M., as well as MAWC’s unresponsive response to DR No. 0197.<sup>1</sup> Further regarding this matter, Staff states:<sup>2</sup>

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<sup>1</sup> At the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. Additional accommodations, if necessary, are available by calling the Public Service Commission’s Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

<sup>2</sup> Paragraph 5(C) of the *Joint Proposed Procedural Schedule*, adopted by the Commission in its *Order Adopting Procedural Schedule*, provides: “Not less than two (2) business days before each discovery conference, any party that has a discovery disagreement or concern involving another party shall file a brief statement describing that disagreement or concern and identifying any other parties involved. Such statement does not need to be a formal motion to compel. Any party may attend a discovery conference, but only those parties involved in an identified discovery disagreement must attend.”

### **DRs Nos. 0187, 0189 and 0191**

1. Staff propounded its DR Nos. 187, 189, and 191 to MAWC via EFIS<sup>3</sup> on September 3, 2015, as follows:

**DR 0187:** Please provide the overall embedded cost of long-term debt and preferred stock as of December 31, 2014, March 31, 2015, June 30, 2015 and each subsequent quarter when the information becomes available for Missouri-American Water Company, American Water Works Company, Inc. (stand-alone basis), American Water Capital Corporation and American Water Works Company, Inc. on a consolidated basis and identify the data and method used to determine these costs. Please provide the following detail for each security included in the overall embedded cost calculations: 1. Issuance date and maturity date; 2. Principal amount originally issued and amount outstanding; 3. Interest rate and interest payment dates; 4. Issuance expenses (amortized and unamortized balances); 5. Premium or discount amounts (amortized and unamortized balances); and 6. Dates and amounts of sinking funds. \* DR requested by David Murray ([david.murray@psc.mo.gov](mailto:david.murray@psc.mo.gov)).

**DR 0189:** Please provide any correspondence (including published research reports) to or from financial analysts (both debt and equity analysts) concerning American Water Works Company, Inc.'s, American Water Capital Corporation's, and Missouri-American Water Company's credit rating, capital structure, projected earnings growth rates, cost of capital and/or any other financial issues since January 1, 2010. Please continuously provide information requested in this data request through the completion of this case. \* DR requested by David Murray ([david.murray@psc.mo.gov](mailto:david.murray@psc.mo.gov)).

**DR 0191:** Please provide valuation analyses (whether done by a third party or internally) using discounted cash flow analyses, including, but not limited to: dividend discount valuation, free cash flow to the firm (enterprise value) valuation, free cash flow to equity holder valuation, residual income valuation, and/or economic value added valuation and any relative valuation analyses, such as price to earnings or price to EBITDA multiples performed on American Water Works

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<sup>3</sup> "EFIS" is the Commission's Electronic Filing and Information System. Discovery propounded by Staff, and responses to such discovery, are required to be entered into EFIS. Rule 4 CSR 240-2.090(2)(H).

Company, Inc.'s current and/or previous water utility operations since January 1, 2010. If no such analyses have been done since January 1, 2010, please provide the most recent valuation analyses performed on any of American Water Works Company, Inc.'s water utility properties. \* DR requested by David Murray ([david.murray@psc.mo.gov](mailto:david.murray@psc.mo.gov)).

2. MAWC served its *Objection Letter* on Staff on September 14, 2015, and therein raised the same for objections as to each of the three DRs listed above, to-wit:

MAWC objects to this data request for the following reasons: a) the responsive information is neither relevant to the subject proceeding nor reasonably calculated to lead to the discovery of admissible evidence; b) the request is unduly burdensome and overbroad; c) the request seeks information about companies that are not regulated by the Missouri Public Service Commission; and, d) much of the information is beyond MAWC's possession, custody, and control.

3. Despite its objections, MAWC went on to say the following in response to these DRs:

**DR 0187:** Without waiving this objection, MAWC will provide information concerning MAWC.<sup>4</sup>

**DR 0189:** Without waiving this objection, MAWC will provide information concerning MAWC.

**DR 0191:** Without waiving this objection, MAWC states that there have been no such valuations of MAWC.

4. Staff requests a Discovery Conference and ruling by the Regulatory Law Judge with respect to these DRs because the information that MAWC has agreed to provide is significantly limited in scope compared to the information requested by Staff's expert. In this general rate case, in which MAWC is requesting a substantial rate increase, it is frankly not MAWC's place to decide what information Staff needs. MAWC is one of several regulated operating subsidiaries of American Water Works Company,

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<sup>4</sup> With respect to the information it indicated it is willing to provide, MAWC indicated that it will likely not be available before October 7, 2015.

Inc. (“American Water”). MAWC is not publicly traded although its parent is. For that reason, Staff requires information not only about MAWC but also about American Water and its other regulated operating subsidiaries in order to perform the full range of analyses required to process this general rate case.

As the Commission itself recently pointed out:

Litigants before the Commission may obtain discovery under the same conditions as in civil actions in the circuit court. At circuit court, and, thus, at the Commission, parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.<sup>5</sup>

Contrary to MAWC’s assertion, the information sought by Staff is both relevant to this proceeding and likely to lead to the discovery of admissible evidence. “Relevant” evidence is that which tends to prove or disprove a fact of consequence to the pending matter.<sup>6</sup> Relevance is generally determined by reference to the pleadings.<sup>7</sup> In a rate case, where there are no issue-framing pleadings, relevance is determined by reference to the list of issues filed by the parties, the prefiled testimony, and the accounting schedules. Cost of capital is generally the largest single issue in a general rate case and it is almost always litigated, even when other significant issues settle. Because MAWC is not publicly traded and does not issue its own debt, information concerning its parent and affiliates are vital to Staff’s processing of this case. By obstructing Staff’s

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<sup>5</sup> *In the Matter of the Laclede Gas Company’s Verified Application to Re-Establish and Extend the Financing Authority Previously Approved by the Commission*, Case No. GF-2015-0181 (*Order Granting Motion for Expedited Treatment, Order Granting Motion to Compel, and Order Granting Protective Order*, issued and effective Sept. 29, 2015) at pp. 1-2 (footnotes omitted). See Rule 56.01(b)(1), Mo.R.Civ.Pro.

<sup>6</sup> W. Schroeder, 22 *Missouri Practice—Missouri Evidence*, § 401.1(a) (1992).

<sup>7</sup> See *St. ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 327-28 (Mo. App., E.D. 1985).

ability to evaluate these matters, MAWC may be attempting to achieve a higher awarded ROE than it could otherwise obtain.<sup>8</sup> With respect to the valuation analyses requested by DR 0191, Staff notes that in past cases, MAWC has eventually provided the annual goodwill impairment test performed on American Water.

Contrary to MAWC's assertion, the discovery sought by Staff is neither overbroad nor unduly burdensome. In fact, that phrase is typically reserved for discovery that is improper *ad initio*. Staff's discovery in this case is not improper; it is not intended for harassment nor is it a "fishing expedition." A general rate case requires a thoroughgoing and exhaustive audit of the subject company and Staff must necessarily examine and evaluate every aspect of the Company's operations in order to develop a revenue requirement and rate design. In particular, where a utility is a member of a group of operating affiliates, not publicly traded, with significant and intimate relations with a corporate parent and a service company, Staff absolutely must have access to information from the parent and the affiliates. There is no reason to doubt that MAWC can obtain this information if the Commission requires it to do so.

#### **DRs Nos. 0196 and 0197**

5. Staff propounded its DR Nos. 0196 and 0197 to MAWC via EFIS on September 8, 2015, as follows:

**DR 0196:** Please provide a complete and detailed narrative of the timeline of events surrounding Missouri-American Water Company's (MAWC) as well as American Water Company and all affiliates, involvement and responsibilities, in the Atrazine lawsuit(s) that ultimately settled. Describe all actions taken by each entity in this matter. Include all court case (or docket) numbers and indicate the courts where all legal documents were filed. For each MAWC affiliate that

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<sup>8</sup> "ROE" is Return On Equity.

was involved please describe their corporate relationship to MAWC. 2. List and identify all non-affiliated American Water Company entities that also participated in the lawsuit(s) in item 1 above and describe their involvement in each case/docket number. 3. Identify all defendants for item 1 above. 4. Provide a complete copy of all settlement documents that were agreed to by American Water Company, MAWC and all MAWC affiliates. 5. Please quantify the total settlement amount received by all plaintiffs. 6. Please describe and explain the formula that was used to allocate the total settlement to all of the plaintiffs. 7. Please quantify the settlement amount American Water Company received. 8. Please quantify the settlement amount MAWC received, as well as the settlement amounts that all MAWC affiliates received, separately. Explain in detail how the settlement amounts were allocated to MAWC and each of MAWC's affiliates. Indicate the date(s) all settlement amounts were received and show all formula calculations used to determine the settlement amounts received by MAWC and by each MAWC affiliate. 9. For the quantified settlement amount received by MAWC in response to item 7 above, please indicate how the settlement amounts were allocated to each MAWC district and provide, by date, all journal entries used to record all settlement amounts by USOA account on MAWC's books. Data Request submitted by: Sarah Sharpe ([sarah.sharpe@psc.mo.gov](mailto:sarah.sharpe@psc.mo.gov)).

**DR 0197:** MAWC witness Tinsley states on pg. 35 of direct testimony that carbon is used to treat source water contaminated by atrazine. **1. List each MAWC district that currently has treatment costs and equipment in place to treat source water that might be contaminated by Atrazine.** 2. Please describe in detail the necessary treatment process for Atrazine at each MAWC district and indicate when such treatment process began at each MAWC district. 3. By calendar year, by MAWC district for the period covering the first point in time MAWC districts first used carbon in its treatment process to negate Atrazine through 2015 quantify all carbon treatment expense that was incurred. Quantify all carbon amounts by USOA account. **4. Does carbon also treat or eliminate any other contaminants (other than Atrazine) that might be found in the source water for any of MAWC's districts? Please list all such contaminants and explain in detail by district.** 5. Other than carbon quantified in response to item 3 above, by calendar year, by MAWC district for the period covering the first point in time

MAWC districts first treated source water to negate Atrazine through 2015 quantify all other treatment expenses that were incurred. List, describe and quantify all other treatment expenses incurred by MAWC by USOA account on a separate basis. For each year breakdown each expense between labor and non-labor. 6. List, describe and quantify all amounts of capital expenditures that each MAWC district incurred by USOA account, by date, in order to treat source water for the Atrazine contaminant. **7. With regard to all other costs not included in response to items 3, 5 and 6 above, for MAWC, by district and by calendar year, for the period covering the beginning of the class action lawsuit through 2015, quantify all expenses incurred and/or allocated to MAWC with regard to the lawsuit and eventual settlement of the atrazine case. Provide all expenses by calendar year, broken down between labor and non-labor and by USOA account with a complete description of each quantified expense category.** 8. List and quantify all other costs incurred and/or allocated by MAWC by USOA account pertaining to the Atrazine issue. Data Request submitted by: Sarah Sharpe ([sarah.sharpe@psc.mo.gov](mailto:sarah.sharpe@psc.mo.gov)).<sup>9</sup>

6. MAWC served its *Objection Letter* to DR 0196 on Staff on September 18, 2015, and therein raised the following objections to portions of DR 0196, to-wit:

MAWC objects to subsections 1, 4, and 7 of this data request for the following reasons: a) the responsive information is neither relevant to the subject proceeding nor reasonably calculated to lead to the discovery of admissible evidence; b) the request is unduly burdensome and overbroad; c) the request seeks information about companies that are not regulated by the Missouri Public Service Commission; and, d) much of the information is beyond MAWC's possession, custody, and control.

7. Despite its objections, MAWC went on to say the following in response to DRs 0196: "Without waiving this objection, MAWC will provide information concerning MAWC." MAWC further stated that it was not certain whether it could provide the information prior to October 8, 2015.

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<sup>9</sup> Emphasis added.

8. MAWC made no objection to DR 0197, but its purported response is unresponsive.

9. Staff requests a Discovery Conference and ruling by the Regulatory Law Judge with respect to DRs 0196 and 0197 either because the information that MAWC has provided is unresponsive or because the information that MAWC has agreed to provide is significantly limited in scope compared to the information requested by Staff's expert. In this general rate case, in which MAWC is requesting a substantial rate increase, it is frankly not MAWC's place to decide what information Staff needs. MAWC is one of several regulated operating subsidiaries of American Water Works Company, Inc. ("American Water"). MAWC is not publicly traded although its parent is. For that reason, Staff requires information not only about MAWC but also about American Water and its other regulated operating subsidiaries in order to perform the full range of analyses required to process this general rate case.

Wherefore, take notice and appear!

Respectfully submitted,

**/s/ Kevin A. Thompson**

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Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this 29<sup>th</sup> day of September, 2015.

**/s/ Kevin A. Thompson**