

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

In the Matter of Missouri-American Water)
Company for Certificates of Convenience)
and Necessity Authorizing it to Install, Own,)
Acquire, Construct, Operate, Control,)
Manage, and Maintain Water and Sewer)
Systems in and around the city of Lawson,)
Missouri)

Case No. WA-2018-0222

THE OFFICE OF PUBLIC COUNSEL SUR-REPLY

COMES NOW the Office of the Public Counsel (“OPC”), by and through undersigned counsel, and files this sur-reply in response to the *Staff Reply* filed by the Missouri Public Service Commission’s Staff (“Staff”) and the *Reply to OPC Response to Staff Recommendation* filed by Missouri-American Water Company (“MAWC”). In support thereof, the OPC states as follows:

1. MAWC filed its initial *Application and Motion for Waiver* in this case on February 5, 2018. Staff filed its *Recommendation* in favor of MAWC’s application on May 29, 2018. The OPC filed its *Response to Staff’s Recommendation* on June 25, 2018. MAWC and Staff both filed their replies to the OPC’s response on June 28, 2018.

I. Issue Regarding the Application of Section 393.320.6

1. The OPC’s initial *Response to Staff’s Recommendation* raised concerns regarding the application of section 393.320.6 to the proposed acquisition and, in particular, requested the parties to “identify which of MAWC’s existing service areas the City’s water and sewer system shall become a part of[.]”

2. MAWC and Staff both responded to the OPC’s request by adopting primarily the same position. Specifically, both MAWC and Staff proposed that the Lawson City water system be consolidated into the “service area” described in MAWC’s current water tariff as “All Missouri

Service Areas Outside of St. Louis County and Outside of Mexico” and that the Lawson City sewer system be consolidated into the “service area” described in MAWC’s current sewer tariff as “Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates.”¹

3. Staff further proposed modification of enumerated recommendations three and four of its previously filed *Recommendation* to read as follows:

3. “Require MAWC to submit tariff sheets, to become effective before closing on the assets, to include the Lawson water system in its ‘All Missouri Service Areas Outside of St. Louis County and Outside of Mexico’, to include a service area map, and service area written description to be included in its EFIS water tariff P.S.C. MO No. 13, and water rates, applicable specifically to water service in its Lawson service area;

4. “Require MAWC to submit tariff sheets, to become effective before closing on the assets, to include the Lawson sewer system in its ‘Pettis County (Maplewood, Quail Run, Brooking Park, Westlake Village), Fenton, Hickory Hills, Temple Terrace, Anna Meadows, Jaxson Estates’ service areas’, to include a service area map, and service area written description to be included in its EFIS

¹ The OPC notes with some consternation the inconsistencies in how the term “service area” is used throughout the applicable tariffs and filings. For example, MAWC’s current water tariff (P.S.C. Mo. No. 13) includes a listing of “certified areas” (most of which are titled as “service areas”), that each includes a map and legal description for the land wherein MAWC proposes to provide water utility service. The tariff further sets forth rates applicable to “All Missouri Service Areas [*plural*] Outside of St. Louis County and Outside of Mexico” thus implying once again that the term “service area” refers to the description of a specific tract of land where MAWC proposes to provide services. This is also consistent with MAWC’s current sewer tariff (P.S.C. Mo. No. 26) which includes a list of “service areas” (again plural) as well as rates that apply to select *groups* of service areas (e.g. Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates). Despite this, both MAWC and Staff have responded to the OPC’s request to identify which “service area” the Lawson City water and sewer systems are being consolidated with pursuant to 393.320.6 by suggesting that the systems be consolidated into one of the *groupings* of service areas that were introduced in MAWC’s current tariff to allow for the application of consolidated rates. In other words, MAWC and Staff have chosen to treat two *groups* of service areas as if those *groups* were themselves independent and individual service areas. It is in this manner that MAWC and Staff are capable of suggesting “that the Lawson water system be consolidated into the service area [*singular*] described in MAWC’s tariff as ‘All Missouri Service Areas [*plural*] Outside of St. Louis County and Outside of Mexico[.]’” Nevertheless, the OPC concedes that applying the term “service area” as it is actually used in the MAWC tariffs to section 393.320.6 would most likely produce an absurd result. Therefore, the OPC accepts MAWC and Staff’s designation of “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” and “Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates” as discrete “service areas” for the purpose of applying 393.320.6.

sewer tariff P.S.C. MO No. 26, and sewer rates, applicable specifically to sewer service in its Lawson service area;

4. As the OPC understands MAWC and Staff's proposed modifications, they would require MAWC to, among other things, submit new tariff sheets replacing the existing sheets RT 1.2 of MAWC's current water tariff (P.S.C. MO No. 13) and RT 3.1 of MAWC's current sewer tariff (P.S.C. MO No. 26) – which provide the rates applicable for “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” and “Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates” respectively – and that these new tariff sheets would, for each of these “service areas,” set forth two sets of rates: a new rate that would apply only to the residents of the city of Lawson, and the old rate that would apply to all other ratepayers in that “service area.”²

5. It is the OPC's belief that implementing the modified versions of Staff's recommendations three and four, as laid out in Staff's *Reply* and understood above, would allow MAWC's application to conform to the requirements of Section 393.320.6. Consequently, provided that the Commission approves the recommendations as modified in Staff's *Reply* and understood above, the OPC withdraws its request that the parties identify which of MAWC's existing service areas the City's water and sewer system shall become a part of.

² The OPC's understanding is premised on the theory that if the Lawson City water and sewer systems are to be consolidated into the “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” and “Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates” water and sewer “service areas” as proposed by MAWC and Staff, then any modification to the rates imposed on these “service areas” (which would obviously include the introduction of rates specific to Lawson City residents) would necessarily result in changes to the tariff sheets which set the rates for these “service areas.” If on the contrary, Staff's enumerated recommendations three and four as modified would permit MAWC to file *entirely new* tariff sheets setting rates specific to the Lawson City service area and would not require any modification to the tariff sheets setting rates for the “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” and “Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates” water and sewer “service areas,” then the OPC would request clarification to explain in what way the Lawson City water and sewer systems have been “consolidated” with the existing MAWC “service areas.”

6. The OPC notes, however, that because Staff’s proposed modifications would result in the adoption of tariff sheets that would effectively require ratepayers of the same customer class living in the same “service area” to pay different rates based on locality, they would violate the prohibition on discrimination found in section 393.130 subsections two and three.

7. For example, the water rates that are presently applicable for the “service area” defined in MAWC’s current water tariff (P.S.C. MO No. 13) as “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” consist of a minimum customer charge based on meter size and ranging from \$9.00 for a 5/8” meter to \$765.25 for a 12” meter, in addition to a commodity charge equal to \$0.62469 per 100 gallons. Meanwhile, the city of Lawson currently charges a simple fee of \$23.33 for the first 1,000 gallons used by a ratepayer with an additional \$10.28 per 1,000 gallons after that.

8. This means that a customer belonging to the “service area” described in the MAWC water tariff as “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” with a 5/8” meter living inside the city of Lawson would pay on average \$8.08 more for the first 1,000 gallons of water used (and \$4.03 more for every 1,000 gallons after that) than would the exact same customer living outside of the city of Lawson.

9. Charging customers of the same class living in the same “service area” a different rate based solely on their location is a form of discrimination that is clearly prohibited by 393.130 subsections two and three.³

³ RSMo §393.130.2 (“No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.”); RSMo. §3939.130.3 (“No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect

10. To remedy this issue, the OPC recommends that Staff's enumerated recommendation three be modified such that the residents of the city of Lawson are charged the same rates as those currently applicable to all other ratepayers in the "service area" described in MAWC's current water tariff (P.S.C. MO No. 13) as "All Missouri Service Areas Outside of St. Louis County and Outside of Mexico," which the city of Lawson's water system is set to be consolidated with.

11. The OPC acknowledges that the same argument presented concerning the Lawson City water system and Staff's enumerated recommendation three could also be made regarding the Lawson City sewer system and Staff's enumerated recommendation four. However, because the violations of section 393.130 regarding the Lawson City sewer system inures to the benefit of the residents of the city of Lawson, the OPC chooses not to contest Staff's enumerated recommendation four at this point in time.⁴

II. Issues Regarding Staff's Enumerated Recommendations 9 and 10.

12. With regard to the issue the OPC raised regarding Staff's enumerated recommendations nine and ten, the OPC continues to assert that assets which Staff concedes ought not to be included in the rate base should in fact not be included in the rate base.

13. Considering enumerated recommendation nine, the OPC once again notes that the North Highway 69 sewage lift station constitutes plant held for future use and thus would not

whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”).

⁴ However, the OPC expressly retains the right to bring a complaint in future on behalf of all ratepayers who are members of the MAWC sewer tariff "service area" for "Pettis County (Maplewood, Quail Run, Booking Park, Westlake Village), Fenton, Hickory Hills, Temple terrace, Anna Meadows, Jaxson Estates" who would not otherwise be eligible for the proposed Lawson City specific sewer rates.

normally be included in the rate base.⁵ Staff acknowledges as much but nevertheless seeks to include it in the rate base simply because it was “part of the appraisal amount.”⁶

14. While the OPC still argues that the best course of action regarding this asset would be to determine the appropriate value of that asset and subtract that value from the total appraisal amount (and hence from rate base), the OPC concedes that Staff’s proffered solution of booking the asset in rate base with a corresponding CIAC offset will have a functionally equivalent result.

15. However, the same cannot be said regarding Staff’s enumerated recommendation ten, as Staff’s modification of their initial recommendation does not solve the underlying issue and actually makes the situation worse.

16. The Vibbard pump station is not presently used and useful and hence should not be included in the rate base.⁷ Again, Staff recognizes this fact but still attempts to include the pump station in the rate base.⁸

17. They first sought to do this by ensuring that the pump station would become used and useful via a requirement that MAWC restore the pump station to functionality and then enter into a water service agreement with the nearby Ray County District 2.⁹

18. Having recognized the error in that approach, Staff has modified its recommendation to require MAWC to “ensure that a backup water supply arrangement is obtained following acquisition of the Lawson systems” using either the Vibbard pumping station or “*other prudent means*.”¹⁰

⁵ EFIS, WA-2018-0222, Staff Recommendation, Official Case File Memorandum, Pg. 3.

⁶ *Id.*

⁷ EFIS, WA-2018-0222, Staff Recommendation, Official Case File Memorandum, Pg. 4.

⁸ *Id.*

⁹ *Id.*; EFIS, WA-2018-0222, Staff Recommendation, Pg. 3.

¹⁰ EFIS, WA-2018-0222, Staff Reply, Pg 6.

19. However, under this new approach it is entirely possible that MAWC might fulfill the requirement without putting the Vibbard station into use. For example, if MAWC determined that drilling a new well was the most prudent method of ensuring “that a backup water supply arrangement is obtained following acquisition of the Lawson systems,” then there would be no reason to refurbish the Vibbard pump station. In such a situation, the pump station would still not be used and useful yet would also still be part of the rate base.

20. The OPC once again offers a simple solution to this dilemma: calculate the value of the Vibbard pump station and subtract it from the total appraisal value thus effectively removing it from the rate base. In the alternative, the same solution proffered by the Staff for resolving the issue with the North Highway 69 sewage lift station could be employed here by requiring MAWC to book the value of the Vibbard pump station along with a corresponding equivalent CIAC offset.¹¹

III. Request to Open a Workshop Docket

21. MAWC responded to the OPC’s request to open a workshop docket by noting that the issue of rulemaking was not one that needed to be determined within the context of the present case and requested that the issue be tabled until it can be separately addressed.

22. The OPC agrees with MAWC’s assessment that the issue of rulemaking does not need to be determined within the context of the present case and further wishes to make clear that it is not the OPC’s intent that the rulemaking it requests should in any way impeded the timely resolution of this case.

23. However, the OPC has reason to believe that the procedural methods set forth in 393.320 may begin to see greater use in the near future which, when combined with the large

¹¹ The OPC does not contest Staff’s requirement that MAWC ensure an adequate backup supply of water be secured.

