

FILED  
March 27, 2025  
Data Center  
Missouri Public  
Service Commission

## Exhibit No. 314

OPC – Exhibit 314  
Testimony of Manzell Payne  
Cross-Rebuttal  
File No. WR-2024-0320

**Exhibit No.:**

**Issue(s):** Tariff Language/Paperless Billing

**Witness/Type of Exhibit:** Payne/Cross-Rebuttal

**Sponsoring Party:** Public Counsel

**Case No.:** WR-2024-0320

**CROSS-REBUTTAL TESTIMONY**

**OF**

**MANZELL PAYNE**

Submitted on Behalf of the Office of the Public Counsel

**MISSOURI-AMERICAN WATER COMPANY**

FILE NO. WR-2024-0320

January 10, 2025

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**CROSS-REBUTTAL TESTIMONY**

**OF**

**MANZELL M PAYNE**

**MISSOURI AMERICAN WATER COMPANY**

**CASE NO. WR-2024-0320**

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

A. My name is Manzell Payne. I am a Utility Regulatory Auditor for the Office of the Public Counsel (“OPC” or “Public Counsel”), P.O. Box 2230, Jefferson City, Missouri 65102.

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

A. My educational background includes a Bachelor of Arts degree in Accounting from Westminster College in Fulton, Missouri received in 2020.

Prior to joining the Office of Public Counsel in July 2023, I worked as an analyst and auditor in the banking industry for four and half years. The responsibilities during my time as an analyst included risk analysis, tracking/monitoring expenditures, auditing of business financial statements and business plans. Through my various analysis and auditing work in the banking industry, I had the opportunity to review an individual or company’s credit worthiness.

Since joining the OPC, I have attended the National Association of Regulatory Utility Commissioners (“NARUC”) Rate School and other seminars and trainings relating to utility regulation.

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

A. Yes, I have previously testified before the Missouri Public Service Commission (“Commission”). Please refer to schedule MMP-CR-1 attached hereto for a list of cases in which I have testified.

**Q. What is the purpose of your cross-rebuttal testimony?**

A. The purpose of my cross-rebuttal testimony is to respond to Staff Witnesses David Spratt and Charles Tyrone Thomason’s direct/rebuttal testimony in response to Missouri American Water Company’s<sup>1</sup> tariff language and paperless billing proposal, respectfully.

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<sup>1</sup> Heretofore “MAWC” or “Company”.

**TARIFF LANGUAGE**

**Q. What deficiencies in MAWC’s tariff does Staff Witness David A. Spratt point out in his direct/rebuttal testimony?**

A. Mr. Spratt points out that the tariff needs to be updated to remove an old rule, and some language should be corrected.

**Q. What Rule does Mr. Spratt and Staff believe should be removed?**

A. Staff believes that Rule 3E should be removed. Rule 3E states:

The Company shall not be liable for damages resulting to Customer or to third persons, unless due to contributory negligence on the part of the Company, and without any contributory negligence on the part of the Customer or such third party.<sup>2</sup>

**Q. What is Mr. Spratt’s reasoning for the removal of this Rule?**

A. Mr. Spratt states:

The tariff outlines rights and protections for MAWC; however, it is Staff’s position that it should not provide MAWC with immunity from accidents when those accidents cause property damage. Based on advice from Staff Counsel, it is Staff’s position that “contributory negligence” is no longer a legal defense to a damage claim in Missouri, and it should not be allowed to be used as a defense through a tariff sheet.<sup>3</sup>

**Q. Do you agree with Staff’s reasoning for the removal of Rule 3E from the tariff?**

A. Yes. The Company should not be given immunity for accidents that cause property damage. I support Staff’s position that “contributory negligence” should not be allowed in the tariff if it is no longer a legal defense in Missouri for a damage claim. MAWC’s use of the tariff language to deny damage claims to customers raises legal, regulatory, and ethical concerns. The Public Service Commission is the authority that oversees that companies are providing safe and adequate service while also having just and reasonable rates. The use of Rule 3E is not just or reasonable for MAWCs customers. It also becomes an issue of ethics, as the Company is shifting the burden of the damages, they caused on to customers without taking

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<sup>2</sup> Staff Witness, David Spratt - Direct/Rebuttal Testimony Page 2. Lines 3-5.

<sup>3</sup> Staff Witness, David Spratt - Direct/Rebuttal Testimony Page 2. Lines 7-11.

any accountability. This can undermine the consumer protection that Commission Rules provide customers. In addition, if MAWC continues to use Rule 3E to deny damage claims to customers, public trust for MAWC, regulators, and other interveners can be eroded and lead to increased complaints, litigation, and overall regulatory scrutiny.

**Q. Mr. Spratt provided further evidence that MAWC’s insurance company has denied claims to customers by stating the Rule 3E. Do you believe that MAWC’s insurance company should be doing this?**

A. No. MAWC’s customers should not have their rights be restricted due to tariff language. These customers also should not have their property damaged by the company, accidentally or not, and be denied their claims due to an old rule that should no longer be in the Company’s tariff.

**Q. Do any other Commission regulated water and sewer utilities’ tariffs include similar provisions limiting their negligence liability?**

A. According to Mr. Spratt, similar language has been removed from all water and sewer company tariffs based on Staff’s advice.<sup>4</sup>

**Q. Additionally, Mr. Spratt had additional changes to MAWC’s tariff. Do you oppose any of the additional changes?**

A. No. Mr. Spratt’s additional changes included the removal of quarterly billing referenced in the tariff as MAWC no longer utilizes quarterly billing, the removal of gender specific language, the removal of Sheet R4 – Rule 1(33) “Late Payment Charge”, the removal of the \$27.50 service charge in Sheet RT9.1, and Rule 22P on Sheet R47 should be moved to Rule 3.<sup>5</sup>

**Q. Please summarize your recommendation.**

A. I recommend that the Commission remove Rule 3E from MAWC’s tariff as the tariff should not be used in a way to deny claims to customers due to contributory negligence that is no longer viable in Missouri.

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<sup>4</sup> Staff Witness, David Spratt - Direct/Rebuttal Testimony Page 3. Lines 2-4.

<sup>5</sup> Staff Witness, David Spratt - Direct/Rebuttal Testimony Pages 3-4. Lines 18-21 & 1-13, respectfully.

**PAPERLESS BILLING**

**Q. What is Paperless Billing?**

A. Paperless billing is a form of sending a customer their bill electronically rather than using the traditional paper bill delivered by postal service. Currently, MAWC's customers can enroll in paperless billing by calling the Company's call center or enrolling through their MyWater<sup>6</sup> account. MAWC's paperless billing feature allows for the customer to receive an email notifying them that their bill is available to view in the MyWater account instead of receiving the paper bill. This email informs the customer of their amount due, the bill due date, and a link to their MyWater account. The email does not provide the bill breakdown for usage amounts or charges.

**Q. What is the Company's position on paperless billing?**

A. Missouri American Water Company's position is to change their paperless billing practice of using an "opt-in" approach to an "opt-out" approach for their customer base. This change would occur in MAWC's tariffs to allow for an opt-out paperless billing program for water Tariff sheets No. R 21 and R 22 and sewer Tariff sheets No. R 10.2 and R 10.4. In this new approach, the Company would send emails to all current customers with a valid email address and an active MyWater account to notify the customer that they will be enrolled in paperless billing unless the customer chooses to click an 'opt-out' icon. The Company will verify electronically that the email was delivered. The Company does not plan to verify that the email was opened.<sup>7</sup> A second email and a following mailed postcard will be sent to all customers to remind them that they will automatically be enrolled in paperless billing unless they opt-out. Once the deadline to opt-out has been met, the Company will begin to present customers' bills via internet or email.

**Q. What is Staff's position on paperless billing?**

A. Staff's recommendation according to Staff witness, Charles Tyrone Thomason, is that the Commission should reject the Company's proposal for paperless billing in its entirety. The reasoning from Mr. Thomason is that the Company's proposal contradicts the customer

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<sup>6</sup> The Company's electronic customer-facing platform. This site allows customers to register an account to manage their account, viewing bills, make payments, view usage history, and schedule service orders. Customers are not required to register an account.

<sup>7</sup> Response to Staff DR. No. 0089.

1 protections that are to be provided by Commission Rules, as well as the little evidence to  
2 justify the auto-enrollment, and the indication that the auto-enrollment experience as proposed  
3 will have negative effect on customers. Mr. Thomason's reasoning for opposing the opt-out  
4 feature for paperless billing included the lack of empirical data by the Company to support  
5 their claim of preference and lack of knowledge by customers, problems faced by customers  
6 with the Company's MyWater portal, the current lack in participation by customers in  
7 paperless billing, the confusing bill inserts, the inconclusive data from pilot programs of other  
8 American Water Companies (such as Indiana), and a logical flaw in MAWC's proposal. In  
9 addition to these reasons, Mr. Thomason pointed to Commission Rule 20 CSR 4240  
10 13.015(1)(B) and how its language precludes the Company from auto-enrolling customers  
11 without them agreeing to it first.

12 **Q. What is Commission Rule 20 CSR 4240 13.015(1)(B) and what is Staff's position on the**  
13 **Rule?**

14 A. Commission Rule 20 CSR 4240 13.015(1)(B) defines what constitutes a customer bill. The  
15 rule states:

16 Bill means a written demand, including, if agreed to by the customer and the  
17 utility, an electronic demand, for payment for service or equipment and the  
18 taxes, surcharges, and franchise fees;<sup>8</sup>

19 Staff's position on the Rule is that it precludes the Company's efforts to automatically enroll  
20 customers in electronic (i.e., paperless) billing unless the customer takes specific action.  
21 Rather than being presented with the requirement to opt out, customers must choose for  
22 themselves to opt in to paperless billing.<sup>9</sup>

23 **Q. Do you agree with Staff's position on Commission Rule 20 CSR 4240 13.015(1)(B)?**

24 A. Yes. Customers should be given the option to opt-in rather than opt-out. With the opt-in  
25 method, customers are agreeing to receive their bill electronically. Through the opt-out  
26 method proposed by the Company, the customer is not given the option to agree, as they will

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<sup>8</sup> Division 4240—Public Service Commission Chapter 13—Service and Billing Practices for Residential Customers of Electric, Gas, Sewer, and Water Utilities – Page 3 - 20 CSR 4240-13.015 Definitions – (1)(B).

<sup>9</sup> Staff Witness, Charles Tyrone Thomason - Direct/Rebuttal Testimony Page 20. Lines 4-7.

1 be automatically enrolled. The Company is changing the default method in which customers  
2 receive their bill without customers agreeing to such a change.

3 **Q. Is Mr. Thomason's testimony for Staff an opposition to the concept of paperless billing?**

4 A. No. As Mr. Thomason states in his direct/rebuttal testimony, Staff recognizes both the  
5 objective and subjective benefits that customers and utilities receive from paperless billing.  
6 Staff is not opposed to the promotion of paperless billing by regulated utilities to their  
7 customers. Staff's position is that customers should choose to initiate paperless billing of their  
8 own volition, rather than the utility company making the choice for them.<sup>10</sup> It appears that  
9 Staff wants the customer to be able to choose to opt-in to paperless billing through their own  
10 means and not have it forced upon them by the Company through an opt-out function of an  
11 auto-enrollment program. Staff also opposes the Company's plan to auto enroll all new  
12 customers who sign up for a MyWater account into paperless billing unless they opt-out.<sup>11</sup>

13 **Q. OPC Witness, Dr. Geoff Marke, detailed a MAWC customer's experience with the**  
14 **Company in his direct/rebuttal testimony. How does his correspondence with the**  
15 **customer give light to the problems that could be faced by the Company auto-enrolling**  
16 **customers in paperless billing?**

17 A. Dr. Marke's direct/rebuttal testimony gives light to one customer's negative experience with  
18 customer service by MAWC. This includes the call center and the MyWater online portal.  
19 This customer voiced his concerns with MAWC at a St. Louis, MO local public hearing. As  
20 Dr. Marke stated in his direct/rebuttal testimony, at this hearing this customer voiced the  
21 following concerns:

- 22 • Poor customer service experience at multiple levels of Company operations;
- 23 • Inaccurate and/or fluctuating hourly/daily/monthly water usage; and
- 24 • Inability to read customer meter usage information either at the meter or on the  
25 MyWater software application;<sup>12</sup>

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<sup>10</sup> Staff Witness, Charles Tyrone Thomason - Direct/Rebuttal Testimony Page 25. Lines 18-22.

<sup>11</sup> Staff Witness, Charles Tyrone Thomason - Direct/Rebuttal Testimony Page 26. Lines 6-8.

<sup>12</sup> OPC Witness, Dr. Geoff Marke – Direct/Rebuttal Testimony Page 30. Lines 20-24.

1 In light of the negative experience of this customer, I believe that MAWC's push towards  
2 auto-enrolling customers into paperless billing warrants caution and the current plan as  
3 proposed by the Company should be rejected. This customer's experience may not be the  
4 same for all other customers but from Mr. Thomason's direct/rebuttal other customers have  
5 expressed their displeasure with the Company's website.<sup>13</sup>

6 **Q. Do you agree with Staff's recommendation on paperless billing?**

7 A. Yes. I agree with Staff that the Commission should reject MAWC's opt-out program as it has  
8 been proposed by the Company. MAWC's customers should not be forced into a feature  
9 solely because the Company believes it is what is best for them. MAWC's customers have  
10 had the ability to opt-in to paperless billing for quite some time, over a decade, and only about  
11 32.82%<sup>14</sup> of their customer base has done so. Although there may be some benefits to  
12 paperless billing, the customer should have the choice to opt-in to the service. Along with  
13 choice, customers should be given the best possible service because that is what they are  
14 paying for. The MyWater portal is not the best possible service. Customers, like the ones  
15 quoted in Mr. Thomason's testimony or Mr. Moriarty from the Dr. Marke's testimony, have  
16 had problems with this online portal. Those issues range from website errors/crashes,  
17 device/browser compatibility, bill payment problems, inability to find information, and  
18 inaccurate data. By having the choice to agree to opt-in, Commission Rule 20 CSR 4240  
19 13.015(1)(B) is being followed correctly. The default method in which the Customer is  
20 receiving their bill does not change without their agreement. As proposed by the Company,  
21 the paperless billing program should be rejected.

22 **Q. Does this conclude your cross-rebuttal testimony?**

23 A. Yes it does.

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<sup>13</sup> Staff Witness, Charles Tyrone Thomason - Direct/Rebuttal Testimony Pages 11-12. Lines 8-33 & Lines 1-21, respectfully.

<sup>14</sup> From MAWC Response to Staff Data Request No. 0072. 162,611 customers were enrolled in paperless billing as of the end of June 2024.

  
Tiffany Hildebrand  
Notary Public