

## Missouri Court Decision Endorses Tariff Variances to Support Development

Alert

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A [new Missouri Missouri Western District Court of Appeals opinion](#) demonstrates that the Missouri Public Service Commission has broad authority to lower utility costs to encourage development. Members of the development community and other public utility partners should consider this opinion when strategizing future projects.

On December 27, 2022, the Missouri Western District Court of Appeals affirmed a commission order granting a joint variance request from a portion of Missouri-American Water Company's (MAWC) tariff. Tariffs are filed with the commission and list the rates and charges that public utilities charge customers. Once approved by the commission, Missouri treats tariff language as effective law similar to a statute. This means that public utilities and customers cannot alter the service or rates without a subsequent commission order. In this instance, MAWC and a real estate developer asked the commission for authorization to vary the application of three different tariff terms on the developer's planned subdivision. All three terms related to how much new customers need to financially contribute for line extensions to interconnect to MAWC's water distribution system.

By MAWC's existing tariff, when the interconnection costs are greater than four times the estimated average annual revenue from a new customer, the customer shall cover a portion of the remaining cost above the quadrupled revenue estimate. The amount of a new customer's obligation to cover extension line costs varies depending on the location, with the developer being obligated to contribute 95% of the interconnection costs if the planned development is located in the St. Louis Metro District. In this case, the developer and MAWC asked the commission for a variance so MAWC could treat the developer as being outside the District and thereby charge only 86% of the extension cost, representing significant savings for the developer. According to the developer, it would be infeasible to finance the planned subdivision

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without this variance request.

Missouri's Office of the Public Counsel (OPC) argued that the commission could not grant the variance request absent express authority and that it was unduly discriminatory. The court disagreed. According to the court, the commission's general statutory power to "change" tariffs includes granting variances for individual customers. The court also reasoned that good cause for the variance existed based on the benefits to ratepayers once the subdivision is completed.

This court opinion is notable because it provides a framework for future partnerships to lower construction costs in support of development. Parties have traditionally accomplished tariff changes only by filing revised tariff sheets, either during a general ratemaking proceeding or as otherwise provided under other legal authority. This practice has restricted developers and public utilities from partnering together where the pricing terms for service extension lines, energy efficiency upgrades, or other tariff programs are at issue. Using this recent opinion though, stakeholders can consider new variances to secure utility services like rebates for high-efficiency furnaces or natural gas line extensions without needing to fully revise a tariff.

The decision's full impact on development opportunities is still uncertain, because OPC may appeal this case. In the meantime, Stinson attorneys are available to evaluate what the court's decision could mean for your business.

## CONTACTS

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