

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** Affiliate Transaction Rules/  
Utility Excavation Coordination/Lead Line  
Replacement Funding/Low-Income Programs/Late Fees  
**Witness/Type of Exhibit:** Marke/Direct  
**Sponsoring Party:** Public Counsel  
**Case No.:** WR-2022-0303

**DIRECT TESTIMONY**  
**OF**  
**GEOFF MARKE**

Submitted on Behalf of the Office of the Public Counsel

**MISSOURI-AMERICAN WATER COMPANY**

**CASE NO. WR-2022-0303**

November 22, 2022

## TABLE OF CONTENTS

<b>Testimony</b>	<b>Page</b>
Introduction	1
Affiliate Transactions (Water & Sewer Utilities)	1
Utility Coordination of Excavation of Distribution System	14
Lead Service Line Replacement Funding	16
Low-Income Programs	22
Critical Needs Program	22
Rehousing Pilot Program	24
Late Fees	25

**DIRECT TESTIMONY**  
**OF**  
**GEOFF MARKE**  
**MISSOURI AMERICAN WATER COMPANY**  
**CASE NO. WR-2022-0303**

1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. Geoff Marke, PhD, Chief Economist, Office of the Public Counsel (OPC or Public Counsel),  
4 P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. What are your qualifications and experience?**

6 A. I have been in my present position with OPC since 2014 where I am responsible for economic  
7 analysis and policy research in electric, gas, water, and sewer utility operations.

8 **Q. Have you testified previously before the Missouri Public Service Commission?**

9 A. Yes. A listing of the Commission cases in which I have previously filed testimony and/or  
10 comments is attached in Schedule GM-1.

11 **Q. What is the purpose of your direct testimony?**

12 The purpose of my direct testimony is to provide commentary recommendations regarding the  
13 long-overdue promulgation of water affiliate transaction rules, benchmarking and reporting  
14 utility coordination in the excavation of system infrastructure, the need for a proactive pursuit  
15 of federal funding for lead line replacement, my support for the Critical Needs and Rehousing  
16 Pilot Programs, and late fee reduction to reflect the cost of service.

17 **II. AFFILIATE TRANSACTION RULES (WATER & SEWER UTILITY)**

18 **Q. What are affiliate transactions?**

19 A. They are transactions between members of a common enterprise, and are not arm's length  
20 transactions.<sup>1</sup>

---

<sup>1</sup> See also GM-2.

1 **Q. What is the purpose of the Commission’s Affiliate Transactions Rules?**

2 A. To protect captive ratepayers and the public at large from monopolistic abuse. The rules are  
3 designed to prevent a regulated utility from subsidizing its nonregulated operations. The rules,  
4 coupled with effective enforcement, should provide the public with assurance that utility rates  
5 are not adversely impacted by the utility’s nonregulated activities.

6 **Q. Why are they important?**

7 A. In a holding company structure, such as Missouri American Water Company’s (“MAWC”  
8 or the “Company”), deliberately or not, there is a strong incentive for the members of that  
9 enterprise to structure the transactions between them to most benefit the enterprise rather  
10 than for each member to strive for the transaction to most benefit it. Here, where MAWC’s  
11 rates (and retail revenues) are based on its cost to provide service, there is an incentive to  
12 shift costs from MAWC’s affiliates to MAWC to maximize the profit of the enterprise. In  
13 contrast, normal business transactions are arm’s length transactions between independent  
14 buyers and sellers who are pursuing their respective best interests and can walk away from  
15 the other party’s best offer if that offer fails to satisfy their objective for the transaction.

16 **Q. Are concerns with affiliate transactions merely theoretical?**

17 A. No, they are very real. The Missouri Supreme Court recognized the foregoing concerns in  
18 its opinion in *Office of the Pub. Counsel v. Mo. PSC*, 409 S.W.3d 371 (Mo. 2013). In that  
19 opinion, the Court said:

20 The risk inherent in affiliate transactions arises because agreements between  
21 a public utility and its affiliates are not made at arm’s length or on an open  
22 market. They are between corporations, one of which is controlled by the  
23 other. As such they are subject to suspicion and therefore present dangerous  
24 potentialities.

25 Most recently, the Commission found that The Empire District Electric Company was  
26 imprudent for entering into a 15-year promissory note with an affiliate at an interest rate  
27 that exceeded that affiliate’s cost for the moneys it lent and with an origination fee that the  
28 affiliate did not incur.

1 **Q. Are Missouri ratepayers afforded the same level of regulatory assurance for each of**  
2 **Missouri’s electric, gas, water, and sewer utilities?**

3 A. No. There are no Commission rules for affiliate transactions for either water or sewer utilities,  
4 i.e., presently there are only affiliate transaction rules for electric and gas utilities in Missouri.

5 **Q. Why?**

6 A. It is my understanding that the impetus for the affiliate transaction rules originated as a  
7 regulatory necessity for the evolving telecom industry. It also made practical sense to extend  
8 those same protections for ratepayers to both electric and gas utilities as their respective  
9 markets evolved and services expanded. Water and sewer utilities, in contrast, historically had  
10 been a much more local and provided a less complex regulatory service.

11 **Q. What has changed?**

12 A. American Water Works Company Inc. (“American Water”) changed that narrative many years  
13 ago, through its overall expanded size and complex corporate structure. It is the Commission  
14 rules that have not adapted.

15 **Q. What do you mean?**

16 A. In what has historically been services dominated by municipal systems or small, local water  
17 utilities, American Water’s aggressive acquisitions, system expansion and increasing  
18 investment in market-based non-regulated services makes it a textbook example of a utility the  
19 Commission had in mind when it drafted its existing affiliate transaction rules. Consider the  
20 sheer size and many affiliates under the American Water umbrella as generalized in the  
21 Company’s “About Us” section of its home webpage:

22 With a history dating back to 1886, American Water (NYSE: AWK) is the largest and  
23 most geographically diverse U.S. publicly traded water and wastewater utility  
24 company. The company employs more than 6,400 dedicated professionals who provide  
25 regulated and regulated-like drinking water and wastewater services to more than 14

1 million people in 24 states. American Water provides safe, clean, affordable and  
2 reliable water services to our customers to help keep their lives flowing.<sup>2</sup>

3 Simply put, there is no regulated utility in the United States like American Water and the lack  
4 of Commission oversight regarding MAWC's affiliate transactions is both disconcerting and  
5 regrettably long overdue.

6 **Q. Has the Commission approved MAWC's use of a cost allocation manual ("CAM")?**

7 A. No, but the Company has one. However, because the Commission's affiliate transaction rules  
8 do not apply to MAWC, its CAM lacks any enforceable standards and, thus, provides minimal  
9 protection, if any. Regulators and advocates thus operate at a considerable informational  
10 disadvantage in ensuring transparent and appropriate cost allocations or minimizing  
11 competitive market advantages that come at the expense of its regulated customers.

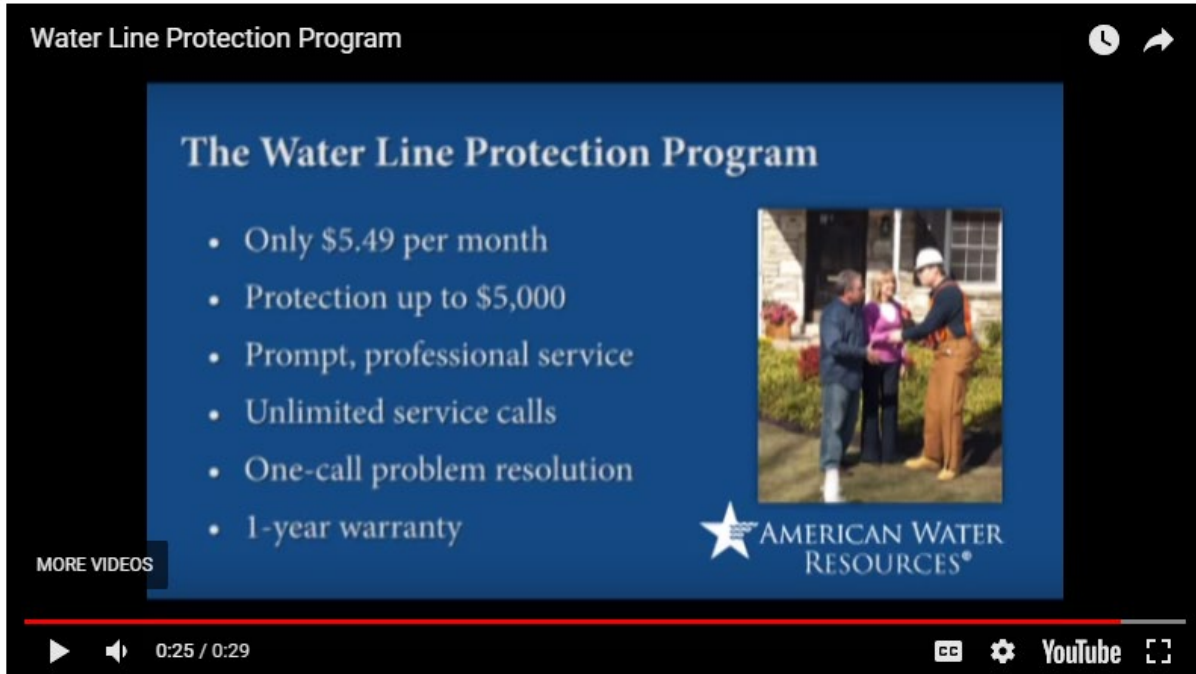
12 **Q. Can you illustrate your concern?**

13 A. Yes. For many years American Water operated an unregulated affiliate that provided water  
14 line protection service as seen in the Figure 1 visual snapshot of the American Water: Water  
15 Line Protection Program video currently on YouTube:

---

<sup>2</sup> American Water: About Us. (2022) <https://www.amwater.com/corp/about-us/>

1 Figure 1: Non-regulated water service line protection program<sup>3</sup>



2  
3 Additional non-regulated services and products include:

- 4 • Sewer Line Protection
- 5 • Leak Detection
- 6 • In Home Plumbing Emergency Program
- 7 • Water Heater Repair Replacement
- 8 • Interior & Exterior Electric Line Protection
- 9 • Gas Line Protection Program
- 10 • In-Home Plumbing Clog Protection Program
- 11 • Power Surge Protection
- 12 • Heating System Repair
- 13 • Cooling System Repair

<sup>3</sup> American Water Resources (2020) <https://awrusa.com/products-services-water-line-protection> & <https://www.youtube.com/watch?v=lgTQ2CSzymw>

1 **Q. Does American Water still offer the Home Service Program as a non-regulated affiliate?**

2 A. Not entirely. American Water sold its non-regulated affiliate to a British private equity firm,  
3 Apax Partners, for \$1.275 billion and also entered into a revenue sharing agreement in which  
4 it will continue to receive 10% of the revenue generated from billed home service customers  
5 through an applicable Company subsidiary (an “on-bill” arrangement), and 15% of the revenue  
6 generated from any future on-bill arrangements entered into after the closing. American  
7 Water’s most recent 10-Q explicitly states:

8 ***Sale of Homeowner Services Group***

9 On December 9, 2021, the Company sold all of the equity interests in subsidiaries that  
10 comprised the Company’s Homeowner Services Group (“HOS”) to a wholly owned  
11 subsidiary of funds advised by Apax Partners LLP, a global private equity advisory  
12 firm (the “Buyer”), for total consideration of approximately **\$1.275 billion**, resulting  
13 in pre-tax gain on sale of \$748 million during the fourth quarter of 2021. The  
14 consideration was comprised of \$480 million in cash, a seller promissory note issued  
15 by the Buyer in the principal amount of \$720 million, and a contingent cash payment  
16 of \$75 million payable upon satisfaction of certain conditions on or before December  
17 31, 2023. . . .

18 **The Company and the Buyer also entered into revenue share agreements,**  
19 **pursuant to which the Company is to receive 10% of the revenue generated from**  
20 **customers who are billed for home warranty services through an applicable**  
21 **Company subsidiary (an “on-bill” arrangement), and 15% of the revenue**  
22 **generated from any future on-bill arrangements entered into after the closing.**

23 Unless earlier terminated, this agreement has a term of up to 15 years, which may be  
24 renewed for up to two five-year periods. The Company recognized \$2 million and \$6  
25 million of income during the three and nine months ended September 30, 2022,



1                   respectively, from the revenue share agreements, which is included in Other, net on the  
2                   Consolidated Statements of Operations.<sup>4</sup> (emphasis added)

3 **Q. Does this arrangement raise any concerns for you?**

4 A. Many. American Water’s historic ability to enter into, maintain, and profit from more than  
5 \$1.25 billion in revenue from the sale of its Homeowner Services Group despite a “competitive  
6 market” was predicated on its unique monopolistic control of captive customers through its  
7 regulated water and sewer services as well as, through the use of its unique customer facing  
8 branding. This branding continues today as seen in Figure 2:

9 Figure 2: American Water Resources Home Protection Program<sup>5</sup>



10  
11 **Q. Can you summarize your concerns as it relates to the Homeowner Services Group?**

12 A. Yes. American Water’s non-regulated Homeowner Services Group was sold for approximately  
13 \$1.25 billion and its valuation was tied to American Water’s unique regulated status, which is  
14 dependent on captive customers, branding and continued billing systems. Moving forward:

<sup>4</sup> American Water Works Company, Inc. Form 10-Q (September 30, 2022) p. 20  
<https://d18rn0p25nwr6d.cloudfront.net/CIK-0001410636/47610339-a039-40ec-9cc1-ed3f4cc94402.pdf>

<sup>5</sup> American Water Resources Homepage (2022) <https://www.awrusa.com/>

- 1 • American Water will continue to receive 10% of revenues from the
- 2 Homeowner Services Group from existing customers through billing
- 3 investments made by regulated customers;
- 4 • American Water will receive 15% of revenues from the Homeowner Services
- 5 Group for new customers through billing investments made by regulated
- 6 customers; and
- 7 • MAWC customers were not compensated from this sale or the continued
- 8 agreement for Apax to take advantage of the regulated utility's brand
- 9 recognition that caused an unfair and harmful competitive advantage relative
- 10 to existing or potential competitors.

11 This issue and the specific recommendations to rectify this anti-competitive behavior and  
12 compensate Missouri ratepayers accordingly is addressed in greater detail in the direct  
13 testimony of OPC witness Angela Schaben.

14 **Q. Did you raise concerns about MAWC's affiliate transactions in its last general rate case**  
15 **before this Commission, Case No: WR-2020-0344?**

16 A. Yes, and in prior MAWC rate cases that preceded that one beginning with Case No. WR-  
17 2017-0285.

18 **Q. Could you provide a timeline of events that have occurred since your initial testimony on**  
19 **this topic in WR-2017-0285?**

20 A. The timeline follows:

- 21 • November 30, 2017: I filed similar surrebuttal testimony in MAWC's Case No: WR-
- 22 2017-0285 general rate case requesting the Commission promulgate rules for water
- 23 companies of a certain size.
- 24 • June 22, 2018: OPC initiated Case No. WX-2018-0387 with attached draft rules that
- 25 added the word "water" before the word "corporation" as a new set of rules in 4 CSR
- 26 240-50.015.

- 1           • June 27, 2018: Commission Staff initiated Case Nos. AW-2018-0394 (consolidation  
2           of electric, gas, water and sewer utility affiliate transactions rules) and WW-2018-0392  
3           (water and sewer corporation less than 8,000) to establish working case files with the  
4           intent of consolidating existing Commission affiliate transaction rules, while also  
5           subjecting water corporations to those newly consolidated affiliate transaction rules.
- 6           • July 2, 2018: Wishing not to interfere with Staff’s endeavor, and out of respect for a  
7           request from Staff, OPC withdrew its rulemaking petition in Case No. WX-2018-0387.
- 8           • August 10, 2018: Interested parties, including OPC, filed comments in Case No. AW-  
9           2018-0394.
- 10          • October 9, 2018: Staff hosted a workshop in Case No. AW-2018-0394.
- 11          • June 4, 2019: OPC initiated Case No. WX-2019-0380 by filing an application and  
12          petition for promulgation of rules with attached draft rules that added the word “water”  
13          before the word “corporation” as a new set of rules in 4 CSR 240-50.015 out of concern  
14          from inactivity in Case No. AW-2018-0394.
- 15          • June 5, 2019: Staff responded to OPC’s initiation of Case No. WX-2019-0380 by  
16          pleading in which it stated:
  - 17               ○ Staff’s approach is consistent with the Governor’s Executive Order 17-03 to  
18               streamline regulations, and it addresses affiliate transactions rules in a  
19               comprehensive, holistic manner. Additionally, numerous stakeholders  
20               submitted comments to Staff’s proposed rules, and Staff held workshops. Staff  
21               is reviewing comments and incorporating them into drafts. Staff continues the  
22               internal review process and could produce final drafts in the next few months.
- 23          • July 17, 2019: The Commission denied OPC’s petition in Case No. WX-2019-0380.
- 24          • September 16, 2019: Staff filed draft affiliate transactions and HVAC rules in Case No.  
25          AW-2018-0394 laying out three possible scenarios for the Commission to consider:
  - 26               (1) continue this working case and issue an Order requesting comments from  
27               stakeholders within 30 days after the date of said Order addressing the

1 consideration of the attached draft rules; (2) engage in an Order of Proposed  
2 Rulemaking utilizing the attached draft rules; or (3) in an Agenda or Agendas  
3 utilize the attached draft rules to produce an Order of Proposed Rulemaking  
4 with changes of the Commissioners to the attached draft rules regarding the  
5 treatment of affiliate transactions and HVAC affiliate transactions.

- 6 • October 9, 2019: OPC filed comments in Case No. AW-2018-0394 expressing our  
7 concerns regarding Staff's proposed language including, but not limited to, the  
8 elimination of the following language from the current affiliate transactions rules:
  - 9 ○ "The rule and its effective enforcement will provide the public the assurance  
10 that their rates are not adversely impacted by the utilities' nonregulated  
11 activities."
- 12 • November 6, 2019: Staff filed a response to OPC's October 9, 2019, comments in Case  
13 No. AW-2018-0394 stating that the aforementioned language was removed in Staff's  
14 initial draft of the affiliate transaction rules, but Staff provided no explanation why it  
15 removed said language. Staff further provided a draft copy of the proposed rules with  
16 tracked change comments. Finally, Staff recommended the Commission direct  
17 interested parties to file comments within 30 days stating their proposed changes and/or  
18 response to Staff's proposed changes.
- 19 • December 9, 2019: Parties filed responses to Staff's proposed changes in Case No.  
20 AW-2018-0394.
- 21 • February 18, 2020: Staff filed its third draft of the affiliate transactions and HVAC  
22 affiliate services rules in Case No. AW-2018-0394.
- 23 • February 26, 2020: The Commission requested that stakeholders file in Case No. AW-  
24 2018-0394 comments related to costs to comply with the new draft rule by March 20,  
25 2020.
- 26 • March 20, 2020: Three utilities (Ameren, Evergy and Spire) filed comments in Case  
27 No. AW-2018-0394.

- 1           • November, 24, 2020: I filed direct and surrebuttal testimony in MAWC’s Case No:  
2           WR-2020-0344 general rate case requesting the Commission promulgate rules for  
3           water companies of a certain size.

4           It is now November 22, 2022, and 1,818 days (or four years, eleven months and twenty-three  
5           days) have passed since I initially filed testimony making the case that water and sewer utilities  
6           need to be added to the Commission’s current affiliate transactions rules.

7           However, as long as that has been, the need for water affiliate transaction rules has been  
8           recognized by past Commissions and stakeholders since as far back as 2003 or more than  
9           nineteen years ago.

10 **Q. What do you mean?**

11 A. In Case No. WR-2003-0500 (then) OPC witness Kimberly K. Bolin wrote:

12 **Q. Does Public Counsel have concerns about the affiliated transactions that are**  
13 **occurring between the Company and its affiliate American Water Resource?**

14 A. Yes. Public Counsel is aware that American Water Resources (AWR) an affiliate of  
15 Missouri-American Water Company is providing a water line protection program.  
16 This service is being offered to customers in all of the Missouri American districts  
17 expect for the St. Louis County district. Notice of this service was sent to customers  
18 through the mail on Missouri-American Water Company letterhead and signed by the  
19 president of Missouri-American Water Company. (See Schedule KKB-8)

20 **Q. Please explain your understanding of how affiliated transactions can have a**  
21 **detrimental effect on the ratepayers?**

22 A. An affiliated transaction is any transaction between two companies or operating  
23 divisions that also have a corporate relationship. This relationship could include one  
24 firm being a subsidiary of the other, both firm’s stock being held by the same parent,  
25 or other various corporate relationships. Transactions between affiliated companies  
26 may not be truly arm’s length transactions and this can result in detriments to a utility’s  
27 captive customers – the ratepayers.

1           The potential detrimental financial consequences for ratepayers stem from the distinct  
2           possibility that the utility will use its monopoly position to extract higher rates from the  
3           captive or monopoly ratepayers or use its monopoly advantage to stifle potential  
4           competitors in the unregulated industry. The utility may also incur higher costs, thus  
5           producing higher rates, by purchasing goods or services from the affiliated non-  
6           regulated entity at a price higher than the non-regulated entity's competitor.

7           Any cross-subsidization that occurs between the regulated and non-regulated  
8           companies could create an unfair advantage to the non-regulated affiliate. The  
9           Commission must ensure that any transfer pricing and cost allocations that occur will  
10          adequately recover utility costs and prevent cross-subsidization, it must also prevent  
11          anti-competitive consequences by ensuring that confidential market sensitive  
12          information is not transferred between the utility and the non-regulate affiliate.<sup>6</sup>

13          Ms. Bolin's testimony continues explaining how ratepayers could be charged higher rates if  
14          the price paid by an affiliate is below the production cost of producing goods or services and  
15          how a utility can use its monopoly position to stifle competition in formerly competitive  
16          industries.<sup>7</sup> On February 24, 2004, parties entered into a revenue requirement stipulation and  
17          agreement that was approved by the Commission in which the following agreement was  
18          ordered:

19                 Affiliated Transaction Rule. The Company, OPC and Staff will use their best efforts to  
20                 see that a rule regarding affiliate transactions is promulgated by the Commission no  
21                 later than April 16, 2005. The Company also agrees to provide to the Staff and the OPC  
22                 a copy of all statutes and commission rules that currently exist in the states where  
23                 American Water and its subsidiaries operate which address affiliated transactions and  
24                 codes of conduct with affiliates by March 17, 2004.<sup>8</sup>

---

<sup>6</sup> See GM-3 for the Direct Testimony of Kimberly K. Bolin in Case No. WR-2003-0500 p. 17-18.

<sup>7</sup> Ibid. p. 18-25

<sup>8</sup> See GM-4 The Stipulation and Agreement as to the Revenue Requirement in Case No. WR-2003-0500 p. 4-5

1 The proposed affiliate transaction rule filing was later extended to August 16, 2005, in which  
2 both MAWC and the Staff filed proposed rules.<sup>9</sup> Notably, the Staff’s proposed rules mirror  
3 both the electric and gas affiliate transaction rules in their entirety the only differentiation being  
4 the insertion of the word “water” in place of the aforementioned relevant industry reference  
5 locations.

6 **Q. What is your recommendation?**

7 A. In this case, I recommend that the Commission order MAWC to create a new CAM that is  
8 guided by existing standards for other regulated utilities, informed by stakeholder input, and  
9 approved by the Commission. To that end, I recommend that the Commission order MAWC  
10 to file a proposed CAM for Commission approval within six months of the date the  
11 Commission issues its Report and Order in this rate case.

12 Regarding next steps as it pertains to the water and sewer affiliate transactions rules, I  
13 recommend that the Commission close Case No. AW-2018-0394 and open a WX water  
14 rulemaking docket that adopts the rules put forward by the Commission Staff in the WR-2003-  
15 0500 docket, which are included in GM-6. These draft rules mirror those in place for the  
16 electric and gas utilities and merely adding the word “water.”

17 As demonstrated from the two years and eight months of inactivity in Case No. AW-2018-  
18 0394 (and the subsequent prolonged history that proceeded that case), there is no need to  
19 categorically change the affiliate transaction rules across industries until water affiliate  
20 transaction rules have been codified to mirror those in place for electric and gas utilities.

---

<sup>9</sup> See GM-5 for MAWC’s response and GM-6 for Staff’s response.

1 **III. UTILITY COORDINATION OF EXCAVATION OF DISTRIBUTION**  
2 **SYSTEM**

3 **Q. Why is proactive utility coordination with private and public entities regarding**  
4 **excavation important?**

5 A. Proactive water utility coordination with municipal, state/federal (department of  
6 transportation), utilities (sewer, electric, telecommunications, and gas) and the private sector  
7 (broadband cables, etc...) over the excavation and remediation of its distribution system can  
8 provide a number of ratepayer (and public) benefits including:

- 9 ○ Avoided surprises, relocations, construction delays, public inconvenience and  
10 redesigns;
- 11 ○ Savings in operational time and dollars;
- 12 ○ Increased safety to workers and the surrounding community; and
- 13 ○ Avoidance of duplicative excavation and paving.

14 **Q. Does MAWC already engage relevant stakeholders in coordination of excavation**  
15 **projects?**

16 A. Yes. Based on my discussions with the Company on this topic, MAWC attempts to contact  
17 the many municipal, state and federal entities that would be directly impacted by the  
18 Company's excavation schedule and vice versa. This occurs less often between utilities.

19 **Q. Is there a need to examine whether greater cost savings can be incurred through**  
20 **deliberate coordinated efforts?**

21 A. I believe so. Electric, gas and water each have generous infrastructure surcharges and/or  
22 related mechanisms in place to accelerate the deployment of copious amounts of capital  
23 investment necessary to provide safe and reliable service. The unfortunate byproduct of  
24 that aggressive capital buildout is the accompanying double-digit rate increases that are now  
25 further stressed by record levels of inflation and volatile fuel prices. Simply put, cost saving



1 should be at the forefront of all parties' priorities. A greater emphasis on coordinated efforts  
2 have very real impacts on costs, economic growth, public safety, and the public trust.

3 **Q. What is your recommendation?**

4 A. I am recommending that the Commission order MAWC to document, report and ultimately  
5 benchmark its efforts taken and savings incurred from coordination with public and private  
6 actors impacted by any excavation of its distribution system on a bi-annual basis (and within  
7 six months of new rates going into effect) in this docket until the conclusion of its next rate  
8 case. I am also recommending that the Commission order MAWC to meet with  
9 representatives from Staff and OPC at least twice to discuss what actions MAWC will  
10 document and what MAWC will include in said reports. Finally, I am recommending that  
11 the Commission consider ordering a working docket that results in a reoccurring annual  
12 workshop in which invitations are extended to all regulated utilities, the Missouri Municipal  
13 League, the Missouri Department of Transportation, and other relevant actors to provide a  
14 forum to examine the possibility for cost savings from:

- 15 • Memorandums of Understanding (“MOU’s”);<sup>10</sup>
- 16 • Shared-Savings Agreements (“SSA’s”); and
- 17 • Shared Best Practices on Coordinated Activity.

18 A one-day workshop would appear to be a small price to pay in terms of time for the  
19 potential opportunity to achieve real cost savings across utilities and municipalities from an  
20 open and engaged dialogue on this topic. Of course, I am open to any feedback from other  
21 interveners on this topic and will respond accordingly in future testimony.

---

<sup>10</sup> MOU’s may be structured as unenforceable guidance documents where the parties agree to a set of merely aspirational goals. Alternatively, MOUs could be structured as binding legal documents that require the parties to abide by the explicit terms and conditions of the agreement.

1 **IV. LEAD SERVICE LINE REPLACEMENT FUNDING**

2 **Q. How many lead service lines has MAWC replaced to date?**

3 A. According to MAWC's response to OPC DR-2022 and OPC DR-2020, MAWC has  
4 replaced anywhere between 5,359 and 6,211 lead service lines since 2017.

5 **Q. How many lead service lines are in MAWC's service territory?**

6 A. We do not know for sure, but according to MAWC response to OPC DR-2020 it estimates  
7 there are lead service lines in at least 70,832 domiciles within its service territory although  
8 the actual number may be much greater (due to the lack of records over some of its systems).  
9 Other literature has suggested much higher numbers. For example, in 2016 the United States  
10 Government Accountability Office ("GAO") estimated that Missouri likely had more than  
11 330,000 homes with lead service lines.<sup>11</sup> Ultimately, imperfect or nonexistent records  
12 creates a reality where housing stock characteristics are used as a proxy for the existence of  
13 likely lead service lines.

14 **Q. Has American Water adopted any goals regarding the removal of lead service lines?**

15 A. Yes. According a recent St. Joseph News-Press article on the topic, American Water  
16 officials stated:

17 "American Water has a goal of proactively replacing all lead service lines, across its  
18 national footprint, by 2030," officials said in an emailed statement. "This goal and  
19 current replacement practices are NOT driven by a regulatory requirement since we  
20 comply with water quality standards."<sup>12</sup>

21 **Q. Has the federal government taken any action on the issue of lead line replacement?**

22 A. On December 16, 2021, the Biden-Harris Administration announced the "Lead Pipe and  
23 Paint Action Plan" setting a goal of full lead pipe replacement in a decade with

---

<sup>11</sup> United States Government Accountability Office (2016) Drinking Water: Approaches for Identifying Lead Service Lines Should Be Shared with All States. <https://www.gao.gov/assets/gao-18-620.pdf>

<sup>12</sup> Ritzdorf, Q. (2022) Missouri works to find and replace lead pipes. *St. Joseph News-Press*.  
<https://finance.yahoo.com/news/missouri-works-replace-lead-pipes-003900641.html>

1 \$350,000,000,000 in State and Local Fiscal Recovery Funds provided through the American  
2 Rescue Plan which can be used for lead service line and lead faucet and fixture  
3 replacements.<sup>13</sup> Specific actions articulated in the plan include:

- 4 • \$15 billion of direct funding from the Bipartisan Infrastructure Law for lead service line  
5 replacements at Environmental Protection Agency (“EPA”) through the Drinking Water  
6 State Revolving Fund (“SRF”), and an additional \$11.7 billion in SRF funding for which  
7 lead pipes replacement is eligible;<sup>14</sup>
- 8 • \$9 billion in the Build Back Better Act for lead remediation grants to disadvantaged  
9 communities through the Water Infrastructure Improvements for the Nation Act (“WIIN”)  
10 program, including for schools and childcare centers at EPA;<sup>15</sup>
- 11 • EPA and Department of Labor (“DOL”) establishing regional technical assistance hubs to  
12 fast track lead service line removal projects in partnership with labor unions and local water  
13 agencies;<sup>16</sup> and
- 14 • Establishing a new Cabinet Level Partnership for Lead Remediation in Schools and Child  
15 Care Centers.<sup>17</sup>

---

<sup>13</sup> White House (2021) Fact Sheet: The Biden-Harris Lead Pipe and Paint Action Plan.

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/> See GM-7.

<sup>14</sup> See GM-8.

<sup>15</sup> See GM-9.

<sup>16</sup> Ibid.

There are currently more than 148,000 public water systems in the United States. As part of the implementation of the Bipartisan Infrastructure Law, the EPA will establish Technical Assistance Hubs in select regions with a large concentration of lead service lines. The Hubs will be designed to support local water agencies to more rapidly remove lead service lines through regional collaborations. The Hubs will support local communities in developing lead service line inventories, creating model contracts for lead service line removal projects, and leveraging union expertise. The EPA and the Department of Labor will collaborate with labor unions to accelerate the replacement of lead pipes, including the potential to leverage existing union training centers to host state training seminars on lead service line replacement technologies and to create good paying union jobs.

<sup>17</sup> Ibid.

This partnership between the Environmental Protection Agency, the U.S. Department of Education, the U.S. Department of Health and Human Services, and U.S. Department of Agriculture will commit to make rapid progress on lead remediation in schools and child care centers—safeguarding the health and well-being of a

1 **Q. Are any of these funds available to investor-owned water utilities?**

2 A. Yes. That is perhaps the biggest difference between previous federal funding streams and  
3 the current White House initiative. Federal funding is available for investor-owned utilities  
4 (“IOU’s”).

5 **Q. Has MAWC taken a proactive effort in securing federal funding to provide least cost  
6 service to its captive ratepayers for lead line service remediation?**

7 A. No.

8 The Company’s response to a series of discovery issued to elicit the level of activity is as  
9 follows:

10 *OPC DR-2021:*

11 Information Requested:

12 Please provide a narrative explanation of MAWC’s efforts to help schools and/or child  
13 daycares/nurseries to eradicate operational lead service lines.

- 14 • Please also include a list of any and all schools and/or child daycares/nurseries that  
15 currently have known operational lead service lines in place but not removed.

16 Information Responded:

17 MAWC is currently developing its Service Line Inventory for all its operating district. At  
18 this time, MAWC has not started the process to identify customers who are most at risk such  
19 as schools, child daycares, and medical clinics. Once the Service Line Inventory is complete,  
20 MAWC will act in accordance with the Revised Lead and Copper Rule.<sup>18</sup>

---

generation of young people. The agencies will initiate the partnership by convening joint stakeholder discussions to gather input from those on the frontlines of lead contamination in schools and childcare centers. The engagements will identify priority areas for coordination across the agencies; opportunities to align funds; address data gaps on lead contamination at schools and child care centers; and development of coordinated guidance to reduce the risk of lead exposure in the nation’s schools and childcare facilities.

<sup>18</sup> See GM-10.

1            *OPC DR-2023:*

2            Information Requested:

3            Please provide a narrative explanation of MAWC’s efforts to secure federal funding through  
4            “The Drinking Water State Revolving Fund” for lead line replacements.

- 5            • Please also include targeted funding amount and any accommodating grant  
6            applications.  
7            • If no efforts have been made, please explain why not.

8            Information Responded:

9            MAWC has focused its efforts on obtaining federal funding for single projects with larger  
10           capital investment, as opposed to multiple smaller projects. As a result, MAWC has not  
11           made efforts to secure federal funding through “The Drinking Water State Revolving  
12           Fund.”<sup>19</sup>

13           *OPC DR-2024:*

14           Information Requested:

15           Please provide a narrative explanation of MAWC’s efforts to secure federal funding through  
16           the “US EPA Water Infrastructure Improvements for the Nation (WIIN) Act Grants” for  
17           lead line replacements.

- 18           • Please also include targeted funding amount and any accommodating grant  
19           applications.  
20           • If no efforts have been made, please explain why not.

21           Information Responded:

22           To date, no efforts have been made to secure federal funding through the “US EPA Water  
23           Infrastructure Improvements for the Nation (WIIN) Act Grants” for lead line replacements.

---

<sup>19</sup> See GM-11.

1 MAWC is reviewing the eligibility requirements and application process to potentially  
2 apply for grant assistance for the communities we serve.<sup>20</sup>

3 *OPC DR-2025:*

4 Information Requested:

5 Please provide a narrative explanation of MAWC's efforts to secure federal funding through  
6 any and all grants above and beyond the Drinking Water State Revolving Fund and the US  
7 EPA Water Infrastructure Improvement for the Nation (WIIN) Act Grants for lead service  
8 line removal.

9 Information Responded:

10 MAWC has applied for federal funding through the American Rescue Plan to help support  
11 the construction of the Service Line Inventory. MAWC has requested the maximum  
12 allotment of \$200,000.<sup>21</sup>

13 In addition to the aforementioned responses, MAWC was unable to provide the costs of lead  
14 line removal at the domicile level or the all-in-costs for lead line remediation to date.  
15 Finally, MAWC was silent as to whether or not customers (specifically, schools,  
16 daycare/nursery centers or other applicable known child-centric locations) have been  
17 informed of the existence of lead service lines.

18 **Q. Has American Water commented on the sheer costs involved in changing out aged  
19 infrastructure and who will pay for it?**

20 A. They have. In the FAQ of American's Water webpage, the following Q&A appears:

21 Q. I heard that it is going to cost \$1 trillion to replace the aging infrastructure in the  
22 U.S. How is this going to be financed and who will pay for it?

---

<sup>20</sup> See GM-12.

<sup>21</sup> See GM-13.

1           A.     With 85% of the nation’s water serviced by the public sector, the burden to finance  
2                   the upgrades rests mainly on municipalities, local communities, and ultimately, state  
3                   and local governments. To assist, the federal government has set up funds to help  
4                   finance the upgrades, such as the Clean Water State Revolving Fund, which was  
5                   established in 1987. The fund enables state and local governments to get low interest  
6                   loans in order to fix aging wastewater treatment facilities and sewer pipes. States are  
7                   required to match funds they use by at least 20%. Additional measures have been  
8                   proposed, such as The Water Quality Financing Act of 2007 (H.R. 720), which  
9                   would commit \$14 billion to communities for fixing their antiquated infrastructure.  
10                  Finally, cities also have the option to apply for municipal bonds in order to finance  
11                  their work. Other solutions point to the private-sector funding, by which private-  
12                  sector companies, such as American Water, invest the money needed for water  
13                  and/or wastewater infrastructure improvements. Public-Private Partnerships (PPP)  
14                  have also been used in many communities and through them private sector  
15                  companies assist in the design, rebuilding, and operation of publicly-owned water  
16                  and wastewater systems. PPP offers one of the most viable ways for communities to  
17                  access the capital and industry expertise of the private-sector. It is believed that such  
18                  partnerships will play an increasingly role in helping the U.S. overcome its water  
19                  infrastructure challenges.<sup>22</sup>

20   **Q.     Does anything concern you about that response?**

21    A.     The emphasis on private funding to meet the alleged infrastructure replacement amount  
22            does. An emphasis on private funding coupled with MAWC’s inaction as it relates to  
23            securing federal funding that is available to investor-owned utilities means that ratepayers  
24            will be paying more for its cost of service than what they should and raises serious prudence  
25            issues moving forward.

---

<sup>22</sup> Missouri American Water (2022) Frequently Asked Questions. <https://www.amwater.com/corp/faqs>

1 **Q. What is your recommendation?**

2 A. OPC recently filed to open working docket AW-2023-0156 regarding utility actions related  
3 to securing funding from the Infrastructure and Jobs Act of 2021 and the Inflation Reduction  
4 Act of 2022. The influx of federal funding to help address a variety of public policy goals  
5 should result in real financial value to ratepayers across each of our utilities. If the  
6 Commission orders that docket to be opened, MAWC should provide an explanation for  
7 why it is electing to leave money on the table or provide an updated response to the  
8 aforementioned discovery on actions it is taking to secure funding.

9 MAWC should also provide a detailed response in rebuttal as to how it plans to secure  
10 federal funding, identify and inform customers moving forward, and other tangible actions.  
11 From my perspective, failure to act on available federal funding in a timely manner (or at  
12 all) will result in increased regulatory risk and likely cost recovery disallowances. In that  
13 manner, this testimony serves as a placeholder for future dockets moving forward and  
14 should nullify any hindsight analysis arguments parties may level against OPC if cost  
15 disallowance recommendations are made.

16 **VII. LOW-INCOME PROGRAMS**

17 **Critical Needs Program**

18 **Q. What is the Critical Needs Program?**

19 A. In Case No. GR-2021-0108, Legal Services of Eastern Missouri recommended the funding and  
20 adoption of a pilot program modeled after Baltimore Gas & Electric's ("BG&E") Critical  
21 Needs Program ("CNP"). The BG&E program recognized that there are vulnerable customers  
22 who may not have the capacity to research and apply for assistance, negotiate reasonable  
23 payment plans, or properly navigate the application process. Yet their circumstances make  
24 them particularly vulnerable to harm if they become disconnected. In response, the CNP  
25 streamlines and expedites the processes to help customers stay connected. The pilot's initial  
26 goal was to implement immediate access to existing resource assistance (bill payment, repair,



1 consumer protections, etc...) to customers that seek assistance in nontraditional utility  
2 customer service venues (e.g., hospitals, public and private assistance agencies, shelters,  
3 etc...). The CNP is a voluntary program that trains customer “navigators,” who work in  
4 nontraditional utility customer service representative (“CSR”) venues. The navigators utilize a  
5 simple form under a “fast-track” protocol that provides an expedited process that should:

- 6 • Maintain or restore utility services;
- 7 • Avoid negative impacts on residents with serious medical and/or crisis conditions;
- 8 • Address build-up of utility bill arrears; and
- 9 • Provide a streamlined process to complementary services.

10 **Q. Is this still a pilot program for BG&E?**

11 A. No. The program’s success lead it to becoming a statutory requirement for utilities in  
12 Maryland, and the service is now largely administered by the State’s Social Service  
13 Department with additional funding through the Maryland’s Fuel Fund program.

14 **Q. Wouldn’t those elements (Department of Social Service and an independent funding  
15 stream) be beyond the scope of the Commission’s power in this case?**

16 A. They would; however, I am not suggesting anything more than to order what parties in Spire  
17 Missouri, Ameren Missouri, and Empire District Electric’s recent rate cases agreed to, which  
18 was to model the initial pilot program that BG&E produced.

19 **Q. Do you have any additional information to share on the topic of critical needs customers?**

20 A. Since the beginning of the year, stakeholders from the Staff, OPC, Ameren Missouri, Empire  
21 District Electric, Spire Missouri, Legal Services of Eastern Missouri, and Consumer Council  
22 have been working together with the United Way of St. Louis and Joplin on the Critical Needs  
23 Pilot Program. As it stands, the Critical Needs Program is being rolled out as an enhancement  
24 to the United Ways 2-11 System through an interoperable software platform called Unite-Us.  
25 This platform is then linked with all major hospitals and hundreds of non-profit and other entry  
26 points for customers in crisis.

1 The Critical Needs Program should go live in the first quarter of 2023 (or possibly sooner).  
2 Invitations have also been extended and were accepted by Evergy Missouri Metro/West and  
3 MAWC in anticipation of their respective rate cases.

4 **Q. What is your recommendation to the Commission?**

5 A. Consistent with Spire Missouri, Ameren Missouri, Empire District Electric, Empire District  
6 Gas, Evergy Missouri Metro, and Evergy Missouri West companies respectively, I recommend  
7 a 50/50 sharing of costs between ratepayers and shareholders for this program for a minimum  
8 of three years at a total of \$500,000 per year. Any excess funding should be directed to the  
9 MAWC's H<sub>2</sub>O program.

10 **Rehousing Pilot Program**

11 **Q. What is Ameren's Missouri's Rehousing Pilot Program?**

12 A. In Ameren Missouri's last rate case (Case No. ER-2021-0240), parties agreed to fund a low-  
13 income program targeted at transitional housing customers based on recommendations from  
14 an independent third party (Apprise) study over Ameren Missouri's low-income programs.  
15 The Ameren Missouri Rehousing Pilot Program includes a select group of homeless agencies  
16 in the greater St. Louis and St. Charles area and includes 500 targeted participants a year. Each  
17 participant will receive \$1000 to be allocated towards arrearages, and/or future bill credits to  
18 help these agencies' clients transition into stable housing arrangements with new utility  
19 accounts.<sup>23</sup>

20 **Q. Has any other utility subsequently adopted this program?**

21 A. Yes. Evergy Missouri Metro and Evergy Missouri West, as a result of the stipulation and  
22 agreements adopted in Case Nos. ER-2022-0129 and ER-2022-0130, will be piloting a  
23 Rehousing Program in their service territories in 2023.

---

<sup>23</sup> Importantly, it was agreed to that deposit fees will be waived for selected participants.

1 **Q. Are you recommending the same thing for MAWC?**

2 A. I am recommending the same funding level and contribution ratio (\$500,000 allocated 50/50  
3 between ratepayers and shareholders). As to the exact amount to give to participants, I would  
4 recommend \$500 per participant and MAWC should partner with both Ameren Missouri and  
5 Evergy Missouri Metro and Evergy Missouri West and their respective housing shelter  
6 agencies on this issue moving forward. Any excess funding should be allocated to MAWC's  
7 H<sub>2</sub>O program.

8 **VIII. LATE FEES**

9 **Q. What are the benefits associated with late fees?**

10 A. The two arguments supporting the continued use of late fees include: 1.) greater revenue  
11 assurance (late fees offset the revenue requirement assuming the Company is not over-  
12 earning); and 2.) late fees should (theoretically) encourage timely payments.

13 **Q. Do you support late payment fees?**

14 A. No. I have not seen any evidence to support that late payment fees are an appropriate deterrent  
15 to non-payment, and I believe that any additional fee added to an already financially struggling  
16 customer will increase the likelihood of disconnection. I believe the threat of disconnection is  
17 the primary deterrent to incentivize timely payments, and that MAWC should be doing  
18 everything in its power to provide an affordable service, which should include minimizing  
19 punitive charges that make it more likely for already struggling customers to fall off.

20 **Q. Do you know of any commissions that recently ordered the elimination of late fees?**

21 A. Yes. The Kentucky Public Service Commission ruled against their continued use in Case No:  
22 2020-00141.<sup>24</sup> I am also aware that many state commissions suspended late fees throughout  
23 the COVID-19 pandemic.

---

<sup>24</sup> See GM-14

1 **Q. What is MAWC's late payment fee?**

2 A. 1.5% of the total bill.

3 **Q. Is this information readily available on the Company's website?**

4 A. No. Under the Company's "Your Rights and Responsibilities as a Customer of Missouri  
5 American Water" Section of its website, the following responsibility is stated:

6 BILL PAYMENT

7 Bill payments are due 21 days after the billing date. The due date is printed on the front  
8 of the bill. **A delinquent charge may be applied to all accounts not paid in full by**  
9 **the due date.** Bills become delinquent after the due date stated on the bill. If the bill is  
10 not paid, service may be disconnected.<sup>25</sup> (emphasis added)

11 I was unable to locate any other reference to late fee amounts on the Company's website.

12 **Q. Do you have any recommendations to modify this amount?**

13 A. I recommend that MAWC's late fees be lowered to 0.25%. Such an amount would more  
14 accurately reflect the cost of service, minimize the punitive pressure on struggling customers,  
15 and still incentivize timely payments by having the "threat" of a late payment charge.

16 I also recommend that the Commission order the Company to update its website so that it is  
17 abundantly clear to customers what they may be charged for late payment. Customers should  
18 not have to struggle to find out what fees they may be charged. The process should be as  
19 transparent and easily accessible as it can be.

20 **Q. Does this conclude your testimony?**

21 A. Yes.

---

<sup>25</sup> Missouri American Water (2022) Your Rights and Responsibilities as a Customer of Missouri American Water"  
<https://www.amwater.com/moaw/Customer-Service-Billing/Rights-Responsibilities/Customer-Rights-And-Responsibilities/index>

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

In the Matter of the Application of Missouri- )  
American Water Company's Request for )  
Authority to Implement General Rate )      Case No. WR-2022-0303  
Increase for Water and Sewer Service )  
Provided in Missouri Service Areas )

**AFFIDAVIT OF GEOFF MARKE**

**STATE OF MISSOURI** )  
                                  )   ss  
**COUNTY OF COLE**     )

Geoff Marke, of lawful age and being first duly sworn, deposes and states:

1. My name is Geoff Marke. I am a Chief Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Geoff Marke  
Chief Economist

Subscribed and sworn to me this 22<sup>nd</sup> day of November 2022.



TIFFANY HILDEBRAND  
My Commission Expires  
August 8, 2023  
Cole County  
Commission #15637121

  
\_\_\_\_\_  
Tiffany Hildebrand  
Notary Public

My commission expires August 8, 2023.