

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

In the Matter of Missouri-American Water)	
Company's Request for Authority to Implement)	Case No. WR-2008-0311
A General Rate Increase for Water and Sewer)	SR-2008-0312
Service Provided in Missouri Service Areas.)	

**MISSOURI-AMERICAN WATER COMPANY'S AND
METROPOLITAN ST. LOUIS SEWER DISTRICT'S JOINT MEMORANDUM
IN OPPOSITION TO THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE AND
OBJECTION TO THE STIPULATION AND AGREEMENT BETWEEN MAWC AND MSD**

COME NOW Missouri-American Water Company (MAWC) and Metropolitan St. Louis Sewer District (MSD), and hereby file their memorandum in opposition to the Office of the Public Counsel's (OPC's) Response and Objection to the Stipulation and Agreement between MAWC and MSD, filed with the Missouri Public Service Commission (Commission) on September 17, 2008. In support of their memorandum, MAWC and MSD state as follows:

1. As a result of extensive negotiation, MSD and MAWC agreed in MAWC's previous rate case that MAWC would provide water usage meter reading data, customer billing information and related services to MSD and, in return, MSD would pay MAWC \$29,166 per month (\$350,000 annually) for such information and services. The specific terms and conditions of providing such billing data and related services were to be governed by the Water Usage Data Agreement between the parties, dated November 29, 2007.

2. The agreement was approved by the Commission by its order issued April 1, 2008, in Case No. WO-2008-0240.

3. On March 31, 2008, MAWC filed the Direct Testimony of Edward Grubb in support of its proposed general rate increase for water and sewer service. Mr. Grubb

testified that MAWC had contracted the services of Mr. Pat Baryenbruch of Baryenbruch & Company LLC “to perform an analysis of the cost of providing water usage data services, to include the incremental cost of providing such services to MSD.” Grubb Dir. Testimony at 22:22-23:5.

4. According to Mr. Grubb’s testimony, the results of the study were contained in a Report prepared by Mr. Baryenbruch entitled, “*Analysis of Costs for Water Usage Data Services Provided to MSD [for the] Twelve Months Ending December 31, 2007,*” which was attached to his testimony as Schedule EJJ-4 (Proprietary) (the “Cost Study”). *Id.* at 23:6-11.

5. Mr. Grubb summarized the Cost Study as follows:

Briefly, Mr. Baryenbruch determined that MAWC’s 2007 total cost of producing this data for its own needs was \$4,750,711 for the St. Louis District customers. These costs include a recovery of the capital costs and operating costs associated with the Company’s meter reading and processing of the data for billing purposes. Mr. Baryenbruch determined that the incremental cost of furnishing water usage and customer identification data was \$7,181 per year. In addition, Mr. Baryenbruch determined an allocation of operating costs between MAWC and MSD on the basis of which utility (i.e., MAWC and MSD) directly benefits from the data. In that case, the annual amount to be charged to MSD would [be \$701,098].”

Id. at 23:11-24:1.

6. In light of the Cost Study, Mr. Grubb testified that MAWC was proposing “no change in the existing amount it charges to MSD for the provision of water usage and customer billing data. Therefore, for purposes of [the 2008 MAWC rate case], MAWC has included \$350,000 in annual revenue to be received from MSD.” *Id.* at 24:4-8.

7. On July 7, 2008, counsel for MSD advised counsel for MAWC that “MSD has reviewed the [Cost Study] prepared by Pat Baryenbruch, attached to Mr. Grubb’s testimony, and MSD does not accept Mr. Baryenbruch’s conclusions. Nevertheless, after much consideration, MSD has determined that it will not challenge the [Cost Study] or the existing charge in the current rate case.” See July 7, 2008 correspondence from Byron E. Francis to William R. England, III, attached hereto as Exhibit A at 2.

8. Although MSD disputed Mr. Baryenbruch’s analysis, MSD’s agreement to maintain the current annual charge of \$350,000 for MAWC’s provision of water usage meter reading data, customer billing information and related services to MSD, constituted a reasonable compromise made in good faith in light of the legal issues and factual circumstances under dispute.

9. A copy of MSD’s letter to MAWC was provided immediately to the OPC and Commission technical staffs for their review and analysis, and on July 9, 2008, Mr. England forwarded a copy of the letter directly to counsel for the Commission Staff and OPC, respectively. See July 9, 2008 correspondence from William R. England, III to Keith Krueger and Christina Baker, attached hereto as Exhibit A at 1.

10. On July 11, 2008, counsel for OPC notified counsel for MAWC that she didn’t think “that Public Counsel is ready to settle any of the issues in the case right now,” but would let Mr. England know “if this changes after we have finished our review of the testimony and have a better idea of what our rebuttal testimony will be.” See July 11, 2008 e-mail from Christina Baker to Trip England, attached hereto as Exhibit B.

11. No party, including OPC, challenged MAWC’s proposal concerning the provision of water usage and customer billing data to MSD in any direct testimony filed

on the issue of rate design. Indeed, the direct testimony of OPC's expert, Barbara A. Meisenheimer, which OPC filed on September 5, 2008, did not even address this issue.

12. On September 17, 2008, MAWC and MSD filed a Stipulation and Agreement, by which they agreed, subject to the approval of the Commission, that the terms and conditions of the Water Usage Data Agreement, and MAWC's associated tariff, would remain in full force and effect. This Stipulation and Agreement was consistent with the proposal set forth in the aforementioned direct testimony of Edward Grubb, and MSD's letter agreement, which had been conveyed to OPC on July 9, 2008.

13. Yet on September 23, 2008, OPC filed a request to postpone action on the proposed Stipulation and Agreement in order to "allow Public Counsel and the other parties time to determine the effect that this Stipulation and Agreement will have, based upon completion of true-up in this case."

14. Further, on September 30, 2008, OPC witness, Barbara A. Meisenheimer, filed Rebuttal Testimony, in which she testified, without stating any grounds in support, that OPC does not support the Stipulation and Agreement between MAWC and MSD. Ms. Meisenheimer stated only that "it seems reasonable that if the customers' rates are to increase, then MSD should share some responsibility for the increase."

15. On October 3, 2008, MAWC and MSD filed a Joint Objection to OPC's Request to Postpone Action on Stipulation and Agreement. Relying on Commission Rule 4 CSR 240-2.115(2)(B), MAWC and MSD argued that OPC's failure to file a timely objection to the Stipulation and Agreement constitutes a full waiver of OPC's right to a hearing on its objection, and that under Commission Rule 4 CSR 240-2.115(C), OPC's failure to object timely authorizes the Commission to treat the nonunanimous Stipulation and Agreement as unanimous.

16. Before the Commission had the opportunity to rule on OPC's Request to Postpone Action, OPC filed its Response and Objection to the Stipulation and Agreement Between MAWC and MSD on October 10, 2008, in which it continues to request a postponement of action on the Stipulation and Agreement until the conclusion of MAWC's true-up hearing in this case on December 8-9, 2008, and claims that it cannot lodge a formal objection to the Stipulation until it receives additional information from MAWC concerning its true-up numbers. See OPC Response, filed October 10, 2008.

17. Without any basis whatsoever, OPC alternatively objects to the Stipulation and Agreement between MAWC and MSD, and requests a waiver of the seven-day objection requirement. See *id.* at ¶ 8.

18. MAWC and MSD strongly oppose OPC's purported objection and request for a waiver, as they are both untimely. OPC has been aware of MAWC's proposal concerning the provision of water usage data and customer billing information to MSD for months (since the filing of Edward Grubb's Direct Testimony on behalf of MAWC on March 31, 2008, and since counsel for OPC's receipt of the correspondence from MAWC and MSD concerning their agreement in early July, 2008). The statement found in MAWC's direct testimony is no different than the terms and conditions set forth in the Stipulation and Agreement between MAWC and MSD. As a result, OPC has had extensive time to assess the effect that the Stipulation and Agreement will have on the parties to this case, and has failed to demonstrate why it did not have sufficient information available to it in September, 2008, to determine whether it had an objection to the Stipulation and Agreement. Further, while OPC previously mentioned a need to

examine the true-up information, there is nothing in the true-up of this case that will have an impact on the appropriate rate for the water usage data.

19. Indeed, there is no evidence in the record to suggest that the \$350,000 annual charge for the provision of water usage data jointly proposed by MAWC and MSD is in any way improper or illegitimate.

20. OPC's approach to this issue frustrates the purpose of Commission Rule 4 CSR 240-2.115. The purpose is to establish whether parties are opposed or not in a timely manner, so that the case can proceed accordingly. For this reason, contrary to OPC's assertion, an untimely objection creates inefficiency.

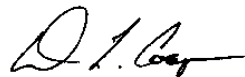
21. MAWC, and especially MSD, would be severely and irreparably prejudiced in the event that OPC's objection, alternative request for a waiver, and/or request to postpone action on the Stipulation and Agreement is granted. The Stipulation and Agreement constitutes a settlement between MAWC and MSD and a compromise of their respective positions concerning the amount and/or legitimacy of any rate to be charged by MAWC for the provision of water usage data, customer billing information and related services to MSD. In light of the Stipulation and Agreement between MAWC and MSD and the failure of any party to address this issue in its direct testimony, neither party has filed testimony to support their respective positions. Thus, should the Commission reserve its determination concerning the Stipulation and Agreement until the completion of the case and potentially reject the Stipulation and Agreement, neither party will have filed testimony to support their positions and they will have lost their opportunity to do so.

22. The prejudice facing MAWC and MSD in the event of a postponement of the Commission's determination concerning the Stipulation and Agreement certainly

outweighs any purported good cause in granting a waiver to OPC, in that, as set forth above, OPC has been aware of MAWC's proposal concerning the provision of water usage data and customer billing information to MSD for over six (6) months, since the filing of MAWC's initial direct testimony in support of its requested rate increases.

WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Commission deny OPC's objection, alternative request for a waiver, and/or request for postponement, treat the Stipulation and Agreement between MAWC and MSD, filed on September 17, 2008, as a unanimous Stipulation and Agreement in this case, issue its Order approving the terms and conditions of the Stipulation and Agreement, and grant such other and further relief as the Commission deems just and appropriate under the circumstances.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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