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WR-2022-0303

SURREBUTTAL TESTIMONY

OF

ANGELA SCHABEN

Submitted on Behalf of the Office of the Public Counsel

MISSOURI-AMERICAN WATER COMPANY

CASE NO. WR-2022-0303

February 8, 2023

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MISSOURI AMERICAN WATER COMPANY, INC.

CASE NO. WR-2022-0303

1 **INTRODUCTION**

2 **Q. Please state your name, title, and business address.**

3 A. Angela Schaben, Utility Regulatory Auditor, Office of the Public Counsel (“OPC” or “Public
4 Counsel”), P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. Are you the same Angela Schaben who filed direct and rebuttal testimony for the OPC
6 in this case?**

7 A. Yes.

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to respond to Missouri American Water Company
10 (“MAWC” or the “Company”) witnesses Brian LaGrand and John M. Watkins, on the
11 subjects of American Water Service Company, Inc. (“Service Company”) and affiliate
12 transactions.

13 **Q. What does MAWC witness Mr. Watkins say in his rebuttal testimony?**

14 A. Mr. Watkins writes on the issues presented in MAWC’s 2003 rate case, Case Number WR-
15 2003-0500, related to MAWC customer data shared with American Water Resources
16 Company, Inc. (“AWRC”) and the subsequent resolution of that issue.

17 In response to my comments in Direct Testimony regarding the use of Missouri customers’
18 data, he also writes that “American Water utility subsidiary customers have options relative
19 to how their data is consumed and/or shared”.¹

¹ John Watkins RT, page 9, lines 1-9

1 **Q. What does MAWC witness Mr. LaGrand say in his rebuttal testimony?**

2 A. Mr. LaGrand references the Cost Allocation Manual (“CAM”) requirement included in the
3 Stipulation and Agreement² (“2003 S&A”) resulting from MAWC’s 2003 rate case, Case
4 Number WR-2003-0500. Although Mr. LaGrand describes portions of the 2003 S&A, he
5 does not mention the additional requirement in the 2003 S&A that Staff, OPC, and MAWC
6 work cooperatively to develop affiliate transaction rules applicable to water utilities.
7 According to Mr. LaGrand, “MAWC affiliate transactions have been scrutinized in all of its
8 rate cases.”³

9 **Q. What are your recommendations to the Commission?**

10 A. In Case Number WR-2003-0500 the interactions between MAWC and AWRC raised
11 awareness about the lack of enforceable water utility affiliate transaction rules. Nearly twenty
12 years later, Missouri still lacks these rules. Though MAWC asserts that it does not provide
13 customer information directly to AWRC, when AWRC was a subsidiary of American Water
14 Works Company, Inc. (“AWWC”) MAWC customer data managed by the Service
15 Company could be shared with AWRC. This is shown in privacy policy⁴ statements and
16 AWRC’s use of AWWC’s domain for an AWRC Customer Privacy Portal⁵. Additionally,
17 prior to its sale, AWRC seemingly mailed letters to MAWC customers using a logo similar
18 to the MAWC logo, states that AWRC is an affiliate of American Water, and does not state
19 whether AWRC is regulated by the Missouri Public Service Commission. Therefore, my
20 recommendations to the Commission are as follows:

- 21 1) Promulgation of a long overdue water utility affiliate transaction rule.
22 2) A disallowance to account for the logo AWRC used, which is similar to
23 MAWC’s logo, without a statement on the letter that specifies whether
24 AWRC is regulated by the Missouri Public Service Commission.

² Schedule ADS-S-1

³ Rebuttal testimony of Mr. Brian W. LaGrand, File No. WR-2022-0303, page 26, line 1.

⁴ American Water privacy policy; Schedule ADS-S-2; AWRC privacy policy; Schedule ADS-S-3.

⁵ AWRC Customer Privacy Portal; Schedule ADS-S-4.

1 3) The consumer privacy link available to ratepayers for managing their
2 personal information should be located in a more accessible location for
3 MAWC customers and not buried within the privacy notices of other
4 regulated AWWC subsidiaries.

5 4) An investigatory docket should be opened to further explore the relationships
6 and sharing of information between MAWC, AWRC, and AWWC's other
7 affiliated entities, including the Service Company.

8 **I. BACKGROUND: Case Number WR-2003-0500**

9 **Q. In relying on the 2003 S&A to respond to your direct testimony, did either Mr.**
10 **LaGrand or Mr. Watkins address the full circumstances of Case Number WR-2003-**
11 **0500 in their rebuttal testimonies?**

12 A. No.

13 **Q. Is it important for the Commission to understand the full background of that case in**
14 **reaching its decision regarding affiliate transactions in this current rate case?**

15 A. Yes. Though Dr. Geoff Marke also provided information relating to WR-2003-0500 in his
16 direct testimony, several pertinent points of Case Number WR-2003-0500 deserve
17 reiterating in order to adequately address the rebuttal testimonies of Mr. LaGrand and Mr.
18 Watkins.

19 **Q. Will you please provide additional detail regarding the circumstances of Case Number**
20 **WR-2003-0500 and the resulting 2003 S&A?**

21 A. Yes. Testimony filed in Case Number WR-2003-0500 raised awareness about the fact that
22 MAWC was mailing out letters promoting the AWRC water service line protection

1 program⁶. The letters were sent on MAWC letterhead and signed by MAWC's then
2 president.⁷

3 In resolving Case Number WR-2003-0500, the Parties reached an agreement—the 2003
4 S&A—requiring a yearly CAM and separately requiring MAWC, OPC, and Staff to work
5 cooperatively to develop affiliate transaction rules applicable to water utilities. Per the 2003
6 S&A, “[t]he Company, OPC and Staff will use their best efforts to see that a rule regarding
7 affiliate transactions is promulgated by the Commission no later than April 16, 2005”.⁸
8 Additionally, the Commission Order approving the 2003 S&A states:

9 The Company, Staff and the Public Counsel will cooperate to obtain promulgation
10 of a Commission rule on affiliate transactions applicable to Company and its
11 affiliates by April 16, 2005. The Company will provide copies to Staff and Public
12 Counsel of all statutes and rules relating to affiliate transactions now in effect in any
13 state in which American Water Works or a subsidiary operates.⁹

14 While OPC, Staff, and the Company were tasked with applying best efforts to draft
15 enforceable affiliate transaction rules applicable to MAWC, the CAM requirement was a
16 separate enforceable requirement.

17 **Q. Were the Parties able to reach an agreement about draft affiliate transaction rules?**

18 A. No. Though the Commission granted the parties a four month extension to August 15,
19 2005,¹⁰ a solution was not reached, and no enforceable affiliate transaction rule addressing
20 MAWC's affiliate transactions was promulgated.

21 The negotiations regarding affiliate transaction rules in Case Number WR-2003-0500 ended
22 with Staff filing a Memorandum to the Commission Concerning the Affiliate Transactions

⁶ See Schedule ADS-S-5.

⁷ Surrebuttal Testimony of OPC witness Kim Bolin, File No. WR-2003-0500, page 6, lines 3-7; schedule ADS-S-6.

⁸ [wr03-500 stip.pdf](#); see also schedule ADS-S-1

⁹ WR-2003-0500 Commission Order Approving Stipulations and Agreements, page 9; [o. approving stipulations and agreements 3-29-04.doc](#); Schedule ADS-S-7

¹⁰ [extension request grubb comment mawc.pdf](#); Schedule ADS-S-8 and [wr-2003-0500 o. directing filing 4-13-05.pdf](#)

1 Rule For Water Utilities (“Staff’s Memo”). Subsequently, MAWC filed its own proposed
2 affiliate transaction rule.

3 **Q. Can you name a specific issue upon which Staff, OPC, and MAWC did not agree while**
4 **attempting to comply with the condition regarding promulgation of an affiliate**
5 **transaction rule in the 2003 S&A?**

6 A. Yes. MAWC proposed “to alter the affiliate transaction rules to exclude transactions with
7 its affiliated service and capital companies”.¹¹

8 **Q. Did Staff agree with MAWC’s proposal to alter the proposed water utility affiliate**
9 **transaction rules to exclude transactions with its affiliated service and capital**
10 **companies?**

11 A. No. Staff did not agree with this proposal.¹²

12 **Q. Why did Staff not agree with MAWC’s proposal to alter the affiliate transaction rules**
13 **to exclude transactions with MAWC’s affiliated service and capital companies?**

14 A. Staff did not agree with this proposal for a variety of reasons. Three reasons addressed in
15 Staff’s Memo, filed in Case Number WR-2003-0500, are listed below:

- 16 1) The current rules applicable to other utility companies in this State do not
17 exclude transactions between a service company and the regulated utility.
- 18 2) The level of allocated affiliated service company expense has increased
19 significantly in recent years and now accounts for approximately \$21 million
20 or 27% of the Company’s Operations and Maintenance costs.
- 21 3) The capital corporation arranges a significant portion of the financing used
22 by MAWC. Excluding transactions with these affiliates could also permit

¹¹ [wr-2003-0500 memorandum.pdf](#), page 3; see also Schedule ADS-S-9

¹² Schedule ADS-S-9; page 3

1 improper cross-subsidization to occur if there are inadequate records and
2 inadequate review of these transactions.¹³

3 **Q. Did the affiliate transaction rules applicable to major gas, electric and steam utilities**
4 **at that time regulate service and capital company transactions?**

5 A. Yes.

6 **Q. Did MAWC file proposed affiliate transaction rules in Case Number WR-2003-0500?**

7 A. Yes. In response to Staff's Memo, MAWC filed its proposed affiliate transaction rules on
8 September 16, 2005.

9 **Q. Did MAWC respond to Staff's use of then labeled 4 CSR 240-40.015¹⁴ as the format to**
10 **"form the basis for the water rule"¹⁵?**

11 A. Yes. Within MAWC's proposal is the statement "MAWC believes that while the natural
12 gas and electric affiliate rule format may be appropriate for a starting point, blanket adoption
13 of the provisions is inappropriate for water utilities because of important differences in the
14 industries and the challenges they face".¹⁶

15 MAWC presented a variety of reasons justifying its aversion to applying the affiliate
16 transaction rules applicable to electric and large gas utilities to water utilities¹⁷. Several are
17 highlighted below:

¹³ Schedule ADS-S-9 ; page 3

¹⁴ In 2003, the gas affiliate transaction rule, 4 CSR 240-40.015, was located under Title 4 of the Code of State Regulations. Between Case Number WR-2003-0500 and the current rate case, this rule was moved from Title 4 to Title 20. Today the Commission's gas affiliate transaction rule is found at 20 CSR 4240-40.015.

¹⁵ As stated in Staff's Memo, page 2, "Staff began the process of negotiation with the Company using the current Commission affiliate transaction rules governing gas companies, 4 CSR 240-40.015, as the format. The gas rule is almost identical to the affiliate transactions rule for electric and steam utilities with the exception of a section concerning marketing affiliate transactions, 4 CSR 240-40.016. Staff used the current rules to form the basis for the water rule because similarly situated utilities in this state should have similar, if not identical, rules governing affiliate transactions. While a water company has some distinct characteristics, in many ways it is similar to other utility companies in the state."

¹⁶ [0500 mawcs proposed affiliate transaction rule.pdf](#); Schedule ADS-S-10

¹⁷ In the current rate case, Company witness Mr. Patrick Baryenbruch utilizes a proxy group of electric utility service companies in order to "benchmark administrative and general ("A&G") expenses" of water utility service companies since "[e]very utility service company provides A&G-related services to utility operating company affiliates. These

- 1 1) “To the extent that water companies may be expanding into unregulated
2 areas of water resource management, they are doing so with considerably
3 less market power than restructuring energy or telephone companies and
4 where mature competitors already exist.”¹⁸
- 5 2) “A great need for consolidation and a more integrated approach in the water
6 industry to achieve economies of scale and facilitate capital attraction, as
7 well as technological and financial viability, if the challenges of the future
8 are to be met at all, let alone in an efficient and cost-effective manner.”¹⁹
- 9 3) “MAWC seeks a rule that will not act as a disincentive to capital attraction,
10 appropriate consolidation, economies of scale and cost-effective service,
11 while avoiding cross-subsidization by utility customers.”²⁰

12 **Q. Can you describe MAWC’s Suggested Water Utility Affiliate Rule filed in Case**
13 **Number WR-2003-0500 (“MAWC’s Suggested Rule”)?**

14 A. Yes. MAWC filed its proposed affiliate transaction rule²¹ after the negotiations required by
15 the 2003 S&A failed to produce an agreed upon standard for water utility affiliate
16 transaction rules.

services are similar across different types of utilities.” Mr. Baryenbruch filed rebuttal testimony in response to my direct testimony and provided specific details pertaining to a variety of electric and water utility projects he has worked with over the years. He does so to support his assertion that water utility service companies provide similar functions and services as electric utility services companies. Essentially, Mr. Baryenbruch appears to assert that water utility service companies and electric utility service companies are so similar and comparable that he is comfortable benchmarking the reasonableness of water utility services costs against electric utility services costs. This points to fundamental similarities between water and electric support services structures. Therefore, affiliate transaction rules applying to electric utility service companies could also reasonably apply to water utility service companies. According to his rebuttal testimony Mr. Baryenbruch has a 45-year+ career that included providing professional services to water, electric, gas, and telephone companies – Rebuttal Testimony of Patrick Baryenbruch, File No. WR-2022-0303.

¹⁸ WR-2003-0500 MAWC’s Proposed Affiliate Transaction Rule, Page 4; see also Schedule ADS-S-10

¹⁹ Ibid. Page 8

²⁰ Ibid. Page 10

²¹ MAWC’s Proposed Affiliate Transaction Rule; Appendix A - Suggested Water Utility Affiliate Rule; see also Schedule ADS-S-10

1 **Q. Is there a definition of “Affiliate transaction” in MAWC’s Suggested Rule?**

2 A. Yes. Section (1)(B) defines an affiliate transaction as “any transaction for the provision,
3 purchase or sale of any information, asset, product or service, or portion of any product or
4 service, between a regulated water corporation and an affiliated entity, and shall include all
5 transactions carried out between any unregulated business operations of a water corporation,
6 except those involving support.”²²

7 **Q. Is the term “Information” defined in MAWC’s Suggested Rule?**

8 A. Yes. Section (1)(F) defines “Information” as “any data obtained by a regulated water utility
9 that is not obtainable by nonaffiliated entities or can only be obtained at a competitively
10 prohibitive cost in either time or resources.”²³

11 **Q. Does MAWC’s Suggested Rule offer affiliate transaction standards?**

12 A. Yes. Section (2)(A) relates to affiliate transaction standards:

13 (A) As to affiliate transactions, a regulated water utility shall not provide a financial
14 advantage to an affiliated entity. For the purposes of this rule, a regulated water
15 utility shall be deemed to provide a financial advantage to an affiliate entity if -

16 1. It compensates an affiliated entity for goods or services below the fully
17 distributed cost to the regulated water utility to provide the goods or services
18 for itself; or

19 2. It transfers information, assets, goods or services of any kind to an
20 affiliated entity below the fully distributed cost to the regulated water
21 utility.²⁴

²² Ibid. Page 1.

²³ Ibid.

²⁴ Ibid.

1 **Q. Does MAWC’s Suggested Rule provide affiliate transaction standards relating to**
2 **general or aggregated customer information?**

3 A. Yes. The proposed Standards section (2)(D) states:

4 (D) General or aggregated customer information (to include blocks of customer
5 names and addresses) shall be made available to affiliated or unaffiliated entities
6 upon terms and conditions available to both affiliated and unaffiliated entities.²⁵

7 **Q. Does MAWC’s Suggested Rule provide affiliate transaction standards relating to**
8 **affiliate logos or trademarks?**

9 A. Yes. The proposed Standards section (2)(F) states:

10 (F) Marketing materials, information or advertisements by an affiliate entity that
11 share an exact or similar name, logo or trademark of the regulated utility shall clearly
12 display or announce that the affiliate entity is not regulated by the Missouri Public
13 Service Commission.²⁶

14 **Q. To complete your discussion of the background of Case Number WR-2003-0500, are**
15 **there currently affiliate transaction rules applicable to MAWC and other large water**
16 **utilities?**

17 A. No. Nearly twenty years after the May 19, 2003 filing date of the proposed tariffs in Case
18 Number WR-2003-0500, MAWC remains exempt from the Commission’s affiliate
19 transaction rules even though the Commission could “unilaterally promulgate a
20 water/natural gas affiliate transaction rule at any time.”²⁷

²⁵ Ibid.

²⁶ Ibid. Page 2.

²⁷ Case No. WR-2003-0500, MAWC’s Response to Staff’s Memorandum, page 3; see also Schedule ADS-S-11

1 **II. Response to Mr. LaGrand**

2 **Q. What was Mr. LaGrand’s response to your direct testimony regarding affiliate**
3 **transactions?**

4 A. Mr. LaGrand states that affiliate transactions are not a concern to be dealt with in this rate
5 case and that MAWC has filed a yearly CAM resulting from the 2003 S&A CAM filing
6 requirement. Mr. LaGrand points out that affiliate transactions are scrutinized in all of its
7 rate cases. Additionally, Mr. LaGrand points out that “[t]he Service Company’s allocation
8 manual is a set of criteria, guidelines and procedures for the Service Company cost
9 allocations to MAWC and its affiliates.”²⁸

10 **Q. Does the submission of a CAM alleviate Service Company affiliate transaction**
11 **concerns as Mr. LaGrand seems to allude to in his rebuttal testimony?**

12 A. No.

13 **Q. Having considered all of the background of Case Number WR-2003-0500 and Mr.**
14 **LaGrand’s rebuttal testimony, what is your response?**

15 A. The submission of a CAM does not replace enforceable affiliate transaction rules. The
16 Service Company’s allocation manual does not alleviate the concern of potential cross-
17 subsidization and the shifting of non-regulated costs to regulated operations. OPC witness
18 Geoff Marke provided extensive details regarding this concern in his testimony.

²⁸ Brian LaGrand, Rebuttal Testimony, File No. WR-2022-0303 page 25

1 **III. Response to Mr. Watkins’s Assertions Regarding Customers’ Ability to Control the Use**
2 **of Their Personal Information**

3 **Q. Can you remind the Commission of your position regarding certain AWWC**
4 **customers’ ability to control the use of their information?**

5 A. In my direct testimony, I pointed out that only California American Water Company
6 customers have the ability to control the use of their customer information on the AWRC
7 site. I recommended that MAWC customers be afforded the same control over their data.

8 **Q. How did MAWC respond to your recommendation?**

9 A. Mr. Watkins provides the following hyperlink in his rebuttal testimony indicating where
10 MAWC and captive ratepayers of other AWWC regulated affiliates can opt of personal
11 information data collection: [https://amwater.service-](https://amwater.service-now.com/privacy_customer?id=privacy_consumer_home_page&business_type=regulated)
12 [now.com/privacy_customer?id=privacy_consumer_home_page&business_type=regulated.](https://amwater.service-now.com/privacy_customer?id=privacy_consumer_home_page&business_type=regulated)

13 **Q. Is the link Mr. Watkins provided easy for customers to find from the MAWC website?**

14 A. No. I had difficulty finding this location from MAWC’s home landing page without the
15 hyperlink provided in Mr. Watkins’s rebuttal testimony. Mr. Watkins provides a hyperlink
16 pointing to the service-now subdomain that is not easily accessible from MAWC’s website.

17 **Q. Does this raise any concerns for you?**

18 A. Yes. I am concerned because the link that Mr. Watkins provided in his rebuttal testimony
19 should be easily accessible to MAWC ratepayers. They should not have to search for it
20 under the specific privacy policy sections of completely separate American Water regulated
21 affiliates. If MAWC ratepayers cannot manage to find the page where they have the ability
22 to manage their personal information, they are less likely to opt-out.

1 **Q. When attempting to navigate to the hyperlink Mr. Watkins provided in his rebuttal**
2 **testimony, did you attempt to access the “Privacy Policy” link located at the bottom of**
3 **the MAWC home page?**

4 A. Yes.

5 **Q. Where did the “Privacy Policy” link take you?**

6 A. By clicking the “Privacy Policy” link located at the bottom of MAWC’s homepage, I was
7 redirected to AWWC’s corporate privacy policy page.

8 **Q. From the AWWC corporate privacy policy page, were you able to navigate to the page**
9 **of the hyperlink that Mr. Watkins provided?**

10 A. Yes. The link that Mr. Watkins provided is found in the privacy rights sections of the
11 California and Virginia Privacy Notice located on AWWC’s corporate privacy policy page
12 as shown in Schedule ADS-S-2.

13 **Q. What does this tell you?**

14 A. MAWC customers may have the option to opt out from having their personal information
15 shared, but they have to navigate to the AWWC website and find the link under the
16 California and Virginia Privacy Notice to do so. MAWC customers are unlikely to navigate
17 to the privacy notices tailored to other states to manage their personal information. It is
18 unduly burdensome to expect them to navigate through all of these pages that do not appear
19 to apply to them.

20 **Q. Are you truly convinced that MAWC customers have the ability to manage their**
21 **personal information, even after reviewing Mr. Watkins’ Schedule JMW-2 RT?**

22 A. No. Mr. Watkins’ Schedule JMW-2 RT walks through the process a customer would
23 experience after clicking on the hyperlink he provided. His schedule shows that a customer
24 may complete a web form as directed and submit it. Mr. Watkins fails to show what happens
25 after the form submission. Just because a customer completes a Right to Access, Right to
26 Delete, Right to Opt-Out, Right to Limit Use, or Right to Correct form found at this link,

1 does not mean the request will ultimately be approved, especially since the link seems to be
2 available only under the California or Virginia Privacy Notices.

3 **Q. What do you recommend?**

4 A. I recommend that the Commission order MAWC, AWWC and all MAWC affiliates to
5 comply with the opt-out choices of MAWC's customers. The link provided in the rebuttal
6 testimony of Mr. Watkins should be easier to find from MAWC's homepage so that MAWC
7 ratepayers can easily choose how their personal information is managed and shared.

8 **IV. PROPOSED DISALLOWANCE: FORMER AFFILIATE'S USE OF SIMILAR LOGO**

9 **Q. In your Direct and Rebuttal Testimony, did you recommend a disallowance based on
10 affiliate transactions between MAWC and AWRC?**

11 A. Yes. In rebuttal testimony I recommended a disallowance to the revenue requirement in
12 order to acknowledge the value of Missouri ratepayer data included in the sale of AWRC.

13 **Q. How did MAWC respond to your recommended disallowance?**

14 A. In his Rebuttal Testimony, Mr. Watkins disagrees with the recommendation of a
15 disallowance based on customer information due to the fact that MAWC has not provided
16 customer information to AWRC since issues raised in Case Number WR-2003-0500 were
17 resolved.

18 **Q. How do you respond?**

19 A. Although the OPC maintains its concerns regarding the sharing of information between
20 MAWC, the Service Company, and AWRC, MAWC asserts that it no longer shares
21 information with AWRC. I have requested information from MAWC to verify these claims,
22 but MAWC has objected to the data requests and refused to provide additional information.
23 However, based on MAWC's assertion that it no longer shares information with AWRC, I
24 no longer believe it is appropriate to base the disallowance off of the sharing of information.
25 Rather, a more appropriate basis is AWRC's use of a similar logo without following the

1 requirements of the Commission’s affiliate transaction rules, which MAWC itself proposed
2 within its Suggested Rule filed in Case Number WR-2003-0500.

3 **Q. Does the Commission have an affiliate transaction rule that discusses the use of similar**
4 **logos and trademarks?**

5 A. Yes. 20 CSR 4240-20.015(2)(f) is an example of one. This particular electric rule, applies
6 to logos and trademarks, and all current Commission approved affiliate transaction rules
7 have this rule.

8 **Q. What is the language of rule 20 CSR 4240-20.015(2)(f)?**

9 A. 20 CSR 4240-20.015(2)(f) states:

10 Marketing materials, information or advertisements by an affiliate entity that share
11 an exact or similar name, logo or trademark of the regulated utility shall clearly
12 display or announce that the affiliate entity is not regulated by the Missouri Public
13 Service Commission.

14 **Q. Are there similarities between the language of rule 20 CSR 4240-20.015(2)(f) and**
15 **MAWC’s Suggested Rule, Section 2(f), filed in Case Number WR-2003-0500?**

16 A. Yes. The language appears identical.

17 **Q. Since the language of MAWC’s Suggested Rule, Section 2(f) is seemingly identical to**
18 **the language of an existing affiliate transaction rule, would this suggest that MAWC**
19 **found this particular rule agreeable?**

20 A. Yes.

21 **Q. Based on the language of 20 CSR 4240-20.015(2)(f), do affiliate transaction rules**
22 **prohibit the use of similar logos between regulated utilities and their affiliates doing**
23 **business in Missouri?**

24 A. The rule does not appear to prohibit the use of similar logos between regulated utilities and
25 their affiliates doing business in Missouri as long as affiliate materials bearing “an exact or

1 similar name, a logo or trademark” of the regulated utility clearly displays or announces that
2 the affiliate entity is not regulated by the Missouri Public Service Commission.

3 **Q. Since MAWC presumably found this language agreeable, as evidenced by its inclusion**
4 **in MAWC’s Suggested Rule, would you expect a good faith effort to comply?**

5 A. I think it is reasonable to expect a good faith effort from the Company to comply with a
6 presumably agreed upon rule even though “the Missouri Affiliate Transaction Rules do not
7 apply to MAWC.”²⁹

8 **Q. Is there any evidence in this case to suggest that MAWC did not comply with the spirit**
9 **of 20 CSR 4240-20.015(2)(f), which mirrors language from MAWC’s Suggested Rule**
10 **filed in Case Number WR-2003-0500?**

11 A. Yes, Schedule ADS-d4 attached to my direct testimony in this case is a letter from AWRC
12 mailed to a MAWC customer. This letter appears to have been sent while AWRC was an
13 affiliate of MAWC, prior to its sale on December 9, 2021. The presumed mailing date of
14 this letter falls within this case’s test year.

15 **Q. Could the contents of the letter fall under either “marketing materials, information,**
16 **or advertisements” as referenced in 20 CSR 4240-20.015(2)(f) and MAWC’s Suggested**
17 **Rule Section 2(f)?**

18 A. I believe so.

19 **Q. Did the AWRC logo displayed on the letter resemble the logo of MAWC?**

20 A. Yes. As I discussed in my direct testimony, the AWRC logo was nearly identical to
21 MAWC’s logo.

²⁹ Watkins Rebuttal Testimony, File No. WR-2022-0303; page 11, lines 6-7

1 **Q. Did the letter specifically state that AWRC was not regulated by the Missouri Public**
2 **Service Commission?**

3 A. Not that I found.

4 **Q. Based on your understanding of 20 CSR 4240-20.015(2)(f) and MAWC's Suggested**
5 **Rule 2(f), is it a problem that AWRC's letters included a similar logo and no statement**
6 **that specified that AWRC was not regulated by the Missouri Public Service**
7 **Commission?**

8 A. Yes. Based on my understanding of 20 CSR 4240-20.015(2)(f) and MAWC's Suggested
9 Rule 2(f), this is a violation of the rule because AWRC's letter included a logo that is
10 substantially similar to MAWC's logo and did not include a statement specifying that
11 AWRC is not regulated by the Missouri Public Service Commission.

12 **Q. In responding to your direct testimony, did the Company address the requirements of**
13 **20 CSR 4240-20.015(2)(f)?**

14 A. Yes. Mr. Watkins makes several notable points pertaining to the language of 20 CSR 4240-
15 20.015(2)(f). These points are listed as follows:

- 16 (1) MAWC is not an electric utility.
17 (2) AWRC is no longer an affiliate of MAWC.
18 (3) The rules are not an absolute prohibition and do not preclude the use of a
19 logo similar to the regulated entity.

20 Based on these points, Mr. Watkins concludes that "even if the Missouri Affiliate
21 Transaction Rules applied to MAWC, and assuming AWR[C] is still an affiliate of MAWC,
22 the Rules would permit the use of logos."³⁰

³⁰ Watkins Rebuttal Testimony, File No. WR-2022-0303; page 11

1 **Q. Do you agree that the affiliate transaction rules would permit AWRC's use of a similar**
2 **logo?**

3 A. No. Mr. Watkins is missing a key element in his conclusion. The Rules do not prohibit the
4 use of "similar logos" between regulated and non-regulated affiliates. Quite the contrary,
5 the Rules permit the use of "similar logos" between regulated and non-regulated affiliates
6 as long as non-regulated affiliate materials clearly displays or announces that the affiliate
7 entity is not regulated by the Missouri Public Service Commission. The purpose of this rule
8 is to ensure that non-regulated affiliate operations are not subsidized by captive ratepayers
9 who are familiar with a regulated utility's logo as a result of continuous communication.

10 Here, AWRC an affiliate of MAWC at the time and during the test year in this case, sent a
11 letter to MAWC customers that used a similar logo to MAWC's logo and failed to clearly
12 state that AWRC is not regulated by the Commission. This appears to be a violation of 20
13 CSR 4240-20.015(2)(f), the language of which MAWC appears to have accepted by
14 including in its Suggested Rule Section 2(f). Though MAWC is clearly not an electric
15 utility, the language of rule 20 CSR 4240-20.015(2)(f) was included in MAWC's Suggested
16 Rule, Section 2(f), presumably because MAWC found this language agreeable. It is
17 reasonable to expect a good faith effort from the Company to comply with a presumably
18 agreed upon rule.

19 **Q. What do you recommend to account for this apparent violation?**

20 A. The Commission should disallow \$10 million to account for this violation. The affiliate
21 transaction violation relating to similar use of trademarks between regulated and non-
22 regulated affiliates³¹ has seemingly been occurring in some form since WR-2003-0500 even
23 though it was included in MAWC's Suggested Rule. This proposed disallowance is
24 reasonable considering this issue wasn't fully resolved in WR-2003-0500.

³¹ Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

1 **V. INVESTIGATORY DOCKET RELATED TO AFFILIATE TRANSACTIONS**

2 **Q. Did you previously raise concerns regarding AWRC's use of MAWC's customer data?**

3 A. Yes. As was shown in Schedule ADS-d4, AWRC was sending solicitation letters to
4 MAWC's customers. I raised a concern regarding how AWRC obtained MAWC's
5 customers' personal information.

6 **Q. How did MAWC respond?**

7 A. Mr. Watkins claims that "MAWC has not provided customer information to AWR[C] for
8 almost two decades and the circumstances upon which information was shared in 2003 were
9 identified and ultimately resolved in the context of the Company's 2003 base rate case (Case
10 No. WR-2003-0500)."³²

11 **Q. Does this alleviate your concern?**

12 A. No. I am still concerned about how AWRC obtained MAWC's customers' personal
13 information. Although MAWC asserts that it did not provide the information, it appears the
14 information may have been provided by the Service Company.

15 I am also concerned with potential issues related to ongoing services provided by AWWC
16 to AWRC to include the potential sharing of the billing software between AWRC and
17 AWWC's regulated affiliates, including MAWC. This concern relates to the potential
18 shifting of non-regulated costs to regulated areas. Evidence presented in Schedule
19 ADS-S-3³³ hints at an ongoing relationship between AWWC and AWRC relating to data
20 privacy services.

³² Watkins Rebuttal Testimony, File No. WR-2022-0303; page 9, lines 17-20

³³ Schedule ADS-S-3, page 4

1 **Q. Why do you believe that the information may have come from the Service Company?**

2 A. Based on the 2021 CAM, the Service Company appears to perform customer service related
3 corporate support functions³⁴. The Service Company would need access to customer data
4 in order to successfully provide customer service.

5 **Q. Are there other indications that MAWC customer data may be collected by the service
6 company affiliate and potentially disseminated?**

7 A. Yes. Additionally, the privacy policy alludes to the fact that customer “Collected
8 Information” resides in central databases. Because the Service Company provides central
9 information technology support extending to database support, the central databases should
10 be maintained by the Service Company³⁵.

11 **Q. Is there any indication that the Service Company continues to provide services to
12 AWRC even though AWWC has sold AWRC?**

13 A. Yes. The hyperlink provided in Mr. Watkins rebuttal testimony begins with
14 <https://amwater.service-now.com/>. This appears to be an AWWC domain and sub domain.
15 The AWRC Customer Privacy Portal also uses the <https://amwater.service-now.com/>
16 domain and subdomain. An AWRC Customer Privacy Portal website utilizing the AWWC
17 domain and subdomain indicates a continued relationship between AWWC and AWRC.
18 The Service Company provides centralized information technology and customer
19 information services and had provided services to AWRC as an AWWC affiliate³⁶. One
20 could reasonably assume that the Service Company may continue to provide services to
21 AWRC.

³⁴ MAWC 2021 CAM report; File No. [BAFT-2022-0627](#)

³⁵ Schedule ADS-S-2, page 2

³⁶ OPC Data request 1151

1 **Q. You mentioned a domain in the previous question. How do you know what domain**
2 **AWWC utilizes?**

3 A. The home page address of AWWC is <https://amwater.com/>.

4 **Q. Do the Commission's current affiliate transaction rules recognize the value of**
5 **customer data?**

6 A. Yes. The Commission's current affiliate transaction rules recognize that customer data is an
7 asset and providing this asset to a non-regulated affiliate for less than its value subsidizes
8 non-regulated affiliate operations. This scenario appears to be one reason why affiliate
9 transaction rules are in effect for Missouri investor owned electric and gas utilities and
10 should be in effect for Missouri's large water utilities.

11 **Q. Did you attempt to investigate how AWRC obtained MAWC's customer information?**

12 A. Yes. I sent several data requests on this topic. In some instances, MAWC asserted that it
13 itself did not provide the data to AWRC³⁷. In other instances, MAWC stated that AWWC
14 did not provide the data³⁸. However, when I asked questions pertaining to the Service
15 Company sharing information, MAWC objected to most of these data requests and only
16 provided a minimal amount of the requested information. Given the time constraints of this
17 rate case, the OPC is unable to dedicate the proper time for further investigating this
18 important issue.

19 **Q. What is your recommendation to the Commission?**

20 A. I recommend that the Commission open a separate investigatory docket to further explore
21 the relationships and potential sharing of information between MAWC, AWRC, and
22 AWWC's other affiliated entities, including the Service Company.

³⁷ OPC Data request 1101

³⁸ OPC Data request 1103(d)

1 **VI. Conclusion**

2 **Q. To summarize, what are your recommendations to the Commission?**

3 A. I have four recommendations. First, as stated in prior testimony in relation to an affiliate
4 transaction rule applicable to large water utilities, “[a]n affiliate transaction rule is needed
5 now more than ever.³⁹ I defer to Dr. Geoff Marke’s testimony on the best course of action
6 in adopting a water utility affiliate transaction rule that protects Missouri captive ratepayers
7 from cross-subsidization between water regulated and non-regulated affiliates.

8 Second, I recommend that the Commission order MAWC, AWWC and all MAWC affiliates
9 to comply with the opt-out choices of MAWC’s customers. In response to Mr. Watkins, the
10 consumer privacy link available to ratepayers for managing their personal information
11 should be located in a MAWC ratepayer friendly area so they are not discouraged from
12 potentially managing their personal information. The hyperlink should be located in a more
13 accessible location for MAWC customers and not buried within the privacy notices of
14 regulated AWWC subsidiaries that are required to follow more stringent consumer privacy
15 laws. If MAWC ratepayers are truly permitted the ability to manage their personal
16 information, MAWC should make a concerted effort in raising awareness of these options.
17 Consumer privacy is important and valued by many. MAWC ratepayers should have an
18 easily accessible option to manage their personal information. In light of this issue,

19 Third, the disallowance that I described in my direct and rebuttal testimony should be tied
20 to the logo rule—20 CSR 4240-20.015(2)(f), which MAWC agreed to in its Suggested Rule.
21 This is to account for the letters AWRC sent while still an affiliate of MAWC that contained
22 a similar logo to MAWC’s logo and that did not include a statement specifying that AWRC
23 was not regulated by the Commission, in contravention of the Commission’s affiliate
24 transaction rules and MAWC’s Suggested Rule Section 2(f).

³⁹ Surrebuttal Testimony of Kim Bolin, File No. WR-2003-0500, page 6

1 Finally, an investigatory docket should be opened to further explore the relationships and
2 potential sharing of information between MAWC, AWRC, and AWWC's other affiliated
3 entities, including the Service Company.

4 **Q. Does this conclude your testimony?**

5 A. Yes.

