

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

In the Matter of the Joint Application of)
Missouri-American Water Company and)
DCM Land, LLC, for a Variance from the)
Company’s Tariff Provisions Regarding)
the Extension of Company Mains)
Case No. WE-2021-0390

**REPLY TO MISSOURI-AMERICAN WATER COMPANY’S
AND DCM LAND, LLC’S RESPONSES TO THE COMMISSION’S ORDER**

COMES NOW the Office of Public Counsel (Public Counsel) and, in reply to Missouri-American Water Company’s and DCM Land, LLC’s (DCM) responses to the Missouri Public Service Commission’s (Commission) *Order Directing Filing* by which it directed, “No later than December 1, 2023, any party wishing to be heard on this matter shall submit a response expressing its opinion on how the Commission should proceed,” states:

1. Missouri-American Water Company (MAWC) and DCM Land, LLC (DCM Land) jointly sought for the Commission to allow MAWC to extend a water main line to a new subdivision (Cottleville Trails) on terms more favorable to DCM Land than MAWC’s applicable water main line extension rule in its Commission-approved tariff applicable to the public.

2. Effective March 6, 2022, the Commission granted the following variances which the Missouri Supreme Court found the Commission unlawfully granted:

1. The Joint Applicants are granted a variance from part of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. so that 120 days is changed to five years for DCM Land’s Cottleville Trails development.
2. The Joint Applicants are granted variances from parts of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.3. and PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6. so that the ratio of 95:5 (i.e., 95% DCM Land funded and 5% MAWC funded) is changed to a ratio of 86:14 (i.e., 86% DCM Land funded and 14% MAWC funded) for DCM Land’s Cottleville Trails development.

3. Any Main Extension Contract, as referenced in PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4. entered into by MAWC with DCM Land for Cottleville Trails shall reflect the variances granted.

3. In its opinion issued August 15, 2023, the Missouri Supreme Court concluded, “For the foregoing reasons, the Commission's order is reversed and remanded to the Commission to enter a new order consistent with this opinion,” and on September 26, 2023, it mandated the Commission to hold further proceedings in conformity with its opinion.

4. In paragraph six of its response MAWC admits:

Based on the then effective Order of the Commission, MAWC issued checks, dated May 25, 2023, to DCM Land, LLC in the amount of 14% of the cost of construction of the main extensions (being \$217,294.59 for Phase 1; and \$106,781.99 for Phase 2). No homes were in service until October 30, 2023, and no reimbursement based on connection of homes has been made.

5. MAWC’s main extension tariff change to an 86/14 sharing throughout its service territory did not take effect until May 28, 2023, after MAWC extended the mains for Cottleville Trails.

6. In their responses to the Commission’s order both MAWC and DCM Land assert that MAWC and DCM Land bore 86% and 14% of the cost of the main extensions, respectively, not the 95% and 5%, respectively, of MAWC’s tariff, but totally ignore the variance to change the requirement that DCM Land “guarantee to take water service at [its] premises within 120 days after the date when [MAWC] accepts the main and determines it is ready for Customer service” and that the MAWC PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4 referenced main extension contract between them include those variances.

7. The Commission should take notice of MAWC’s canceled tariff sheets PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2, PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.3., and PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6; and order MAWC

and DCM Land to put into evidence their executed PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4 main extension contract for review, and to the extent that it incorporates terms that conflict with the Missouri Supreme Court's holding, order them to reform that contract to comply with that order.

8. Public Counsel anticipates that one such contract reformation will be to change DCM Land's guarantee to MAWC that it will take water service at DCM Land's Cottleville Trails within five years after the date MAWC accepts the main and determines it ready for Customer service to the tariff required one hundred twenty (120) days.

9. Further, it is Public Counsel's position that statute supports a remedy for MAWC and DCM Land's use of the 86/14 sharing of the cost of the main extensions the Missouri Supreme Court found the Commission to have unlawfully authorized. As amended in 2011 effective July 1, 2011, § 386.520.2, RSMo, in part, states,

With respect to orders or decisions issued on and after July 1, 2011, that involve the establishment of new rates or charges for public utilities that are not classified as price-cap or competitive companies, there shall be no stay or suspension of the commission's order or decision, however:

(1) In the event a final and unappealable judicial decision determines that a commission order or decision unlawfully or unreasonably decided an issue or issues in a manner affecting rates, then the court shall instruct the commission to provide temporary rate adjustments and, if new rates and charges have not been approved by the commission before the judicial decision becomes final and unappealable, prospective rate adjustments. Such adjustments shall be calculated based on the record evidence in the proceeding under review and the information contained in the reconciliation and billing determinants provided by the commission under subsection 4 of section 386.420 and in accordance with the procedures set forth in subdivisions (2) to (5) of this subsection;

* * * *

(3) If the effect of the unlawful or unreasonable commission decision was to increase the public utility's rates and charges by a lesser amount than what the public utility would have received had the commission not erred or to decrease the public utility's rates and charges in a greater amount than would have occurred had

the commission not erred, then the commission shall be instructed on remand to approve temporary rate adjustments designed to allow the public utility to recover from its then-existing customers the amounts it should have collected plus interest at the higher of the prime bank lending rate minus two percentage points or zero. Such amounts shall be calculated for the period commencing with the date the rate increase or decrease took effect until the earlier of the date when new permanent rates and charges consistent with the court's opinion became effective or when new permanent rates or charges otherwise approved by the commission as a result of a general rate case filing or complaint became effective. Such amounts shall then be reflected as a rate adjustment over a like period of time. The commission shall issue its order on remand within sixty days unless the commission determines that additional time is necessary to properly calculate the temporary or any prospective rate adjustment, in which case the commission shall issue its order within one hundred * twenty days;

* * * *

10. In its response MAWC admits the Commission's variances affected its rates. The foregoing statute directs the Commission to adjust MAWC's rates to collect the amount it undercollected from DCM Land by the difference in the 86/14 sharing and the lawful 95/5 sharing. Because that unlawful sharing was limited to one customer, the rate adjustment should be limited to that customer, *i.e.*, MAWC should charge DCM Land for the 9% difference between the 86% rate it charged, and the lawful 95% rate. According to Public Counsel's calculations \$139,689.38 and \$68,645.57, respectively, for the main extensions for phase 1 and phase 2 of Cottleville Trails.

Wherefore, the Office of Public Counsel offers this reply.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5th day of December 2023.

/s/ Nathan Williams