

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

In the Matter of Missouri-American Water)
Company's Request for Authority to Implement) File No. WR-2017-0285
General Rate Increase for Water and Sewer)
Service Provided in Missouri Service Areas.)

**REPLY TO STAFF’S RESPONSE TO MOTION
TO ESTABLISH FUTURE TEST YEAR**

COMES NOW the Midwest Energy Consumers’ Group (“MECG”); the Missouri Industrial Energy Consumers (“MIEC”); the Office of the Public Counsel (“OPC”); the City of Joplin; the City of Jefferson City; the City of Warrensburg; the City of St. Joseph; the City of Riverside; and the Consumers Council of Missouri (collectively referred to as the “Signatories”), and for their Reply to Staff’s Response to Motion to Establish Future Test Year respectfully states as follows:

1. On July 27, the Midwest Energy Consumers’ Group (“MECG”); the Missouri Industrial Energy Consumers (“MIEC”); the Office of the Public Counsel (“OPC”); the City of Joplin; the City of Jefferson City; the City of Warrensburg; the City of St. Joseph; the City of Riverside; and the Consumers Council of Missouri (collectively referred to as the “Signatories”), filed their Response to Missouri American Water Company’s (“MAWC”) Motion to Establish Future Test Year (“Customer Response”). In the Customer Response, the Signatories argued that MAWC’s claimed authority for establishment of a future test year is “not as clear” as MAWC asserts. In fact, the Signatories pointed out that the authority relied upon by MAWC does not expressly authorize the use of a future test year. To the contrary, the Signatories pointed out that Section 393.270.4 creates an express preference for a historical test year. Furthermore, the Signatories pointed out that the General Assembly has recently refused to pass

legislation that would have explicitly authorized the Commission to utilize a future test year. Additionally, the Signatories referenced previous court decisions that expressly approved the Commission's use of historical test years. Finally, the Signatories noted the multitude of problems that come with a future test year and urged the Commission to reject MAWC's future test year request.

2. On July 27, Staff of the Missouri Public Service Commission ("Staff") also filed its Response to Missouri American Water Company's Motion to Establish Future Test Year ("Staff Response"). In its Response, Staff agreed that the future test year authority relied upon by MAWC does not "explicitly authorize a future test year."¹ The Signatories agree with Staff's conclusion and suggests that there is no statute or case law which expressly provides authority for the Commission to use a future test year.

3. In its Response, Staff also pointed out that the use of a future test year would "be a major departure from past practice."² The Signatories agree that the use of a future test year would be a "major" change in the Commission's approach to utility ratemaking.

In a recent report on proposed ratemaking legislation, the Commission considered many such changes and concluded "Missouri's current regulatory structure has functioned very effectively for over a century, and there is no need for a massive, radical overhaul."³ Like Staff, the Signatories agree that the use of a future test year would be a major change and would be contrary to the conclusions that the Commission reached in its legislative workshop report just eight months ago. The Signatories believe that the Commission is capable of establishing just

¹ Staff Response, page 2, paragraph 8.

² *Id.*, page 9, paragraph 23.

³ See, *A Report Regarding Policies to Improve Electric Utility Regulation*, Case No. EW-2016-0313, issued December 6, 2016, page 4.

and reasonable rates through a historical test year.⁴ The continued reliance on a historical test year will not only lead to just and reasonable rates, it would also preserve the numerous safeguards designed to protect Missouri ratepayers.

4. The Signatories agree with another conclusion reached by Staff. Specifically, Staff and the Signatories agree that a future test year is not “needed to prevent the undermining of the matching principle.”⁵ The use of a historic test year, as well as the update of financial information through a true-up, allows the Commission to measure and match MAWC’s revenues, costs, rate base and rate of return all as of the same date. This is the essence of the matching principle. Importantly, since all of these financial items are capable of being measured with certainty, there are no concerns that rate base additions included in rates have not actually been made. This is important for several reasons, including that it maintains the integrity of the Commission’s “known and measurable” standard. As such, the historic test year and adherence to the matching principle and the known and measurable standard are entirely consistent.

Moreover, Staff notes, and the Signatories agree, that the use of a future test year is not entirely consistent with the matching principle. As Staff points out:

In MAWC’s request, its future test year is a *projection* of normalized costs, created by multiplying normalized test year costs by a factor based upon an *estimated* future inflation rate, and a 13-month average of *planned* – not certain – rate base expenditures. Instead, MAWC’s request itself may undermine the matching principle, by asking the commission to place into rates future amounts outside of the test year that are not “known and measurable.”⁶

⁴ Apparently, MAWC also recently agreed that a historic test year could result in just and reasonable rates. On March 16, 2016, MAWC voluntarily settled its last rate case for a stipulated rate increase of \$30.6 million. That revenue requirement was subsequently reduced to \$30.4 million. That rate increase went into effect on July 20, 2016. Importantly, the “just and reasonable” rates that were reflected in that settlement were based upon an historic test year. Now, less than a year after agreeing to a rate increase resulting from a historic test year, MAWC illogically argues that a historic test year cannot result in just and reasonable rates and that a future test year is necessary. Certainly, MAWC’s actions in its last case and rhetoric in this case are contradictory.

⁵ Staff Response, page 6, paragraph 16.

⁶ *Id.*

As the Signatories noted in their original response, there is no certainty that any of MAWC's planned capital investments will ever be made. MAWC has repeatedly placed a caveat on all rate base estimates indicating that "[p]rojects/budgets are subject to change based on changes in circumstances and/or the Company's periodic review of projects and priorities."⁷ Given the uncertainty as to MAWC's investment, costs and revenues, the matching principle is destroyed under its future test year proposal.

5. While the Signatories agree with several of the conclusions contained in Staff's Response, they disagree with one important recommendation. Specifically, Staff suggests that the Commission should refrain from deciding the issue of a future test year and, instead, "reserve consideration" of such questions. While Staff suggests that the Commission order a historic test year as a "starting point,"⁸ Staff then appears to suggest that parties could then seek to propose future test year adjustments in the context of the true-up process.

Under this scenario, proposals by any party to consider changes beyond the end of the true-up period (i.e., future test year projections) for inclusion in rates could be accomplished through discrete revenue, expense, and rate base adjustments that can be reconciled in terms of their revenue requirement impact.⁹

While the Signatories understand Staff's effort to find a middle ground, the Signatories suggest that Staff's proposal is entirely unworkable. First, the use of "discrete" update adjustments past a true-up date is a clear abandonment of the matching principle.

Second, true-up audits and hearings typically take place less than a month after the evidentiary hearing is completed. Parties are provided less than two weeks in which to conduct discovery and prepare true-up rebuttal in response to the utility's true-up direct. In addition, the

⁷ See, Customer Response, at pages 3-5, paragraphs 7-8.

⁸ Staff Response, pages 7-8, paragraph 20.

⁹ *Id.*, pages 8-9, paragraph 22.

Commission typically allows only 1-2 days in order to conduct a true-up hearing. Obviously, time is very limited.

Under Staff's proposal, parties would be allowed less than two weeks to conduct discovery and prepare true-up rebuttal in response to MAWC's future test year projections on every cost, revenue and investment item. Moreover, the Commission would be confronted with the scenario of conducting a true-up hearing in 1-2 days that would consider MAWC's proposal to project every cost, revenue and investment item. Needless to say, such a proposal would be utterly unworkable.

The limited time period would make discovery a pointless undertaking. Not only would parties not have enough time to conduct the discovery on each of these financial pieces of information, parties would have even less time to attempt to digest such information, reduce it to rebuttal testimony and prepare cross-examination for a true-up hearing.¹⁰ Given this, the Signatories assert that Staff's proposal is unworkable and should be rejected.

WHEREFORE, the Signatories respectfully request that the Commission accept this Reply, and reject MAWC's future test year proposal as well as Staff's alternative future test year update proposal.

¹⁰ Such a proposal simply perpetuates the "information asymmetry" referenced by NRRI as a critical shortcoming inherent in future test year ratemaking and pointed out in the Signatories July 27 pleading. See Customers Response, at pages 5-6.

Respectfully submitted,

Woodsmall Law Office

/s/ David Woodsmall
David L. Woodsmall, MBE #40747
308 E. High Street, Suite 204
Jefferson City, Missouri 65101
(573) 797-0005
david.woodsmall@woodsmalllaw.com

ATTORNEY FOR THE MIDWEST
ENERGY CONSUMERS' GROUP

Office of the Public Counsel

/s/ Tim Opitz
Tim Opitz, MBE #65082
Deputy Public Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5324
Timothy.opitz@ded.mo.gov

ATTORNEY FOR THE OFFICE OF
THE PUBLIC COUNSEL

Blitz, Bardgett & Deutsch, L.C.

/s/ Stephanie S. Bell
Marc H. Ellinger, MBE #40828
Stephanie S. Bell, MBE #61855
308 E. High Street, Suite 301
Jefferson City, MO 65101
(573) 634-2500
mellinger@bbdlc.com
sbell@bbdlc.com

ATTORNEYS FOR THE
CITY OF JOPLIN

John B. Coffman, LLC

/s/ John B. Coffman
John B. Coffman, MBE #36591
871 Tuxedo Blvd.
St. Louis, Missouri 63119-2044
(573) 424-6779
john@johncoffman.net

ATTORNEY FOR CONSUMERS
COUNCIL OF MISSOURI

William D. Steinmeier, P.C.

/s/ William D. Steinmeier
William D. Steinmeier, MBE #25689
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
(573) 659-8672
wds@wdspc.com

ATTORNEY FOR THE
CITY OF ST. JOSEPH, MISSOURI

Bryan Cave, LLP

/s/ Edward F. Downey
Edward F. Downey, MBE #28866
Lewis R. Mills, MBE #35275
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
(573) 556-6620
efdowney@bryancave.com
lewis.mills@bryancave.com

Diana M. Vuylsteke, MBE #42419
211 N. Broadway, Suite 3600
St. Louis, MO 63102
(314) 259-2543
dmvuylsteke@bryancave.com

ATTORNEYS FOR THE MISSOURI
INDUSTRIAL ENERGY CONSUMERS

Newman, Comley & Ruth, P.C.

/s/ Mark W. Comley
Mark W. Comley, MBE #28847
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266
comleym@ncrpc.com

ATTORNEY FOR THE CITY OF
JEFFERSON CITY, MISSOURI

**Curtis, Heinz
Garrett & O'Keefe, P.C.**

/s/ Leland B. Curtis
Leland B. Curtis, MBE #20550
Carl J. Lumley, MBE #32869
Edward J. Sluys, MBE #60471
130 S. Bemiston, Suite 200
Clayton, MO 63105
(314) 725-8788
lcurtis@chgolaw.com
esluys@chgolaw.com

ATTORNEY FOR THE
CITY OF WARRENSBURG

Spencer Fane LLP

/s/ Joseph P. Bednar, Jr.
Joseph P. Bednar, Jr., MBE #33921
304 East High Street
Jefferson City, MO 65101
(573) 634-8116
jbednar@spencerfane.com

ATTORNEY FOR THE
CITY OF RIVERSIDE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing pleading has been served by electronic means on all parties of record as reflected in the records maintained by the Secretary of the Commission through the EFIS system.

/s/ David Woodsmall
David Woodsmall

Dated: August 2, 2017