BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Workshop Case to Explore the Ratemaking Process	))	File No. AW-2019-0127

COMMENTS OF MISSOURI-AMERICAN WATER COMPANY REGARDING THE MISSOURI PUBLIC SERVICE COMMISSION'S RATEMAKING PROCESS

On November 6, 2018, the Missouri Public Service Commission ("Commission"), at the request of its Staff, issued its Order Opening a Working Case to consider the ratemaking process. The purpose of the workshop is to "assist Staff in its review and consideration of the Commission's ratemaking procedure."[1] Missouri-American Water Company ("MAWC") appreciates the opportunity to participate in this workshop and offers the following written comments regarding the Commission's ratemaking procedure.

In short, MAWC believes that the current Commission procedure for processing rate cases is unnecessarily complex and, therefore, inhibits the timely resolution of a rate case, whether by way of settlement or contested hearing. As MAWC pointed out in its recent rate case before the Commission, the Missouri Commission is an "outlier" in the way in which is processes rate cases.[2] The result is that the "traditional" Missouri procedural utility rate schedule is more inefficient and complex than those in the other states in which regulated affiliates of MAWC operate.

MAWC acknowledges and accepts the fact that as a public utility seeking to revise its currently authorized rates it has the burden of proof/persuasion as to the new rates it seeks to implement. As such, a typical litigation schedule would call for a moving party's direct

[1] Staff Motion to Open Workshop Docket and to Provide Notice of a Workshop to be Held on November 29, 2018, page 1.
[2] MAWC's Response to Staff Suggestions in Opposition to Motion for Variance, Case No. WR-2017-0285, et al., page 2.

testimony, followed by rebuttal testimony from the non-moving parties, followed by surrebuttal testimony. In fact, Commission rule 4 CSR 240-2.130(7) contemplates such a schedule:

> "Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case."

Over the years, however, rates cases before the Commission have established a procedural schedule where the utility company files direct testimony at the time it files its revised tariffs, followed by Staff and non-company parties' direct testimony, followed by rebuttal testimony, followed by surrebuttal testimony. More recently, Staff and non-company parties' direct testimony and all parties' rebuttal testimony have been split into separate filings for revenue requirement and rate design, resulting in at least six (6) different testimony filings prior to the evidentiary hearing. Staff and non-company parties' direct testimony (which is typically filed five to six months after the filing of the Company's direct testimony) has been limited to their "case-in-chief" and does not respond to or rebut the utility company's direct testimony. Thus, the utility company's direct testimony and the Staff and non-company parties' direct testimony are like two ships passing in the night and do little to narrow and identify the issues between the parties. This failure to narrow and identify the issues continues through the rebuttal testimony filing, where the Company is required to rebut the direct testimony of Staff and non-company parties' testimony, and Staff and non-company parties', for the first time, rebut the Company's direct testimony. Only after the filing of rebuttal testimony are the parties in a position to begin to identify the issues between them.

Using MAWC's most recent rate case as an example, rebuttal revenue requirement testimony was not filed until approximately six and a half (6-1/2) months after MAWC filed its initial tariffs and direct testimony; and rebuttal rate design testimony was not filed until

approximately seven (7) months after MAWC's direct testimony.[3] In other words, not until six and a half months (6-1/2) to seven (7) months into an eleven month process were the parties in a position to really understand all of the issues between them and begin to make meaningful efforts to narrow and/or settle those issues.

MAWC suggests that the Commission's rate case process can, and should, be changed to reflect a more typical litigation procedure where Staff and non-company parties are directed to respond to the utility company's direct testimony at the time established for the Staff and non-company parties to file their direct testimony. So, for example, using MAWC's recent rate case as a guide, Staff and non-company parties would be required to file their rebuttal testimony to MAWC's direct testimony, thus eliminating the requirement that they file direct testimony. This would have resulted in Staff and non-company parties filing their rebuttal testimony approximately five months after the filing of MAWC's direct testimony instead of six and a half (6-1/2) to seven (7) months, as was the situation in MAWC's last case. Not only would this provide ample time for discovery and sharpen the issues in controversy but additionally, this could shorten the time to process the rate case by forty-five (45) to sixty (60) days.[4]

There is no reason that Staff and non-company parties should not be able to examine and respond to the utility company's direct case (both revenue requirement and rate design) within a five month period. The consequence of failing to do so results in the utility company not seeing Staff's and other parties' responsive positions until approximately six and one-half (6-1/2) or more months after the filing of the company's direct testimony. The result of the current process involving a series of rebuttal and surrebuttal testimonies is that the parties end up "talking past"

[3] Order Scheduling Evidentiary Hearing and Setting Procedural Schedule, Case No. WR-2017-0285, et al.
[4]Attached as Exhibit 1, for illustrative purposes, is a table comparing the procedural schedule in MAWC's last rate case with a proposed schedule consistent with these comments.

one another and not identifying issues in a way that would provide the Commission with a clear sense of the issues to be addressed in the hearing. If, at the first filing of Staff's and non-company parties' testimony, they were required to present their responsive or rebuttal positions to the utility company's initial filing, the company's full response to all issues could be provided in its rebuttal testimony and there would be an opportunity to define issues at a much earlier stage of the case. Such a process would provide for more meaningful conversations between the parties, testimony that focuses on the issues in dispute and, where necessary, a cleaner hearing record for the Commission.

The orderly examination of rate filings is not unique to the State of Missouri. Yet, as noted earlier, Missouri's rate case procedure is unique when compared with rate case procedures utilized by other state utility regulatory commissions. Rate cases typically involve a regulatory commission's Staff, a consumer advocate, and various intervening parties. In each of the other states where the regulated affiliates of MAWC operate, the commission staff, consumer advocate, and intervening parties' direct filings are responsive to the utility company's direct case. As an example, attached to the comments as Appendices A-O are ordered procedural schedules from Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia, respectively. The common thread among these procedural schedules is that the evidentiary filings submitted by the commission staff, consumer advocates, and intervenors all respond directly to the utility company's rate case filing.

Again, the crux of the problem in Missouri is that Staff and other non-company parties only file their "case-in-chief" as their direct testimony. What Staff has historically called its "case-in-chief" is not responsive to the utility company's filing, but purports to be offered as an

alternative to the utility company's case. Legally, the burden of proof/persuasion is on the utility company and remains on the utility company throughout the case. Accordingly, the Staff and other parties should be required to present their case in response to the utility Company's filing, not as an independent alternative. The difference between the Staff's case-in-chief and "true" rebuttal testimony is neither clear nor relevant, only serving to further muddy the record and create complexity and confusion without needing to do so. There is no purpose for Staff (or any other non-company party) to distinguish between its case-in-chief and rebuttal testimony. Both should respond to the utility company's direct case. Thus, whether the utility company is responding to the parties' cases in chief or to parties' rebuttal, the utility company is providing testimony that responds to the other parties' positions.

Another revision in the traditional Missouri rate case procedure that MAWC would suggest is to consolidate revenue requirement and rate design testimonies into a single filing. Splitting testimony into revenue requirement and rate design separate filings (filed sometimes weeks apart) is an unnecessary complication which results in confusion and delay and lengthens the testimony order.

In summary, MAWC's proposal that Staff and non-company parties respond to utility company's direct testimony in their initial submissions is a reasonable approach to the rate case process that will streamline responsive testimony and provide at an earlier point in the process a record that narrows and focuses on the actual issues for Commission decision. As an added benefit, this approach could shorten the time for processing a rate case by forty-five (45) to sixty (60) days.