

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference
on the 28th day of October,
2020.

In the Matter of the Application of Missouri-)
American Water Company for an)
Accounting Authority Order Authorizing It)
to Defer and Accumulate Costs and)
Financial Impacts Related to COVID-19)

File No. WU-2020-0417

**ORDER APPROVING NON-UNANIMOUS
STIPULATION AND AGREEMENT**

Issue Date: October 28, 2020

Effective Date: November 9, 2020

On June 26, 2020, Missouri-American Water Company (MAWC) applied for an accounting authority order (AAO) permitting it to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings all extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic, plus associated carrying costs. The Commission directed notice and established an intervention deadline. The Commission granted intervention to Midwest Energy Consumers (MECG), Missouri Industrial Energy Consumers (MIEC), the City of St. Joseph, Missouri, and the City of Riverside, Missouri.

On October 7, 2020, the parties, with the exception of the City of Riverside and the City of St. Joseph, filed a *Nonunanimous Stipulation and Agreement* (Agreement). The Agreement stated that the City of St. Joseph and the City of Riverside did not oppose it.¹

¹ See, File No. WU-2020-0417, *Nonunanimous Stipulation and Agreement* (filed October 7, 2020), Paragraph 3. The Commission notes that Paragraph 3 contains a typographical error referring to the “City of Joseph” instead of the “City of St. Joseph.” MAWC on behalf of all the parties filed a notice on October 22,

Commission Rule 20 CSR 4240-2.115(2)(B) allows nonsignatory parties seven days to object to a nonunanimous stipulation and agreement. That same rule allows the Commission to treat a non-unanimous stipulation as unanimous if no party timely objects. More than seven days have elapsed since the Agreement was filed and no party objected. Thus, the Commission will treat the Agreement as unanimous. The Commission heard additional explanations about the Agreement from the parties at an on-the-record presentation held on October 22, 2020.

The signatories to the Agreement request that the Commission issue an order authorizing MAWC to track and defer into a separate regulatory asset, assigned by service area, or allocated by service area and booked separately as between water and sewer, the following incremental costs directly related to the COVID-19 pandemic, beginning March 1, 2020:

(a) New or incremental operating and maintenance expense, limited to the following eligible costs:

- (i) Additional cleaning of facilities and vehicles;
- (ii) Personal protective equipment;
- (iii) Sanitizers;
- (iv) Signage related to pandemic safety;
- (v) Rental equipment, to include vehicles, portable hand washing stations, portable lavatories, and temporary office trailers;
- (vi) Other incremental COVID-related costs as agreed to by the parties or order of the Commission;

2020, clarifying that this was an error. Additionally, as Paragraph 3 indicates, the City of St. Joseph did not object to the Agreement making the typographical error immaterial.

(b) Increased bad debt expense to the extent total bad debt expense exceeds \$2,600,000 on an annual basis;

(c) Interest expense on MAWC's approximately \$70.0 million 364 day term loan entered into on March 20, 2020, with an interest rate of London Interbank Offered Rate (LIBOR) plus 80 basis points;

(d) Late payment fees waived during the moratorium period up to \$785,351;

(e) Reconnection charges and disconnection charges waived during the moratorium period up to \$783,200.

The Agreement also addresses how the signatories agree MAWC should treat: carrying costs, lost revenues, savings to be deferred, duration of the AAO, reporting of cost categories to be tracked and deferred, accounting practices and procedures, future recovery, treatment of this stipulation pending the outcome of an Evergy Missouri West, Inc. appeal related to AAOs,² additional customer support through a \$250,000 contribution to the H2O help for others program, and customer credit protections.

The Agreement waives any procedural requirements that would otherwise be necessary before final decision.³ Also, because the Agreement disposes of this action, the Commission need not separately state its findings of fact and conclusions of law.⁴

Missouri courts have recognized the Commission's regulatory authority to grant relief to a utility in the form of an AAO

which allows the utility to defer and capitalize certain expenses until the time it files its next rate case. The AAO technique protects the utility from earnings shortfalls and softens the blow which results from extraordinary

² *Office of Pub. Counsel v. Evergy Missouri W., Inc.*, No. WD 83319, 2020 WL 4290057, (Mo. Ct. App. July 28, 2020), reh'g and/or transfer denied (Aug. 27, 2020), transfer requested No. SC 98724 (Sept. 16, 2020).

³ Section 536.060, RSMo 2016.

⁴ Section 536.090, RSMo 2016.

construction programs. However, AAOs are not a guarantee of an ultimate recovery of a certain amount by the utility.⁵

The AAO “simply allows for certain costs to be separately accounted for *possible* future recovery in a future ratemaking proceeding.”⁶ “This is not retroactive ratemaking, because the past rates are not being changed so that more money can be collected from services that have already been provided; instead, the past costs are being considered to set rates to be charged in the future.”⁷ Although the courts have recognized the Commission’s authority to authorize an AAO in extraordinary and unusual circumstances, there is nothing in the Public Service Commission Law or the Commission’s regulations that would limit the grant of an AAO to any particular set of circumstances.⁸

The Commission has discretion in prescribing accounting methods and forms of accounts, records, and memorandum kept by water and sewer corporations without conducting a hearing.⁹ Nevertheless, the Commission issued notice in this matter and allowed interested entities to intervene and request a hearing. No hearing was

⁵ *State ex rel. Aquila, Inc. v. Public Service Comm’n of State*, 326 S.W.3d 20, 27 (Mo. App. 2010) (quoting, *Missouri Gas Energy v. Public Service Commission*, 978 S.W.2d 434 (Mo.App. W.D.1998)). See also Section 393.140, RSMo 2016. Additionally, Commission Rules 20 CSR 4240-50.030(1) and 61.020(1) require water and sewer companies to keep all accounts in conformity with the uniform systems of accounts issued by the National Association of Regulatory Utility Commissioners (NARUC) for water and sewer companies, respectively. However, section (4) of each rule provides that in prescribing this system of accounts the Commission is not committing itself to the approval or acceptance of any item set out in any account for the purpose of fixing rates or in determining any other matter.

⁶ *State ex rel. Office of Public Counsel v. Missouri Public Service Comm’n*, 301 S.W.3d 556, 570 (Mo. App. W.D. 2009) (emphasis in the original).

⁷ *Id.*, (quoting, *State ex rel. Mo. Gas Energy*, 210 S.W.3d at 335-36, citations omitted).

⁸ Section 393.140, RSMo 2016. See also, *Missouri Gas Energy v. Public Service Comm’n*, 978 S.W.2d 434, 437 (Mo. App. 1998); *State ex rel. Office of Public Counsel v. Public Service Comm’n*, 858 S.W.2d 806, 811 (Mo. App. 1993).

⁹ The courts have not decided the issue of whether Section 393.140(4) (which does not require a hearing) or Section 393.140(8) (which does require a hearing) controls the grant of an AAO. *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 809-810 (Mo. App. 1993).

requested.¹⁰ Instead, the signatory parties filed the Agreement to which there was no objection.

Based on the Commission's review of the Agreement, the Commission finds that the Agreement is consistent with the public interest and will approve it. The Commission will incorporate the terms of the Agreement into this order. So that the consumer aid and consumer protections provisions can become effective as soon as possible, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The provisions of the *Non-Unanimous Stipulation and Agreement* filed on October 7, 2020, are approved and incorporated into this order as if fully set forth herein. The signatories shall comply with the terms of the Agreement. A copy of the Agreement is attached to this order as Appendix A.

2. This order shall become effective on November 9, 2020.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Dippell, Senior Regulatory Law Judge

¹⁰ The requirement for a hearing is met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Comm'n of State of Mo.*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

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

In the Matter of the Application of Missouri-)
American Water Company for an)
Accounting Authority Order Authorizing It) **File No. WU-2020-0417**
to Defer and Accumulate Costs and)
Financial Impacts Related to COVID-19.)

NONUNANIMOUS STIPULATION AND AGREEMENT

COME NOW Missouri-American Water Company (“MAWC” or “Company”), the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“OPC”), Midwest Energy Consumers Group (“MECG”), and the Missouri Industrial Energy Consumers (“MIEC”), collectively referred to herein as “the Parties,” and, pursuant to Rule 20 CSR 4240-2.115 submit this *NonUnanimous Stipulation and Agreement*, to the Missouri Public Service Commission (“Commission”):

BACKGROUND

1. On June 26, 2020, MAWC filed an *Application and Motion for Waiver* requesting the Commission’s authority to track and defer in a regulatory asset certain expenses and financial impacts related to the COVID-19 pandemic, and to waive for good cause the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D).
2. The Parties have subsequently held discussions concerning the issues raised by the *Application and Motion for Waiver*. As a result of these discussions, the Parties have agreed to the following *NonUnanimous Stipulation and Agreement* to resolve this matter in its entirety.

3. The City of Joseph and the City of Riverside, while not Parties to the *NonUnanimous Stipulation and Agreement*, have affirmatively indicated through their counsel that they do not oppose this *NonUnanimous Stipulation and Agreement*, such that it may be treated as unanimous in accordance with Commission Rule 20 CSR 4240-2.115.

RESOLUTION

4. The Parties request that the Commission issue an order authorizing MAWC to track and defer into a separate regulatory asset, assigned by service area, or allocated by service area and booked separately as between water and sewer, the following incremental costs directly related to the COVID-19 pandemic, beginning March 1, 2020:

(a) New or incremental operating and maintenance expense, limited to the following eligible costs:

- (i) Additional cleaning of facilities and vehicles;
- (ii) Personal protective equipment;
- (iii) Sanitizers;
- (iv) Signage related to pandemic safety;
- (v) Rental equipment, to include vehicles, portable hand washing stations, portable lavatories, and temporary office trailers;
- (vi) Other incremental COVID-related costs as agreed to by the parties or Order of the Commission;

(b) Increased bad debt expense to the extent total bad debt expense exceeds \$2,600,000 on an annual basis;

(c) Interest expense on MAWC's approximately \$70.0 million 364 day term loan entered into on March 20, 2020, with an interest rate of London Interbank offered Rate (LIBOR) plus 80 basis points.

(d) Late payment fees waived during the moratorium period up to \$785,351;

(e) Reconnection charges and disconnection charges waived during the moratorium period up to \$783,200.

5. Carrying Costs: MAWC will not seek carrying costs on the deferred balances in this AAO case or in the Company's currently pending rate proceeding (WR-2020-0344). MAWC will not seek carrying costs in a subsequent rate case for deferred items beyond the true-up date in WR-2020-0344.

6. Lost Revenues: MAWC agrees not to defer lost revenues from reduced customer usage (volumetric charges) due to the pandemic or other lost revenues except as provided in this *NonUnanimous Stipulation and Agreement* in paragraph 4.

7. Savings to be deferred: Deferred operating and maintenance cost reductions will be tracked and recorded as a regulatory liability separately from the deferred costs regulatory asset. All deferred COVID-19 operating and maintenance cost reductions will be deferred so long as the total expense in each cost category is below the level included in rates in MAWC's last rate case. Operating and maintenance cost reductions to be deferred are reductions to the following:

(a) Travel expense (hotels, airfare, meals, entertainment);

(b) Training expense;

(c) Conferences;

(d) Office supplies;

- (e) Utility service provided to facilities leased or owned by MAWC;
- (f) Staffing reductions after March 1, 2020, and throughout the AAO accumulation period;
- (g) Reduced employee compensation and benefits after March 1, 2020, and throughout the AAO accumulation period;
- (h) Any taxable net operating loss that is carried back to previous tax years per the CARES Act; and,
- (i) Any direct federal or state assistance MAWC, American Water Works Company, or any other affiliate that allocates costs to MAWC receives related to COVID-19 relief; and,
- (j) Other incremental COVID-related savings as agreed to by the parties or by Order of the Commission.

8. Duration of AAO: All costs and cost reductions will be tracked and deferred separately into a regulatory asset / liability until March 31, 2021. The term may be extended or renewed upon agreement of the Parties or Order of the Commission. Given the one year term of the loan, the deferral of interest expense on the one year loan identified in response to provision 4(c) shall not be extended beyond March 31, 2021.

9. Reporting: MAWC agrees, within two weeks after the Commission issues an order approving this *NonUnanimous Stipulation and Agreement*, to file an initial report identifying the categories to be tracked and deferred from the period March 1 - June 30, 2020. The report will identify all cost, revenues, and savings described above related to the pandemic that have been identified to date, as well as the following:

- (a) The number of customers, by customer class;
- (b) The number of customers, by customer class, voluntarily disconnected by month;
- (c) The number of customers, by customer class, involuntarily disconnected by month;
- (d) The number of utility reconnections, reported by month;
- (e) The number of customers on a utility payment plan, by payment plan type (including budget billing), by month;
- (f) The total amount of arrearages by customer class;
- (g) The number of accounts in arrearage by customer class in increments of \$100 (e.g., less than \$100, \$101 to \$200, etc...) by month;
- (h) The range of arrearage amounts by customer class (i.e., current high and low dollar amount) and the mean average;
- (i) A quantification of total past-due customer arrearages and number of customers experiencing arrearages, that are thirty, sixty, and ninety days or more late in payment, reported by month; and,
- (j) The number and dollar amount of bills sent to residential customers, and the number and dollar amount of payments made by residential customers.

10. The Parties agree that, for reporting purposes, arrearages will reflect only past due bills.

11. Costs will be tracked by month in the initial and subsequent quarterly reports.

12. MAWC will update this initial report quarterly until the conclusion of the update or true-up period, if applicable, in the Company's next general rate case. The quarterly report shall be filed within 45 days of the end of each quarter.

13. Accounting Practices and Procedures: The Company's authority to defer the financial impacts of COVID-19 including incremental costs, bad debt expense, interest expense, late payment fees, disconnect/reconnect charges and operating cost reductions is limited to those categories described herein. Within 30 days of a Commission order authorizing this deferral, the Company will provide to the other Parties copies of the applicable policies and procedures intended to govern how monthly deferral amounts are to be calculated for each applicable category. Such policies and procedures shall also contain a proposed monthly reporting format. Concerns regarding these policies and procedures on the part of any Party will be addressed through further discussion by the Parties.

14. Future Recovery: The Parties agree that the ability to track and defer costs into a regulatory asset is for accounting purposes only. All questions regarding potential ratemaking treatment of the deferred costs and the materiality thereof are reserved for the Company's pending base rate proceeding (WR-2020-0344) and a subsequent rate case for deferred items not considered for recovery in WR-2020-0344. The Parties reserve the right to review the Company's deferral of COVID-19 costs and recommend adjustments in the Company's applicable general rate case.

15. Evergy Appeal (WD 83319): The Parties agree that if the courts render a decision pertaining to WD83319 or SC98724 that renders accounting authority orders

invalid, this *NonUnanimous Stipulation and Agreement* becomes null and void, and the Company agrees to adjust its books and records consistent with the Court's decision.

16. Customer Support: The Company makes annual contributions to the H2O program to support customers in financial need in its service territory. The Company will make an additional \$250,000 contribution to the H2O help for others program prior to year-end. MAWC agrees to hold one virtual meeting with Staff, OPC and the participating Community Action Agencies in the fourth quarter of 2020 to solicit feedback on outreach and participation parameters and one meeting in the first quarter of 2021 to discuss results to date.

17. Customer Protections: The Company agrees to cease full credit external reporting of its customers for the duration of the approved AAO.

GENERAL PROVISIONS

18. Unless otherwise explicitly provided herein, none of the Parties to this *NonUnanimous Stipulation and Agreement* shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation to, any other method of cost determination or cost allocation or revenue-related methodology. Other than as explicitly provided herein, none of the Parties shall be prejudiced or bound in any manner in this or any other proceeding by the terms of this *NonUnanimous Stipulation and Agreement* regardless of whether this *NonUnanimous Stipulation and Agreement* is approved.

19. This *NonUnanimous Stipulation and Agreement* has resulted from negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this *NonUnanimous Stipulation and Agreement*

unconditionally and without modification, then this *NonUnanimous Stipulation and Agreement* shall be void and no Party shall be bound by any of the agreements or provisions hereof.

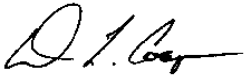
20. If the Commission does not unconditionally approve this *NonUnanimous Stipulation and Agreement* without modification, and notwithstanding the provision herein that it shall become void, neither this *NonUnanimous Stipulation and Agreement* nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080 RSMo or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this *NonUnanimous Stipulation and Agreement* had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this *NonUnanimous Stipulation and Agreement* shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

21. In the event the Commission unconditionally accepts the specific terms of this *NonUnanimous Stipulation and Agreement* without modification, the Parties waive the following rights only as to the issues resolved herein: 1) their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo; 2) their respective rights to seek rehearing, pursuant to §536.500 RSMo; and 3) their respective rights to judicial review pursuant to §386.510 RSMo. This waiver applies only to a final, unappealed Commission order unconditionally approving this *NonUnanimous*

Stipulation and Agreement issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding or any matters not explicitly addressed by this *NonUnanimous Stipulation and Agreement*.

WHEREFORE, for the foregoing reasons, the undersigned Parties respectfully request that the Commission issue its Order approving the terms and conditions of this *NonUnanimous Stipulation and Agreement*.

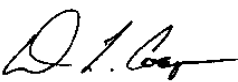
Respectfully submitted,

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| <p><u>/s/ David L. Woodsmall</u> David L. Woodsmall, MBE #40747 308 E. Capital, Suite 204 Jefferson City, Missouri 65101 (573) 797-0005 Internet: david.woodsmall@woodsmalllaw.com</p> <p>ATTORNEY FOR THE MIDWEST ENERGY CONSUMERS' GROUP</p> | <p><u>/s/ Caleb Hall</u> Caleb Hall, #68112 Senior Counsel 200 Madison Street, Suite 650 Jefferson City, MO 65102 P: (573) 751-4857 F: (573) 751-5562 Caleb.hall@opc.mo.gov</p> <p>Attorney for the Office of the Public Counsel</p> |
| <p>Curtis, Heinz, Garrett & O'Keefe, P.C.</p> <p>By: <u>/s/ Diana M. Plescia</u> Diana M. Plescia #42419 130 S. Bemiston, Suite 200 St. Louis, Missouri 63105 Telephone: (314) 725-8788 Facsimile: (314) 725-8789 E-mail: dplescia@chgolaw.com</p> <p>Attorney for the Missouri Industrial Energy Consumers</p> | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 7th day of October 2020, to all counsel of record.



STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 28th day of October, 2020.**




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

October 28, 2020

File/Case No. WU-2020-0417

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.