BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas	)))))	File No. WR-2015-0301

INITIAL POST-HEARING BRIEF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS, CITY OF JOPLIN, CITY OF ST. JOSEPH, CITY OF WARRENSBURG, AND CITY OF BRUNSWICK

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COME NOW the Missouri Industrial Energy Consumers, City of Joplin, City of St. Joseph, City of Warrensburg, and the City of Brunswick (joining in Points III and IV only), and for their Initial Post-Hearing Brief state as follows:

I. Consolidated Tariff Pricing is Unlawful and Discriminatory

This case presents the Commission with several rate design options at various points along a spectrum from Single Tariff Pricing ("STP") to Consolidated Tariff Pricing ("CTP") to District Specific Pricing ("DSP"). Missouri American Water Company ("MAWC" or the "Company") initially proposed a consolidation of its existing eight districts into three, with a goal of grouping customers with similar costs. The Public Service Commission Staff ("Staff") responded with a proposal to also consolidate MAWC's eight districts into three, but guided by geography rather than costs. The City of Riverside ("Riverside") has proposed yet another three district consolidation option with the majority of the state clustered into one district while Joplin and St. Joseph would each remain as separate and distinct districts. A Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Revenue ("Consumer Stipulation") filed by the Office of Public Counsel ("OPC"), the Missouri Industrial Energy Consumers ("MIEC"), the City of Brunswick ("Brunswick"), the City of Joplin ("Joplin"), the City of St. Joseph ("St. Joseph"), later joined by the City of Warrensburg

("Warrensburg") and not opposed by Public Water Supply Districts Nos. 1 and 2 of Andrew County presented yet another option. Under the Consumer Stipulation, supported by the vast majority of consumer intervenors, eight districts would remain which would neither grant any undue or unreasonable preference or advantage to any district nor subject any district to an undue or unreasonable prejudice or disadvantage.

A. Statutory Authority and Limits

The Commission's jurisdiction is determined by the General Assembly's statutory delegation of regulatory power to the Commission. Section 393.130 RSMo, grants, limits and controls the Commission's powers in this particular case. In pertinent part, this statute provides:

> 1. **All charges** made or demanded by any...water corporation...for **water...service rendered or to be rendered shall be just and reasonable...Every unjust or unreasonable charge made or demanded for...water service,** or in connection therewith...**is prohibited.**
>
> 3. **No...water corporation...shall make or grant any undue or unreasonable preference or advantage to any...locality**, or to any particular description of service in **any respect whatsoever, or subject any...locality** or any particular description of service **to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.[[1]]**

Subsection 1 requires the Commission to set rates that are just and reasonable for the "water...service rendered." MAWC's, Staff's and Riverside's CTP proposals would violate this subsection in that some districts would be charged rates which are higher than the reasonable cost to render water service in that district. The undisputed evidence before the Commission shows that none of MAWC's current districts are interconnected, none of the districts receive water service from the facilities or infrastructure of another district and none of the districts receive any benefit from costs incurred in rendering service to any other district. Therefore, any

[1] Section 393.130, RSMo (emphasis added).

rate design scheme which attempts to apportion the costs incurred by MAWC in providing water service in one district to the customers of any other district is prohibited by Section 393.130.1, RSMo, and is unlawful.

Subsection 3 prohibits the Commission from approving rates which "grant any undue or unreasonable preference or advantage to any...locality...in any respect whatsoever, or subject any...locality...to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The Commission must not discriminate against or in favor of any locality. The CTP proposals of MAWC, Staff and Riverside would do just that by discriminating against some districts and favoring others by setting rates above the reasonable cost of service for some and below for others, and thus would violate Section 393.130.3, RSMo.[2]

B. Judicial Interpretation

While examining rates which discriminated between types of customers and not localities, the Missouri Supreme Court provided a clear discussion of the public policy and duty to set reasonable rates that do not discriminate.[3] The Court noted that the legislature's use of terms such as "undue preference" and "unreasonable discrimination" as limitations on the Commission's authority was intentional. By using these terms, the General Assembly set clear limits on its authorization to the Commission. The terms "discrimination" and "preference," qualified with the terms "undue" and "unreasonable," have been interpreted by Missouri courts to foreclose severance of the close relationship between cost-causers and cost-payers, discussed in the testimony of this case as the established principal of cost causation.

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[2] *See Alexander v. Chicago, M. & St. P. R. Co.,* 221 S.W. 712 (Mo. 1920), interpreting what is now 387.110, RSMo, which provides nearly identical language for common carriers.

[3] *State ex rel. Laundry, Inc. v. Mo. Pub. Serv. Comm'n,* 34 S.W.2d 37 (Mo. 1931).

In *State ex rel. City of Cape Girardeau v. Missouri Public Service Commission*,[4] the court upheld rejection of a rate proposal that would have "pass[ed] on to all residential customers within the city the benefits derived from the consumption of one user; it would [have] establish[ed] residential rates which would not reflect the true cost to those individual customers. In the commission's judgment the more equitable solution to the conflict of the demands of § 393.130.3 was to maintain rates determined by cost of service to the company's different customers." The court validated the equitable principle of cost causation as the proper means for the Commission to apply the limits of § 393.130 placed upon it by the General Assembly. The CTP proposals before the Commission would pass the benefits accrued by customers in districts with lower costs of service to customers in districts with higher costs of service, abandoning cost causation and in violation of § 393.130.3, RSMo.

In *State ex rel. City of West Plains v. Missouri Public Service Commission*,[5] the Supreme Court found that a telephone utility's tariff that spread several individual municipal franchise taxes to ratepayers in other communities that did not impose such taxes was an "unjust discrimination" and upheld tariffs that limited charges for municipal taxes only to the customers living within those municipalities. The taxes which were spread across municipalities in that case are analogous to the costs which CTP attempts to force customers to share regardless of whether or not those customers caused the costs.

In *State ex rel. City of Grain Valley v. Missouri Public Service Commission*,[6] the court reviewed rates that were the reverse of the CTP proposals in the present case. There, the court found that Southwestern Bell's rates for Grain Valley and Blue Springs violated the anti-

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[4] 567 S.W.2d 450, 454 (Mo. App. 1978)
[5] 310 S.W.2d 925 (Mo. banc 1958).
[6] 778 S.W.2d 287 (Mo. App. W.D. 1989)

discrimination statute applicable to telephone companies, § 392.200, RSMo, where the company provided the same service under the same conditions to customers in the two localities but charged customers in the two localities different rates. While the facts in *Grain Valley* provide a different angle than the present case, the legal principle still applies. There, the company charged different rates for providing the same service under the same conditions. Here, CTP, as proposed by MAWC, Staff and Riverside, would charge the same rate for providing a different service under completely different conditions. Thus, CTP would subject some districts to undue or unreasonable prejudice or disadvantage while granting undue or unreasonable preference to other districts in violation of § 393.130.3, RSMo.

The touchstone of public utility rate regulation is the rule that one group or class of consumers shall not be burdened with costs created by another group or class. *Coffelt v. Ark. Power & Light Co.*[7]; *Utilities Comm. v. Consumers Council*[8]; *Jones v. Kansas Gas & Elect. Co.*[9] In Missouri, courts have recognized this principle, specifically, that §§ 393.130.1 and 393.130.3 direct the purpose of the Public Service Commission "to secure equality in service rates for all who need or desire these services and who are similarly situated." *Reinhold v. Fee Fee Trunk Sewer Inc.*[10] MAWC's consumers in one district are not "similarly situated" to those in the other districts in any meaningful way; indeed, the districts are most dissimilar. To consolidate such separate and different districts is arbitrary, unreasonable, inequitable, and beyond the Commission's statutory authority.

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[7] 248 Ark. 313, 451 S.W. 2d 881 (1970).
[8] 18 N.C. App. 717, 198 S.E.2d 98 (1973).
[9] 222 Kan. 390, 401, 565 P.2d 597, 606 (1977).
[10] 664 S.W.2d 599, 604 (1984) (citing *May Dept. Stores Co. v. Union Elec. Light and Power Co.*, 107 S.W.2d 41, 49 (1937)).

State ex rel. City of Joplin v. Missouri Public Service Commission,[11] is particularly instructive. In that case, the Commission required the water customers in the Joplin district to subsidize the rates of the customers in other districts in the amount of $880,000 per year in order to prevent "rate shock" to the customers in those other districts. Relying on § 393.130.3, the court rejected the subsidy:

> Under section 393.130.3, water corporations are forbidden from granting undue preference or advantage to any ratepayer, just as they may not unduly or unreasonably prejudice or disadvantage any ratepayer in the provision of services. Hence, the Commission lacks statutory authority to approve discriminatory rates, and its approval of the rates herein, required Joplin ratepayers to pay significantly more than the actual cost of service in that district for the express purpose of subsidizing the services provided in other Company districts that were only paying for the actual cost of service arguably exceeded its authority.[[12]]

When a court examines whether the Commission's approved rates are discriminatory under § 393.130.3, it will examine and compare the rates with the cost of service for each district and the purpose or justification for any differences.

C. Conclusion

The Commission is bound by statute to set water rates for each district based upon the recognized cost to render water service to each district. Missouri courts have applied § 393.130, RSMo, and its sister statutes that apply to other types of public utilities to a variety of facts and have held that to do otherwise is unjust, unreasonable and in violation of the authority granted to the Commission by the General Assembly. Whether it arises in the form of laundry companies charged a water rate higher than that of other similarly situated businesses; or allowing residential customers to benefit from the electricity usage of one user; or in spreading franchise taxes to customers outside the communities that impose such taxes; or in charging different rates

[11] 186 S.W.3d 290 (Mo. App. W.D. 2005) (emphasis added).
[12] *Id.* at 296.

for providing the same service under the same conditions, Missouri courts have consistently struck down or affirmed the rejection of the type of rate design sought by all of the CTP proposals before the Commission in this case. CTP is nothing more than the pooling of costs from numerous, separate and dissimilar districts in order to collect those costs from all of the consolidated customers, regardless of those customers' connection to or benefit from costs incurred by MAWC. Missouri law requires the Commission to set water rates upon the actual cost to render water service in each district, anything less is beyond the authority of the Commission, discriminatory and unlawful.

II. Consolidated Tariff Pricing is Unreasonable

A. Consolidated Tariff Pricing Violates the Basic Principles and Goals of Utility Rate Making

As this Commission has stated previously, in its Order Approving a Non-Unanimous Stipulation and Agreement in the 2011 Missouri American rate case, "[t]he Commission's **guiding purpose** in setting rates is to protect the consumer against the natural monopoly of the public utility[.]"[13] In the 2000 Missouri American rate case, this Commission explained "The **primary** goal of a 'class' rate design structure is to recover costs from those who cause the costs to be incurred."[14] In this case, Dr. Marke testified that cost causation is a **fundamental** tenet of ratemaking.[15] Mr. Collins testified that cost causation is "one of the **basic** tenets of sound ratemaking" and results in "appropriate rates."[16] In the 2000 Missouri American rate case, this Commission stated:

[13] WR-2011-0337, Order Approving Non-Unanimous Stipulation and Agreement (March 7, 2012), p. 6 (emphasis added).
[14] WR-2000-281, Report and Order on Second Remand (December 4, 2007), p. 15.
[15] Tr. 665:23-25.
[16] Tr. 735:1-6.

> The Commission decided that **in order for rates to be just, there should be a relationship between rates and costs**, and that moving to district-specific pricing was necessary to achieve that goal.[[17]]

Although, in this case, Staff supports a certain level of consolidation, Mr. Busch agreed with Staff's previous opinion in SW-2011-0103 that "the recovery of costs in correlation with their cause is the most equitable manner to determine the appropriate rates for any regulated service."[18] In addition, in this case, Mr. Busch testified that he believes that cost causation is a factor that should be considered.[19]

In *In re Gas Service Company*, this Commission ruled:

> Above all, in the opinion of the Commission, the **touchstone** of rate design is that the **rates must and should reflect the cost to serve** that particular customer or group of customers. To depart from this basic principle will place the regulator in a never-never land wherein he can design rates to suit his own particular whim or caprice, or satisfy his own preconceived ideas of how society should be charged for services.[[20]]

Or worse yet, to depart from this basic principle, could place the regulator in the position where he or she is forced to pick (in the words of Commissioner Rupp) "winners and losers."

B. The Justifications Provided by Staff and the Company for Consolidation are Hypothetical and not Supported by the Evidence in this Case

The evidence in the record is clear and overwhelming that is not appropriate and that DSP is the only just and reasonable method for cost recovery through rates in the Missouri American system. All of the rationales proffered by the Company and by the Staff for consolidation are hypothetical and lack evidentiary foundation.

The Commission's decision, especially a decision to abandon cost causation principles, in favor of consolidation must be based on competent and substantial evidence. "[A reviewing court

[17] WR-2000-281, Report and Order on Second Remand (December 4, 2007), p. 15.
[18] Tr. 419:21-420:2 (emphasis added).
[19] Tr. 411:15-17.
[20] 21 Mo. P.S.C. 262 (1976) (emphasis added).

will determine] first, whether the Commission's order is lawful, and second, whether the order is reasonable and based on competent and substantial evidence upon the whole record."[21] Next, the court will determine whether the order is reasonable and based on competent and substantial evidence.[22] "Whether the order is reasonable depends on 'whether (i) the order is supported by substantial and competent evidence on the whole record, (ii) the decision is arbitrary, capricious or unreasonable, or (iii) the Commission abused its discretion.'"[23] Here, Staff and the Company provide a number of reasons why the Commission should move toward consolidation. Yet, these reasons are hypothetical and completely unsupported by the record, let alone competent and substantial evidence.

The Western District Court of Appeals has previously ruled that it was unreasonable for the Commission to approve consolidation of districts on the alleged fact that the cost to serve the company's residential customers throughout the state was the same on the basis that there was no evidence in the record showing whether the cost to serve each area was indeed the same.[24] Likewise, in this case, the Commission is being asked to approve consolidation on a number of alleged "facts" or rationales for consolidation that lack any substantiation in the record.

Missouri American's witness Mr. McDermott lists six rationales for Single Tariff Pricing.[25] Staff's witness Mr. Busch gives four justifications for recommending consolidation.[26]

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[21] *State ex rel. Pub. Counsel v. Missouri Pub. Serv. Comm'n,* 289 S.W.3d 240, 246 (Mo. App. W.D. 2009) (citing *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 186 S.W.3d 376, 381 (Mo. App. W.D. 2005)).
[22] *Id.*
[23] *State ex rel. Pub. Counsel v. Missouri Pub. Serv. Comm'n*, 289 S.W.3d 240, 246 (Mo. App. W.D. 2009) (citing *Mo. Gas Energy*, 186 S.W.2d at 382).
[24] *State ex rel. Pub. Counsel v. Missouri Pub. Serv. Comm'n*, 289 S.W.3d 240, 254 (Mo. App. W.D. 2009).
[25] McDermott Direct, MAWC Ex. 12, 14-18.
[26] Busch Direct, Staff Ex. 9, 7-9.

Most of the rationales are really just advantages to the Company and serve to advance the utility's private interest, rather than any public interest. Other rationales are efficiency based, which is an inappropriate justification for rate design. None of the rationales are supported by competent or substantial evidence.

1. Better Incentives for Standard Water Quality

McDermott claims the "key benefit" for moving toward consolidated pricing is "Better incentives for standard water quality."[27] He explains this means "enabling [the company's] recovery of government mandated...investment."[28] At the hearing, McDermott admitted that under the present rate structure, the Company is already able to recover costs associated with government mandated investment.[29] Similarly, McDermott confirms that he does not claim that Missouri is currently suffering from poor water quality.[30]

2. Promotes State Economic Development Goals

McDermott also claims consolidation "promotes state economic development goals."[31] However, McDermott had no evidence that consolidation would improve water quality, quality of life, or economic growth.[32]

3. Lower Administrative and Regulatory Costs

McDermott claims consolidation will "lower administrative and regulatory costs."[33] Mr. Busch similarly claims that consolidation "may benefit customers through reduced rate case

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[27] McDermott Direct, MAWC Ex.12, 14-15.
[28] McDermott Direct, MAWC Ex.12, 14:4-5.
[29] Tr. 635:15-19.
[30] Tr. 637:23-638:2.
[31] McDermott Direct, MAWC Ex. 12, 15:12-21.
[32] Tr. 638:3-22.
[33] McDermott Direct, MAWC Ex. 12, 16:10-17:2.

expense."[34] This argument is similar to Mr. Busch's other claim that it is "difficult...to develop rates on a district specific basis."[35] Relative to this rationale, Staff explained "it's more cost that the Company has to...employ, which then gets passed along to all consumers[.]"[36] However, with respect to potential "reduced rate case expense," Mr. Busch could not offer an estimate of such reduction and had no evidence to support this claim.[37] Similarly, McDermott had no estimates of such costs and admitted he did not study the potential for lowered billing and collections or reduced costs of regulatory filings.[38] While the signatories to this Brief agree that consolidation might be more convenient or feasible (or in Mr. Busch's words – "alleviate some of the need for precision") for both the Staff and the Company, there is no evidence to suggest any real benefit to ratepayers. Moreover, the Missouri Supreme Court, in *State ex rel. Kansas City v. Missouri Public Service Commission,* explained that "[N]either convenience, expediency or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by the statute."[39] CTP, as proposed by the Company and Staff, results in discriminatory rates which cannot be justified on the basis of convenience.

4. Create a Consistent Regulatory Approach for All Public Utilities

Next, McDermott claims consolidation will "create a consistent regulatory approach for all public utilities." Not only does this also appear to be an improper "convenience" justification, it is wholly unclear whether having a consistent regulatory approach for all public utilities benefits anyone – the Company, the Commission, or ratepayers. Counsel for Missouri

[34] Busch Direct, Staff Ex. 9, 8:1-9.
[35] Busch Direct, Staff Ex. 9, 7:3-22.
[36] Tr. 422:9-13.
[37] Tr. 423:13-21.
[38] Tr. 639:12-16.
[39] 257 S.W. 462 (Mo. banc 1923).

American, in his opening statement on regulatory policy, highlighted the differences among utilities: "Studies show the water industry is three times more capital intensive than the gas industry and two times more capital intensive than the electric industry."[40] Counsel for Staff in his opening statement explained, "Unlike an electric company, which has a huge service area, Missouri American...consists of lots of little service areas...Each of these service areas has its own water sources, its own water treatment, its own sewage collection, its own sewage treatment."[41] In addition, Dr. Marke offered an in-depth explanation for why water systems differ considerably from electric and gas.[42] The evidence in this case shows the vast differences between public utilities such that an attempt to justify CTP on the basis that it would create a consistent regulatory approach for all public utilities is unreasonable.

5. Mitigates Rate Shock

McDermott also claims that consolidation "improves affordability for all consumers."[43] Mr. Busch characterized this same argument as "mitigating rate shock."[44]

In the 2000 case, despite St. Joseph facing a potential rate increase of 200 percent, Staff supported maintaining district-specific pricing based on the principles of cost causation.[45] Now, based on a personal shift in the views of Mr. Busch, Staff seeks consolidation on the basis that it may "mitigate" rate shock. Staff essentially argues that consolidation benefits all consumers by "spreading out...the existing costs to other consumers."[46] This justification ignores the fact that several districts, including St. Joseph and Joplin, have made substantial investments in their

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[40] Tr. 90:21-25.
[41] Tr. 97:2-4, 10-13.
[42] Marke Direct, OPC Ex. 9, 4.
[43] McDermott Direct, MAWC Ex. 12, 15:22-16:9.
[44] Busch Direct, Staff Ex. 9, 8:10-22.
[45] Tr. 316:6-11.
[46] Tr. 426:2-8.

infrastructure since 2000, and such costs have been solely borne by the ratepayers in those respective districts.[47] A shift toward CTP now would be particularly discriminatory to those districts which have made significant investments since this Commission decided DSP created just and reasonable rates in 2000.

Still, Mr. Busch does admit that the Company's version of consolidation would **not** mitigate rate shock.[48] He noted that the 1,500 consumers in district three was not a large enough customer base to avoid rate shock.[49] However, Mr. Busch does believe the Staff consolidation proposal will achieve this goal. In response to the question "Do you believe that if we went to a more consolidated tariff or even a single tariff...the smaller districts and other districts would have a resulting rate decrease?" Ms. Norton, President of Missouri American Water responded, "Yes, I do."[50]

Yet Staff's consolidation proposal, to which the Company does not object, would result in a 16.77% increase in rates (more than $100 a year) on more than 80% of its residential customers (St. Louis Metro District).[51] This increase is more exaggerated than under a purely district-specific plan. It would be 2.57% more than the increased revenue responsibility Staff attributed to the St Louis Metro district.[52]

Under Staff's consolidation plan, customers in Warrensburg would see an 18.27% increase,[53] even though Staff calculated the increase in revenue responsibility assigned to

[47] Tr. 181:25-182:2; Tr. 316: 6-11.
[48] Tr. 468:9-17.
[49] Tr. 468:21-469:6.
[50] Tr. 119:10-14.
[51] Staff CTP Versus Present Rates, MAWC Ex. 49R, p. 4.
[52] MAWC Stipulation and Agreement, MAWC Ex. 52R.
[53] Staff CTP Versus Present Rates, MAWC Ex. 49R, p.4.

Warrensburg at 1.37%.[54] Finally, small districts would **not** be immune from "rate shock" under Staff's proposal. Tri-States would see a 70.90% increase in rates,[55] when Staff suggested the increase in revenue responsibility assigned to Tri-States was only 33.82%.[56]

Even more troubling is that the numbers provided to the Commission by the Company in MAWC Exhibit 48, 49, 51, and 52 (as well as MAWC Exhibits 48R, 49R, 51R, 52R) as "bill impact" do not include the "sewer shift" the company proposed.[57] There is a non-Arnold related sewer shortfall of roughly $565,000.[58] There is also an Arnold related sewer shortfall of roughly $700,000.[59] The Company proposed shifting the entire shortfall onto residential water consumers.[60] If the exhibits properly showed the Company's true proposal, including the sewer shortfall shift, the increases described above would be even larger.[61]

6. Provides Incentives for Larger Water Companies to Purchase Smaller Distressed Water Systems

Finally, McDermott asserts that consolidation provides incentives for larger water companies to purchase smaller under-performing water companies.[62] This is identical to the fourth justification offered by Mr. Busch.[63]

First, the evidence shows that there are already incentives under the current rate structure for Missouri American to acquire small systems, and Missouri American is in fact doing so.

[54] MAWC Stipulation and Agreement, MAWC Ex. 52R.
[55] Staff CTP Versus Present Rates, MAWC Ex. 49R, p. 4.
[56] MAWC Stipulation and Agreement, MAWC Ex. 52R.
[57] Tr. 573:19-20.
[58] Tr. 738:3-4.
[59] Tr. 329:8-12.
[60] Tr. 329:18-20.
[61] Tr. 738:24-739:1.
[62] McDermott Direct, MAWC Ex. 12, 14:20-15:11.
[63] Busch Direct, Staff Ex. 9, 9:1-5.

Ms. Norton testified that since the last rate case (2012), the company has acquired five water and five wastewater systems.[64] Staff's evidence shows the company has actually acquired seven water and seven wastewater systems since the last rate case.[65] When asked why the Company is interested in being more aggressive in its acquisition strategy, Ms. Norton stated "growing our business is important."[66] In the rate case following any acquisition, the Company has an opportunity to earn a return on the investment they make in any small, troubled systems.[67]

Second, there is no evidence in the record to suggest that if this Commission orders consolidation Missouri American will become more aggressive in its acquisition strategy. When questioned, McDermott had no evidence to suggest that investor-owned water utilities in states with CTP were more aggressive in their acquisition strategies than in states with DSP.[68] Mr. Busch confirmed that the Company hadn't "indicated one way or the other if they will be more aggressive or not."[69] Mr. Busch testified at the hearing that regardless of the outcome of this case, he had no reason to believe Missouri American would cease acquiring troubled districts.[70]

When asked about the future, hypotheticals and speculation abound. When asked by the Chairman whether a consolidated rate structure would allow the company to be more aggressive, Mr. Busch testified "I think it's a **possibility** that...they **might** become more aggressive."[71] When asked whether the Company would be more aggressive in the future with respect to acquisitions, Ms. Norton did not state that the decision would be dependent on consolidation, but

[64] Tr. 138:1-10; Kartmann Direct, MAWC Ex. 11, 29:13-16.
[65] Staff Report, Revenue Requirement Cost of Service, Staff Ex. 1, 3:19-32.
[66] Tr. 129:13-14.
[67] Tr. 444:14-18.
[68] Tr. 636:13-18.
[69] Tr. 474:22-24.
[70] Tr. 433:11-21.
[71] Tr. 474:2-8 (emphasis added).

rather stated, "We definitely **would like to** do more acquisitions in the future."[72] Mr. Busch suggests. "Maybe they're [small water systems] not failing today, but they're...**going to fail** five to ten years from now...we know that environmental regulations are **going to change** and it's not going to be able to fix it[.]"[73]

Missouri American has made no promises that it will acquire a certain number of troubled systems in the next five years. It readily admits now that, even when asked by the Commission or the Department of Natural Resources, it still declines to do certain acquisitions.[74] Words like "possibility", "might", "would like to" and "going to" do not constitute competent or substantial evidence on which the Commission could make a determination that consolidation would, in fact, ameliorate the small distressed systems issue.

This rationale related to the acquisition of small troubled systems sometimes shifts into a more general rationale of being able to provide safe and reliable water to customers. Missouri American claims "A lot of the smaller systems right now are on the verge of not being able to provide safe, reliable water to their customers[.]"[75] Staff also claims that it is in the "public interest for larger systems to be able to take over small struggling systems to provide the necessary investment to allow all citizens...to have safe and adequate service."[76] Yet, there is absolutely no evidence that any of the ten (or fourteen) recently acquired districts were failing to provide safe, reliable water prior to being acquired by Missouri American and there is no evidence in this case of any other small district failing to provide safe, reliable water. The only

[72] Tr. 139:7-9 (emphasis added).
[73] Tr. 429:15-20 (emphasis added).
[74] Tr. 138:21-22; Tr. 423:7-12.
[75] Tr. 141: 17-19.
[76] Tr. 430:24-431:4.

evidence in this case regarding potentially unsafe and unreliable water services is by that of Missouri American itself in the City of Riverside.[77]

C. The Justifications Provided by OPC for Maintaining a District Specific Model are Supported by Competent and Substantial Evidence.

OPC provides a number of rationales for maintaining a district specific model. These rationales are not hypotheticals but instead are supported by competent and substantial evidence in the record. These rationales follow and update the decision of the Commission in the 2000 case which shifted Missouri American Water to DSP. Further, these rationales are supported by the same or similar evidence in this case.

1. Consolidation Results in Subsidizing High-Cost Systems with Rates Above Costs of Service for Those in Low-Cost Systems

The Office of Public Counsel has claimed that consolidation requires those served by average to low-cost systems to pay costs incurred by high-cost systems. Essentially moving away from cost-causation creates a system where some consumers, the "losers," are subsidizing others, the "winners."

In 2005, the Western District provided a cautionary note relative to a system in which some parties pay more than their actual cost of service for the purpose of subsidizing others:

> Hence, the Commission lacks statutory authority to approve discriminatory rates, and its approval of the rates herein, required Joplin ratepayers to pay significantly more than the actual cost of service in that district for the express purpose of subsidizing the services provided in other Company districts that were only paying for the actual cost of service arguably exceeded its authority.[[78]]

Here, the Company and Staff are asking the Commission to approve rates which would cause certain ratepayers to pay significantly more than their actual cost of service for the express

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[77] *See* Rose Direct, Riverside Ex. 1; Local Public Hearing, February 1, 2016 (Riverside), Volume 15.

[78] *State ex rel. City of Joplin v. Mo. Pub. Serv. Comm'n, of State of Mo.*, 186 S.W.3d 290, 296 (Mo. App. W.D. 2005).

purpose of subsidizing smaller high-cost systems. What is worse, those smaller high-cost systems will not be "paying for the **actual** cost of service" as was the case in *State ex rel. City of Joplin*, but will be paying significantly **less** than their actual cost of service.

Mr. Herbert's Schedule PRH-6 shows that under either the Company's proposal for CTP or Staff's CTP proposal, certain localities would be greatly advantaged (through receiving a subsidy from other districts) and other localities would be greatly disadvantaged (by paying the subsidy for another district).[79] Under Staff's CTP proposal, certain localities (such as St. Joseph) would be paying higher than their actual cost of service.[80] Other localities would be paying below their cost of service.[81] Under Staff's CTP proposal, districts like St. Joseph (paying above its cost of service) would be providing a significant subsidy to others in its "zone" like Platte County and Brunswick.[82] The Company's CTP proposal operates similarly.[83]

With respect to capital improvements, the evidence shows that when the Warrensburg system is upgraded, the residents of Joplin will help pay for the upgrades.[84] Still, the residents of Joplin would not benefit from any upgrades to the Warrensburg system.[85] Similarly, Ms. Norton testified that with the Company's CTP proposal, St. Louis Metro District would absorb a substantial amount of the costs of the new Parkville plant.[86] She also confirmed that the customers in the St. Louis Metro District would not receive any service from the plant in

[79] Herbert Rebuttal, MAWC Ex. 9, Schedule No. PRH-6.
[80] Tr. 674:21-24; Herbert Rebuttal, MAWC Ex. 9, Schedule No. PRH-6, p. 2.
[81] Tr. 675:3-6; Herbert Rebuttal, MAWC Ex. 9, Schedule No. PRH-6, p. 2.
[82] Tr. 674:25 – 675:2; Herbert Rebuttal, MAWC Ex.9, Schedule No. PRH-6, p. 2.
[83] See Herbert Rebuttal, MAWC Ex. 9, Schedule No. PRH-6, p. 1.
[84] Tr. 675:21-24.
[85] Tr. 676:3-7.
[86] Tr. 176:13-21.

Parkville.[87] Mr. Busch testified that with Staff's CTP proposal, the costs of the new Parkville plant would be spread among all the consumers in Staff's Zone 2.[88]

These subsidies are not hypothetical. The Company's own witness shows the annual cost of service per residential customer in Platte County is $1,031.48 while the annual cost to service a residential customer in St. Joseph is $418.39.[89] Staff proposes to consolidate these two districts, along with Brunswick (at $937.23), establishing a single rate for all the customers in "Zone 2." If a single rate is established, the residents of St. Joseph will be significantly subsidizing the residents of Platte County and Brunswick (whose cost of service is more than double that in St. Joseph). As Dr. Marke testified, consolidated pricing has the potential to create winners and losers.[90]

2. Disparity in the Costs of Providing Service Justifies District Specific Pricing

When this Commission decided that district-specific pricing was the just and reasonable course in 2000, it did so in part, on the disparity of costs in providing service:

> In fact, the evidence in the case showed that there is a **great disparity in the costs of providing service** among the various districts Missouri American served.[[91]]

Just as in the 2000 case, in this case, there is overwhelming, competent and substantial evidence that there is a great disparity in the costs of providing services among the various districts. Company Witness Herbert's Summary of Average Annual Residential Cost of Service by District shows the annual cost per residential customer ranges from $409.70 to $1,031.48.[92] Mr.

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[87] Tr. 176:22-25.
[88] Tr. 435:1-7.
[89] Herbert Rebuttal, MAWC Ex. 9, Schedule No. PRH-6, p. 2.
[90] Tr. 677:16-20.
[91] WR-2000-281, Report and Order on Second Remand (December 4, 2007), p. 15 (emphasis added).
[92] Herbert Rebuttal, MAWC Ex. 9, Schedule No. PRH-6.

Busch confirmed at the hearing that the revenue responsibilities assigned are "vastly different" amongst the different classes."[93] In 2000, this Commission found the following significant:

> Missouri American's various districts differ significantly in such cost drivers as water supply source, water treatment process, proximity of supply source, aggregate demand and customer density.[[94]]

The evidence is the same in this case. The evidence shows that the systems are not interconnected.[95] There are differences in the sources of supply between the districts.[96] There are different treatment and processing requirements for surface water when compared with ground water.[97] The costs in treating ground water versus surface water are also different.[98] Mr. Busch testified "the southwest part of the state is a...rocky part of the state. It's much more difficult to place a meter there...than it is in St. Louis or here in Jefferson City or maybe up in Platte County. So there are some differences."[99] Company Witness Mr. Herbert agreed the costs in "creating" the end product are different.[100] The evidence supports maintaining DSP.

3. Public Perception Favors District Specific Pricing

In the Commission's Report and Order in the 2000 case, the Commission highlighted public perception as a factor for consideration:

> One factor for consideration in determining just and reasonable rates is public perception. The testimony adduced at the Local Public Hearings held in this matter was strongly in favor of DSP. MAWC, therefore, must set its rates separately for each service area in order to recover the appropriate revenue requirement for each service area.[[101]]

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[93] Tr. 416:18 – 417:1.
[94] WR-2000-281, Report and Order on Second Remand (December 4, 2007), p. 5.
[95] Marke Direct, OPC Ex. 9, 9:1-5; Tr. 412:4-6; Tr. 434:13-17.
[96] Marke Direct, OPC Ex. 9, 11, Table 1; Tr. 412:11-1; Tr. 419:1-3.
[97] Tr. 369:1-6; Tr. 412:17-20; Tr. 419:3-6.
[98] Tr. 369:7-10.
[99] Tr. 808:19-24.
[100] Tr. 372:8-15.
[101] WR-2000-281, Report and Order (August 31, 2000), p. 58 (emphasis added).58

As counsel for OPC pointed out in his opening statement, consumers in St. Louis, Ferguson, Arnold, St. Joseph, Mexico, Joplin and Branson expressed opposition to consolidation.[102] In addition, Ms. Haase, on behalf of the City of Joplin, testified "we believe that where we're located and our water source and our cost drivers are all unique...We do not believe that our citizens should subsidize other districts."[103] The testimony from the Local Public Hearings shows strong support for DSP.

4. Consolidation Increases the Risk for Overinvestment

OPC claims that consolidation can lead to overinvestment in infrastructure.[104] Mr. Busch testified that he agreed "when you start to consolidate rates, that there is some opportunity for the Company to invest more than is necessary."[105] When Missouri -American was under a consolidated rate plan, Staff presented evidence of and argued imprudence on the part of Missouri American.[106] Busch agreed that "the more you consolidate, the greater the risk of over-investment."[107] The testimony in this case that CTP could lead to over-investment is uncontradicted.

5. District Specific Pricing Sends Proper Price Signals to Consumers

Finally, OPC and the MIEC provided testimony regarding price signals. A movement toward consolidation would increase consumption in high cost service areas and lower

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[102] Tr. 103- 106; Local Public Hearing, February 9, 2016 (St. Louis), Volume 13, 32:18-23; Local Public Hearing, February 8, 2016 (Ferguson), Volume 11, 48:10-16; ; Local Public Hearing, February 9, 2016 (Arnold), Volume 12, 31:2-18; Local Public Hearing, February 1, 2016 (St. Joseph), Volume 8, 7:12-7:9; Local Public Hearing, February 4, 2016 (Mexico), Volume 10, 17:19-18:5; Local Public Hearing, January 26, 2016 (Joplin), Volume 5, 8:6-9:11; Local Public Hearing, January 26, 2016 (Branson), Volume 3, 7:12-16 and 26:13-17.
[103] Tr. 294:14-16.
[104] Marke Direct, OPC Ex. 9, 22:1-15.
[105] Tr. 420:9-11.
[106] Tr. 427:11-14; see also WR-2000-281, Report and Order (August 31, 2000).
[107] Tr. 512:4-9.

consumption in low cost service areas.[108] This erodes efficiency.[109] The subsidies created by consolidated pricing erode any economic incentive for customers in high-cost districts to be more efficient.[110] The Commission recognized this economic truism in Case No. ER-2011-0028:

> In general, it is important that each customer class carry its own weight by paying rates sufficient to cover the cost to serve that class. That is a matter of simple fairness in that one customer class should not be required to subsidize another. Requiring each customer class to cover its actual cost of service also encourages cost effective utilization of electricity by customers by sending correct price signals to those customers.[111]

D. There is No National Trend Toward Consolidation

Missouri American has suggested to this Commission that there is a national trend toward consolidation. This is simply not true. Dr. Marke testified that for investor-owned water utility operations, the majority of states do not have Ssingle Tariff Pricing.[112] Mr. Collins specifically disagreed that there is a national trend toward consolidation.[113]

American Water operates in sixteen states.[114] When asked how many of the states have Single Tariff Pricing, Ms. Norton told the Commission: Illinois, Kentucky, "[p]lus other states as well."[115] Later, she admitted, with respect to Illinois, "there are a few different districts."[116] Dr. Marke testified that Illinois has "well over double-digit districts."[117] This is confirmed by American Water's website, in the record as Joplin Exhibit 2 and by the testimony of Mr.

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[108] Marke Direct, OPC Ex. 9, 21:16-18.
[109] Collins Direct, MIEC Ex. 5, 5:16-17.
[110] Collins Direct, MIEC Ex. 5, 5:17-20.
[111] In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service, July 13, 2011Report & Order, Finding 11, pp. 115-116.
[112] Tr. 222:21-223:3.
[113] Tr. 737:3-8.
[114] Tr. 151:14-15.
[115] Tr. 152: 4-6.
[116] Tr. 182:20-21.
[117] Tr. 222:11-13.

Collins.[118] In fact, Dr. Marke testified that the **only** state in which American Water operates that utilizes STP is Pennsylvania.[119]

Company witness Mr. McDermott offered Schedule KAM-3 as evidence of a national trend toward consolidation.[120] Under the heading "Generally Accepted" regarding Single-Tariff Pricing, McDermott included Illinois.[121] But Illinois does not have STP.[122] Mr. McDermott included California as a state where STP has been approved, but could not confirm whether there was actually a single rate for all of American Water's consumers in California.[123] When asked whether he could confirm how many states, if any, are currently under STP, he could not.[124] McDermott's Schedule KAM-3 labeled "as of 2015" also had Missouri among the states where STP has been approved, despite Missouri having moved toward DSP in 2000.[125] Beyond the data in the chart being misleading and incorrect, the methodology used by McDermott in creating the chart was significantly flawed.[126]

There is no substantial and competent evidence in the record on which the Commission can find that there is a national trend toward consolidation. The testimony of Dr. Marke indicates that all but one of the states in which American Water operates maintains some level of separate districts. The justification that this Commission should move toward CTP because other states have done so falls flat.

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[118] Tr. 736:13-16.
[119] Tr. 224:3-11.
[120] McDermott Direct, MAWC Ex. 12.
[121] McDermott Direct, MAWC Ex. 12, Schedule KAM-3.
[122] IL Notice of Proposed Change in Scheduled Rates, Joplin Ex. 2; Tr. 222:11-13; Tr. 736:13-16.
[123] Tr. 642:14-19.
[124] Tr. 643:19-644:9.
[125] McDermott Direct, MAWC Ex. 12; Tr. 649:20-650:5.
[126] Tr. 650:6-22; Tr. 655:10-17.

E. Addressing the Potential Impact of a New Facility in Parkville in this Case is Premature.

First, the signatories to this Brief agree with Staff's recommendation that MAWC be required to file a five-year capital expenditure plan for annual review by the Commission.[127] At the Hearing, Mr. Busch explained the rationale for the suggestion is that "it gives interested parties an opportunity to review...and...make recommendations[.]"[128] We agree that it would be helpful to the Commission and the ratepayers to know what potential projects are on the horizon. It could also help mitigate any potential for overinvestment or imprudent investment by the Company.

At the Hearing, it was clear that several of the parties indicated this rate case was the first they had learned about the proposed new plant in Parkville. The potential costs of the plant were offered as a reason for CTP (by those in Platte County) and against consolidation (by those who might be consolidated with Platte County).

However, the Commission cannot and should not make a determination regarding consolidation based on the potential cost of the Parkville plant. The Commission has previously determined it was premature to make a decision regarding certain costs before the "assessment of reasonable and prudent expenses would be more clear."[129]

When asked about the estimated amount of expenditures for the new plant, Ms. Norton stated, "We're right in the middle of the design phase right now and so we don't have the --- the real numbers as to what that's going to be[.]"[130] When asked if in the next rate case whether "we should have a better understanding of what [the costs for the Parkville plant] will be," Ms.

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[127] *See* Busch Rebuttal, Staff Ex. 11, 11:3:10.
[128] Tr. 812:4-7.
[129] *Union Elec. Co. v. Mo. Pub. Serv. Comm'n*, 136 S.W.3d 146, 154-155.
[130] Tr. 130:4-6.

Norton responded: "Absolutely, yes."[131] The Company, Staff, and Riverside argue that the "time is now" to consolidate – while no single large capital improvement is before the Commission. The Company, Staff, and Riverside argue consolidation would help mitigate any future rate shock that could be caused by a significant capital investment.

To the contrary, the undisputed evidence is that the costs regarding the Parkville facility will be more clear in the next rate case. The appropriate case to determine whether there exists any rate shock to be mitigated is when the numbers for the capital project and potential effects on ratepayers are clear. Any consolidation decision in this case based on the potential of rate shock caused by a new facility in Parkville would be arbitrary and premature.

F. A Legislative Solution Already Exists for the Problem Sought to be Addressed by the Staff through Consolidation

The fundamental reason Staff proposes CTP is to facilitate the acquisition of distressed systems. Yet, the General Assembly addressed this problem in 2013 through legislation. The fear is that a newly acquired small system might not have a sufficiently large customer base on which to spread the costs required to upgrade such system. The legislative solution provides that any small water utility that is acquired by a large water utility **shall** become part of an existing district upon the date of acquisition. This automatically guarantees a larger customer base than the customer base of the acquired district. Section 393.320.6, RSMo, enacted in 2013, specifically provides:

> Upon the date of the acquisition of a small water utility by a large water public utility...the small water utility shall, for ratemaking purposes, become part of an existing service area, as defined by the public service commission, of the acquiring large water public utility that is either contiguous to the small water utility, the closest geographically to the small water utility, or best suited due to operational or other factors. This

[131] Tr. 186:12-15.

consolidation shall be approved by the public service commission in its order approving the acquisition.

At the hearing, Mr. Busch confirmed that under Section 393.320, RSMo, the Commission has the ability to assign an acquired district to an already existing district.[132] In addition, Dr. Marke testified the statute in place "allows the Company to acquire a small system and place it within an existing district" which "addresses a lot of the concerns" related to small system viability issues.[133]

The Company has previously relied on Section 393.320, RSMo, to argue for consolidation of acquired districts with existing districts.[134] In that case, the Company argued that Section 393.320.6 required the Commission to make the small district part of "an existing service area."[135] The Company stated "This statute [393.320.6] appears designed to further consolidation of small water and sewer systems into large utilities in order to provide the economies of scale associated with those operations."[136]

G. The Problem Sought to be Addressed by the Staff through Consolidation can and should be Resolved by the Legislature

Even if the parties were to concede there was an issue with companies not acquiring distressed systems (which there is no evidence of in the record), and even if the parties were to concede that Section 393.320, RSMo, does not fully address the issue, this "problem" should be addressed by the legislature, rather than the Commission.

Other states have addressed the issue of small distressed systems through legislative solutions. Dr. Marke testified that California has several mechanisms, including a "rate support

[132] Tr. 503: 9-15.
[133] Tr. 713:7-12.
[134] See, e.g., WO-2014-0013.
[135] See WO-2014-0013, MAWC's Response to Staff's Recommendation, ¶ 5.
[136] See WO-2014-0013, MAWC's Response to Staff's Recommendation, ¶ 6.

fund," to deal with distressed small systems.[137] This "rate support fund" was a legislative enacted program.[138] Indeed, in 2014, California enacted the "Safe Drinking Water Small Community Emergency Grant Fund."[139] Moneys from the fund "may be expended on grants for projects that serve disadvantaged and severely disadvantaged communities or address emergencies experienced by small community water systems."[140]

Likewise, in 2008, the Washington legislature created the "Water system acquisition and rehabilitation program."[141] Through this program, the Department of Public Health and Safety "shall provide financial assistance...in the form of grants that partially cover project costs."[142] In addition, Washington has a "drinking water assistance account" which "allow[s] the state...to fund a state revolving loan fund program."[143] "Moneys in the account may only be used to assist local governments and water systems to provide safe and reliable drinking water."[144] Other states have similar programs.[145]

These legislative options allow for a more fair solution to the issue. First, relative to who pays, the Staff and the Company are asking the Commission to provide an "incentive" to the Company to help the distressed systems. This "incentive" would be offered on the backs of the Company's other ratepayers. If the Company decides to "bail out" the failing systems, then only those customers of Missouri American would be shouldering the burden. In addition, as it currently stands, Missouri American expects its water consumers (many of whom do not even

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[137] Tr. 67: 3-9.
[138] Tr. 677:10-11.
[139] Cal. Health & Safety Code §116760.46.
[140] *Id.*
[141] See RCW 70.119A.190.
[142] *Id.*
[143] RCW 70.119A.170.
[144] *Id.*
[145] *See* MCA 75-6-212; LA R.S. 40:2825; NE St. 71-5316.

receive sewer service from Missouri American) to shoulder the burden of the troubled sewer systems. If the Commission approves such an "incentive," it is disadvantaging Missouri American customers when compared with other water consumers and specifically disadvantaging Missouri American **water** consumers. The legislature could craft a solution in which all citizens (who presumably are taking water and sewer service from somewhere in Missouri) bear the cost of "bailing out" failing systems.

Second, legislative options allow for a more fair solution as to who might receive the incentives. Mr. Busch testified that Staff currently reaches out to "four or five" companies about acquisition when the Staff has identified a troubled water or wastewater system.[146] The "incentive" the Company and Staff claim as a justification for consolidation only creates an "incentive" for Missouri American.[147] The Commission is limited in this case to providing an "incentive" to Missouri American to purchase the distressed systems. The Commission cannot, through this rate case, provide an incentive for all potential purchasers (private or municipal[148]) to acquire a distressed system. However, the legislature could create a solution which would provide incentives to all interested purchasers to acquire small troubled systems. This not only seems like a more fair approach, but also a more comprehensive, statewide approach.

The reasons offered by the Company and Staff in support of STP are hypothetical and unsupported by the record. If you examine the reasons closely, it is difficult to determine how CTP would protect the consumer or would be in interest of all of Missouri American's customers or the public interest of the state as whole. To the contrary, there is significant evidence to

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[146] Tr. 442:1-13.
[147] Tr. 637:11-14.
[148] Eighty-four percent of all water systems are municipal owned and more than ninety percent of all wastewater systems are municipal owned. Tr. 221:21-222:3.

support the justifications provided for maintaining DSP. The Commission determined DSP was the appropriate rate structure for Missouri American in 2000 and the evidence in this case is similar. We urge the commission to reject the Company's, Staff's and Riverside's CTP proposals, and adopt the proposal as set forth in the Consumer Stipulation for the reasons set forth in Point III.

III. The Commission Should Adopt the Consumer Stipulation

A. Introduction

Most of Missouri American's recent rate cases have, at least in part, been resolved by stipulations of the parties.[149] This case is no different. Here, the parties settled the issue of Revenue Requirement.[150] Additionally, many of the consumer parties settled the rate design, district consolidation and sewer revenue issues ("Consumer Stipulation").[151] Signatories to the Consumer Stipulation include the OPC, the MIEC, the City of Brunswick, the City of St. Joseph, the City of Joplin and the City of Warrensburg.[152] Only the Staff has filed a written objection to that Stipulation, although the undersigned believe that Missouri American and Riverside also oppose the Stipulation. Missouri American and the Staff are not representatives of consumers. And the only consumer party to voice opposition to the Consumer Stipulation is Riverside, representing well less than one and a half percent of Missouri American's customers.[153] The

[149] Marke Direct, Ex. 9, Appendix A.

[150] *See* Non-Unanimous Revenue Requirement Stipulation and Agreement filed on March 16, 2016 (no parties objected).

[151] *See* Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Revenue filed on March 22, 2016.

[152] The City of Warrensburg joined in the Non-Unanimous Stipulation on March 24, 2016.

[153] The Platte County District, which includes Riverside, has 6,216 customers. *See* Appendix A to Stipulation filed on March 24, 2016 (and dividing the reported "meter billings"billings' by 12). Missouri-American has 460,000 water customers. *See* Staff Revenue Requirement Report, Ex. 1, p. 3.

Consumer Stipulation, however, actually recommends a five percent **reduction in rates** for residential customers in the Platte County District, which includes Riverside.

The Consumer Stipulation fixes reasonable customer charges and provides, consistent with Staff's position at the conclusion of the Hearing, that all other revenue requirement impacts will be applied on an equal percentage basis to all other rate elements for all classes in each district.

The Consumer Stipulation addresses the district consolidation issue. That Stipulation proposes to maintain the current eight districts with some limited consolidation and amendment: Anna Meadows and Hickory Hills into the St. Louis Metro District; the City of Brunswick from the present District Eight[154] into the St. Joseph District; and Redfield into the Jefferson City District. The consolidation of Anna Meadows, Hickory Hills, and Redfield into other districts is entirely consistent with the requirements of Section 393.320, RSMo since those are newly acquired small districts.[155] The movement of the City of Brunswick from District Eight to the St. Joseph District, and the consolidation of other districts into the St. Louis Metro District were concessions made by the City of St. Joseph and the other signatories. Those concessions, as well as Joplin's and St. Louis Metro's concession to absorb, in the form of higher water rates, the $565,000 sewer system revenue requirement shortfall, apply only should the Commission adopt the Consumer Stipulation in full.[156]

The Consumer Stipulation also addresses the $565,000 sewer system revenue requirement shortfall, with the St. Louis Metro District (90%) and the City of Joplin (10%)

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[154] *See* Order Approving Non-Unanimous Stipulation and Agreement in WR-2011-0037 dated March 16, 2012, pp. 3-4.

[155] *See* Staff Revenue Requirement Report, Staff Ex. 1, p. 3.

[156] *See* Consumer Stipulation, p. 3.

accepting that shortfall in the form of higher water rates. The Stipulation also caps the Arnold sewer rate at $33 per month since Missouri American represented to Arnold that it would do so.

Last, in order to provide full transparency and to "better enable the parties to address any rate design and/or district consolidation issues in the next rate case" the Consumer Stipulation seeks to have the Commission require Missouri American to annually submit a five year capital expenditure plan.

B. The Customer Charges in the Consumer Stipulation and the Equal Percentage Basis Application of Increased Revenue Requirement Are Reasonable

The undersigned incorporate by reference the briefing by OPC on this issue.

C. The $565,000 Sewer System Revenue Requirement Issue

Staff and other parties appreciate that Missouri American's sewer rates are already very high and the desire by Staff, and likely this Commission, to avoid increasing sewer rates even more. However, there is a $565,000 increase in the sewer revenue requirement. That figure assumes that the cost of Missouri American's commitment to limit Arnold's sewer rates is borne by Missouri American's shareholders and not by other ratepayers. Therefore, the parties to the Consumer Stipulation have attempted to resolve this issue for the benefit of the Commission and for the parties to this case. Although it is against a number of the principles and arguments advanced by Joplin and by the MIEC, they and the other consumer parties have agreed to have the Joplin and St. Louis Metro Districts absorb, in the form of higher water rates, the $565,000 sewer system revenue requirement shortfall under the revenue requirement stipulation. They do so only in consideration of the adoption of the remainder of the Consumer Stipulation.

D. The Proposed Resolution of the Consolidation Issue Is Reasonable and Lawful

As indicated above, the Consumer Stipulation proposes to maintain the current eight districts with some limited consolidation and amendment. That limited consolidation is for Anna Meadows and Hickory Hills to be consolidated into the St. Louis Metro District and for Redfield to be consolidated into the Jefferson City District. Those consolidations are reasonable and lawful because Section 393.320.6, RSMo, provides for such consolidation:

> 6. Upon the date of the acquisition of a small water utility by a large water public utility, whether or not the procedures for establishing ratemaking rate base provided by this section have been utilized, the **small water utility shall, for ratemaking purposes, become part of an existing service area, as defined by the public service commission, of the acquiring large water public utility that is either contiguous to the small water utility, the closest geographically to the small water utility, or best suited due to operational or other factors**. This consolidation shall be approved by the public service commission in its order approving the acquisition. (emphasis added)

Each of these recently acquired districts qualifies as a "small water utility" because they served fewer than 8,000 customers. Section 393.320.1(2), RSMo.

While Staff prefers its three district consolidation proposal, Staff witness Busch testified that the Consumer Stipulation proposal "is a step in the right direction" and "a fair approach for moving off of where we are today."[157] When pressed on whether Single Tariff Pricing was appropriate, he opined that it was not appropriate because of "cost causation factors," meaning that he has some of the same concerns about consolidation that MIEC and OPC witnesses had

[157] Tr. 445:14-23.

(even citing the St. Joseph plant's cost overruns).[158] As Commissioner Rupp noted, socializing costs by consolidation is "picking winners and losers."[159] Mr. Busch agreed:

> But definitely, based upon current rates and based upon what was calculated as a revenue requirement that was based upon Exhibit 52, some people are going to have an increase and some are going to have a decrease. When … you [have] that consolidation, that is -- that is what happens.[160]

The Consumer Stipulation's approach to consolidation is preferable to Staff's proposal because it involves less "picking [of] winners and losers" and rests upon a foundation based on cost causation principles.

Busch argued for more consolidation than proposed in the Consumer Stipulation to "facilitate acquisition of distressed systems"[161] and because consolidation spreads out the costs.[162] But as the Chairman correctly noted, Missouri -American acquired many systems since the last rate case even though it still had eight districts, and Staff's proposal appeared to be a solution in search of a problem.[163] The Chairman also noted that Staff's hope that Missouri American will acquire more distressed systems may not be enough "to move us."[164] The Chairman's analysis is spot on. Missouri American is already acquiring distressed systems and has made no commitment to acquire more if districts are consolidated. Additionally, the other stated concern addressed by more consolidation, "spreading out the costs," is, as Commissioner Rupp observed, simply code for "picking winners and losers." This Commission should not abandon cost-based principles in favor of a policy that picks winners and losers. This is

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[158] Tr. 475:18-476:5.

[159] Tr. 477:22-25.

[160] Tr. 480:18-23.

[161] Tr. 473:1-475:1.

[162] Tr. 469:18-24.

[163] Tr. 473:1-475:1.

[164] *Id.*

particularly true here, where there has been a lack of transparency such that the "losers" under the consolidation are not put on notice of the longer term impacts on them from consolidation.[165]

Surprisingly, the only **consumer party** to express opposition to the Consumer Stipulation was the City of Riverside, and it is part of the district (Platte County) that the Stipulation proposes a five percent residential **rate decrease**. Its opposition is grounded on its desire to be consolidated so that other ratepayers can pay for expensive plant construction soon to take place. Riverside's opposition rings hollow, for it has historically been a strong opponent of an extreme form of consolidation, namely single-tariff pricing. In Case No. WR-2000-281 it argued that such consolidation was "both unlawful and unreasonable."[166] Its witnesses took similar positions in subsequent cases.

E. Requiring Submission of a Five Year Capital Expenditure Plan is Reasonable

The Consumer Stipulation proposes that the Commission require Missouri American to annually submit a 5-year capital expenditure plan. This is a reasonable requirement. It is particularly reasonable now because it will inform regulators, the OPC and, importantly, other consumer parties, of expected cost increases so that they can properly weigh in on future consolidation issues likely to arise, just as they have done in almost every rate case. Consumers should not be blind-sided by the impacts of ratemaking. As Brian Collins notes in his direct testimony:

> If rates were to be consolidated, there would be no reason to maintain separate books and records for each operating district. This could inhibit management from effectively managing each of its districts because district-specific costs will not be maintained or managed. Due to the loss of transparent operating and

[165] Collins Direct, MIEC Ex. 5, p. 6.

[166] Initial Post-Hearing Brief of AG Processing and City of Riverside, July 24, 2000.

financial data for each operating district, it would be very difficult to evaluate the efficiency and effectiveness of each operating district.[[167]]

F. Conclusion

In conclusion, the Commission should adopt the Consumer Stipulation for all of the reasons set forth above.

IV. Any Sewer Shortfall as a Result of the Company's Promise to Arnold Should be Borne by the Company's Shareholders and not Ratepayers

The undersigned incorporate by reference the briefing by Staff on this issue.

WHEREFORE, the signatories to this Brief urge this Commission to adopt the Consumer Stipulation for all of the reasons set forth above and order that any sewer shortfall related to Arnold be borne by the Company's shareholders.

[167] Collins Direct, MIEC Ex. 5, p. 6.

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(JOINING IN POINTS III & IV ONLY)

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing were sent by email this 8th day of April, 2016, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Stephanie Bell