

**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) **File No. WE-2021-0390**
Tariff Provisions Regarding the Extension of)
Company Mains.)

MAWC’S SUR-REPLY TO OPC’S REPLY

COMES NOW Missouri-American Water Company (“MAWC”) and, in sur-reply to the Office of the Public Counsel’s (“OPC”) *Reply to Missouri-American Water Company’s and DCM Land, LLC’s Responses to the Commission’s Order* (“OPC Reply”), states as follows to the Missouri Public Service Commission (“Commission”):

1. The OPC’s Reply was filed on December 5, 2023. MAWC previously filed its *Response to Order Directing Filing*, wherein it outlined its position as to the Commission’s next steps. However, there are two matters in the OPC Reply to which MAWC believes it should respond: 1) A statement as to the provisions of MAWC’s current tariff; and, 2) The applicability of Section 386.520, RSMo, to the situation at hand.

2. In paragraph 5 of OPC’s Reply, OPC states: “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.” That is an inaccurate description of the Main Extension Tariff that became effective on May 28, 2023.

3. MO P.S.C. No. 13, 2nd Revised Sheet No. R 48 (effective May 28, 2023) provides for a statewide sharing of 75/25 in regard to main extensions (“The Applicant and Company shall fund the cost of the proposed water main extension at a ratio of 75/25 (i.e., 75% Applicant funded and 25% Company funded) for all districts.”). Further, the current tariff no longer provides for refunds based on connections.

4. OPC further suggests that Section 386.520.2, RSMo, supports a remedy. However, Section 386.520.2 does not contemplate the situation presented in this situation. Section 386.520.2(1), as quoted by OPC, indicates that any adjustments should be calculated “with the procedures set forth in subdivisions (2) to (5) of this subsection.”

5. Subsection 386.520.2(3), as quoted by OPC, states, in part, as follows:

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.

(emphasis added).

6. First, the language of the statute strongly suggests that it addresses the results of a rate case concerning rates to be paid by customers. This subsection specifically addresses amounts that “the public utility would have received. . . .” The main extension tariff does not concern amounts “received” by MAWC, but instead, amounts “paid” by MAWC to a developer.

7. Second, the remedy is for the Commission to “approve temporary rate adjustments designed to allow the public utility to recover from its then-existing customers the amounts it should have collected” In this situation, there are no on-going rates to be “adjusted.” Payments were previously made to the developer.

8. Lastly, when this process is applicable, Subsection 386.520.2(3) states that the “commission shall be instructed on remand to approve temporary rate adjustments. . . .” (emphasis added). Neither the Missouri Supreme Court’s Order, nor its Mandate, “instructed” the commission to make any rate adjustment.

9. The Supreme Court’s Order concluded by stating, “For the foregoing reasons, the Commission's order is reversed and remanded to the Commission to enter a new order consistent with this opinion.”¹ The Court’s Mandate stated:

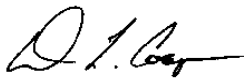
Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Missouri Public Service Commission rendered, be reversed, annulled and for naught held and esteemed, and that the said Appellant be restored to all things which it has lost by reason of said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Missouri Public Service Commission for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered.²

10. The Appellant was the OPC, which has nothing to be “restored.” No instructions to “approve temporary rate adjustments” are found.

11. For these reasons, and as stated in MAWC’s *Response to Order Directing Filing*, the Commission should proceed to enter an amended order consistent with the Supreme Court’s findings and then find the matter to be moot.

WHEREFORE, Missouri-American respectfully requests the Commission after consideration of the pleadings issue such orders as should find to be reasonable and just.

Respectfully submitted,



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¹ Opinion, *In the Matter of the Joint Application of Missouri-American Water Company and DCM Land, LLC v. Office of Public Counsel*, Case No. SC99978, p. 9 (Mo. 2023).

² Mandate, *In the Matter of the Joint Application of Missouri-American Water Company and DCM Land, LLC v. Office of Public Counsel*, Case No. SC99978 (September 26, 2023).

**ATTORNEYS FOR MISSOURI-AMERICAN
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 8th day of December 2023, to:

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