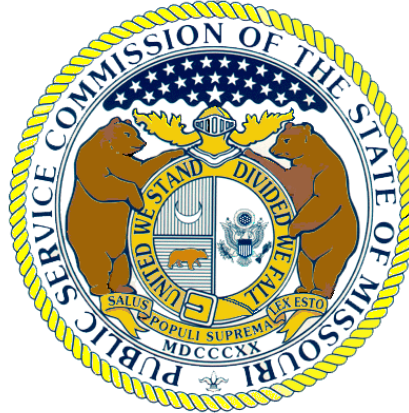


# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of )  
Missouri-American Water Company for an ) **File No. WU-2017-0351**  
Accounting Authority Order Related to Property )  
Taxes in St. Louis County and Platte County )

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## REPORT AND ORDER

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Taxes in St. Louis County and Platte County )

**REPORT AND ORDER**

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**REGULATORY LAW JUDGE: Kim S. Burton**

**Procedural History**

On June 29, 2017,<sup>1</sup> Missouri-American Water Company (“MAWC” or “the Company”) filed an application (“Application”) seeking an accounting authority order (“AAO”) that permits the Company to record as a deferred debit the increase in property taxes for the counties of St. Louis (“STLCO”) and Platte (“Platte Co” jointly, “the Counties”). The Commission provided notice of the Application and granted applications to intervene filed by: Missouri Industrial Energy Consumers (“MIEC”), Midwest Energy Consumers Group (“MECG”), and St. Louis County, Missouri (“STLCO”).

An evidentiary hearing was held on November 8. Initial post-hearing briefs were filed on November 22, with reply briefs submitted on December 1.

**Findings of Fact**

1. The Commission finds that any given witness’ qualifications and overall credibility are not dispositive as to each and every portion of that witness’ testimony. The Commission gives each item or portion of a witness’ testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional

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<sup>1</sup> Calendar references are to 2017, unless otherwise noted.

specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>2</sup>

2. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>3</sup>

3. MAWC is a Missouri Corporation with its principal place of business in St. Louis, Missouri. The Company is a “water corporation,” a “sewer corporation,” and a “public utility.”<sup>4</sup> MAWC provides water service to approximately 463,700 customers in 24 Missouri counties. MAWC’s water service territory includes cities such as St. Joseph, Warrensburg, Parkville, Riverside, Jefferson City, and parts of St. Charles.<sup>5</sup>

4. Property taxes are an annual recurring expense for utilities.<sup>6</sup> In each of the 24 Missouri counties in which MAWC operates, the Company is assessed annual property tax.<sup>7</sup>

5. When submitting its property declaration to STLCO, MAWC self-reports its personal property and separately self-reports equipment used in the gathering,

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<sup>2</sup> Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony”. *State ex rel. Pub. Counsel v. Mo. Pub. Serv. Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

<sup>3</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Mo. Office of Pub. Counsel v. Pub. Serv. Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

<sup>4</sup> EFIS Item No. 1, Application, ¶2. See Section 386.020, RSMo 2016. All statutory references are to the 2016 Revised Statutes of Missouri.

<sup>5</sup> EFIS Item No. 1, Application, ¶ 1, Ex. 3.

<sup>6</sup> Tr. 103.

<sup>7</sup> Ex. 3.

treatment, and distribution of water. That property is then assessed at 32% of its true value in money.<sup>8</sup>

6. Prior to 2007, a county assessor could assess local property based on factors of their choosing. Also prior to 2007, STLCO used a 7-year recovery period when calculating depreciation.

7. A statute was enacted to set a standard for county assessors to use to make the process fair and equitable across the state.<sup>9</sup>

8. Section 137.122(2) directed counties to assess property tax using “class life” as set out in the Modified Accelerated Cost Recovery System (“MACRS”) life tables under the Internal Revenue Code.<sup>10</sup>

9. Under Section 137.122, to estimate the value of depreciable business personal property<sup>11</sup> placed in service after January 1, 2006, county assessors apply the appropriate class life and recovery period to the original cost of the property according to a statutorily set depreciation schedule.<sup>12</sup>

10. According to the appropriate MACRS class-life standard, equipment used in the gathering, treatment and distribution of water is to be assessed with a 20-year recovery period.<sup>13</sup>

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<sup>8</sup> Ex. 12, Q. 6. The type of property at issue in this case is personal property that is assessed as real estate under Chapter 137. Tr. p. 175-176.

<sup>9</sup> Tr. 184-185. See Section 137.122(2), RSMo.

<sup>10</sup> Section 137.122(2), RSMo. The “recovery period” over which the original cost of depreciable tangible personal property is depreciated for property tax purposes is set by statute to be the same as the recovery period allowed for such property under the Internal Revenue Code. See IRS Publication 946.

<sup>11</sup> “Business personal property” is tangible personal property which is used in a trade or business or used for production of income and which had a determinable life of longer than one year. Section 137.122(1), RSMo.

<sup>12</sup> Section 137.122.3,5 RSMo. Tr. 176.

<sup>13</sup> Ex. 12, Q 9., Tr. 195-196. IRS Publication 946.

11. Since approximately 2003, MAWC has employed Joseph C. Sansone Company (“Sansone”) to act as the Company’s authorized tax representative and submit its property tax information to STLCO.<sup>14</sup> Employees with MAWC’s affiliate company American Water Services act as MAWC’s point of contact to Sansone on the Company’s property declarations since MAWC self-reports its property subject to assessment to the counties.<sup>15</sup> Elizabeth Arriaga is the current manager of the general tax group for American Water Services Company who provides Sansone information on MAWC’s assets and is one of the two people who would review Sansone’s property filings with STLCO.<sup>16</sup>

12. Since 2013, Suzanne Strain has served as the Manager of Personal Property Department of the St. Louis County Assessor’s Office. She is responsible for planning, organizing, and implementing the valuation of all personal property in STLCO.<sup>17</sup>

13. On April 28, 2017, Sansone’s Senior Director of Personal Property Services, Tammy Frost submitted MAWC’s 2017 property declaration to STLCO. The submission reported the Company’s personal and non-parcel real property owned as of January 1, 2017. The information was provided in an excel spreadsheet that listed the assessed values by tax district, along with “worksheets” to support MAWC’s arrived at assessed values. MAWC’s worksheets included a line item “assessment rate.”<sup>18</sup>

14. Ms. Strain reviewed the worksheets in an attempt to discern how MAWC arrived at their listed assessed value. When MAWC submits its annual property report

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<sup>14</sup> Tr. 63-64. Sansone also submits MAWC’s property declarations for St. Charles County.

<sup>15</sup> Ex. 13, Tr. 70-72, 176-178.

<sup>16</sup> Tr. p70-72, 93-94.

<sup>17</sup> Ex. 12, Q. 1-2.

<sup>18</sup> Ex. 13., Ex. 12, Q. 7-9.

to STLCO, the Company is supposed to identify the original cost and the year the property was acquired. However, when MAWC submitted its reports to STLCO, it stated the assessed value per year for each taxing district, but did not report the depreciation factor used to calculate the assessed value.<sup>19</sup>

15. When reviewing MAWC's 2017 declaration, Ms. Strain realized that MAWC was using a 7-year recovery period to arrive at their assessment rate instead of the appropriate 20-year recovery period.<sup>20</sup> There are only two companies that STLCO assesses that have distributable property, Laclede Gas Company and MAWC. Laclede Gas Company submits its property declarations to STLCO using a 20-year recovery period.<sup>21</sup>

16. Approximately ten years earlier, on March 19, 2007, Ms. Frost sent an email to STLCO's then Personal Property Assessment Manager Karen Leahy stating that she was finalizing the 2007 values for MAWC and wondered if the recent MACRS implementation for personal property would affect utilities, especially for the non-parcel real estate (distribution) asset values. Ms. Frost asked, "Will we use the same depreciation as last year for all 2006 additions? Please advise."<sup>22</sup>

17. Ms. Leahy responded to Ms. Frost that, "If you have depreciated the locally assessed personal property items in the past using our depreciation schedules, I see no reason why the 06 acquisitions shouldn't be depreciated using the new recovery schedules. This would seem consistent with how we have been doing it. I have used the

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<sup>19</sup> Tr. 179-180. Ex. 13.

<sup>20</sup> Ex. 12, 9-10., Ex. 13.

<sup>21</sup> Other companies with distributable property are assessed at the state level, not locally. Tr. 177-178.

<sup>22</sup> Ex. 2, Schedule 4.



existing schedules to locally assess the railroads and other utility companies that report to us also, and will apply the 06 rates.”<sup>23</sup>

18. Despite the March 19, 2007 email conversation, prior to 2017, Sansone would self-report MAWC’s property declarations to STLCO based on a 7-year recovery period. For the other 23 Missouri counties in which it operates, MAWC has been submitting its property declarations based on a 20-year recovery period.<sup>24</sup>

19. Through an oversight by STLCO - based on its reliance on MAWC’s self-reporting - prior to 2017, STLCO accepted MAWC’s property declarations and calculations for assessed value that used a 7-year recovery period.<sup>25</sup> STLCO failed to double check the property tax declaration for MAWC.<sup>26</sup>

20. After Ms. Strain’s discovery of MAWC’s error in 2017, she emailed Ms. Frost on May 30, 2017, advising her that while the 7-year recovery period was accepted by STLCO in the past, a 20-year recovery period should be used for the assessment of assets used in the gathering, treatment and distribution of water.<sup>27</sup>

21. No explanation was offered as to why the Company chose to use a 7-year recovery period to report its property assessments to STLCO. Neither of MAWC’s two witnesses at hearing had knowledge of what conversations may have previously occurred between MAWC’s representatives and STLCO about the use of a 7-year recovery period instead of a 20-year recovery period.<sup>28</sup>

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<sup>23</sup> Ex. 2, Schedule 4.

<sup>24</sup> Ex. 3. Ex. 12, Q.9-10.

<sup>25</sup> Ex. 12, Ex. 14. Tr. 200-202.

<sup>26</sup> Tr. 180-181.

<sup>27</sup> Ex. 14.

<sup>28</sup> Tr. 42-43, Mr. Wilde is employed by Missouri-American Services Company as Senior Director of Corporate Tax, but has only been in his current position for a year and a half. Ex. 1, Tr. 35, 43, 80-81.

22. On May 31, 2017, Ms. Frost informed Ms. Arriaga with American Water Services about her conversation with Ms. Strain. Ms. Frost wrote to Ms. Arriaga, “We have discussed frequently of [sic] Missouri’s implementation of MACRS depreciation schedules (statewide) for the valuation of personal property and the potential impact should that occur fully in St. Louis County. As a reminder, some counties phased this in over a period of years to combine with their existing County schedules, while some converted later such as Jefferson County a couple of years ago.”<sup>29</sup>

23. Unrelated to the events in STLCO, MAWC was also notified that beginning in 2017, Platte Co intends to assess Company property using a 50-year MACRS class life and include Construction Work in Progress (“CWIP”) when calculating MAWC’s property tax.<sup>30</sup> Platte Co’s attempt to use a 50-year life for some of MAWC’s property is unprecedented in Missouri.<sup>31</sup>

24. Although MAWC is assessed for its CWIP balance by STLCO, Platte Co has not previously included CWIP in its property assessments.<sup>32</sup> MAWC’s Parkville water treatment plant, located in Platte Co, is currently under construction and will be placed in service by the end of 2017. The CWIP for the Parkville water treatment plant is estimated to be approximately \$30 million dollars for 2017.<sup>33</sup>

25. MAWC anticipates the increased property taxes in STLCO to be \$4.4 million for calendar year 2017 and approximately \$2.5 million for the first five months of 2018.<sup>34</sup> For Platte Co, MAWC anticipates increased property taxes of approximately \$400,000

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<sup>29</sup> Ex. 15.

<sup>30</sup> Tr. 92.

<sup>31</sup> Ex. 6, p.7.

<sup>32</sup> Ex. 6, p. 7.

<sup>33</sup> Tr. 95-97.

<sup>34</sup> Ex. 5, Schedule 1.

for 2017 and approximately \$167,000 for 2018 through May 2018.<sup>35</sup> The combined additional property taxes to the Counties for the seventeen months at issue amounts to approximately 9.6% of the Company's 2016 net income.<sup>36</sup>

26. During a general rate case proceeding, the Commission normally incorporates property tax expense when calculating a utility's revenue requirement.<sup>37</sup> An annualized amount of taxes are then included in the rates that are paid by MAWC's customers.<sup>38</sup> In MAWC's most recent general rate case, File No. WR-2015-0301, the Company's property tax expense - based on a test year ending December 31, 2014, and updated with a true-up period for known and measurable expenses through January 31, 2016 - was used for rate setting purposes.<sup>39</sup>

27. For MAWC's currently pending general rate case,<sup>40</sup> MAWC is projecting their property tax expenses for STLCO using a 20-year assessment.<sup>41</sup> A final Commission order in MAWC's pending general rate case is anticipated to go into effect no later than May 28, 2018.<sup>42</sup> To the extent that MAWC incurs an increase in its property taxes, those increases are passed on to customers.<sup>43</sup>

28. If MAWC had begun in 2007 to use the 20-year recovery period for calculating its STLCO property taxes it would not be facing this change in 2017.<sup>44</sup>

29. Increases in property taxes are not unusual or nonrecurring.<sup>45</sup>

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<sup>35</sup> Tr. 96-97. The 2016 MAWC Net Income in PSC Annual Report page F-13 is \$47,826,578, Ex. 5, Schedule 1.

<sup>36</sup> Ex. 1, p. 10.

<sup>37</sup> Tr. 131.

<sup>38</sup> Tr. 81-82,83.

<sup>39</sup> EFIS Item No. 1, Application, ¶ 7, File No. WR-2015-0301, Order Granting Staff's Motion for Test Year.

<sup>40</sup> File No. WR-2017-0285, et al.

<sup>41</sup> Tr. 81-82.

<sup>42</sup> See File No. WR-2017-0285, et al.

<sup>43</sup> Tr. 81-83.

<sup>44</sup> Tr. 82.

30. MAWC evaluated if there were grounds to legally challenge STLCO's method of arriving at true value when assessing MAWC's property. MAWC determined that given the facts and circumstances, since the Company would bear the burden of proof in any challenge of STLCO's assessment, it would not pursue a challenge.<sup>46</sup>

31. At the time of hearing, MAWC was challenging Platte Co's assessment with the State Tax Commission.<sup>47</sup> However, as MAWC's witness Mr. Wilde acknowledged, while the statute may give guidance on the use of MACRS, county assessors have some discretion to use a different method when trying to accurately determine true value.<sup>48</sup>

32. When evaluating a company's financial position at a certain point in time, all relevant factors should be taken into account. While MAWC's property tax expenses have increased since 2015, other costs have likely decreased.<sup>49</sup>

33. No company has made a claim requesting special accounting treatment related to the statutory change in the depreciation allowance since 2007.<sup>50</sup>

34. A regulatory asset is a subcategory of potential deferred debits. While for electric and gas utilities there is a specific account to book regulatory assets, for water utilities, a deferral, even of a regulatory asset, can be booked to Account 186, miscellaneous deferred debits, in the appropriate Uniform System of Accounts.<sup>51</sup>

35. For accounting purposes, while the FERC and NARUC Uniform System of Accounts may differ slightly in describing Extraordinary Items, the consistent meaning

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<sup>45</sup> Tr. 162.

<sup>46</sup> Tr. 68-69.

<sup>47</sup> Tr. 69-70.

<sup>48</sup> Tr. 65.

<sup>49</sup> Tr. 154.

<sup>50</sup> Tr. 130.

<sup>51</sup> Tr. 105.

for both is that an “extraordinary item” is an event that is considered unique, unusual, and nonrecurring.<sup>52</sup>

### **Conclusions of Law**

As a “water corporation” and “public utility,” MAWC is subject to the jurisdiction of the Commission.<sup>53</sup> As a regulated utility, MAWC must submit periodic reporting of its financial information to the Commission.<sup>54</sup> This “regulatory reporting” allows the Commission to use its knowledge and expertise to review the content and format of financial information in order to set utility rates and effectively perform its other regulatory functions under Chapters 386 and 393 of the Revised Statutes of Missouri.<sup>55</sup>

Section 393.140(4) grants the Commission the power to prescribe uniform methods by which regulated water corporations keep accounts, records, and books. The Commission exercised that authority through its adoption of the July 1976 revised Uniform System of Accounts for Class A Water Companies, issued by the National Association of Regulatory Utility Commissioners (“NARUC USOA”).<sup>56</sup> MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission.<sup>57</sup> However, after a hearing, the Commission can change

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<sup>52</sup> Tr. 139-140.

<sup>53</sup> Section 386.020, RSMo.

<sup>54</sup> Ex. 7, p 2, Section 393.140(4), RSMo.

<sup>55</sup> Ex. 6. p 2-3. “The public service commission... and its powers are referable to the police power of the state....It has a staff of technical and professional experts to aid it in the accomplish of its statutory powers....”*State ex rel. Union Elec Co. v. Public Service Com’n of State of Mo.*, 765 S.W.2d 618, 621-622 (Mo.App. W.D. 1988) quoting *Chicago, Rock Island & Pacific Railroad Company v. Public Service Commission*, 312 S.W.2d 791, 796 (Mo. banc 1958).

<sup>56</sup> 4 CSR 240-50.030(1). “Class A” is to be used by water companies with annual water operating revenues of \$500,000 or more, which includes MAWC. 4 CSR 240-50.030(2).

<sup>57</sup> 4 CSR 240-50.030.

the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited.<sup>58</sup>

MAWC's Application requests the Commission allow the Company to record as a deferred debit the increase in the Counties' property tax assessments for 2017 and the first five months of 2018.<sup>59</sup>

Among other debits, NARUC USOA Account 186. Miscellaneous Deferred Debits can be used for "unusual or extraordinary expenses, not included in other accounts." General Instruction No. 7 of NARUC USOA specifically states:

It is the intent that net income shall reflect all items of profit and loss during the period with the sole exception of prior period adjustments as described in General Instruction 8. Those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company shall be considered extraordinary items. Commission approval must be obtained to treat an item as extraordinary. Such request must be accompanied by complete detailed information.

An AAO is a deferral mechanism that allows a utility to "defer and capitalize certain expenses until it files its next rate case."<sup>60</sup> An AAO is not a rate-making decision.<sup>61</sup> Although an AAO allows a cost to be placed in a separate account for future consideration, it does not create an expectation of recovery, nor does it bind the Commission to any particular ratemaking treatment.<sup>62</sup> When evaluating whether an event should be considered extraordinary, the Commission will look to the appropriate

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<sup>58</sup> Section 393.140(8).

<sup>59</sup> Although the Application originally requested the ability to record the cost as a regulatory asset, NARUC USOA, unlike the USOS for other regulated utilities, does not specify an account for booking "regulatory assets." A "regulatory asset" is a subcategory of deferred debits. Tr. p. 105.

<sup>60</sup> *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 436 (Mo.App W.D. 1998).

<sup>61</sup> *Id.* at 438.

<sup>62</sup> *Id.*

Uniform System of Accounts for guidance.<sup>63</sup> However, for accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring.<sup>64</sup>

### **Decision**

Property taxes are an expected cost of operating a business in the State of Missouri. It is an obligation borne by all investor-owned utilities, including MAWC, which pays property taxes to each of the 24 Missouri counties in which it operates. The Commission does not dispute that a property tax payment is consistently considered a prudent operating expense subject to ratemaking treatment during a general rate case.

However, the issue before the Commission is not whether it is prudent to pay property taxes. The issue is whether the increase in MAWC's property taxes to the Counties for 2017 and the beginning of 2018 resulted from an event that would be considered "unusual" or "extraordinary" under NARUC USOA. That is to say, did the Counties' implementation of a different standard for assessing MAWC's property taxes cause an unusual, unique and nonrecurring event worthy of exceptional treatment? For the following reasons, the Commission finds they do not.

There is nothing unusual or extraordinary about paying property taxes to warrant an AAO. It is a recurring expense. MAWC counters that while the duty to pay property tax is not unusual, the level of increase in property tax and the actions by the Counties are the nonrecurring, unusual, and unique events.

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<sup>63</sup> *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n*, 509, S.W.3d 757, 769-770 (Mo.App. W.D. 2016).

<sup>64</sup> Tr. 139-140.

In the Application, MAWC claims that at the time of its last rate case, File No. WR-2015-0301<sup>65</sup> the Company, “had no reason to believe that its property tax expenses would suddenly increase significantly beyond...current rates because of St. Louis County and Platte County unexpectedly making administrative changes in how they assess the Company’s property.”<sup>66</sup> At hearing, counsel for MAWC stated that the Counties’ actions were unpredictable since MAWC, “had no advance notice of these decisions until after they were made and, in fact, after they had filed their property tax declaration in both these counties.”<sup>67</sup>

If true, this could potentially demonstrate an unexpected event. However, insofar as STLCO is concerned, credible evidence presented at hearing shows MAWC was notified as early as 2007 that an updated class life should be used to calculate property taxes for STLCO. Furthermore, those responsible for reviewing and filing the Company’s property tax declarations for STLCO were cognizant that a correction by STLCO was inevitable.

In 2007, Ms. Frost from Sansone asked STCLO if MAWC should continue using the same depreciation as last year. As Ms. Strain testified, prior to 2007, STLCO used a 7-year recovery period to calculate depreciation. STLCO responded that acquisitions should use the new recovery schedules. In a May 31, 2017 email to Ms. Arriaga with American Water Services Company, Ms. Frost states:

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<sup>65</sup> File No. WR-2015-0301, In the Matter of Missouri-American Water Company’s Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Area, MAWC submitted a Notice of Intended Case Filing on May 15, 2015, and the Commission issued its Report and Order on May 26, 2016, with a June 25, 2016 effective date. In a December 28, 2015 order, the Commission established a Test Year for the 12 months ending December 31, 2014, with a true-up period through January 31, 2016.

<sup>66</sup> Application, ¶ 7; EFIS Item No. 1.

<sup>67</sup> Tr. 9, 11-22.



“We have discussed frequently of [sic] Missouri’s implementation of MACRS depreciation schedules (statewide) for the valuation of personal property and the potential impact should that occur fully in St. Louis County. As a reminder, some counties phased this in over a period of years to combine with their existing County schedules, while some converted later such as Jefferson County a couple of years ago.”<sup>68</sup>

This email between MAWC’s property tax consultant and the manager of the general tax group for the American Water Service Company demonstrates frequent prior conversations between the two about the potential impact of the use of the MACRS depreciation schedules by STLCO. At the very least, American Water Service Company, MAWC’s affiliate responsible for managing its property tax filing, was aware that Jefferson County made the transition to the 20-year recovery period years before the May 31, 2017 email.<sup>69</sup> This should have put the Company on notice that the only remaining county, STLCO, could foreseeably apply the 20-year recovery period.

These prior discussions about the impact of STLCO’s use of MACRS; the fact that 23 of 24 Missouri counties were already using MACRS and the 20-year recovery period; and, the fact that Jefferson County made the transition two years prior, refutes MAWC’s contention that the Company had no reason to believe, “its property tax expenses would suddenly increase.” MAWC’s payment of property taxes based on a 20-year recovery period in the 23 other counties in which it operates shows that STLCO’s actions were not unique or unusual.

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<sup>68</sup> Ex. 15.

<sup>69</sup> Tr. 75, ln 4-13; Ex. 15; Ex. 3.

Some may argue that absent the Company timing the filing of a general rate case to include a known increase of property taxes, MAWC will unfairly incur an additional cost that it cannot recover in rates. While this is true, there are always increases and off-setting decreases in other costs that are not reflected in current rates. That is why the General Instructions for NARUC USOA indicates the intent should be for net income to reflect all items of profit and loss during the period.<sup>70</sup> MAWC is requesting the Commission single out one increased expense for special deferred treatment without consideration for other items of profit or loss. This Commission recently denied Kansas City Power & Light Company's request to do that exact thing with a tracker for increased property tax expense.<sup>71</sup>

When KCP&L appealed, the Court upheld the Commission's decision.<sup>72</sup> Pointing out that a tracker is similar to an AAO in that it allows a utility to deviate from the normal method of accounting, the Court found the Commission appropriately determined the use of trackers should be limited since they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentive for a utility to operate efficiently.<sup>73</sup>

Furthermore, if, as MAWC claims, the Counties' change in the methodologies used for assessing property taxes and the level of the increase are the extraordinary events that justify a deferred debit, MAWC could have requested an AAO when the other 23 counties in which it operates converted to a 20-year recovery period. Either MAWC did not consider the conversions extraordinary or the Company incorporated the

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<sup>70</sup> NARUC USOA, General Instruction No. 7.

<sup>71</sup> *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n*, 509, S.W.3d 757 (Mo.App. W.D. 2016).

<sup>72</sup> *Id.* at 769-770 (Mo.App. W.D. 2016).

<sup>73</sup> *Id.*

changes when it filed its general rate cases. Indeed, since December 2006, MAWC has filed five general rate cases with the Commission.<sup>74</sup>

Moreover, while STLCO may have informed MAWC in 2017 to begin applying the 20-year recovery period, this was not the application of a new methodology. It was STLCO correcting an error on MAWC's part and an oversight on STLCO's part about which MAWC should have reasonably been on notice since 2007.

While the Commission does not think MAWC intentionally tried to underpay STLCO, it failed to present a clear picture of what actually transpired. As the applicant seeking a deviation from the standard, MAWC bears the burden of proof.<sup>75</sup> Yet MAWC chose to present only two witnesses at hearing and neither of those witnesses could explain why, for the past ten years, the Company continued to apply a 7-year recovery period in STLCO for property routinely assessed with a 20-year recovery period by the other 23 Missouri counties. STLCO's participation and the helpful testimony of Ms. Strain provided many of the facts surrounding MAWC's past property tax declarations. Ms. Strain testified that MAWC did not clearly mark the depreciation percentage it applied when calculating its assessment rates. Ms. Strain testified that the only other utility comparable to MAWC's distributable property was Laclede Gas Company, which self-reported using the 20-year recovery period.

From the evidence presented by STLCO, it appears the Company's representative with first-hand knowledge of the past events and communications with Sansone concerning the use of a 7-year recovery period is the current manager of the

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<sup>74</sup> See File Nos. WR-2007-0216, WR-2008-0311, WR-2010-0131, WR-2015-0301, and WR-2017-0285, et al.

<sup>75</sup> "The general standard of proof for civil cases is preponderance of the evidence." *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007).

general tax group for American Water Services Company, Ms. Arriaga, but she was not presented as a witness.

While Platte Co's use of a 50-year class life may be unexpected, MAWC's own witness Mr. Wilde acknowledged that assessors are statutorily given latitude to apply a different standard if it more accurately represents the true value of property. Indeed, increases in property taxes are not unusual; they are expected. The assessment of CWIP may be new for Platte Co, but it is not unusual. Although Platte Co did not include CWIP in its prior assessments, MAWC is currently assessed for CWIP by STLCO.

Although MAWC may argue the combined level of increase in property tax expense for STLCO and Platte Co should be considered extraordinary, for reasons previously explained, the Company should have known about the potential increase in STLCO since 2007 and acted accordingly. The level of increase for Platte Co for the seventeen months at issue amounts to approximately \$560,000, which is hardly extraordinary for a utility the size of MAWC.

Applying the facts to the pertinent law, the Commission finds that MAWC did not meet the standards for granting an AAO and will deny the Application.

**THE COMMISSION ORDERS THAT:**

1. The application for an Accounting Authority Order filed by Missouri-American Water Company is denied.
2. This order shall become effective December 30, 2017.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, and Coleman, CC., concur,  
Kenney, and Rupp, CC., dissent;  
and certify compliance with the  
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 20<sup>th</sup> day of December, 2017.