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Issues: Cyber Security, Regulatory Policy,
Future Test Year
Witness: Richard C. Svindland
Exhibit Type: Rebuttal/Surrebuttal/Sur-Surrebuttal
Sponsoring Party: Missouri-American Water Company
Case No.: WR-2024-0320
Date: January 24, 2025

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. WR-2024-0320

REBUTTAL/SURREBUTTAL/SUR-SURREBUTTAL TESTIMONY

OF

RICHARD C. SVINDLAND

ON BEHALF OF

MISSOURI-AMERICAN WATER COMPANY

AFFIDAVIT

I, Richard C. Svindland, under penalty of perjury, and pursuant to Section 509.030, RSMo, state that I am the President of Missouri American Water Company, Inc., that the accompanying testimony has been prepared by me or under my direction and supervision; that if inquiries were made as to the facts in said testimony, I would respond as therein set forth; and that the aforesaid testimony is true and correct to the best of my knowledge and belief.



Richard C. Svindland

January 23, 2025
Dated

**REBUTTAL/SURREBUTTAL/SUR-SURREBUTTAL TESTIMONY
RICHARD C. SVINDLAND
MISSOURI AMERICAN WATER COMPANY
CASE NO.: WR-2024-0320**

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REBUTTAL/SURREBUTTAL/SUR-SURREBUTTAL TESTIMONY

RICHARD C. SVINDLAND

I. INTRODUCTION

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Q. Please state your name and business address.

A. My name is Richard C. Svindland. My business address is 727 Craig Road, St. Louis, Missouri 63141.

Q. Are you the same Richard C. Svindland who previously submitted Direct Testimony in this proceeding?

A. Yes.

Q. What is the purpose of your Rebuttal/Surrebuttal/Sur-Surrebuttal Testimony?

A. I am responding to the Direct/Rebuttal Testimony of Office of the Public Counsel (“OPC”) witnesses Angela Schaben and Dr. Geoff Marke. Specifically, I will respond to the portion of Ms. Schaben’s Direct/Rebuttal Testimony that addresses American Water’s cybersecurity capabilities and the portion of Dr. Marke’s Direct/Rebuttal Testimony addressing his perception that there is an erosion of fundamental regulatory principles exhibited in the Company’s case filing, as well as reflected in filings made by other Missouri utilities of late.

II. AMERICAN WATER’S CYBERSECURITY CAPABILITIES

Q. OPC Witness Schaben states that the American Water cybersecurity breach “shows that even a privatized monopoly utility with superior security measures is just as susceptible to breaches as a small water utility that follows cybersecurity best practice measures and privatization may not always be the best avenue, especially as large,

1 **privatized monopolies lose sight of the concept of customer affordability.”¹ Please**
2 **respond.**

3 A. First, I disagree with the suggestion that MAWC has lost sight of the concept of customer
4 affordability. As I discuss in my Direct Testimony, the Company takes affordability
5 seriously and through Mr. Rea’s analysis has demonstrated that customers’ bills have and
6 will continue to remain affordable. Further, American Water invests in cybersecurity
7 capabilities and has for several decades. Due to these investments and the cybersecurity
8 knowledge and experience of the organization, American Water was able to prevent the
9 cyber incident from impacting any of the water operating systems (“OT”) and was able to
10 limit any impact to its information technology (“IT”) systems. Conversely, municipal
11 water systems often connect their water systems directly to the internet, which makes them
12 more susceptible to attack. American Water has invested in technologies and security to
13 segregate its OT systems from its IT systems to limit any exposure of a cyber event from
14 impacting the provision of water and wastewater services. Additionally, these investments
15 are evident in the resiliency shown by American Water to have all its IT systems
16 operational within four days of the event.

17 **III. STATE OF REGULATORY PRINCIPLES IN MISSOURI**

18 **Q. OPC Witness Marke asserts that he has seen utilities put forth issues that, over time,**
19 **has resulted in a “steady decline of what he considers to be important, basic**
20 **regulatory principles.” He further states that “public utility regulation in Missouri**
21 **seems to be headed toward a type of ‘cruise control’ mindset that enables an**
22 **environment of increasingly shorter review periods and a willingness to abandon**

¹ Schaben DT/RT, p. 16-17.

1 **general rate making principles that ultimately results in a greater shift of risk from**
2 **the profit-seeking utility onto the captive ratepayer.”² How do you respond?**

3 A. I disagree with Dr. Marke. The Company’s current rate case proves that Dr. Marke’s stated
4 concern that public utility regulation is heading towards cruise control is unfounded. The
5 Company’s rate case filing included a substantial amount of information for the Missouri
6 Public Service Commission (“PSC” or the “Commission”) to review and consider prior to
7 making a determination on the Company’s requested rate change. Indeed, the Company’s
8 initial rate case filing consisted of over 1,200 pages, which included testimony from 14
9 Company witnesses and 72 schedules supporting the Company’s requests and proposals.
10 The intervening parties in this case have also submitted extensive amounts of information
11 for the Commission to review and consider prior to rendering its decision. To assert that
12 there appears to be a trend in Missouri where basic regulatory principles are being eroded,
13 and that public utility regulation is heading towards being set on cruise control, simply
14 ignores the reality of the magnitude of work all parties, and the Commission itself,
15 undertake to ensure that Missouri American customers receive safe and reliable service at
16 just, reasonable, and affordable rates.

17 While I agree that the Company has proposed regulatory mechanisms that help reduce
18 regulatory lag and allow for timely recovery of capital investments and operational and
19 maintenance expenses, such as the proposed production cost tracker and Revenue
20 Stabilization Mechanism (“RSM”), such regulatory mechanisms do not violate
21 fundamental regulatory principles or minimize the Commission’s oversight.³ Company

² Marke DT/RT, p. 2.

³ The same is true for other constructive regulatory policies the Intervenors recommend rejecting, such as the full cost recovery of total market-based compensation, recognition of the Company’s actual capital structure along with

1 witnesses Brian LaGrand and Charles Rea address the specific policy critiques offered by
2 the parties in this case against the Company’s proposed production cost tracker and RSM,
3 respectively,⁴ and as they explain, these proposed mechanisms align with fundamental
4 regulatory principles and allow the Company the ability to reliably recover its authorized
5 revenue requirement, which is in the Company’s and its customers’ long-term best
6 interests.

7 **Q. While recognizing that a Future Test Year (“FTY”) is not an issue in this proceeding,**
8 **OPC Witness Marke points to the Company’s continued reoccurring request for a**
9 **FTY as part of the “continuous pressure to erode a balanced regulatory process” that**
10 **merits “further discussion.”⁵ How do you respond?**

11 A. I agree that a FTY is no longer an issue in this case. MAWC included a request to use a
12 future test year in its initial filings in this rate case. Other parties filed responses to this
13 request, and ultimately the Commission decided that the Company should use a historical
14 test year with adjustments in this case.⁶

15 I also agree that this is not the first time the Company proposed using a FTY. That is
16 because it is an important tool to support the Company’s continued provision of safe,

a reasonable and appropriate return on equity, and the Company’s proposed Universal Affordability Tariff. Collectively, the positions of the parties are short-sighted and not in the long-term interest of our customers. The Company provides safe, reliable and affordable service to customers as cost effectively as possible over the long term. In this proceeding, the Company is simply asking for appropriate and timely cost recovery of its ongoing expenses; for appropriate and timely returns of and on its investments; for constructive regulatory measures that allow MAWC to compete for proactive investments so crucial not only to the Company, but also to the State as a whole. And it is doing so while maintaining a balanced regulatory process. These, along with the Revenue Stabilization Mechanism and production cost tracker, are all constructive regulatory policies the Commission should support, as discussed throughout the Direct and Rebuttal/Surrebuttal/Sur-surrebuttal Testimony of the Company witnesses.

⁴ See, Rebuttal Testimony of Brian LaGrand, p. 31, line 11, through p. 36, line 10; and Rebuttal Testimony of Charles Rea, p. 29, line 2, through p. 47, line 14.

⁵ Marke DT/RT p. 3.

⁶ Case No. WR-2024-0320, *Order Regarding Test Year*.

1 reliable and affordable service to our customers. Not only do we believe the Commission
2 has statutory authority to adopt a FTY, but it would be prudent to do so both for the benefit
3 of customers and the Company, as well as the regulatory landscape in Missouri, as
4 explained by Company Witness LaGrand in Direct Testimony.⁷ To date, the Commission
5 has not granted our request for such treatment, but I fundamentally disagree that such a
6 request or the approval of a FTY would “erode” the regulatory process as suggested by Dr.
7 Marke. Dr. Marke has elected to submit testimony addressing future test years and other
8 topics out of a concern that “those suggestions slowly start to become accepted, inevitable
9 realities.”⁸ MAWC is seeking to advance, not erode, Missouri’s regulatory paradigm to
10 address a changing utility operating environment, and that is worthwhile.

11 As Company Witness LaGrand stated in his Direct Testimony, the Company’s proposal to
12 use a FTY year is supported by the increasing number of regulatory jurisdictions that have
13 recognized the merits of this ratemaking tool.⁹ Further, the National Association of
14 Regulatory Commissions (“NARUC”) has stated that the FTY is a “best” practice for
15 water companies.¹⁰ Witness LaGrand’s Direct Testimony provides further support for the
16 Company’s request for a FTY in this proceeding. A future test year provides a more
17 accurate picture of future operating conditions. Mr. LaGrand also discusses Dr. Marke’s
18 testimony in his Rebuttal/Surrebuttal/Sur-Surrebuttal Testimony.

19 **Q. OPC Witness Marke also states that regulatory mechanisms, such as those proposed**

⁷ LaGrand DT, p. 14-15

⁸ Marke DT/RT, p. 3.

⁹ LaGrand DT, p11.

¹⁰ NARUC, Resolution Supporting Consideration of Regulatory Policies Deemed as “Best Practices,” July 27, 2005; and NARUC, Resolution Addressing Gap Between Authorized Versus Actual Returns on Equity in Regulation of Water and Wastewater Utilities, July 24, 2013.

1 **by the Company, and use of a FTY, when taken together, presents a “distorted**
2 **picture” of what public utility regulation is meant to accomplish.¹¹ Please respond.**

3 A. I disagree. While I am not a public utility regulatory expert, it is my understanding that
4 public utility regulation, at least in Missouri, is meant to ensure that all utilities are
5 providing safe and adequate service to their customers at just and reasonable rates. And
6 contrary to Dr. Marke’s opinion on the matter, regulatory mechanisms, such as those
7 proposed by the Company here, and use of a FTY, are tools that can be used by the
8 Company and the PSC to provide the Company with the ability to continue providing safe,
9 reliable and adequate service to our customers at just and reasonable rates.

10 These tools help Missouri’s regulatory principles evolve and have been adopted in many
11 other states as an enhancement of their regulatory approach. The regulation of public
12 utilities must evolve periodically to keep in balance the interests of customers and the
13 investors that provide the capital to enable the provision of utility service. The
14 Commission’s charge is to balance the interests of the public (customers) and company
15 investors.¹² Regulatory policies are not a zero-sum game - movement of the regulatory
16 paradigm to support continued investment in the utility infrastructure is not, per se, an
17 erosion of the paradigm from a customer perspective. Facilitating appropriate investments
18 also benefits customers, even if it necessarily comes at a higher cost. Customer benefits
19 cannot be measured only from the perspective of the cost of the service. Unfortunately,
20 water and wastewater systems exist throughout the country that primarily, or only, focus
21 on keeping the cost of service stable, frequently to the detriment of system investment.

¹¹ Marke DT/RT. p. 3.

¹² See “A Snapshot of What We Do” from the Missouri Public Service Commission available at
<https://psc.mo.gov/CMSInternetData/ConsumerInformation/A%20Snapshot%20of%20What%20We%20Do.pdf>.

1 These systems face deterioration that, in extreme cases, places the provision of service in
2 jeopardy and even in less extreme circumstances inconveniences customers through
3 unnecessary service outages, health and safety risks, and inability to promote economic
4 development by providing service to new customers. MAWC seeks to utilize evolving
5 regulatory principles advancements that have been implemented in other states to facilitate
6 critical system investment while balancing the interests of customers.

7 **Q. Are you suggesting that the Company will not be able to continue providing safe and**
8 **reliable service without the Commission approving the proposed production cost**
9 **tracker and the proposed RSM?**

10 A. No, I am not suggesting this at all. The Company is committed to providing safe and
11 reliable service to customers regardless of whether the production cost tracker and RSM
12 are approved in this case. However, these proposals, if adopted, would allow the Company
13 to provide safe and reliable service in a manner that is in the long-term best interest of
14 customers by providing the Company with the ability to adequately recover the Company's
15 prudently incurred costs and reliably recover its authorized revenue requirement, which in
16 turn will allow it to continue to attract proactive capital investment and continue its
17 proactive investment in infrastructure.

18 **Q. Please explain why constructive regulatory mechanisms like the production cost**
19 **tracker and RSM support the Company attracting proactive capital investment.**

20 A. The Company's ability to timely recover its costs and reliably recover its authorized
21 revenue requirement impacts the Company's ability to earn its authorized rate of return,
22 which is a consideration for investors. When investors have an incentive to invest, they
23 will, and when they do not, they won't.

1 **Q. Please explain why you say that proactive capital investment is in the long-term**
2 **interest of customers?**

3 A. As Company Witness Derek Linam explains in his Direct Testimony, planned main
4 replacements are much less costly on a unit cost basis than addressing main breaks on an
5 ad hoc basis, which can result in service disruptions, property damage, health risks from
6 potential drinking water contamination, and the steep increase in future main replacements
7 resulting from prior deferrals. Thus, proactive capital investment results in a stronger and
8 more reliable water system for both current and future customers at lower cost in the long-
9 run.

10 **Q. Do you have any final comments you'd like to offer for the Commission's**
11 **consideration?**

12 A. Yes. Dr. Marke's testimony characterizes regulatory mechanisms in a very negative, anti-
13 customer light, but Missouri American and its customers have already benefitted from
14 regulatory mechanisms, like the ISRS and WSIRA. These mechanisms stand as examples
15 of good regulatory policy that promote the public interest as recognized by the enactment
16 of legislation to allow such mechanisms. MAWC, as well as other water and wastewater
17 utilities, are dealing with aging infrastructure that must be addressed, and these
18 mechanisms have supported the Company's ability to replace aging infrastructure at an
19 accelerated pace in the most cost effective manner possible over the long-term. Further,
20 each has a reconciliation process that helps ensure customers only pay for revenues that
21 reflect only those authorized by the Commission to be recovered from customers, and thus
22 in no way stand as examples of the Commission divesting itself of oversight or moving
23 towards a "cruise control" regulatory review process.

1 Q. Does this conclude your Rebuttal/Surrebuttal/Sur-Surrebuttal Testimony?

2 A. Yes.