

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

In the Matter of Missouri-American Water)	
Company's Request for Authority to Implement)	<u>Case No. WR-2017-0285</u>
General Rate Increase for Water and Sewer)	Case No. SR-2017-0286
Service Provided in Missouri Service Areas.)	

MAWC’S OPPOSITION TO MIEC’S MOTION TO STRIKE

COMES NOW Missouri-American Water Company (MAWC or Company), and, for its opposition to the Motion to Strike a Portion of the Initial Brief of Missouri-American Water Company filed by Missouri Industrial Energy Consumers (MIEC), states to the Missouri Public Service Commission (Commission) as follows:

1. MIEC seeks to have the Commission strike that portion of MAWC’s Initial Brief stating MAWC’s position regarding fully consolidated rates or Single Tariff Pricing. In addition, MIEC requests the Commission to decline to consider full consolidation of Rate J as a contested issue in this case. MIEC’s motion is without merit and should be summarily rejected.

2. MIEC argues that the Company’s position, as stated in its Initial Brief (pages 27-28) is not supported by the evidence in this case. On the contrary, Company’s position in its initial filing and throughout this case has been to implement Single Tariff Pricing. The record is replete with testimony citing numerous policy and factual reasons to support MAWC’s position. (Exh. 15, 16 and 17, Heppenstall Dir., pp. 14-17; Reb. pp. 10-16; Sur. pp. 4-5; Exh. 18, 20 and 21, Jenkins Dir., pp. 38-48; RDReb, pp. 7-16; Sur. pp. 59-62) Single Tariff Pricing is also supported by the testimony of Mayors Rose (Riverside), Johnson (Parkville) and Smedley (Platte Woods). (Tr. Vol. 4, pp. 6-8 and 12-16) It is also supported by Public Water Supply Public District Nos. 1 and 2 of Andrew County’s witness Johnstone. (Exh. 675, Johnstone Reb., pp. 4-

8) While the Company initially proposed two rates for Rate B (sale for resale) and Rate J (large industrial), it did so in order to “gradually” move those customer classes to a single tariff. In other words, the Company’s proposal to implement two rates for Rates B and J was not a departure from, or inconsistent with, its Single Tariff Pricing proposal, but rather an effort to gradually move those classes to a single tariff. Accordingly, all of the evidence in this case supporting Single Tariff Pricing also supports the movement to a uniform rate for these two customer classes. As a result of the parties stipulating to a revenue requirement increase that was approximately \$50,000,000 less than MAWC’s original filing, a gradual movement to a Single Tariff rate for Rates B and J is no longer necessary and Single Tariff Pricing should be implemented in this case for all customer classes.

3. MIEC’s claims that MAWC did not articulate its position until its Initial Brief is refuted by MAWC’s counsel’s opening statement as follows:

“Well, this is that next rate case and Missouri-American has proposed full consolidation of its three districts in this case. Specifically, the Company initially proposed its single statewide rate for its residential, small commercial and industrial customers and public - - excuse me, other public authorities, all of which are grouped in its rate A classification. Initially, the Company proposed two rates for its rate B customers, which are sale for resale, Mr. Dority’s clients, the public water supply districts would fall into that classification; and rate J, large industrial, which I believe Mr. Mills’ customers - - or excuse me, clients would fall into that rate classification.

The Company proposed two rates: one for district one, which is the St. Louis are or zone; and another rate for districts two and three. At the time they filed the rate case because they felt like moving to a statewide rate at that time based on a \$369 million revenue requirement was a bit of a jump and, so, they proposed this two-rate structure to implement full consolidation in the rate B and rate J classifications as a gradual step to get there.

As the Commission is aware, we now have a stipulation on

revenue requirement at \$318 million, approximately \$50 million less than the filed case, and the Company feels that with that reduction in revenue requirement that it is not as large a step to consolidate rate J and rate B on a full - - on a statewide basis. So, that's what you will see in the exhibit that we've handed out.

In short, Missouri-American believes that the reasons the Commission articulated in favor of its decision to consolidate Missouri-American's 19 districts into three districts in the last case remain valid today and support a move to full consolidation in this case.

(Tr. Vol. 17, pp. 544-545, emphasis added)

There is nothing "vague" about the Company's position as stated in its opening statement. If MIEC (or any party) had an objection to the Company's position, it could and should have raised it at the beginning of the hearing.

4. Moreover, in discussing Exhibit 136, MAWC's counsel stated it as follows:

" . . . I would call it a rate comparison schedule showing the impacts of the proposed revenue requirement stipulated amount on the various classes of customers depending on the rate design that's chosen. Now, I need to qualify that. Since it's a Company-Staff effort, it just compares the Staff's position, which as you probably know, is to sort of maintain the existing three districts; or the Company's position which is to consolidate to one district."

(Tr. Vol. 17, p. 541, emphasis added)

Exhibit 136, page 11, specifically proposes a "consolidated" rate for Rate J customers (i.e., \$2.1913 per thousand gallons). Thus, this exhibit further evidenced the Company's proposal to move to full Single Tariff Pricing for all rates, including Rate J.

5. MIEC also asserts that the Company's position is inconsistent with the position it took "in settlement discussions." (Motion, ¶2) Settlement discussions are privileged and confidential; however, since MIEC has breached that privilege, MAWC states that its position to

unify rates for all customers classes, including Rate J, was made known during the settlement conference on March 2, 2018, when the Company distributed to all parties, including MIEC, an earlier draft of Staff Exhibit 136, which also showed a single, statewide rate for all customer classes, including Rate J. Thus, the MIEC's claim that it was not aware of the Company's decision to modify its rate design proposal until after hearing is simply not true.

6. MIEC further claims it is prejudiced by MAWC's last second change of position, citing its "due process" right to an opportunity for a fair hearing. MIEC, however, does not cite to any case law or Commission rule for the notion that a party has a right to hold another party to its initial "filed" position. In fact, MIEC's position is inconsistent with its own Statement of Position in this case: "The MIEC reserves the right to take positions on issues for which it is not now taking after the presentation of evidence on those issues at the hearing." (Second Statement of Positions of the Missouri Industrial Energy Consumers, filed February 22, 2018, p. 1) If MIEC can wait until after the hearing to take new positions on issues on which it hasn't previously taken a position, then surely the Company can modify its positions prior to the start of the hearing.

7. MIEC also states that had it been aware of MAWC's change of position prior to hearing, it would have had the opportunity to provide counter testimony. MIEC's statement fails to acknowledge the fact that MIEC's position in this case was to support continuation of the existing three-district rate design and vigorously oppose Single Tariff Pricing. MIEC offered the testimony of its witness Collins to support continuation of the three-district rate structure and oppose the Company's proposal to fully consolidate rates. Notably, MIEC did not state that if the Commission implements Single Tariff Pricing it supports the Company's proposal to

establish two rates for Rate J. The fact of the matter is that MIEC had ample opportunity to provide counter testimony to Single Tariff Pricing and did so in this case.¹

8. MIEC further mischaracterizes the record by citing, “No party disputed MAWC’s proposal to implement a two-zone Rate J, and so it was never treated as a contested issue.” (Motion, ¶2) First, if no party disputed Company’s proposal to establish two rates for Rate J, then there should have been a stipulation to that effect or, at the very least, the parties opposing Company’s rate design program should have offered testimony to that effect. Second, MIEC’s statement ignores the fact that the Cities of Riverside and Joplin as well as the Public Water Supply District Nos. 1 and 2 of Andrew County supported fully consolidated rates or Single Tariff Pricing. In addition, the President and CEO of the St. Joseph Area Chamber of Commerce, which presumably includes Rate J customers, supported Single Tariff Pricing. (Tr. Vol. 7, pp. 21-23) None of those parties supported a two-zone rate for Rates B or J. Consequently, as long as MIEC (and others) opposed the Company’s proposed Single Tariff Pricing, the rate structure for Rate J was a contested issue.

9. As a final matter, it doesn’t matter what the Parties propose as long as there is a reasonable basis in the record for each finding or conclusion by the Commission. *State ex rel. Capital City Water Co. v. MoPSC*, 850 S.W.2d 903, 912 (Mo.App. W.D. 1993). The Commission has considerable discretion in rate setting due to the complexities involved. *State ex rel. KCP&L v. MoPSC*, 509 S.W.3d 757, 765 (Mo.App. W.D. 2016). The court in *KCP&L* reviewed, among other things, the Commission’s decision on return on equity (“ROE”). The principles applied by the court to the Commission’s ROE analysis are equally applicable to a determination regarding consolidated

¹ It is also disingenuous for MIEC to suggest in its Reply Brief that it was denied an opportunity to “show how dramatic and punitive this change would be” when MIEC has in the past refused to identify its members, let alone reveal what, if any, impact water rates have on their individual operations.

pricing. The Commission may adopt or reject all or any portion of a witness' testimony, choose between conflicting evidence, and adopt a position anywhere within the range of options presented by the witnesses. *Id.* at 767-768. The Commission must exercise its considerable discretion and expertise in setting just and reasonable rates. *Id.* at 768.

10. The *KCP&L* decision presents another example of how the Commission is not limited to precise party positions. *KCP&L* sought recovery of its total rate case expenses, while Staff and OPC alleged that particular expenses were imprudent and should be disallowed. The Commission, however, applied a formula comparing the requested revenue requirement to the awarded revenue requirement. *Id.* at 775-776. The court upheld this decision by the Commission in all respects. "We find the remedy crafted by the PSC was a reasonable exercise of the PSC's discretion and expertise in determining just and reasonable" rates. *Id.* at 775-779.

11. The Commission has broad discretion to set just and reasonable rates and requires flexibility in exercising its ratemaking function to deal with changing circumstances. *State ex rel. Capital City Water Co. v. MoPSC*, 850 S.W.2d 903, 910-911 (Mo.App. W.D. 1993). The Commission must establish rates, rules, regulations, and practices which are "in all respects just and reasonable," without being limited by the parties' allegations. RSMo. 393.130; RSMo. 393.150; RSMo. 393.270.

WHEREFORE, in light of the foregoing, MAWC respectfully requests the Commission to deny MIEC's Motion to Strike a Portion of the Initial Brief of MAWC, and for such other orders as are reasonable in the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on April 13, 2018, to the following:

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