

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

In the Matter of Missouri-American Water )  
Company’s Request for Authority to Implement ) **File No. WR-2017-0285**  
General Rate Increase for Water and Sewer )  
Service Provided in Missouri Service Areas. )

**MISSOURI-AMERICAN WATER COMPANY’S REPLY TO  
THE EMPIRE DISTRICT ELECTRIC COMPANY’S RESPONSE TO MAWC’S  
MOTION FOR EXPEDITED TREATMENT AND APPROVAL OF COMPLIANCE  
TARIFFS**

**COMES NOW**, Missouri-American Water Company (“MAWC” or “Company”) and, for its Reply to The Empire District Electric Company (“Empire”), states to the Missouri Public Service Commission (Commission) as follows:

On May 11, 2018, the Commission ordered that Missouri-American Water Company respond no later than May 14, 2018, to Empire’s Response to MAWC’s Motion for Expedited Treatment and Approval of Compliance Tariffs, which was filed on May 10, 2018.

This matter is one of contract that is not directly implicated by the subject Motion for Expedited Treatment and associated compliance tariff sheets.

**History of the Empire Special Contract Rate**

In the 2011-2012 rate case, on January 19, 2012, MAWC and Empire filed a Non-Unanimous Stipulation and Agreement as to a special contract as the result of negotiations between MAWC and Empire in Case No. WR-2011-0337.<sup>1</sup> In referencing the special contract, the parties stated the following to the Commission:

The Agreement essentially provides for a continuation of the existing arrangement whereby Empire is charged the lower of the Company’s fully loaded production costs (covering the operating expenses, taxes and the capital cost of providing water to the Joplin District), or the Company’s rate

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<sup>1</sup> WR-2011-0337, EFIS Item 153, *Non-Unanimous Stipulation and Agreement as to Special Contract*.

for manufacturers, industrials and large quantity users of water as approved by the Commission and applicable to the Joplin District. The term of the Agreement is extended for twenty-five (25) years from its effective date, which roughly coincides with the life expectancy of Empire's State Line Combined Cycle Plant electric production facility for which the water service is intended.<sup>2</sup>

The MAWC-Empire contract provides that Empire's pricing shall be determined as follows:

The Commodity Charge component for such interruptible water service shall be at a rate per thousand gallons or CCF of water consumed, comprised of the lesser of the Water Company's (a) fully loaded production costs covering the operating expenses, taxes, and capital costs of producing water for the Joplin district, or (b) rate for manufacturers, industrials and large quantity users of water which is approved by the Commission and applicable to the Joplin District. This Commodity Charge component shall be in addition to any Customer Charge component and may be further adjusted in accordance with the minimum annual consumption as set forth below.

Paragraph 6 of the **Interruptible Industrial Water Supply Agreement**, approved in Case No. WR-2011-0337.

On February 24, 2012, Empire was signatory to a second Non-Unanimous Stipulation and Agreement<sup>3</sup> in Case No. WR-2011-0337 (the first stipulation had been objected to by the Office of the Public Counsel and AG Processing, Inc.). It contains the following provision:

**18. The Empire Interruptible Contract.** The Signatories recommend that the Non-Unanimous Stipulation and Agreement as to Special Contract (Contract) executed by MAWC and Empire be approved. ***The Signatories agree that the commodity charge rate component of the Contract will be subject to modification in subsequent MAWC general rate case.*** Additionally, since the Contract is for a period of more than ten years, the Signatories agree that: (1) Staff, Public Counsel and AGP have the right to request a Commission review of the continued appropriateness of the alternative rate set forth in the Contract after the initial five years of the Contract, with the purpose of such review being to determine whether the

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<sup>2</sup> Case No. WR-2011-0337, EFIS Item 153 *Non-Unanimous Stipulation and Agreement as to Special Contract*, paragraph 4.

<sup>3</sup> Case No. WR-2011-0337, EFIS Item 283 *Non-Unanimous Stipulation and Agreement*.

alternative rate continues to be in the best interest of all customers in MAWC's service territory; (2) the Commission, acting on its own volition, may also open an inquiry in this regard; (3) if, upon such review(s), the Commission finds that the Contract, as implemented, no longer serves the public interest, it may allow MAWC to continue providing service under the Contract after adjusting rate conditions or it may direct MAWC to terminate the Contract; and (4) any Commission decision rendered as a result of any review(s) conducted under these provisions shall be implemented in the Company's next general rate case.

(emphasis added).

Thus, this Stipulation expressly contemplated that "*the commodity charge rate component of the Contract will be subject to modification in subsequent MAWC general rate case.*" It also provided for the review of the contract by specified parties, as well as an inquiry opened by the Commission itself.

On March 7, 2012, the Commission approved the Non-Unanimous Stipulation and Agreement, including the Special Contract between MAWC and Empire<sup>4</sup>.

The rate contained in the Special Contract is not static.

### **This Case**

On June 30, 2017, MAWC filed its case-in-chief with a request to adjust rates.<sup>5</sup> The request included an increase to Empire's special contract rate. MAWC had a proposed a rate of \$2.34 per 1,000 gallons for Empire<sup>6</sup>, based on its proposed fully consolidated Single Tariff Pricing.

On November 22, 2017, 120 days past the July 25, 2017, intervention deadline, Empire moved to intervene in the current case. As part of its motion for intervention,

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<sup>4</sup> Case No. WR-2011-0337, EFIS Item 298.

<sup>5</sup> Case No. WR-2017-0285, EFIS Item 2, *Transmittal Letter and Tariff Revisions*.

<sup>6</sup> Case No. WR-2017-0285, EFIS Item 4, *Direct Testimony of Brian LaGrand*, p. 127, CAS 11 & 12; *Exhibit 22, Direct Testimony of Brian LaGrand*, p. 127, CAS 11 & 12

Empire stated that it “accepts the record established in this case.” The motion was granted by the Commission on November 30, 2017.

On March 1, 2018, as the result of extensive negotiations, the parties executed and filed a Stipulation and Agreement (*2018 Stipulation and Agreement*) that settled the majority of the issues in the case, including an agreed-upon increase to MAWC’s revenue requirement.<sup>7</sup> The *2018 Stipulation and Agreement* also included a provision regarding special contracts:

**20. Special Contracts:** The Signatories agree that the special contracts currently in effect should continue without any material changes, with the exception of the contract with Triumph Foods, LLC, in which the commodity charge will be revised consistent with the confidential Rebuttal Testimony of Staff Witness Matthew J. Barnes.

However, the 2018 Stipulation and Agreement did not resolve two major rate design questions – 1) whether to retain three rate districts, consolidate into one rate district, or return to eight rate districts; and, 2) in any of those scenarios, what should be the appropriate customer charge. Both of these issues have an impact on Empire’s special contract rate.

Thus, by the parties agreeing to an increase in rates, but without rate design settled, the parties left for the Commission’s determination how that rate increase would be spread among the various customers. Rates were changing with regard to special contracts, but the contracts themselves would continue without any material changes (i.e. how the formula determining the rate would operate).<sup>8</sup>

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<sup>7</sup> See WR-2017-0285, EFIS Item 261, *Stipulation and Agreement*. While Empire was not a signatory to the *2018 Stipulation and Agreement*, it did not object.

<sup>8</sup> The *2018 Stipulation and Agreement* specifically mentions the change to Triumph Foods, LLC’s commodity rate because Staff was obliged review the terms of that special contract as result of case negotiations. See Case No. WR-2015-0301, EFIS Item 398, *Joint Motion for Approval of Addendum No. 3 to Missouri-American Water Company’s Special Contract with Triumph Foods LLC*; and, EFIS Item 405, *Order Approving Addendum No. 3 to Missouri-American Water Company’s Special Contract with Triumph*

## The Commission's Decision on Rate Design

The parties filed their position statements on the remaining issues in the case by February 21, 2018. Empire filed a statement of position stating that it took no position on the issues in the case.<sup>9</sup> There was a four-day evidentiary hearing on the above questions (and others) on March 5-8, 2018<sup>10</sup>. Empire did not participate in the hearings as it requested leave to be excused on February 23, 2017<sup>11</sup>, which was granted on February 27, 2018.<sup>12</sup>

On May 2, 2018, the Commission issued its *Order Approving Stipulations and Agreements, and Report and Order* (together, *Orders*).<sup>13</sup> The *Orders* first approved the *2018 Stipulation and Agreement*, and then reached a decision on district consolidation opting for two districts, rather than eight, three, or one. The Commission-approved agreement on the revenue increase, coupled with the Commission's decision on rate design (which set the cost of service for the new districts) and finally on customer charges, ultimately provided the volumetric charges that would be applied to the customers served by MAWC.

Those decisions affected all customers, including Empire. The Commission directed Missouri-American to file tariffs that complied with its *Report and Order*.<sup>14</sup> The order included a two-district rate design for Rate A and Rate J. The Company filed its compliance tariffs on May 4, 2018, with some minor revisions on May 10, 2018.

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*Foods LLC.*

<sup>9</sup> Case No. WR-2017-0285, EFIS Item 256, *Statement of Position of Empire District Electric Company.*

<sup>10</sup> Case No. WR-2017-0285, EFIS Items 271, 272, 273, and 274, *Transcript Volumes 15, 16, 17, and 18.*

<sup>11</sup> Case No. WR-2017-0285, EFIS Item, 256, *The Empire District Electric Company Request to Be Excused.*

<sup>12</sup> Case No. WR-2017-0285, EFIS Item 258, *Order Granting Requests to be Excused from Evidentiary Hearing*

<sup>13</sup> Case No. WR-2017-0285, EFIS Items 445 and 446, respectively.

<sup>14</sup> EFIS Item 446, *Report and Order.*

Under the Special Contract, Empire's rate can only be one of two things. Either Rate J, the rate for manufacturers, industrials and large quantity users approved by the Commission and applicable to the Joplin District (\$2.8268 per 1,000 gallons) **or** the fully loaded production costs covering the operating expenses, taxes and capital costs of producing water for the Joplin District (\$2.5145 per 1,000 gallons).

### **Conclusion**

Missouri-American's compliance tariffs adhere to the Commission's *Report and Order*, and in so doing, are further consistent with the plain language of the Empire Special Contract, as well as the *2011 Stipulation and Agreement* and the *2018 Stipulation and Agreement*. The issue raised by Empire is one of contractual interpretation. It is not necessary to decide that issue in conjunction with the compliance tariffs. As a result, the Commission should approve the filed tariffs.

Respectfully submitted,

/s/ Tim Luft

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**ATTORNEY FOR MISSOURI-AMERICAN  
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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 May 14, 2018, to the parties.

//S// William R. England III