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

REPLY 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, and for their Reply Brief state as follows:

I. Response to Missouri American's Initial Brief Regarding Consolidation

A. Introduction

Missouri American claims that consolidation promotes "widely-available" "essential services" at "reasonable prices" with "a simple and understandable tariff."[1] There is no evidence that without consolidation essential services will be denied. Indeed, Missouri American is already required by law to provide safe and adequate service to all ratepayers in all districts. Under every proposal for consolidation there will be multiple tariffs, eight in the case of the Consumer Stipulation and three each in the proposals of Missouri American, Staff and Riverside. There is no evidence that Missouri American cannot administer eight separate tariffs or that only three or fewer can be "simple and understandable." The thrust of its argument really is its "reasonable price" claim. In focusing on that claim, Missouri American emphasizes the relative prices among districts with little concern for the differing costs of each district in serving

[1] Missouri American Water Company's Initial Brief (hereinafter "Missouri American Br."), 9.

ratepayers. In utility ratemaking the cost to serve is the primary determinant of reasonable prices.[2] Consumers' Initial Brief sets forth at least five reasons why district specific cost-based pricing is reasonable pricing.[3]

B. The Evidence Does Not Support Consolidation

Missouri American, and the other proponents of major consolidation, argue that consolidation promotes "long-term rate stability" and prevents rate shock.[4] The theory is that the more costs are socialized the less fluctuation there will be in prices of utilities. Yet each of them proposes to consolidate numerous smaller districts into the St. Louis Metro District, a district that by itself has more customers than all the other districts combined. By proposing to consolidate any additional ratepayers into the St. Louis Metro District, and thereby restrict the number of ratepayers available to consolidate into smaller districts to dampen rate shock in those other districts, Missouri American undercuts its own claim.

Moreover, as explained in Consumers' Initial Brief, it is patently unfair to socialize prices now after the cities of Joplin and St. Joseph have already significantly funded their own plant improvements.[5] The same can be said for the St. Louis Metro District, which has been paying for its own plant improvements under the ISRS and is prohibited from socializing the ISRS charges to districts and ratepayers not served by the plant so surcharged. *See* Section 393.1006.5(1) ("The commission shall, however, only allow such surcharges to apply to classes

[2] *See State ex rel. City of Cape Girardeau v. Missouri Public Service Commission*, 567 S.W.2d 450, 454 (Mo. App. 1978); Initial Post-Hearing Br. of MIEC, et al. (hereinafter "Consumers' Initial Br."), 7-9.

[3] Consumers' Initial Br. 20-25.

[4] Missouri American Br. 9.

[5] Consumers' Initial Br. 15-16.

of customers receiving a benefit from the subject water utility plant projects or shall prorate the surcharge according to the benefit received by each class of customers").

Missouri American argues that consolidation "is supported by the many similarities in the manner in which the various districts are operated."[6] Those similarities are that Missouri American pumps treated water through transmission lines to distribution areas where the water is then pumped through service lines to customers, that there is a common source of funding for district operations, and that there is centralized billing, accounting and other functions.[7] It argues that the "cost of operations are related to functions in which the operating characteristics are the same" so consolidated rates are warranted.[8] This argument rings hollow. While the functions may be the same from district to district, the costs of those functions vary widely and the performance of the function in one district does not benefit ratepayers in the other districts because the districts are not interconnected.

Missouri American next argues that customers from district to district value its services the same, so therefore there should be consolidated pricing.[9] This argument defies common sense. Rather, a good argument can be made that customers actually value the services at the price that they pay for them. Customers in rural districts where more water line length may be required at greater cost to serve, agree to pay the higher utility prices by electing to live there. Customers in urban areas arguably consider the lower cost to acquire utilities in locating there as well.

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[6] Missouri American Br. 9.
[7] *Id.*
[8] *Id.*
[9] Missouri American Br. 10.

Missouri American next argues that consolidated pricing results in lower administrative and regulatory costs.[10] While this may be true, numerous witnesses, including Staff witness Busch, recognize that costs may actually increase as a result of consolidation due to incorrect pricing signals and because of the incentive for overinvestment by the utility.[11]

Missouri American next argues that consolidated pricing incents large utilities to acquire other utility systems.[12] Consumers' Initial Brief completely discredits that argument.[13] 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.[14] Missouri American has acquired five water and five wastewater systems.[15] Staff's evidence shows that Missouri American has actually acquired seven water and seven wastewater systems since the last rate case.[16] Moreover, there is no evidence in the record to suggest that if this Commission orders rate consolidation that Missouri American will become more aggressive in its acquisition strategy. Staff witness Busch testified that regardless of the outcome of this case, he had no reason to believe that Missouri American would cease acquiring troubled districts.[17]

Last, Missouri American argues a national trend toward consolidation.[18] Consumers' Initial Brief completely discredits this argument as well.[19] There is no substantial and competent

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[10] *Id*.

[11] Consumers' Initial Br. 24-25.

[12] Missouri American Br. 11.

[13] Consumers' Initial Br. 17-20.

[14] Missouri regulated water companies have declined over the last ten years. In 2005, the Commission regulated 68 water companies. Today, that number has decreased to 51. *See* Commission Annual Reports.

[15] Tr. 138:1-10; Kartmann Direct, MAWC Ex. 11, 29:13-16.

[16] Staff Report, Revenue Requirement Cost of Service, Staff Ex. 1, 3:19-32.

[17] Tr. 433:11-21.

[18] Missouri American Br. 11-12.

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.

C. Consolidation Runs Afoul of the Law and Sound Public Policy

The lack of interconnection of the various water districts supports district specific pricing, not consolidated pricing. Missouri American argues that the lack of interconnection "is a compelling reason for consolidation.[20] It claims that consolidation results in economies of scale, but its factual support for the argument focuses on costs. The act of acquiring smaller systems may create economies of scale, meaning that the **cost per unit of the product** may be lower, but that has nothing to do with the **pricing of the product**, which is the issue here. The testimony of Collins and Marke show that consolidated pricing may actually increase costs by sending the wrong price signals to customers and encouraging overinvestment.[21]

Missouri American argues that the costs to serve ratepayers in the same district vary from customer to customer, depending on how close they are to the treatment plant.[22] Whether that discrimination is unjust or unreasonable is not the issue in this case. No party has proposed customer-specific cost calculations. This argument is a red herring.

Missouri American argues that "in economic terms" customers from low cost districts do not "subsidize" customers in high cost districts by consolidation.[23] The hyper-technical

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[19] Consumers' Initial Br. 25-26.
[20] Missouri American Br. 13.
[21] Consumers' Initial Br. 24-25.
[22] Missouri American Br. 14.
[23] Missouri American Br. 15.

definition of subsidy is not the issue here. The consolidation proposals of Staff, Riverside and Missouri American create "subsidies" in the ordinary meaning of that word. The question is whether customers in low cost districts will pay more than the cost to serve them so that customers in high cost districts can pay less than the cost to serve them. Clearly, in this case the answer is "yes." That is undue or unjust discrimination and an undue or unjust preference. Either way, it is not just and reasonable and not legal. In *State ex rel. City of Joplin v. Public Service Commission,*[24] the Court of Appeals addressed this issue.

> Under the tariffs approved by the Commission, the Joplin district and its ratepayers were to be charged under a "modified" DSP method that resulted in Joplin district ratepayers paying rates at existing levels under the STP method. Among other matters, the Commission's decision produced an acknowledged excess of revenue over actual costs of providing water service to the Joplin district. The surplus of some $880,000 per year from the Joplin district was purportedly applied to benefit ratepayers in other districts who were only charged for the actual costs of service and would otherwise have faced significant rate increases, characterized as shock rates, under the DSP method.

The Court of Appeals found that the "subsidiz[ed]" pricing was illegal:

> 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 Missouri American districts that were only paying for the actual cost of service arguably exceeded its authority.[**[25]**]**
>
> Missouri American argues that consolidated pricing creates no incentive to over-invest.[26]

With all due respect to Missouri American witnesses McDermott and Dunn, OPC witness

[24] 186 S.W.3d 290 (Mo. App. 2005).

[25] 186 S.W.3d at 296 (emphasis added).

[26] Missouri American Br. 15-16.

Marke,[27] MIEC witness Collins,[28] and even consolidation proponent Staff witness Busch, all agree that consolidation runs the risk of over-investment, and thus higher costs to ratepayers. As indicated in Consumers' Initial Brief, Mr. Busch agreed "when you start to consolidate rates, that there is some opportunity for the Missouri American to invest more than is necessary"[29] and that "the more you consolidate, the greater the risk of over-investment."[30]

Missouri American argues that consolidated pricing creates no incentive to over-pay for troubled water and sewer systems.[31] Missouri American's argument is not so much that it has no incentive to overpay, a position seemingly inconsistent with its argument that consolidation creates an incentive to buy, but that this Commission should count on Staff to determine any premium paid so that this Commission can disallow it. Why create the incentive, and thus create more burden on Staff to police Missouri American, especially when one argument advanced for consolidation is that it will reduce the level of Staff's workload?

D. The Consolidation Proposals Are Illegal and Unreasonable

In its briefing of this issue, Missouri American cites no appellate court cases where the rates proposed for consolidation were for services of districts that were not inter-connected, as is the case here.[32] It cites *State ex rel. Laundry, Inc. v. Public Service Commission,*[33] but that case is inapposite. It held that the utility could not discriminate among customers with the same characteristics in the same service area. It certainly did not hold that customers within different unconnected districts should be charged or may lawfully be charged the same rates regardless of

[27] Marke Direct, OPC Ex. 9, 22:1-15.
[28] Collins Direct, MIEC Ex. 5, 6:1-14.
[29] Tr. 420:9-11.
[30] Tr. 512:4-9.
[31] Missouri American Br. 16-17.
[32] Missouri American Br. 17-20.
[33] 34 S.W.2d 37, 44-45(Mo. banc. 1931).

the cost to serve them. Missouri American also cites *State ex rel. City of West Plains, Missouri. v. Public Service Commission,*[34] but it too is inapposite. There, the Court addressed charges of the interconnected telephone system where by the nature of that business all of its plant served all of its customers. Last, Missouri American cites a decision of this Commission, *In the Matter of the Tariff Filing of Algonquin Water Resources of Missouri, LLC,* Case No. WR-2006-0425. There, the Commission did order some amount of consolidation based upon its conclusion "that in giving an overall rate increase to Algonquin, it would be unfair for some customers to receive rate decreases while other customers receive fairly substantial increases."[35] In fact, as explained below, that consideration supports Consumers' modified DSP since it prevents larger increases and decreases in rates for the most Missouri American customers.[36]

Significantly, Missouri American fails to discuss, much less cite, *State ex rel. City of Joplin v. Public Service Commission.*[37] As explained above, that decision appears exactly on point. There, this Commission approved above cost rates for Joplin to subsidize customers in other districts to prevent "rate shock." But the Court of Appeals found that the "subsidiz[ed]" pricing was illegal:

> 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.**[38]

[34] 310 S.W.2d 925, 933 (Mo. banc. 1958).
[35] *Id.* at 35.
[36] *See* MAWC Ex. 50.
[37] 186 S.W.3d 290 (Mo. App. 2005).
[38] 186 S.W.3d at 296 (emphasis added).

This decision is exactly on point, and this Commission should follow it.

In addition to the above, Consumers direct this Commission to an excellent discussion of the unlawful and unreasonable nature of consolidation as found in the brief of the City of Riverside in Case No. WR-2000-281, pages 37-49. A true copy of that brief is attached hereto as Appendix A.

Last, Missouri American argues that Section 393.320, RSMo, evidences a legislative preference or intent for consolidating smaller water systems when acquired by a large water utility.[39] No party has challenged the proper application of that section. Section 393.320.6 provides:

> 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.[40]

This section actually undercuts Missouri American's argument for consolidation. First, this section limits the requirement to systems serving 8,000 or fewer customers and, second, applies only to new acquisitions of water systems. Many of the systems proposed for consolidation serve more than 8,000 customers and all that are at issue here are not newly acquired systems in any event. Had the General Assembly intended uniform consolidation or STP, 393.320.6 is indeed an odd way to express that sentiment.

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[39] Missouri American Br. 20.

[40] (Emphasis added).

E. Impacts on Ratepayers from the Consolidation Proposals

Missouri American cites its bill impact spreadsheets[41] claiming that STP, or Riverside's variant of STP, "have the least amount of adverse impact (i.e., number of increased rates) on residential customers of the five proposals."[42] But this metric ("number of increased rates") is meaningless in conveying the actual impact to customers**.** Its analysis in that regard is misleading at best since this statistic does not convey the number of customers actually experiencing those increased rates. For instance, residential customers in the St. Louis Metro District comprise 81% of Missouri American's residential customer base.[43] While they see rate increases under every proposal, the magnitude of those increases varies under each proposal. Under STP, the residential rates of customers in the St. Louis Metro District will be 17.2% higher than as set in the last rate case.[44] That compares to an increase of 18.5% to 19.3% for them under Riverside's modified STP proposal.[45] And that compares to an increase of 15.9% to 16.8% for them under Staff's CTP proposal.[46] Under the Non-Unanimous Stipulation of almost all consumer parties (the "Consumer Stipulation"), the residential rates of customers in the St. Louis Metro District would still increase between 8.2% and 12.9% while the rates of some other districts' customers, including those of the only consumer party to oppose that stipulation, Riverside, actually decrease.[47] So, while technically Missouri American is correct that under the STP proposals fewer residential ratepayers would see increased rates, that is only because the

[41] MAWC Exs. 48-53.

[42] Missouri American Br. 22 – 24.

[43] Herbert Rebuttal, Missouri American Ex. 9, Schedule PRH-6 (dividing 355,437 by the total of the residential customer column).

[44] MAWC Ex. 53R.

[45] MAWC Ex. 51R1.

[46] MAWC Ex. 49R1.

[47] MAWC Ex. 50R2.

vast majority of residential customers that Missouri American serves will see rate increases under every proposal and would see even higher rate increases than justified by the cost to serve them under the variants of STP.

Missouri American acknowledges this significant impact on customers of the St. Louis Metro District, but argues that much of that increase in rates is already borne by those customers under the ISRS surcharges.[48] This argument is disingenuous for at least two reasons. First, that St. Louis Metro customers have already been paying rate increases, while customers of other districts have not, is hardly a good thing for the St. Louis Metro customers and hardly a basis for foisting even larger increases on them now. Second, and significantly, the ISRS surcharges as a matter of law cannot be charged to customers who are not served by the plant, the cost of which is surcharged under the ISRS. Section 393.1006 provides:

> 5. (1) An ISRS shall be calculated based upon the amount of ISRS costs that are eligible for recovery during the period in which the surcharge will be in effect and upon the applicable customer class billing determinants utilized in designing the water corporation's customer rates in its most recent general rate proceeding. **The commission shall, however, only allow such surcharges to apply to classes of customers receiving a benefit from the subject water utility plant projects or shall prorate the surcharge according to the benefit received by each class of customers**; provided that the ISRS shall be applied in a manner consistent with the customer class cost-of-service study recognized by the commission in the water corporation's most recent general rate proceeding, if applicable, and with the rate design methodology utilized to develop the water corporation's rates resulting from its most recent general rate proceeding.[49]

Therefore, the customers of other districts that would be consolidated with St. Louis Metro District cannot share in the ISRS burden. Yet under consolidation, customers of the St. Louis Metro District will pay higher rates to pay for plant improvements to the other districts proposed

[48] Missouri American Br. 22.

[49] (Emphasis added).

for consolidation with them. This is so even though those plant improvements in the other districts do not serve the St. Louis Metro District at all. Foisting the cost of subsidies in such an unfair manner to 81% of residential customers is hardly just and reasonable. Moreover, because of this unfairness, significant intra-district rate challenges will be created. For instance, the customers who are served by the new plant in the St. Louis Metro District will be pitted against customers consolidated into that District, but not served by that plant. Those who are served by the new plant, and consequently paying the ISRS, will argue for more frequent rate cases, to move the cost of those investments from the ISRS (paid only by customers of the St. Louis Metro District) to base rates (paid by all customers of the newly consolidated St. Louis Metro District). Those who are not served by the new plant will want fewer rate cases.

Likewise, Warrensburg's residential customers see increases in rates under every proposal, but all variants of STP and consolidation, other than the minor consolidation under the Consumer Stipulation, bring significantly higher increases to them. Missouri American acknowledges this fact, but downplays it by essentially arguing that "Warrensburg customers can afford to pay more" because they have lower rates than do customers in some of subsidized districts.[50] That argument highlights the problem encountered when one departs from cost-based rates, namely that the proponents of subsidized rates can always come up with some social argument for the subsidy. As this case clearly shows, those arguments will change over time. "Exhibit A" in that regard is Riverside's position in this case, which is a complete reversal of positions it has taken in prior cases, most notably its position in Case No. WR-2000-281. In that

[50] Missouri American Br. 22.

case, it strongly opposed consolidation, calling it "unlawful and unreasonable."[51] What changed? For one, back then it did not want to share in the cost of expensive plants in other districts (St. Joseph):

> Spreading one district's discrete costs to the other districts without question will reduce the rate impact on the customer in the **benefitted** district. There is no doubt at all that municipal authorities in St. Joseph would like for other ratepayers in the state to pay two-thirds of their new plant. But both the common law and Section 393.130 stand as barriers to the discrimination between cost-causers and cost-payers.[52]

But now St. Joseph has already paid a large part of the cost of its new plant and Riverside is facing its own challenges in the form of expensive plant improvements that will shortly be made to serve it but that it would like customers in other districts, not served by that plant, to pay for.

Further highlighting the problems caused when rates are **not** cost-based is the shockingly candid positions of both Missouri American and Staff that consolidation should be undertaken now, before the really significant impacts of consolidation will be realized down the road. For instance, Missouri American states:

> Moreover, this case presents a unique opportunity for the Commission to implement consolidated pricing without a great deal of disruption to the customers of all of the districts. ... **Pushing the decision regarding consolidated pricing off to a future rate case where significant increases may be required in one or more districts will only make consolidated pricing more difficult to achieve.**[53]

The highlighted sentence is code for the lack of understanding by ratepayers now, or lack of transparency, regarding significant future impacts of consolidation to the "anchors," namely the subsidizing ratepayers. Both the Staff and Missouri American are encouraging this Commission

[51] Initial Post-Hearing Br. of AG Processing Inc. a Cooperative, Friskies Petcare, a Division of Nestle USA and Wire Rope Corporation of America, Inc. and the City of Riverside, Missouri, (July 24, 2010), 37-49.

[52] *Id*. at 44 (emphasis original).

[53] *Id*. at 12 (emphasis added).

to seize upon that lack of transparency now while the anchors are oblivious to the large rate increases likely resulting in the next rate case from consolidation occurring now. That is hardly good public policy. Indeed, the Chairman stated his concerns about having a transparent process.[54] Given the laudable goal of transparency, the better time to address the consolidations proposed by Missouri American, Staff and Riverside is in the next rate case. Consolidated pricing will indeed be more difficult to achieve in the next rate case, but at least the public, and particularly the anchors, will be more informed and better able to weigh in on this important issue. This is particularly true if the Commission adopts the requirement in the Consumer Stipulation that Missouri American annually submit a five year capital expenditure plan.

F. Consolidation of Sewer Districts and the Proposed Revenue Contribution from Water To Sewer

Consumers incorporate by reference the briefing of the OPC on this issue.

G. Rate Design

Consumers incorporate by reference the briefing of the OPC on this issue with this supplement to that briefing. On pages 33-34 of Missouri American's Initial Brief it argues that the Consumers' Non-Unanimous Stipulation on Rate Design is unclear as to whether declining block structure for non-residential classes is retained. That Stipulation provides on page 1, under Rate Design, certain monthly meter customer charges and that:

> All other customer charges (i.e. meter charges) will receive an increase proportionate to the overall revenue increase of 1.15%;
>
> All other remaining increases/decreases will be applied on an equal percentage basis to all other rate elements for all classes in each district.

[54] Tr. 51:8 - 54:15.

Consumers believe that this language is sufficiently clear that the Stipulation still supports declining block structure with an equal percentage increase applied to all rates in the blocks.

II. Response to Staff's Initial Brief Regarding Consolidation

Staff and the signatories to this Brief do appear to agree on several points. We agree with Staff that "[r]ates that are fair match costs to cost causers[.]"[55] We also agree with Staff that "[a]n important goal in rate design is keeping subsidies as limited as possible."[56]

But we disagree when Staff suggests that two fundamental principles of public utility regulation are at odds – that "spreading…costs" avoids "significant per customer rate impacts" but "equity favors requiring that those who cause additional costs, should pay them." Signatories to this Brief agree that the principles of cost causation and affordability are important, and believe the Consumer Stipulation achieves both. Staff's Consolidation plan is contrary to both of these principles. Not only is Staff's plan insufficient to avoid significant per customer rate impacts, but it also unfairly assigns costs from those who cause them to those that do not.

First, Staff's plan does not avoid significant per customer rate impacts. As for its current impact, it would cause nearly a 17% increase on more than 80% of Missouri American's residential customers.[57] It would cause a **more significant** impact on those customers than the Consumer Stipulation.[58] Other districts, such as Tri-States, with nearly 3,000 customer accounts, would see a 70.9% increase in rates (more than twice the increase of the revenue responsibility

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[55] Staff's Initial Br. 8. This is also consistent with Staff's position in 2011 when it stated "Having the cost causer pay for its service is **the most appropriate way** to develop rates for water and sewer companies." Brief and Scenarios of the Staff of the Missouri Public Service Commission, In the Matter of the Review of Economic, Legal and Policy Considerations of District-Specific Pricing and Single-Tariff Pricing, SW-2011-0103, (September 1, 2010), 19 (emphasis added).
[56] *Id.*
[57] *See* Consumers' Initial Br. 16-17.
[58] *Id.*

assigned to the district by Staff).[59] Nor will Staff's plan avoid significant per customer rate impacts in the future. Staff's two smaller districts have less than 35,000 customer accounts.[60] In 2000, a new water plant in St. Joseph (a district with approximately 28,000 accounts) caused rates to increase more than 100%.[61] Any significant infrastructure upgrades would still cause rate shock in Staff's Districts 2 and 3.

Second, Staff's plan violates the principles of cost causation and results in significant subsidization. Staff argues that its plan would "match costs to cost causers." Staff's plan does just the opposite.[62] Under Staff's plan, despite Staff determining that the revenue responsibility attributed to St. Joseph was a **negative** 1.23%,[63] Staff's plan would **increase** St. Joseph's rates by an average of approximately 9.5%.[64] Similarly, despite Staff determining the revenue responsibility attributed to Platte County was a positive 1.78%, Staff's plan would **decrease** Platte County's rates by an average of 27.0%. Rather than matching costs to cost causers, the primary determinant of whether a locality's rates go up or down depends on where the lines for

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[59] *Id.*
[60] *See* Staff's Initial Br. 17-18; Marke Direct, OPC Ex. 9, 6-10.
[61] *See* WR-2000-281, Report and Order (August 31, 2000); see also WR-2011-0337, Gorman Rebuttal – Rate Design, MIEC Ex. 4, (January 19, 2012), page 5, lines 15-23.
[62] *See* Appendix B. If Staff's Plan preserved cost-of-service ratemaking the revenue requirement responsibility would match Staff's proposed rates. Although a perfect match might not be achieved, one might expect the two would move in the same direction (negative or positive) or move in similar proportions. That is not the case with Staff's plan. Six localities to which Staff attributes an increase in revenue responsibility, receive decreased rates of significantly varying degrees (Spring Valley, Platte County, Mexico, Jefferson City, Joplin, Brunswick). One locality to which Staff attributes a decrease in revenue responsibility, receives increased rates (St. Joseph). Three localities with increases in revenue requirement responsibilities receiving larger rate increases (Warrensburg, Tri-States, St. Louis Metro). One locality with an increase in revenue requirement responsibility receives a smaller rate increase (Maple/River/Stone). With regard to the two other localities that showed a decrease in revenue requirement responsibilities, one would receive a decrease in rates (Rankin Acres) and the other, an increase, in rates (Ozark Mountain/LTA).
[63] MAWC Stipulation and Agreement, MAWC Ex. 52.
[64] Staff CTP versus present rates, MAWC Ex. 49R1.

the districts are drawn. A process which, in other spheres, could be called gerrymandering and which invites **politics** into a process that was once (and currently is) driven by cost-causation **data,** a process which will not produce just and reasonable rates.

Staff focuses on three public policy issues "implicated" in this rate case: "the need for Missouri residents to have access to safe and adequate drinking water, the desire to minimize…rate shock to Missouri residents, and the unfortunate reality that there are many struggling water and sewer companies in Missouri." Staff offers these issues as justifications upon which the Commission could move toward consolidation.[65] Yet, none of these "issues" are supported by the record. There is no evidence in the record that Missourians do not have access to safe and adequate drinking water.[66] The evidence in the record shows that Staff's Consolidation plan does not and will not minimize rate shock.[67] Finally, Staff has not identified the number or names of any struggling water and sewer companies in Missouri that would be "saved."

Staff also argues that consolidation is warranted because it is difficult for Staff to allocate costs to the small, newly-acquired companies.[68] In the On the Record Proceeding in SW-2011-0103, Commissioner Jarrett inquired "As far as staff time, staff duties, that type of thing, if we have single-tariff pricing, would that change the way you do business in your department in any

[65] Staff's Initial Br. 16.
[66] As was pointed out in our Initial Brief, the only evidence regarding potentially unreliable water service is by that of Missouri American itself. *See* Rose Direct, Riverside Ex. 1; Local Public Hearing, February 1, 2016 (Riverside), Vol. 15.
[67] *See* pp. 17-18, herein.
[68] Staff's Initial Br. 19.

way…?"[69] Mr. Busch responded that there would be a benefit for the auditing department and for performing class cost of service studies before big rate cases, but stated, "The day-to-day activities in the water and sewer department, it's not going to impact how we do business at all."[70] Now Staff argues that a movement to three water districts would be easier on Staff than "allocating cost assignments to nearly 30 separate districts." However, the consolidation to eight districts (without any additional divisions in the eighth district) as proposed in the Consumer Stipulation would also reduce the number of separate districts to which Staff would have to allocate costs. The Consumer Stipulation would reduce the burden on Staff while largely maintaining adherence to cost-causation principles.

Staff also suggests that its Consolidation plan promotes the public interest by (1) "providing access to safe and adequate drinking water;" (2) "smooth[ing] the impact on customers rates;" and (3) "encourag[ing]…utilities…to acquire struggling water and sewer systems." Again, none of these three propositions are supported by substantial and competent evidence. There is no evidence that Missouri residents do not have access to safe and adequate drinking water.[71] Staff's plan does not "smooth" impact on customer rates.[72] Finally, the evidence shows that the Company's acquisition strategy is not based on whether there is a movement toward consolidation.[73] In addition, Staff has previously suggested that a large company's purchase of smaller districts may actually inject additional discrimination into the

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[69] Transcript, On-The-Record Proceeding, Volume 1, In the Matter of the Review of Economic, Legal and Policy Considerations of District-Specific Pricing and Single-Tariff Pricing, SW-2011-0103 (November 9, 2010), (hereinafter "Transcript, SW-2011-0103"), 96.
[70] Transcript, SW-2011-0103, pp. 96-97.
[71] The only evidence of poor water quality and service was of that provided by Missouri American itself offered by Riverside. *See* Rose Direct, Riverside Ex. 1; Local Public Hearing, February 1, 2016 (Riverside), Volume 15.
[72] *See* pp. 17-18 herein.
[73] *See* Consumers' Initial Br. 18.

system.[74] Staff also argues that consolidation would create "more certainty" for how newly acquired systems will fit into a utility's profile; however, that certainty is already provided by Section 393.320.6, RSMo.[75]

With respect to the Company's proposal, Staff argues that it "is not proportional." Staff argues a proposal that results in 95% of all Missouri American's customers assigned to a single district would leave two remaining districts with customer bases that are so small (with 5% of the customers and 0.5% of the customers, respectively) that the "proposal frustrates one of the primary reasons for consolidation – the ability to spread costs over a larger customer population."[76] Staff essentially argues that this proposal is too similar to single tariff pricing, which is a "move Staff does not support" as it is a "firm departure from the transparency of cost-of-service ratemaking."[77] Staff does not explain how its consolidation proposal is any different. There is no justification from Staff for why its proposal, also with two extremely small districts (8% and 7.8% of the customers), justifies a movement away from cost-causation and to a system of "picking winners and losers."

As a possible additional justification for consolidation, Staff argues that "the profile" of Missouri American has "changed significantly" since the last rate case with its recent

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[74] In the On the Record Proceeding in SW-2011-0103, Mr. Busch also identified how incentivizing large companies to purchase small districts might lead to additional discrimination: "Let's say you have a Missouri American...who owns this one system way out in the middle of nowhere, and they have the ability to subsidize or single tariff pricing. But you may have another situation where you just have some single provider…there's nobody to subsidize them. And so you're looking at two very similarly situated customer groups, on because just by luck, a Missouri American…purchased them, those costs get spread out. But…this town right next door, sorry nobody chose to buy you, so you're going to have to pay a lot more[.] Transcript, SW-2011-0301, pp. 53-54.

[75] *See* Consumers' Initial Br. 28-29.

[76] Staff's Initial Br. 21.

[77] Staff's Initial Br. 23.

acquisitions. Yet these acquisitions, excluding Arnold (6,390 accounts) and Tri-States (2,986 accounts), total less than 1,700 accounts.[78] Even with Tri-States and Arnold, the acquisitions represent only an addition of approximately 2.4% of customer accounts, as Missouri American currently has more than 465,000 total customer accounts.[79]

Of note, Staff's position in this case is a significant departure from its position in WR-2000-281 and in SW-2011-0103. In Staff's own words "There exists one key disadvantage of STP **that trumps all arguments to the contrary**: the notion that STP strategy offends the traditional notions of cost of service ratemaking."[80] Indeed, just five years ago, when Aqua Missouri had 3,000 water and sewer customers in nine (9) water rate districts,[81] Staff did **not** support "further expansion of the Company's single-tariff rates."[82]

In that case, Staff indicated it would not support a scenario where one district would see an increase in the average residential bill of 94.67%.[83] Staff claimed that STP would result in an outcome that is "inequitable for several reasons, including the production of **severe** rate shock[.]"[84] In this case, Staff has sponsored a plan that would subject the residents using 5,000 gallons a month on a 5/8 meter in Tri-States to at least[85] a 57.9% increase and the residents of Emerald Point to a 148.4% increase.[86]

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[78] WA-2012-0066; SA-2012-0067; WO-2014-0113; SO-2014-0116; WO-2013-0517; WA-2015-0019; SA-2015-0150; SO-2013-0260; WA-2016-0019; WA-2016-0108.
[79] *See* Staff Report, Revenue Requirement Cost of Service, Staff Ex. 1, 2-4.
[80] Brief and Scenarios of the Staff, SW-2011-0103 (September 1, 2010), 18 (emphasis added).
[81] *Id.* at 3.
[82] *Id.* at 18.
[83] *Id.* at 21.
[84] *Id.* at 23.
[85] Recall that Exhibit 49, 49R, and 49R1 do not include the shift of $565,000 of sewer revenue responsibility Staff proposes to shift to water ratepayers. Tr. 573:19-20.
[86] Staff CTP versus Present Rates, MAWC Ex. 49R1, 1.

In SW-2011-0103, Staff argued "Because many of the systems are not similar in customer population, geographic size, physical location, physical layout, or system maintenance requirements, many 'cost causers' would receive a substantial subsidy from the larger, well-established systems."[87] Indeed the "systems" Staff referenced in SW-2011-0103 are some of the same systems at issue here, as Missouri American acquired Aqua Missouri's systems.[88] In this case, Staff has recognized that these differences still exist.[89] In fact, Staff does not support a uniform, system-wide customer charge because "costs of meter installation and meter reading vary between the geographic districts."[90]

In SW-2011-0103, with respect to the STP scenario, Staff argued it "would result in customers…paying rates that are far beyond their current cost of service which may be found to be inequitable."[91] Here, Staff's consolidation plan also results in customers paying rates significantly above their cost of service. Customers in Warrensburg would see at least an 18.27% average increase,[92] even though Staff calculated the increase in revenue responsibility assigned to Warrensburg at 1.37%.[93] Customers in Tri-States would see at least a 70.90% average increase,[94] despite Staff calculating the increase in revenue responsibility assigned to Tri-States at 33.82%.[95] As we argued in our Initial Brief, Staff's consolidation plan inequitably and discriminatorily results in subsidizing high-cost systems with rates above costs of service for

[87] Brief and Scenarios of the Staff of the Missouri Public Service Commission, In the Matter of the Review of Economic, Legal and Policy Considerations of District-Specific Pricing and Single-Tariff Pricing, SW-2011-0103 (September 1, 2010), 23.
[88] *See* WO-2011-0168 and SO-2011-0169.
[89] Tr. 416:18; Tr. 417:1; Tr. 369:7-10.
[90] Staff's Initial Br., 13.
[91] Brief and Scenarios of the Staff, SW-2011-0103 (September 1, 2010), 23.
[92] Staff CTP Versus Present Rates, MAWC Ex. 49R1, 4.
[93] MAWC Stipulation and Agreement, MAWC Ex. 52R.
[94] Staff CTP Versus Present Rates, MAWC Ex. 49R1, 4.
[95] MAWC Stipulation and Agreement, MAWC Ex. 52R.

those in low-cost districts.[96] Still, Staff surprisingly argues its plan "preserves cost-of-service ratemaking."[97] The evidence in this case shows that this claim is patently false.[98]

Staff dedicates much of its Brief to arguing consolidation is a "policy" issue.[99] Indeed, Staff's Brief on District Consolidation contains not a single citation to case law. But consolidation is also a **legal** issue. While Staff points out that Staff concluded in its Brief in SW-2011-0103 that "there exists no one controlling legal standard that can be used to evaluate what constitutes 'undue or reasonable prejudice or disadvantage,'"[100] this Commission's decision should still be guided by existing case law. In SW-2011-0103, Staff pointed out that in *State ex rel. City of Joplin v. Mo. Pub. Serv. Comm'n, of State of Mo.,*[101] the Court of Appeals stated that "**if** the Commission could not justify the rate design for Joplin, it [the Court of Appeals] **could** declare the rates unlawful."[102] With respect to S*tate of Missouri ex rel. City of West Plains, et al. v. Public Service Commission, et al.,*[103] the Staff wrote: "the Court concurred with the Commission's assessment that unjust discrimination can exist when consumers are forced to pay for a service from which they receive no benefit."[104] The Staff also highlighted a United States Supreme Court decision[105] wherein the court stated: "But that principle of equality does forbid any difference in charge which is not based upon difference in service[.]"[106] In the On the Record Proceeding in SW-2011-0103, Mr. Dearmont, on behalf of Staff and with respect to his

[96] Consumers' Initial Br. 20-22
[97] Initial Brief of Staff, 23.
[98] *See* Appendix B and n. 62, herein.
[99] Staff's Initial Br. 15.
[100] Staff's Initial Br. 15, n. 62.
[101] 186 S.W.3d 290, 296 (Mo. App. W.D. 2005) (emphasis added).
[102] Brief and Scenarios of the Staff, SW-2011-0103, (September 1, 2010), 10 (emphasis added).
[103] 310 S.W.2d 925 (Mo. banc 1958).
[104] Brief and Scenarios of the Staff, SW-2011-0103 (September 1, 2010), 13.
[105] *Western Union Telegraph Company v. Call Publishing Company*, 181 U.S. 92, 100 (1901).
[106]Brief and Scenarios of the Staff, SW-2011-0103 (September 1, 2010), 15.

review of the litigation following the 2000 case, stated "if the Commission wants to make these decisions in the future…those decisions must be justified; [and] they must contain adequate findings of fact to justify difference in prices based upon difference in service costs."[107]

The laundry list of theoretical policy reasons for a movement toward consolidation offered by Staff and Company, without more, is insufficient to justify a movement toward consolidation. The evidence shows there are insufficient justifications for requiring low-cost customers to subsidize high-cost customers. It shows Staff's plan forces consumers to pay for upgrades from which they would receive no benefit, and shows Staff's plan amounts to differences in charges that have no relation to any difference in service. Adoption of Staff's Consolidation plan would be unjust and unreasonable and would unreasonably prejudice and disadvantage certain localities.

III. Response to Intervenor City of Riverside's Initial Brief Regarding Consolidation

The City of Riverside ("Riverside") argues that the Commission "should escalate the consolidation of Water Districts"[108] because "no Statute has been enacted or Rule promulgated that establishes a process that determines when rates in a particular District are too high as to be unjust and unreasonable."[109] The Commission's jurisdiction is determined by the General Assembly's statutory delegation of regulatory power, specifically for the present case Section 393.130, RSMo. The Commission can only act within the powers and limits given to it by the Legislature. Contrary to Riverside's contention, the Legislature's failure to enact a statute is not the equivalent of granting the Commission additional authority.

[107] Transcript, SW-2011-0301, 100.
[108] Intervenor City of Riverside's Initial Br. 1.
[109] *Id.*

The Legislature has not provided the Commission with an **easy-to-apply** chart to determine when rates are unjust and unreasonable, but has instead trusted the Commission's intelligence and judgment to apply the principles of Section 393.130, RSMo, to the facts and circumstances of each case in order to set just and reasonable rates that balance the interests of all affected parties. In the present case, the appropriate balance is achieved by the proposal jointly filed by the Missouri 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"), and later joined by the City of Warrensburg ("Warrensburg").

Riverside also argues that "[i]t is unjust and unreasonable for a resident to pay a different amount for his water just because the water district in which he has been placed has fewer overall ratepayers, or fewer commercial or industrial ratepayers, or both."[110] This argument conveniently ignores the cost to provide water service to customers, or cost causation. This Commission has consistently adhered to cost causation as "[a]bove 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."[111]

> We see this again in the 2000 Missouri American Rate case when the Commission stated:
>
> 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.[112]

While the people of Riverside come from a position worthy of empathy, Riverside's arguments ignore the necessity of the Commission to set rates that "must and should reflect the cost to serve[.]".[113]

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[110] *Id.* at 2.
[111] *In re Gas Service Company*, 21 Mo. P.S.C. 262 (1976).
[112] WR-2000-281, Report and Order on Second Remand (December 7, 2007), 15.

Riverside directs its arguments at District Specific Pricing ("DSP"), but none of the proposals before the Commission are built through pure DSP, as each before the Commission in this case contains some degree of consolidation. While we believe that DSP is an ideal rate design system that should not be completely abandoned, the Consumer Stipulation calls for the continuation of the current consolidation and provides for additional minor consolidation.[114]

Riverside's Initial Brief sets up DSP as a straw man for attack, but DSP, as addressed by Riverside, is not an option before the Commission as all the proposals provide some degree of consolidation. The "degree" is the essence of the Commission's deliberation and ultimate decision. As outlined in our Initial Post-Hearing Brief,[115] the Consumer Stipulation incorporates the lawful amount of consolidation, while still giving the proper weight to cost causation in order to set just and reasonable rates for all ratepayers.

Riverside claims that its proposal for consolidation "better protects the residential user from unjust and unreasonable rate increases."[116] This is only true if viewed from the narrow and isolated perspective of a Riverside customer. Under its proposal, some customers would be given preferences and others would be subjected to undue discrimination in direct violation of the Commission's authority prescribed by Section 393.130, RSMo. Riverside's argument provides no statutory authority for the Commission to accept its proposed consolidation because none exists. The fact that no statute has been enacted or rule promulgated does not give the

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[113] *In re Gas Service Company*, 21 Mo. P.S.C. 262 (1976).

[114] Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Revenue filed on March 22, 2016, which moves the City of Brunswick from District 8 to the St. Joseph District; Anna Meadows and Hickory Hills into the St. Louis Metro District; Redfield into the Jefferson City District; and the remaining small districts of the present District 8 would become a new consolidated Branson District.

[115] *Id.*

[116] Intervenor City of Riverside's Initial Br. 3.

Commission authority to fill the void. The Commission may only act within the delegation of powers given to it by the General Assembly. We are not unappreciative of their concerns, but their efforts may be misdirected as the appropriate venue is the Legislature. The question before the Commission is not whether to adopt District Specific Pricing or complete consolidation. The question is how much consolidation should be continued or increased within the jurisdiction and directives of Section 393.130, RSMo. This Commission must adopt **just and lawful** rates which "reflect the cost to serve,"[117] and address the concerns of all parties affected. The district consolidation of the Consumer Stipulation filed by OPC, MIEC, Brunswick, Joplin, St. Joseph and Warrensburg is the only proposal presented to the Commission that accomplishes these goals.

IV. The Burden of Proof

Noticeably absent from the Initial Briefs of Missouri American and Staff is any mention of the burden of proof. Missouri American has the burden of proof to show the rates they seek are just and reasonable. Section 393.150.2 provides, in pertinent part: "At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable **shall be upon … the water corporation** or sewer corporation[.]"[118] As part and parcel of its case for a rate increase, the Company also seeks district consolidation and bears the burden of proving the rates under a consolidated plan would be just and reasonable. In SW-2011-0103, Staff correctly explained:

[117] *In re Gas Service Company*, 21 Mo. P.S.C. 262 (1976).
[118] Section 393.150.2, RSMo. See also *Office of Pub. Counsel v. Mo.Pub. Serv. Comm'n*, 409 S.W.3d 371, 378 (Mo. banc 2013) (emphasis added).

> Any Commission decision, including those involving single tariff versus district-specific pricing, must be supported by competent and substantial evidence adduced in the case in which the decisions is rendered[[119]]

"[S]ubstantial evidence is evidence which, if true, would have a probative force upon the issues."[120] The question of what constitutes sufficient, competent and substantial evidence to support district consolidation has not been addressed by Missouri Courts. However, in the On the Record Proceeding in SW-2011-0103,[121] the Commission wrestled with the question, posed by Commissioner Davis, "if someone is applying to consolidate districts, what sort of evidence should they put on?"[122]

Commissioner Davis opined "[O]bviously we're going to need some justification to support the decision…. Mr. Kartmann listed some public policy reasons, and I'm just not sure that's enough."[123] Staff Attorney Dearmont opined that one would need "direct testimony specifically quantifying perhaps offsetting administrative costs and things of those natures."[124] Mr. Dearmont also opined that evidence regarding shared common costs might be helpful.[125]

Commissioner Davis suggested to Aqua Missouri that a study which would "project out capital expenditures" would also provide "reassurance….that there wasn't going to be a big disparity or a big subsidy from one group…of ratepayers to…others."[126] Staff witness Busch agreed with Commissioner Davis, stating:

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[119] Brief and Scenarios of the Staff, SW-2011-0103 (September 1, 2010), p. 15.
[120] *State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 713 S.W.2d 593, 595 (Mo. App. W.D. 1986).
[121] Mr. Kartmann, who was involved in this case (at least initially), was present and participated in the proceeding on behalf of Missouri American. See Transcript, SW-2011-0103.
[122] Transcript, SW-2011-0103, p. 119.
[123] *Id*.
[124] *Id.* at 120.
[125] *Id.*
[126] *Id.* at 124.

> [I]f we were going to go down the path…to put some systems together for a single-tariff rate, we would want to know...I think Mr. Kartmann keeps bringing it up…over time, these systems will even out.
>
> [I]f we're going to go this way…I'd like to know…it's not going to be 30 years from now before System X finally gets their investment, so they're going to subsidize these ….other systems…for the next 30 years without any plans from the company willing to…needing to put the investment in there.
>
> So I think we would definitely---that would be one of the things that we would be looking at is…what is your five-or ten-year capital expenditures plan[.][[127]]

Commissioner Davis added "I would think there would…have to be some sort of capital expenditure plan, I would say for ten years. I mean five years is just not enough."[128]

OPC's Christina Baker suggested that a company that was proposing consolidation would need to "spend time before the rate case…[where] they get their testimony together, they get their whys, they get their balance, they get their…possible projections – 10, 15 years – get it all together in a cohesive plan[.]"[129] Ms. Baker explained that a company could not simply argue "we want it because other people have it; we think it would be great."[130]

Yet, despite Mr. Kartmann's presence for this discussion, this is the argument that Missouri American makes here, namely that there is a "national trend" toward consolidation and that it would provide a number of advantages or incentives to Missouri-American. OPC suggested that this would not be enough in 2011, and we suggest to the Commission now that these arguments are not enough for the company to meet its burden of proof.

[127] *Id.* at 125.
[128] *Id.* at 125-126.
[129] *Id*. at 127.
[130] *Id.*

Missouri American has submitted a list of public policy reasons, unsupported by any evidence,[131] as justifications for consolidation. Missouri American did not submit any actual evidence of administrative cost savings (nor did Staff).[132] Worse yet, there is no capital expenditure plan in the record. Other than a suggestion that a new plant will be necessary in the next five years, the record is devoid of any information that would allow this Commission to determine if subsidies could "even out" in the long run.

Finally, when asked if there was anything else that someone would need to file if they were seeking consolidation, Mr. Busch responded with "what the tariffs would look like."[133] While the company **has** filed proposed tariff sheets, what Mr. Busch seems to be suggesting is a review of the bill impacts – what the tariffs might actually mean for customers.

In this case, Missouri American submitted possible bill impacts on the first day of the hearing,[134] but noted errors in such exhibits on the second day of the hearing.[135] Following the hearing, Missouri American submitted two additional sets of revisions,[136] and following the filing of Initial Briefs has submitted two more sets of revisions.[137] Still, as has been pointed out by other parties,[138] and in our Initial Brief,[139] there are significant questions about the accuracy of the exhibits and about whether they reflect the true impact to the various districts.

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[131] *See* Consumers' Initial Br. 11-20.
[132] Tr. 422:9-13; Tr. 639:12-16.
[133] Transcript, SW-2011-0103, 129-130.
[134] Tr. 344:19-20.
[135] Tr. 870:3-8.
[136] On April 5, 2016: 48R, 49R, 50R, 51R, 53R. On April 6, 2016: 50R1. On April 7, 2016: 50R2.
[137] On April 13, 2016: 49R1, 51R1. On April 19, 2016: 48R1, 53R1.
[138] *See*, e.g., Initial Br. of Public Water District Nos. 1 and 2 of Andrew County, 10-13.
[139] *See* Consumers' Initial Br. 17.

In 2010, the Commission and several parties to this case suggested to Missouri American the type of evidence that would be needed to provide the Commission with sufficient evidence to even consider a move toward consolidation. Instead of pursing these suggestions in a meaningful way, the Company argues theoretical and hypothetical justifications that are not supported by the record. The Commission is bound by Section 393.150.2, RSMo, to determine if the Company met its burden of **proving** that the rates it has proposed are just and reasonable. In this case, even if the Commission thinks consolidation is good public policy, it simply does not have the evidence before it on which to justify a move toward consolidation. As such, the Commission should adopt the Consumer Stipulation.

WHEREFORE, the signatories to this Brief urge this Commission to adopt the Consumer Stipulation for all of the reasons set forth above.

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(Joining in Points I.E, I.F., I.G., II, III and IV Only)

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing were sent by email this 22nd 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

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water Company Tariff Sheets Designed to Implement General Rate Increases for Water and Sewer Service provided to Customers in the Missouri Service Area of the Company	)	WR-2000-281 et al.

INITIAL POST-HEARING BRIEF
OF
AG PROCESSING INC. A COOPERATIVE, FRISKIES PETCARE, A DIVISION OF NESTLE USA and WIRE ROPE CORPORATION OF AMERICA, INC.

AND

THE CITY OF RIVERSIDE, MISSOURI

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July 24, 2000

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COME NOW Intervenors Ag Processing Inc. A Cooperative, Wire Rope Corporation of American, Inc., Friskies Petcare Division of Nestle' USA ("St. Joseph Industrials") and the City of Riverside, Missouri, ("Riverside") (collectively referred to as "Indicated Intervenors") and submit their Joint Initial Post-Hearing Brief in this matter.

I. INTRODUCTION.

These parties are jointly interested in several important issues in this proceeding. This Joint Brief will address (1) the prudence of Missouri-American in selecting a new site and constructing a new water treatment plant for St. Joseph, (2) whether district specific pricing should be adopted, and (3)

certain issues of rate design particularly pertinent to larger water customers. We expect that other parties will also brief several of these issues, specifically the issue concerning district specific pricing, and thus that portion of this brief will be more general in nature and will address what we believe to be the significant legal issues surrounding that controversy.

II. PRUDENCE IN SELECTION OF ALTERNATIVES [Issue 4: St. Joseph Treatment Plant and Related Facilities Valuation].[1/]

A. Introductory Comments.

As a point of beginning, it is useful to identify several points related to this issue that are not disputed.

- The old plant in St. Joseph provided safe and adequate water service for over 100 years.
- There was a 500-year flood on the Missouri River in August of 1993.
- At the time of the flood, the old plant was providing safe and adequate service to the public in St. Joseph.
- At the peak of the flood, water did not overtop the existing levee at the old plant; rather it seeped through the railroad roadbed at the rear of the old plant and entered the plant from the rear where there was no flood protection.
- As a result, the old plant was off-line for four (4) days, obviously presenting a significant inconvenience to ratepayers served by that plant.
- Prior to the 1993 flood, MAWC had obtained corporate and Missouri DNR approvals for and was implementing a plan to refurbish the existing St. Joseph water plant. The cost proposed for that

[1/]Reference is to the issues designated in the May 25, 2000 Proposed List of Issues.

project, as submitted to the Missouri DNR, was $26.6 million.

- That plan included reinforcement and enhancement of existing flood protection, and construction or renovation of several treatment and processing facilities at the old plant.

- The refurbishment plan was intended to be effected over a period of several years.

- At the time of the 1993 flood, MAWC was in the process of implementing that refurbishment plan.

- Following the 1993 flood, continued implementation of MAWC's refurbishment plan was displaced by the immediate need to restore service, get the plant fully back on line and to recover from the immediate damage caused by the flood.

- Following the restoration of service, the old plant resumed providing safe and adequate service to the public in St. Joseph.

- Thereafter, and until it was taken off-line in approximately April or May of 2000 and a process of dismantling begun, the old plant provided safe and adequate service to the public in St. Joseph.

From that point on, the views of the parties significantly diverge. Indicated Intervenors believe that, following MAWC's recovery from the flood in last half of 1993 and early 1994, an internal corporate management decision was made that the 1993 flood presented an opportunity for the company to enhance its rate base and its revenue by constructing a completely new treatment facility out of the flood plain of the Missouri River. This decision was accompanied by a decision to construct a new alluvial well field upstream of the existing plant and the construction of redundant raw and finished water lines to connect the new treatment facility to the new well field and pipe fin-

ished water back to connect with the existing distribution system immediately adjacent to the old plant.

We believe that this decision was driven not by need for the new facility, nor certainly by consideration for the impact on the ratepayers, but rather by the function of the regulatory environment which creates an incentive for a public utility to invest in utility plant to counter the effects of depreciation on its rate base previously installed. This segment of this Initial Brief will address the various arguments and the testimony submitted to the Commission on this multi-faceted issue.

We further believe that this decision was further encouraged by this Commission's seeming warmth toward the perverse concept of Single Tariff Pricing ("STP") in which capital costs that are incurred solely to provide service to one geographically separate and unconnected service area are shifted to other customers in other service areas of the company. The controversy regarding Single Tariff Pricing and District Specific Pricing will be addressed in Section III of this Brief.

Moreover, we believe that the company's decision to abandon the old functional treatment plant, along with the value that it represented, was in complete derogation of the impact that decision would have on the ratepayers of the seven districts presently serviced by this company. The decision was in derogation of the effect it would have on ratepayers in St. Joseph if what we believe to be the unlawful process of STP was ended.

St. Joseph Industrials and Riverside contend that the prudent decision by MAWC would have been to continue with the approved and partly implemented plan to refurbish the old water plant, but enhance the flood protection around the plant, including specifically its east (rear) side adjacent to the railroad right of way. Not only would this plan have been effected for less than $40.3 million, it would by its nature necessarily result in a "staging" which would have resulted in spreading the rate impact of the renovations over several years.

B. Prudence -- The Evidence.

1. Dr. Morris' Background.

St. Joseph Industrials offered the testimony of Dr. Charles D. Morris going directly to the imprudence of MAWC's decision to construct, instead, a new $70+ million "water palace," a new alluvial well field and redundant raw and finished water supply lines. The imprudence is obviously MAWC's failure to select the completely adequate but dramatically less costly option to renovate the existing plant, a plan that had, in fact, already received both corporate and DNR approval prior to the flood.

Dr. Morris is a Ph.D. professor of engineering at Missouri's preeminent engineering school, the University of Missouri-Rolla. Dr. Morris currently teaches courses in hydrology, hydraulics and water resources, including the design of water and wastewater treatment plants. Dr. Morris has even been

engaged by this Commission to provide expert testimony. Dr. Morris has designed numerous water treatment plants and associated facilities (including some on the Missouri River), consulted on many projects in numerous states, and is well qualified to render an opinion on MAWC's prudence and judgment in their selection of treatment plant alternatives and expenditures for the new treatment plant and its appurtenances in the St. Joseph service territory.

2. Dr. Morris' Opinion - MAWC's Decision to Build a New Treatment Plant Overrode Engineering and Economic Judgment for MAWC.

Dr. Morris testified that, in his professional opinion:

> the construction of a new water source and treatment facility by MAWC to replace the existing surface water supply and treatment facility was not prudent. Rather than being based on sound economics, that choice in my opinion was incorrectly based on a decision to abandon an existing and operational water treatment plant in reaction to the 1993 flood. Once that decision to abandon had been made, however, I believe that MAWC's subsequent estimates of the costs of renovating the existing surface water supply and treatment facilities were inflated in order to justify this decision.

Morris, Direct Testimony, Exhibit 65, p. 9.

Dr. Morris noted that, as early as 1991, a renovation plan for the old plant had received corporate approval and was moving forward to implementation. However, this plan appeared to have been derailed by the 1993 flood in which Missouri River water, without overtopping or undercutting the existing flood protection for the plant, had infiltrated the plant from the rear

along a railroad right-of-way and roadbed. Dr. Morris further testified that

> In reviewing this situation, it has appeared to me that in reaction to this flood MAWC made a corporate decision to construct a new water plant outside the flood plain and abandon the old facility even though the risk of future flooding at the existing plant could have been fully addressed along with other phased renovations.
>
> . . . .
>
> Had this comparison been made properly, renovation and additional flood protection at the existing facility is clearly the most economical alternative . . . . [A] more realistic cost estimate of $40.3 million represents the **high end** of a range of cost estimates for existing plant flood protection and renovation that could have proved to be even lower.

Morris, Direct, Ex. 65, p. 10-12 (emphasis in original). He therefore recommended that the additional costs in excess of that estimate be disallowed as imprudent.

3. Dr. Morris Allowed MAWC a High-End $40.3 Million.

Dr. Morris was not stingy with what he recommended be allowed MAWC. He first took MAWC's own 1991 estimate ($26.6 million) of the costs MAWC had itself considered necessary to reinvigorate the existing plant. Using the Engineering News Record,[2/] Dr. Morris then factored those costs upward to ac-

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[2/]Even Mr. Young, MAWC's witness on this issue, recognized the accuracy of this source, particularly since it reflects "after the fact" knowledge of inflation rates. Tr. 1216-17.

count for inflation, to a 1996 base of $30.1 million.[3/] Morris, Direct, Ex. 65, p. 15. He then increased this estimate by $2.7 for land acquisition,[4/] an additional $3 million for a new main river intake structure, and the associated pumps and piping (Morris, Direct, Ex. 65, p. 15). He further added to his estimate $2.5 million for grading work on the existing access road and flood proofing for the plant, a residual clarifier and associated pipelines. Finally, Dr. Morris also included a contingency allowance of $2 million bringing his **high end** estimate to $40.3 million for the renovation and floodproofing enhancement project. Morris, Direct, Ex. 65, p. 16.

Dr. Morris characterized his estimate as "high end" because he included several "worst case" cost assumptions and also included the $2 million contingency allowance. "Because of these factors," he testified:

> I believe that this $40.3 million figure is on the high end of a reasonable range of costs that would actually be incurred if this work was to be done. As a result of this evaluation, the cost of the work in floodproofing and renovation/replacement that would have been called for, if properly planned and supervised, could be accomplished for no more than that figure and probably less.

[3/] 1996 was chosen as the target of the inflation adjustments because it appeared that was the time frame at which the purportedly "final" comparisons were made by MAWC.

[4/] Additional land may be needed for the renovation process, for storage of construction materials, and for expansion of units and the possibility of some future alluvial wells.

Morris, Direct, Ex. 65, p. 15.

Morris, Direct, Ex. 65, p. 16.

4. MAWC's Decision-Making Process Was Neither Supportable Nor Documented.

Dr. Morris evaluated MAWC's decision-making process as neither nor supportable nor documented. He testified:

> [i]n my professional opinion, construction of the new groundwater source and treatment facility was neither necessary nor prudent and was most likely based on a decision to abandon the existing water treatment plant site after the 1993 flood **without** detailed studies of the engineering and economic feasibility of making that move to a remote site and using ground water for the source of water. Moreover, once MAWC committed to the remote site, it appears that reasonable engineering and economic reason was abandoned.

Morris, Direct, Ex. 65, p. 16-17 (emphasis in original).

Although data was requested, MAWC provided no detailed engineering or economic justification for the decision to abandon the old functioning plant and construct a new groundwater treatment plant and supply. The materials that were provided in response to Dr. Morris' data requests only made reference to the asserted advantages of some improvement in bacteriological quality, temperature constancy, together with an increase in hardness that would be associated with groundwater. Morris, Direct, Ex. 65, p. 17.

MAWC appeared to place much reliance on the age of the existing facility. However, as Dr. Morris noted, "[t]he fact that a plant is old does not mean that it is worthless." Morris, Direct, Ex. 65, p. 18. In fact,

> Continuing maintenance and refurbishment/replacement are needed for particular parts of the plant as is demonstrated by MAWC's apparent plans to carry out such activities **before the 1993 flood occurred.**

Morris, Direct, Ex. 65, p. 18 (emphasis in original).

Dr. Morris also noted that a significant factor in this case was the need to run several miles of redundant raw and finished water lines, all of which would be unnecessary had the old plant been refurbished. Morris, Direct, Ex. 65, p. 19. He also noted that the $40.3 million cost that he estimated would address all the existing inadequacies of the old plant including enhancing its flood protection. Morris, Direct, Ex. 65, p. 18. Looking just at the cost of the plant refurbishment compared to the cost of the new treatment plant by itself was inappropriate because, as he testified:

> The renovation of just the existing treatment plant is estimated to be $30.1 million and the cost to build just the new treatment plant is estimated to be $28.8 million as stated in the 1996 Report. But this would result in a new plant that was neither connected to a water source as input nor connected to the distribution system for output. Such a plant would be useless. In this case, looking at the **total** cost of the entire treatment facilities **inclusive** of sourcing costs, supply piping and output piping, the total cost of the treatment facilities is far less if the existing plant were renovated. Here, the total costs (water treatment plant - $30.1 million; intake, flood proofing, etc. - $10.2 million) to renovate the existing facilities are estimated to be $40.3 million compared to the cost of the new facilities with all necessary appurtenances at roughly $75 million (water treatment plant - $28.8 million; groundwater wells, supply and finished water pipelines, etc. - $44.7 million). Thus, in this circumstance, it clearly would

> have been less expensive for the utility and, ultimately, for its ratepayers to renovate the existing facilities rather than to build new facilities because the groundwater collection system and the pipeline transportation system are not needed.

Morris, Direct, Ex. 65, p. 19-20.

The proposed renovations also would have provided flood protection for the old plant against the 1993 flood level, which had become the "flood of record" such that remaining risk of flooding was, in Dr. Morris' words, "insignificant." Morris, Direct, Ex. 65, p. 18. Addressing the Missouri Department of Natural Resource regulations that discourage locating a <u>new</u> plant in a flood plain, Dr. Morris noted that the regulations were reasonable as applied to an existing plant. He stated:

> The risk of flooding as occurred in 1993 is estimated by the Corps of Engineers in any year to be a probability of less than two tenths of one percent, which is insignificant. Also, by using the existing site a significant cost savings could have been realized. This cost savings is estimated to be approximately $33.2 million. In my opinion, this cost savings and risk meet the criteria: "to the extent practicable and economical".

Morris, Direct, Ex. 65, p. 22. Confirming Dr. Morris' view, it deserves note that the subject regulation had been issued in 1988, was in place in 1993, and had not frustrated DNR approval of MAWC's plan to refurbish the old plant. Tr. 1206, 1292-93.

C. Phase-In Proposal Results From Staged Construction of Prudent Alternative [Issue 8d].

An issue in this case has involved what is termed the "phase-in" of rates. In our view, a phase-in is an impact mitigation mechanism that is properly used to make a movement to cost of service gradual or mitigate the effects of rate shock. Phase-in is not a device properly used to justify overcharging one group (or in this case, district) costs that they do not cause, but rather a means of softening sharp transitions in rates as a part of an overall movement to cost of service.

Dr. Morris did not offer cost of service nor rate impact testimony and did not offer or propose a "phase-in" in the sense we use that term. Had, however, MAWC made the wise choice to renovate the existing plant, that renovation project would have been done in several construction stages or "phases." Thus, an additional benefit of a prudent choice would have been a mitigation of the rate impact that the inclusion of even the substantially reduced level of renovation costs would otherwise cause for ratemaking purposes.

For example, an additional group of filters or sedimentation basins would be constructed, then brought on line. A properly timed rate case would then have sought and obtained a rate increase reflecting the additional capital investment that had been brought on line. While this would result in a short series of rate cases impacting the St. Joseph district, the same effect as a "phase-in" would result. Moreover, since smaller projects would result in tighter and better defined construction

schedules, better timing for rate cases would result which would also minimize any AFUDC accruals, as confirmed by Mr. Young. Tr. 1319.

1. Mr. Harwig Calculated the Revenue Impact of a Staged Plant Renovation Project as Recommended by Dr. Morris .

Dr. Morris deferred to St. Joseph Industrials' other witness, Mr. Ernest Harwig, to submit appropriate rate calculations consistent with Dr. Morris' recommendations regarding the proper amount. In effect, by modelling the construction schedule of the elements of the prudent refurbishment recommendation, the impact of even the reduced level of increases necessary for St. Joseph would be mitigated.

Following on Dr. Morris' proposal of a staged renovation project, Mr. Harwig proposed that the revenue impacts of the new St. Joseph treatment plant be retained within in the St. Joseph district consistent with District Specific Pricing. However, Mr. Harwig then calculated revenue requirements associated with Dr. Morris' recommendations by determining a fixed charge rate to apply to the cost of the recommended plant improvements. Harwig, Revenue Requirement Direct, Ex. 64, p. 3-4. While labeled by some as a "phase-in," this proposal is not truly a phase-in. Rather, it would follow approximately the timing of the multi-stage renovation project that would have been completed had a prudent decision been made in the first instances by MAWC.

Mr. Harwig's calculations of the revenue requirement effect recommended by Dr. Morris' cost estimates was as follows:

Initial Phase	35% increase
Second Phase	13.6% increase
Final Phase	5.0% increase

Harwig, Revenue Requirement Direct, Ex. 64, p. 3. He tabled these calculations in Schedule 2-RR.[5/] Further, Mr. Harwig used a return on equity number of 10%, based on the February 23, 2000 Non-Unanimous Stipulation and Agreement by which the agreeing parties indicated acceptance of that as a rate of return. Harwig, Revenue Requirement Direct, Ex. 64, p. 4.

D. MAWC Response.

As might have been expected, MAWC's response to Dr. Morris' testimony and recommendations boiled down to "you've got it all wrong." MAWC seemed intent on focusing on the **1996** report (which they failed to provide to Dr. Morris despite our requests) as the answer to the problem, when in fact that report is the manifestation **of** the problem. Despite all MAWC's cross-examination of Dr. Morris, nor its testimony through Mr. Young, MAWC **never produced** any detailed cost estimate, any detailed analysis or any other document constituting an engineering study that actually compared the cost of one alternative to the other. Smoke screen, yes; substance, no. In the famous words of John F.

[5/]Mr. Harwig noted that these calculations reflected only the plant improvements per the recommendations of Dr. Morris. If other cost increases or decreases were found appropriate, they should be included in these calculations. Harwig, Revenue Requirement Direct, Ex. 64, p. 4.

Kennedy, "Where there's smoke, there's bound to be a smoke-making machine."

As is often the case with questions that appear on their face to be complex, the solution is simple. That MAWC put up such a fuss about its numerous estimates **demonstrates that there was no estimate that supported the "Feasibility Study" on which MAWC supposedly pinned its decision.** If such an estimate had existed, the Commission may be assured that, had such a cost estimate existed, MAWC would have grandly trotted it out to silence its critics. However, no detailed cost estimate was forthcoming because no such cost estimates exist.

Comparing MAWC's 1991 renovation estimate and its 1993 Gannett Fleming engineering cost estimate to the 1996 paper shuffle reveals what happened:

First, there remains no definitive estimate, no detailed studies of the engineering and economic feasibility of moving from the old site to the new. No such study was done in 1994, nor in 1996. St. Joseph Industrials' data requests sought all such studies -- none were provided.

Second, juxtaposing the 1991 and 1993 renovation estimates with the purported old plant 1996 (Alternative I-A - Old Plant Renovation - Non-Phased) shows that costs lumped and inflated without explanation, costs were passed through without explanation and a continuing expansion of the scope of the project was effected, again without any explanation or justification. Costs were inflated, well beyond the amount necessary to

reflect simple inflationary escalation. The Regulatory Law Judge will recall how vague and evasive Mr. Young was regarding where these "costs" were broken out or otherwise identified to particular components of the proposed renovation work. Indeed, in the only real attempt to trace these costs out from the 1991 report to the 1996 "feasibility study," Mr. Young was **unable** to clearly identify and break out the various components or distinguish what costs had been inflated and which one had not. "Here is where it gets a little tricky," Mr. Young stated. Tr. 1332, l. 15.

Prudence, by the way, is MAWC's burden to prove. It is not St. Joseph Industrials' burden to prove that MAWC's choices were imprudent; rather, it is MAWC's burden to prove that they were. And, the whole point -- ***where that proof?*** Where even is proof that **real** cost estimates reflecting costs of renovation existed or were considered? If they exist, where are they? If they were considered, what has become of them? That is the essence of the proof of prudence in this case, and on this test MAWC falls far short of the mark.

MAWC would point to the 1996 "study," but there is no detail there or anywhere that makes or even attempts a comparison or comparative evaluation of solid costs. Rather than reading as a study, the 1996 "study" reads like a justification and rationalization for an already-made decision. That, of course, is exactly what it is.

Third, additional components were added to the project to change and increase its scope. A simple analogy will make

this point: Suppose that you are in need of an automobile for transportation. You do not wish the most costly car, since you only wish to move from one place to another in reasonable safety and comfort. A Chevrolet will do. However, a car dealer that is intent on selling a Cadillac instead of a Chevrolet could simply continue to add options to the Chevrolet (whether needed or not) until its combined sticker price equalled or exceeded that of the Caddy whose standard equipment included many of those options. Then, the dealer could announce that the Caddy was, indeed, "cheaper" than the Chevrolet. Add to the example that the car dealer is the only one in town, or even in the county for that matter, and you **really** need a car.[6/]

Playing musical chairs with projects and project scopes does not substantiate the comparison, nor suggest detailed investigation of alternatives. MAWC attempted no refutation of Dr. Morris' estimates, nor his methodology, nor his expertise and experience to do so.

E. The Big MAWC Attack.

Predictably, MAWC sought to deflect criticism not by coming forward with detailed cost estimates that it had evaluated, but rather by seeking to confuse the issue of how Dr. Morris arrived at **his** estimate. Given the low level of detail in most

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[6/]Of course, to make the analogy still more fitted to Missouri-American, the dealer would then grandly announce that you could buy the Caddy for the price of the Chevy, and that other customers throughout the community and other communities where he sold cars would pay the difference.

of the materials supplied by MAWC, Dr. Morris based his estimate on what he was advised were the 1991 plant renovation study numbers but, because of MAWC's failure to provide complete and detailed information, were in fact numbers from a 1993 Gannett Fleming study. Those components summed to $26.6 million. Dr. Morris then applied an inflation factor obtained from the Engineering News Record to derive an inflation-adjusted estimate of $30.1 million for the renovation to the old treatment plant. To this number Dr. Morris then added costs which he estimated to perform the additional items such as a renovated river intake structure, certain access road improvements, and additional floodproofing, to bring his total to $40.3 million contained in his direct testimony. Morris, Surrebuttal, Ex. 66, p. 6.

However, based on MAWC Witness Young's testimony, it then appeared that the document which Dr. Morris had employed was from 1993 rather than 1991, thereby **reducing** the inflation component of Dr. Morris' estimate of the costs to perform the required renovation of the existing treatment plant. Morris, Surrebuttal, Ex. 66, p. 6-7.

Dr. Morris explained this reduction in the following terms:

> In using what I had been advised were 1991 cost estimate numbers, I adjusted them upward to account for the effect of inflation. Since I, in fact, used the 1993 numbers, but assumed that they were from the 1991 period, the period, and thus the effect of inflation, would be reduced. In making my original calculations, I used the inflation rate based on data from Engineering News Record and my experience with construction costs for the

> period of 1991 to 1996 of 13.2 percent. If the data was in fact 1993 numbers it was, by definition, already reflective of inflation to that point, so my remaining calculation would only reflect a period from 1993 to 1996. This would have reduced the estimated amount of $30.1 million for renovation of the treatment plant.

Morris, Surrebuttal, Ex. 66, p. 7.

In fact, it reduced Dr. Morris' overall estimate for the work that would have been necessary both to renovate and flood protect the old St. Joseph plant, by $2.1 million, resulting in a total of $38.2 million for the entire project.

F. MAWC's "Estimate Roulette".

There was deep confusion when Company Witness Young sought to explain and tie numbers across his various estimates. The only detailed estimate that he would acknowledge was a definitive engineering estimate was the 1993 cost estimate on which MAWC was proceeding to implement at the time of the flood. Despite all the patter put up by MAWC, several things finally become apparent.

First, MAWC was in the process of implementing and had even let design contracts for a renovation of the old plant in St. Joseph at the time of the flood. Tr. 1321.

Second, the engineering estimate of that renovation project was $26.6 million, in 1993 dollars. Tr. 1314.

Third, that project was sidetracked by the July, 1993 flood that took the plant off line for four days.

Following the flood, the scope of the renovation project then was added to, added to, and added to again with "additional scope items" (Tr. 1236-37) until the total project cost virtually equaled the cost of a new treatment plant, the Cadillac option MAWC was pushing toward.

There are no details in any of the materials provided by the Company that substantiate any of the estimates that it would like to rely upon. Both Dr. Morris and Mr. Biddy commented on the almost complete lack of detail in MAWC's estimating process. Morris, Direct, Ex. 65, pp. 16-17; Tr. 1665.[7] Mr. Biddy stated that he had looked "in vain" for a cost estimate of $63.3 million (which appeared to be MAWC's "most favored" number). Tr. 1696. Both engineers concluded that the most detailed estimate and workup that was provided in response to pervasive discovery was the 1993 Gannett report (TLB-14) which, during cross-examination, Mr. Young admitted totaled to $26.6 million -- the same number that Dr. Morris had identified in his estimate and independently used to derive his original recommendation for cost allowance. Tr. 1304, 1314.[8]

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[7] Mr. Biddy characterized MAWC's work as "the most incompetent I'd seen in 37 years of engineering practice." Tr. 1665, ll. 21-23.

[8] Again, Mr. Biddy, noted that:

> My point is, all estimates by Missouri-American except for the 1993 Gannett Fleming estimate are not engineering cost estimates and are incompetent.

Tr. 1700, ll. 3-6.

On one hand, MAWC holds to a $63.3 million figure as its comparison number, but neither offered, provided or produced anything to document its calculation of that number other than the cash flow charts in the "Feasibility Study." That MAWC compared options using that number is not the point; how that number was derived is. On the other hand, Mr. Young repeatedly sought to maintain that the cash flow documents could not be used to support cost estimates. Tr. 1695. Indeed, MAWC seized on one of Dr. Morris' workpapers reflecting some notes and calculations on one of the cash flow sheets, set up the strawman that the cash flow sheets were the source of Dr. Morris' figures, then loudly sought to demolish its straw construction, apparently without realizing that they were undercutting their own position. Tr. 1853-61.

Obviously, no detailed engineering cost estimate supporting the $63.3 million number exists. If the $63.3 million number is the number that MAWC wants to hang its hat on, then it should have been easy to support it with an engineering cost estimate of the depth and detail provided by Gannett Fleming in 1993. Yet no such document was provided, produced or identified.

To reach this number, Mr. Young testified that MAWC had added additional (unspecified) "scope items" (Tr. 1236), unspecified costs for (among other things) community relations and

multiple internal corporate fees,[9] and a 26.5 percent compounded contingency fund. Tr. 1312.[10]

Many costs which Mr. Young testified were included in the Feasibility Study duplicated other costs he identified as already included. For example, a lump sum of $1.698 million was included under the revealing label of "water company expenses." Tr. 1240. These were characterized as design, bidding, construction supervision and start-up of the facility, which were costs that Mr. Young claimed were part of "soft" costs and included somewhere else. Tr. 1241. When challenged, these apparent duplications were simply never explained beyond Mr. Young seeking to explain "how the American Water System manages a construction project." Tr. 1234.

It should take more than Mr. Young's explanations "how the whole process worked" (Tr. 1241) to support a $70+ million capital expenditure and as much as a 268% rate increase on some MAWC customers. Yet, there is no detail for any estimate other than the engineering cost estimate from Gannett Fleming that is in the record as TLB-14.

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[9] Apparently "how the American Water System manages a design and construction project" (Tr. 1234) is to "manage" to get as many corporate affiliates and subsidiary corporations as possible up to the feeding trough.

[10] During the Nixon administration, when price controls were applied, merchants such as restaurants were supposedly prevented from increasing prices. The result was a proliferation of new menus "unbundling" the vegetables that had been part of the "blue plate special," then pricing them separately. Not surprisingly, the cost of dining rose despite price controls.

Mr. Young wanted to assert that his $63.3 million number from MAWC's "Feasibility Study" was accurate and was the proper number to compare, but **there was no such number anywhere in that Feasibility Study OTHER than on the cash flow sheets** -- the same cash flow sheets that Mr. Young sought to discount as unconnected with any particular items of construction. There simply **is no detailed cost estimate which can be examined, whether it be engineering cost, construction cost, total project cost, or estimate by any other name!**

This record virtually abounds with examples of MAWC's driving up costs abound in this record. As one example of how MAWC sought to drive up its estimates from its 1993 engineering cost numbers, consider Mr. Young's testimony regarding the ozonation contract, which he estimated at $5.3 million. Tr. 1340. Also included was an additional $8 million for residual handling. Neither of these was needed. Morris, Direct, Ex. 65, p. 11. Moreover, while first noting that the DNR had indicated that the larger clear well was an acceptable substitute for the $5.3 million of ozonation equipment, the "Feasibility study" solved that problem by including BOTH the costs of the expanded clear well AND the ozonization equipment. Tr. 1265. If you can choose one or the other, why not take both!

Comparing the 1993 Gannett Fleming engineering cost estimate (Ex. TLB-14) to the 1994 $78 million estimate (Ex. TLB-16) is also instructive as to "how the whole process worked." Tr. 1241. On the 1993 Gannett estimate, renovation of the

pulsators was estimated at $3,627,000. Just over one year later, in December 1994, the item had been escalated to $4 million. The new chemical building, estimated by Gannett in May of 1993 at $4,335,000, ballooned to $6,250,000 by December, 1994. The renovation to the filter building and new clear well, estimated in 1993 by Gannett Fleming at $4,493,000, was split into two items by 1994 that totaled $6.2 million. The transfer and high service pumping renovations had been inflated from $1,569,000 in May, 1993 to an astounding $4,800,000 just 18 months later. Exhibits TLB-14, TLB-16.

MAWC found it difficult to shake completely free of the $26.6 million number from the 1993 engineering cost estimate. Even Mr. Young admitted that Gannett (and Gannett's own transmittal letter revealed) that Gannett had been "conservative" with its estimate. Mr. Young subsequently agreed that "conservative" in this sense meant erring on the high side. Tr. 1311. Gannett then indicated that a large contingency would not be necessary, Ex. TLB-14, to which MAWC responded by adding still another 10% contingency fund.[11/] Reversing the cost inflation process and tracing back the various components of the various estimates to the 1993 engineering cost estimate, however, produced a total of $25.335 million -- very close to the $26.6 million. Tr. 1336.

Dr. Morris had arrived at the same $26.6 million estimate -- independently -- from the 1991 numbers and factored

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[11/]Mr. Young's language, "We didn't want to lose that," when referring to the double-count on the contingency allowance on the Gannett estimate (Tr. 1277, l. 8), may well have been Freudian.

them up for inflation to his $30.1 million figure. He then added roughly $10 million to that total to cover the estimated costs of access road work, additional floodproofing, and renovations at the river intake.

The river intake is an instructive issue. Dr. Morris has designed such intakes, recently he was involved with the redesign of a river intake facility for Boonville, Missouri also involving the Missouri river. Tr. 1862, 1914. He testified on cross-examination that the costs of such structures "can vary tremendously depending on where you're building" the structure. "It's not a function of the volume of water your pumping." Tr. 1862. However, MAWC built its estimate, dated in October, 1994, on another installation in Hershey, then simply ratioed up the cost based on volume of water. With that calculation, MAWC produced an estimate for a new intake structure of $5,907,000 (which included $500,000 for pumps). Ex. TLB-14. But that wasn't enough. On the December, 1994 estimate, the cost of the intake structure and pumping has been "pumped up" yet again to $7,200,000. Ex. TLB-16.

Company Witness Young seemed largely to want to focus on his 1996 "Feasibility Study" which compared the putative costs of the new groundwater facility to the renovation ($63.3 million). Tr. 1200-01. This is, however, an exercise in question-begging, for it is the very 1996 "Feasibility Study" that demonstrates the inflated estimates, yet itself contains no detailed engineering cost estimates supporting the amounts claimed. No

one could find the detailed estimate that supported this $63.3 million figure.

It is to be recalled that Mr. Young identified this very document as the "decision making document" for MAWC. Tr. 1253. However, in the very next exchange, Mr. Young admits that the design of the new plant was initiated in December, 1995, almost a **full year** before the "decision making document" was completed. Clearly, MAWC had already made up its mind to proceed with the project and inflated the estimates to attempt to validate its choice.

The key point in all this, as admitted by Mr. Young, in May, 1993, MAWC was going forward with the renovation project, that project had gained Board approval and a design contract had been let. Tr. 1321. Then, in July, 1993, the flood came. Asked to identify what changed other than the flooding, Mr. Young responded: "[t]he cost of the project changed." Tr. 1322, l. 10. Yes, Mr. Young, it certainly did.

At base, MAWC's attempt to blur the record and argue that no one understands their systems is a shell game and should not confuse the Commission. Utilities such as AWWC with a capitalization of "billions and billions of dollars" (Tr. 2204, l. 15) that is seeking to recover the costs of a $70+ million capital addition should be required to clearly justify their prudence. This is the utility's burden and the utility's burden of proof. The Commission will recall that DNR approval was obtained and a renovation project was going forward at the time

of the flood. Following the immediate recovery from the flood, the only things that **needed** to be changed in that plan were increasing the flood protection at the plant. There is **no question** that MAWC could so increase the scope of the project with either currently unnecessary items or inflated estimates of additional "scope" or both so as to create a new estimate that would justify the decision to build a new plant.

One can almost sense what happened. The flood was, to be sure, an unsettling event. The receding floodwaters, however, revealed a massive construction project. MAWC management saw in it an opportunity. Putting their renovation plan on hold, MAWC saw a chance to move MAWC's facility to a new location and enhance its rate base rather substantially in the process. As Mr. Young testified, if he had an infinite amount of money, "he'd take the whole plant out of the flood plain," which is, of course, exactly what he did. Tr. 1366.

Unfortunately, money, while obviously not a major concern to AWWC with its capitalization of "billions and billions," it is of concern to the thousands of ratepayers who are about to be flooded yet again, but this time with massive rate increases as they are asked to pick up the financial consequences of MAWC's decisions. The original renovation plan was a phased plan that would have mitigated rate shock. Tr. 1216. Removal of the renovation plan eliminated, at least in MAWC's view, the need to phase in the recovery. Tr. 1394.

MAWC also seized on this Commission's decisions in WR-97-237 and WO-98-204 to argue that STP had been finally adopted, thus the ratepayers in St. Joseph were decoyed with promises of 35% increases. Tr. 170, 487, 792, 1928. In particular, in St. Joseph MAWC sought to use a "citizens advisory committee." As one member of that group put it, that group did not discuss anything useful, was nothing more than a public relations ploy for MAWC. He characterized it as a "rubber stamp". St. Joseph Public Hearing, Tr. 58-59. Mr. Barclay, Chairman of Wire Rope Corporation, and long-time St. Joseph resident, commented at the public hearing that the old plant had served well and been improved many times during its life. As a businessman, he saw the cost of the cure as many times worse than the disease. St. Joseph Public Hearing, Tr. 59-60.

The bad actor in this whole sorry mess is MAWC. It should pay the price of its essentially reckless behavior -- not its ratepayers. One business customer, Mr. Bob Knoell of Friskies, testified at the public hearing. His comments are instructive to this issue:

> We feel that Missouri-American Water should not be allowed to pass on the total cost of the new plant for some of the reasons I have here. We feel that St. Joe could have been better served by renovating the old plant at approximately half the cost and gradually passing on the costs.

St. Joseph Public Hearing, Tr. 48-49.

This customer's comments were echoed by Terry McLatchey of AGP who, at the same hearing, testified:

> Misjudgment by management should affect shockholders, not their customers. The board of directors which is elected by stockholders has the responsibility and the means to deal with poor management decisions. Passing poor judgment on to the [captive] customers should not be an option.

St. Joseph Public Hearing, Tr. 54.

The means to do that are in the hands of this Commission. By denying inclusion in rate base for a substantial portion of this imprudent expenditure, the management of this company will be brought to the bar to justify their actions. Actions have consequences and those consequences should not fall of the ratepayers of this utility.

G. Water Quality Issues.

An issue arose in this case regarding the characterization of the source of supply for the new treatment plant. The issue arose in two contexts. First, the context that there was great value in the "intangibles" of a ground water supply that supposedly would overcome the hurdle of the excessive cost of obtaining such a supply. Tr. 1250. Second, there was much argument from MAWC that the new source was more reliable and less prone to failure than surface water.

Both contentions are bogeys. Exhibits 88 and 89 evidence that there is a special classification in the regulations for Ground Water Under the Direct Influence of Surface Water ("GWI"). In fact, for situations of MAWC seems threatened by the GWI classification, because it is essentially treated in the regulations as though it were surface water. Exhibit 88

leaves the question to the state authority to decide, and Exhibit 89 are the state Guidelines for making those determinations. The classification turns not only on the precise measurement of the distance of the alluvial wells from the river (and, indeed the Rainey (Collector) Well has laterals that extend to 200 feet from the river), but also on the nature of the supply and its interrelationship with the adjacent river.

MAWC's own hydrogeological report on the wells indicated that 80-90 percent recharge was expected to be derived by induced filtration from the river. Tr. 1351. Rapid shifts in water characteristics have been shown to occur. Tr. 1815. Temperature correlation between the new supply and the river have been tracked and noted. Tr. 1815-17.

As regards the reliability issue, it is established in this record that the new wells are, themselves, subject to different risks than the old intake, but risks nevertheless. Mr. Biddy testified to risks from floating debris. Dr. Morris noted that, in sustained low river conditions, the recharge source for the wells will be lost. It is clear that no location is without risk, but again our point is that the new wells have their own, and different, set of risks. This, again, is not justification to abandon a functional treatment plant.

It is, in our view, unnecessary for this Commission to decide for all time whether the new source is GWI, surface water, or ground water. The distance of the wells from the river was not established by MAWC. There was even a minor controversy

regarding whether an operating permit had been issued. It turned out that no such permit has yet been issued; only construction permits and temporary permits.[12/] Perhaps unintentional, such factual errors should the credibility of MAWC's case.

The point of the whole issue, from our perspective, is that MAWC's puffing as to the superiority of its new source of supply as compared to the old source of supply is just that, puffing. The new source of supply, like the old, is inextricably linked with the Missouri River. Importantly, as Dr. Morris testified, the claimed "advantages" of the ground water source could have been obtained simply by installing similar alluvial wells adjacent to the old plant (Morris, Direct, Ex. 65, p. 15) -- it is **not an excuse that justifies the construction of the new treatment facility.**

H. Independence of Biddy and Morris.

One of the strongest points against MAWC was completely overlooked by the company. We trust it will not be lost on the Commission. Completely independent of each other, the Missouri Office of the Public Counsel and the Industrial Intervenors engaged experienced engineers to provide technical support in this matter. Industrial Intervenors engaged Dr. Morris, a

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[12/]While maintaining (almost combatively) that "We have a permit to operate the ground water facility," (Tr. 1353), the claim later became: "We have a **permit to construct** -- yeah, to construct the new plant." Tr. 1423, ll. 7-8. When produced, the "permit to operate the plant" had changed once again and become a "permit to build the well field." Tr. 1846; Ex. 102. On its face, Exhibit JSY-22 is not a permit to operate, rather, it is a permit to construct.

professor at Missouri's premier engineering school. Independently, each expert requested data from the company regarding the documentation supporting the company's choice of alternatives. Tr. 1915. Independently, these two engineers analyzed the data that the company selectively chose to provide to them. Tr. 1308-09.[13/]

Independently, and through two completely different paths, the two experienced engineers reached virtually identical conclusions regarding the costs of renovation of the old plant. Dr. Morris concluded that $40.3 million would adequately address the renovation and floodproofing improvements. Morris, Direct, Ex. 65, p. 16. Mr. Biddy concluded that $36.3 million would do the job. Biddy, Direct, Ex. 19, p. 21.[14/] Dr. Morris included a $2 million contingency fund and characterized his estimate as being on the high end of the range; Mr. Biddy did not include an explicit contingency fund in his calculation. Dr. Morris also included some funds for the purchase of additional land near the site, initially for a staging area and for the possible later addition of some alluvial wells to allow blending and temperature control. Morris, Direct, Ex. 65, p. 15. When these reconciling

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[13/]While these intervenors and Dr. Morris did not know it until Mr. Young's Rebuttal testimony was provided, MAWC failed to provide us with a comprehensive response to Dr. Morris' data requests (quoted in Dr. Morris' Surrebuttal testimony). By then, there was insufficient time to seek compulsory orders.

[14/]Mr. Biddy reduced this estimate to $29.2 million through a used and useful percentage pertaining to the overcapacity of the new plant. Dr. Morris was not asked to address issues regarding the size of the new plant.

comparisons between the two engineers' estimates are made, their independent estimates arrive at virtually the same number.

Both engineers concluded that the documentation that the company provided was substandard and fell far below the level of analysis that should have been performed pursuant to good engineering standards. Biddy, Surrebuttal, Ex. 20, p. 13.[15/] Dr. Morris stated that detailed studies of the engineering and economic feasibility of the move to a different site did not exist and that reasonable engineering and economic reason had been abandoned once the apparent decision had been made to commit to the new site. Morris, Direct, Ex. 65, p. 17-18. Mr. Biddy's criticisms were more sharp. He stated that MAWC's decision was not prudent,

> but was based on MAWC's decision to abandon an existing functioning water source and treatment plant <u>without</u> the benefit of detailed studies of the engineering and economic feasibility of expanding and upgrading the existing plant to meet functional requirements at a cost-effective price.

Biddy, Direct, Ex. 19, p. 8 (emphasis in original).

Both engineers concluded that the only estimate worth its "engineering salt" was the 1993 Gannett Fleming engineering cost estimate. Biddy, Surrebuttal, Ex. 20, pp. 8-9; Morris, Surrebuttal, Ex. 66, pp. 2-3. This was the only estimate that provided a detailed analysis and workup of the costs to perform

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[15/] Mr. Biddy characterizes MAWC's work as "sloppy and unprofessional" (Ex. 20, p. 13, ll. 14-15) and as "the most incompetent that I have seen in 37 years of engineering practice." Ex. 20, p. 11, l. 18.

the necessary work. Mr. Biddy had access to this engineering cost estimate at an earlier stage than did Dr. Morris and included the documentation in his own exhibits as TLB-14.

We would encourage the Commission to briefly page through this roughly twenty-page Exhibit TLB-14. Following the summary sheets (which themselves do a far better job of identifying the components of the estimate than anything else MAWC seems to rely on), are multiple pages of unit cost estimations by the engineers, and detailed development of the various components that were incorporated into the estimate. With this level of detail, it is at least possible to review the thought and analytical process that went into the preparation of the estimate. It also reveals professional engineering integrity in that it exposes the costing assumptions of its preparer to scrutiny. The various components, and the method of their derivation, are displayed. This is far from the "here is where it gets a little tricky" (Tr. 1332, l.15) justification employed by MAWC.

Neither Dr. Morris nor Mr. Biddy consulted with each other at any time during this process. Tr. 1915. Indeed, the first time they met or spoke to one another was at the hearing itself. Given this, it is indeed remarkable that they arrived at virtually the same conclusions with respect to MAWC's work and the quality of its estimates. Their separate estimates, arrived at through completely different approaches, lend confirmation and credibility to the general conclusion that for the **phased** expenditure of $38-40 million, MAWC could have not only flood protect-

ed the old St. Joseph plant, but could have renovated that plant and preserved the existing value that asset had for the benefit of the ratepayers. Since that project would have been staged, as noted by Dr. Morris, it would have resulted in an effective "phase-in" of the required revenue support, moderated the sharpness of the increases, and would have avoided many of the problems that this case has presented for the Commission.

I. Staff's Position on Overall Prudence.

Mr. Merciel was Staff's witness on the prudence of MAWC's actions. First of all, Staff's position was something of a conundrum, since Staff took the position that the Commission had already determined the prudence of MAWC's decision to build the new plant in the siteing case. Inexplicably, Staff came to this conclusion in the face of the Commission's express disclaimer that it was doing so. Ex. 95. It will be recalled that the Staff made no investigation of the prudence of the selection in the siteing case, and sought to make none here. That certainly was an easy road.

In any event, Mr. Merciel, seemingly embarrassed by the investigation and analysis that others had performed, waited until his rebuttal testimony to propose a modest disallowance from the new plant on the general basis of overcapacity.

Mr. Merciel's track record on prudence reviews during his career with the Commission was revealed through a series of data requests. Mr. Merciel has been with the Commission virtually his entire career since his graduation from Rolla in May,

1976. But for spending 120 days in outside employment following his graduation (and a two month period of unemployment early in 1977), Mr. Merciel has called the Missouri Public Service Commission home. Ex. 99. During this 23-odd year career with the PSC in its water department, Mr. Merciel has testified in some 48 water cases at the Commission (including two court proceedings) and testified that list was substantially incomplete, that the listing that he had prepared had been prepared from memory, and that a complete list would be somewhat larger. Tr. 1567-68.

During Mr. Merciel's 23-year career spanning nearly 50 Commission water cases (and perhaps many more), **Mr. Merciel has never seen a water company make an imprudent rate base or capital expenditure** and the instances in which he observed even a capital expenditure or rate base addition that he did not like are scarce as hen's teeth. Through his responses to data requests, Mr. Merciel confirmed that he has only recommended disallowance of **any** capital improvement or rate base inclusion proposed by a water company **in two cases** (Ex. 97) and neither of those was on the basis that the expenditure had been imprudent. Ex. 98. Given this record, MAWC seems all the more out of step with Missouri's other water utilities.

Though a latecomer to the view, and a tentative one at best, it is commendable the Mr. Merciel finally was able to find at least **one** Missouri water utility that had overbuilt its construction project so that his record will not be lacking in that regard.

III. SINGLE TARIFF PRICING (STP) IS BOTH UNLAWFUL AND UNREASONABLE. THE COMMISSION SHOULD TERMINATE THE STP EXPERIMENT AND RETURN TO DISTRICT SPECIFIC PRICING (DSP).

Both the St. Joseph District and the Platte County (Parkville) District stand to see greater rate increases in the short run should the Commission reject Single Tariff Pricing (STP) and return to District Specific Pricing (DSP). Inasmuch as Ag Processing, Friskies Petcare and Wire Rope Corporation are located in the St. Joseph District and the City of Riverside is located in the Platte County (Parkville) District, one would expect them to favor the continuation of STP. However, that is not the case. Despite the fact that STP would be beneficial to them in the short run, both the St. Joseph Industrials and Riverside consistently continue to oppose the continuation of STP because it is both unlawful and unreasonable in violation of the common law and Section 393.130. RSMo., which is declarative of the common law rule against discrimination.

A. Single Tariff Pricing Is Unlawful and Discriminatory.

Company's STP proposal is nothing more complicated than taking all the costs of the seven separate company operating districts and combining them, then developing essentially uniform tariffs that recover those costs across the separate districts. This mechanism, of course, disregards costs that are specific to each district, especially the district specific capital costs necessary to supplying water to each separate district. Instead of directly charging each district for its unique costs, STP

simply "averages" those costs and distributes them to all the districts with the result being that company customers in any of the districts only accidentally pay the actual costs that the company incurs to provide them with service. While this may be more convenient and expedient for the Company in preparing rate cases, the Courts of this state have often cited an axiom that aptly fits this situation:

> [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.

See State ex rel. Kansas City v. Public Service Commission, 257 S.W. 462 (Mo. banc 1923); State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W. 41, 49 (Mo. banc 1979); State ex rel. Missouri Cable Telecommunications Ass'n v. Public Service Commission, 929 S.W. 2d 768, 772 (Mo. App. W.D. 1996).

The Commission would do well to keep this guiding principle in mind as it considers the issuance of its order in this case. The legal requirement is that the rate approved by the Commission must be lawful, reasonable and nondiscriminatory.

The Commission's jurisdiction is determined by the General Assembly's statutory delegation of regulatory power to the Commission. Section 393.130, RSMo. 1994, limits the Commission's power in this particular case. Single Tariff Pricing (STP) violates § 393.130, which provides in pertinent part:

> 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. [Emphasis Added]

Subsection 1, is the statutory provision, which requires rates to be just and reasonable for the "**water...service rendered**." The setting of rates for service in a district, which are higher than the reasonable cost to render the water service in such district violates such subsection. Inasmuch as none of the seven districts are interconnected, none of the customers in any one of the districts is rendered water service by any of the other districts. Thus, any attempt to impute or include in the rates of one district, the costs of rendering water service to another district, violates the law and is prohibited by Subsection 1 of Section 393.130.

Subsection 3 contains the anti-discrimination and anti-preference provision of the Public Service Act relating to water companies. This provision is written in the disjunctive so that not only is it unlawful to subject a locality to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever"; it is equally unlawful to grant a locality "any undue or unreasonable preference or advantage . . . in any respect whatsoever." See Alexander v. Chicago, M. & St. P. R. Co., 147 S.W.

217 (Mo. 1912), interpreting what is now Section 387.110, which provides virtually identical language pertaining to common carriers.

In the case of Single Tariff Pricing for non-interconnected districts with substantially different district specific costs of service, both prohibitions in Section 3 are broken. Not only does STP violate the law by granting undue or unreasonable preference or advantage to those localities (districts), whose resulting rates are lower than the cost of rendering such districts with water service, but STP also violates the law by subjecting other localities (districts) to undue or unreasonable prejudice or disadvantage, by requiring them to pay higher rates than justified by the cost of rendering those districts with water service. Under STP, it is only happenstance and chance that the rates in any one locality (district) recover no more or no less than the cost of rendering such district's water service.

Selection of terms such as "undue preference" and "unreasonable discrimination" as limitations on a utility's authority were intentional. They are declarative of the common law rule, founded on public policy requiring one engaged in a public calling to charge a reasonable rate without discrimination. State ex rel. Laundry, Inc. v. Public Service Commission, 34 S.W. 2d 37 (Mo. 1931).[16/] Use of these terms sets clear lim-

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[16/] The Laundry case should be required reading for anyone interested in understanding the anti-discrimination provisions of Section 393.130.2 and 3. There is a very scholarly discussion of the purpose of the law prohibiting undue discrimination and undue (continued...)

its on the grant of authority to the Commission. The terms "discrimination" and "preference," qualified with the additional terms "undue" and "unreasonable" have been construed by our courts to foreclose severance of the close relationship between cost-causers and cost-payers.

In State ex rel. City of Cape Girardeau v. Public Service Commission, 567 S.W.2d 450, 454 (Mo.App., 1978), the court confirmed 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 State ex rel. City of West Plains v. Public Service Commission, 310 S.W.2d 925 (Mo. en banc 1958), the Supreme Court noted that a telephone utility's prior tariffs that passed through 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 utility customers living within those municipalities.

16/ (...continued)
preference found there. In Laundry, the Court determined that there was undue and unlawful discrimination for failure to give the same rate to all who used water under the same or substantially similar circumstances. In that case the company had a manufacturers rate and refused to give it to laundries, who were not manufacturers but used water the same as manufacturers. Quite obviously, the converse, where one locality is charged the same rate as another locality but the costs to serve each locality are substantially different, is also discrimination.

In State ex rel. City of Grain Valley v. Public Service Commission, 778 S.W.2d 287 (Mo. App. W.D. 1989), the Missouri Court of Appeals held that Southwestern Bell was in violation of Section 392.200, RSMo., the anti-discrimination statute applicable to telephone companies, for providing the same service under the same conditions to two localities but charging one locality a different rate than the other locality. This, of course, is the converse to STP, which is the providing of a different service under different conditions to seven localities but charging all seven localities the same rates, thereby subjecting some districts (localities) to undue or unreasonable prejudice or disadvantage while granting undue or unreasonable preference or advantage to the other districts (localities) in violation of Subsection 3 of Section 393.130.

It is undisputed that MAWC's seven districts are operationally separate. There is no physical connection between these districts. There is no possibility that the water treatment plant, mains or distribution facilities in St. Joseph may be used by the ratepayers in St. Charles, nor can the wells that provide MAWC's supply in Joplin provide service to customers in Warrensburg. The separate districts are discrete operating entities that have their own unique treatment plants, if they have a treatment plant, and their own unique sources of supply. Costs that are imposed by the provision of service to customers in one district are not incurred in any manner by customers in another district. Utility plant that is used and useful in

providing service to customers in St. Charles is not used and useful in providing service to customers in Joplin.

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., 248 Ark. 313, 451 S.W. 2d 881 (1970); Utilities Comm. v. Consumers Council, 18 N.C. App. 717, 198 S.E. 2d 98 (1973); Jones v. Kansas Gas & Elect. Co., 222 Kan. 390, 401, 565 P.2d 597, 606 (1977).

Under Section 393.130.3, an undue or unreasonable preference or advantage is granted some districts while other districts are subjected to undue or unreasonable prejudice or disadvantage by transferring a significant portion of the costs caused by the use of a physically discrete utility plant and necessitated and caused by the usage of one group of customers in the locality served by such physically discrete utility plant to another group of customers in localities situated in different parts of the state, and who have or derive no benefit whatever from that utility plant. Under STP, depending upon the district in which they are located, the customers of Missouri-American are either being subjected to an undue or unreasonable prejudice or disadvantage or are being granted an undue preference or advantage. Under either scenario, Missouri-American is violating Section 393.130.3.

At its most basic, the justification for ignoring these undisputed cost differences is that it will allow the Company to

spread the costs of its operations over more customers. Just as obviously, those who would otherwise have to pay the costs are given an unreasonable preference, those who have to pay costs that they did not cause are unduly prejudiced.

Spreading one district's discrete costs to the other districts without question will reduce the rate impact on the customer in the **benefited** district. There is no doubt at all that municipal authorities in St. Joseph would like for other ratepayers in the state to pay two-thirds of their new plant. But both the common law and Section 393.130 stand as barriers to the discrimination between cost-causers and cost-payers.

There is a useful (though imperfect) analogy in the electric field. Several years ago, the citizens of the State of Missouri, through an initiative Proposition, amended the Public Service Commission statutes to deny the Commission the authority to pass through costs associated with electric plant that was not used and useful. See, Section 393.135 RSMo 1994. Although applicable explicitly only to electric utilities, the section, and the fact that it was passed by an initiative, strongly hints that public sentiment would preclude the use of regulatory devices to charge ratepayers costs that are associated with utility investment that is not used and useful to them.

B. Single Tariff Pricing Is Unreasonable.

We have noted above the illegality of the Company's Single Tariff Pricing ("STP") proposal based on its preferential treatment for some districts and its prejudicial treatment against other districts via its complete and undisputed departure from district by district cost of service. The Single Tariff Pricing proposal also is unreasonable on the same basis. Approaching the question from this perspective reveals an entirely different analysis.

As held in the Jones case, supra, the relationship between costs and rates is the essence of public utility regulation. Consider for a moment how this relationship came to be recognized.

Public utility regulation was established because the people, through their elected representatives, recognized that public utility operations were capital intensive and that duplication of competing facilities within a geographical territory was economically inefficient. Accordingly, public utilities were permitted to have a monopoly in a given service territory. Recognizing, however, that monopoly powers were destined to result in abuses, the legislature established a regulatory commission to counterbalance what would otherwise be the unrestrained exercise of monopoly power. The regulatory commission was established as the substitute for competition and was intended to establish, through regulation, a close approximation of the pricing structure that would result if competition were permit-

ted. Thus the quid pro quo for the monopolistic rights granted the utility was its submission to regulation and its commitment to safe, adequate and non-discriminatory service to all requesting that service within its monopoly territory.

One of the typical abuses of monopoly power that the regulators were to prevent was the monopolist's ability to enhance or protect its market dominance by overcharging customers for services as to which there was no effective competition, while using the excess monopoly rents gained thereby to subsidize below-cost operations in other areas. Thus was born the companion principle that each separate utility service should, to the maximum extent possible, be priced based on its cost including an approximately equal rate of return for the utility on the value of its investment used to provide that service. To say it in another way, the question was posed: What rate would likely result if robust competition were permitted? The answer is that no service would be provided at much above or much below cost, since, in either case, in a competitive environment, either the below-cost supplier would be forced out of business, or competitors would undercut the prices of the above-cost supplier. In all cases, after several iterations of this model, rates that represented a return of the cost to provide the particular service, including a reasonable rate of return on the needed investment, would develop.

Thus approached, the concept of "cost of service" is not limited to the aggregate revenue requirement of the utility,

but extends to cover the appropriate pricing of service to customers and groups of customers that are reasonably related as to cost and usage characteristics. Regulation that does not achieve this objective is failing its basic mission and purpose. Regulation that achieves control only of the **aggregate** level of utility revenues is doing an incomplete job.

This case demonstrates the effect of abandoning these basic principles of public utility regulation. Cost differences between physically discrete service districts are acknowledged as present, but then dismissed or ignored under STP.

There are other practical reasons behind cost-based rates, including:

- **Cost based rates send proper price signals to utility customers**. They permit appropriate evaluation of alternatives such as housing insulation, electric appliances, selection of manufacturing equipment on efficiencies, and (in this case) the evaluation of the cost of the use of scarce resources such as water, whether to install more efficient plumbing fixtures or engage in "zero-scaping" to reduce lawn-watering. They promote wise use of resources and meaningful comparison of available alternatives. In some instances, they may even cause previously unexplored alternatives to become economic.

- **Cost based rates provide appropriate public feedback** for the utility regarding its investment and encourage prudence in making that investment. If rates do not track costs, or if ratepayers are over-charged or under-charged, customer reaction to the costs associated with utility investment will be misdirected and inappropriate. Excessive investment will be inhibited by the fear of public scrutiny and wrath.

- **Cost based rates provide earnings stability for the utility**. When customer usage patterns shift, utility revenues will shift. If rates are tied to costs, costs will also shift in synchrony with changes in usage patterns and utility earnings will remain stable. Conversely, if rates and costs are not related, custom-

> er usage shifts will still change revenues, but underlying costs may not change with resultant instability and unpredictability in utility earnings.

In In re Gas Service Company, 21 Mo. P.S.C. (N.S.) 262 (1976), 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. [Emphasis added].

The Commission of today should recognize the validity of these well-established principles. By promoting STP, the Company seeks to ignore costs, how costs are incurred, and for whose benefit costs are incurred. Now is the time to end STP. However, because of the rate shock that certain districts will experience due to the fact that STP has been in effect for several years, STP should be phased out over a period of years just as it was phased in over a period of years. Had STP never been authorized, current rates would be at the district cost of service and there would be no need for a phase out. That, however, is not the case. STP had been authorized and rates are now set on such basis. Thus, the Commission should announce that it is ending the STP experiment now and commence phasing out the STP rates over a period of years in districts that would receive a rate shock from an immediate return to DSP.

Recognizing that the intervenors representing the Warrensburg, St. Charles and Joplin Districts, will be preparing persuasive briefs on the issue of terminating STP and returning to DSP, we will not burden the record any further on this issue at this time.

IV. CLASS COST OF SERVICE ISSUES.

Despite the focus on the District Specific and Prudence issues, class cost of services issues are nonetheless important and need to be resolved. There are large areas of agreement between MAWC, Staff and St. Joseph Industrials on this issue. We will address the significant disagreement that all other parties have with Public Counsel, and also the area of disagreement between Mr. Harwig and Mr. Hubbs of the Staff. That disagreement, while appearing to be minor, has significant implications for larger customers in the St. Joseph district.

A. MAWC, Industrial Intervenors and Staff Appear to Agree On the Use of the Base-Extra Capacity Method.

The company's initial filing proposed to use the well-recognized Base-Extra capacity method. Drawn from the Manual of the American Waterworks Association (AWWA Manual), Base-Extra was used by company Witness Stout to perform his initial allocations.

B. Preferred Result is a DSP District Specific Class Cost of Service Study that Recognizes Differences Between Load Characteristics of Various Districts.

Although using an appropriate method, Mr. Stout performed his allocations as though all seven districts had been combined. Tr. 215. He used an average of all the districts to derive his allocators (Tr. 217), but recognized that this failed to recognize differences between the various districts of the company. Tr. 215. In effect, Mr. Stout treated MAWC as though it was one big district. Tr. 216.

According to Mr. Harwig, Mr. Stout's study, provided a basis for evaluating the rates recommended by MAWC in this case (Harwig, Direct, Ex. 57, p. 20), but not a sound basis. Its defect is that:

> It lumps together like customer classes from seven districts for cost allocation purposes, but usage patterns of like classes can be very different from one district to another. . . . Thus the cost allocations cannot be considered to be representative for residential customers in all districts.

Harwig, Direct, Ex. 57, p. 20.

Rather, Mr. Harwig recommended that revenue requirements be determined on a DSP basis, and that cost of service studies be performed with the DSP revenue requirements and load ratios appropriate for the customer classes in each district. Ex. 57, p. 21.

C. The Proper Treatment of Large Customers Served from Transmission-Size Mains.

Messrs. Harwig and Hubbs were in disagreement over two aspects of Mr. Hubbs' class cost of service study. First, Mr. Hubbs used the same peak day and peak load factors across all the seven districts. As a result, Mr. Harwig testified that Mr. Hubbs' studies "may not be a reliable guide to determining an appropriate rate charge for each class **within a given district**." Harwig, Rebuttal, Ex. 61, p. 4.

In cross-examination on this point, Mr. Hubbs acknowledged that the same allocation factors were used for all districts. Tr. 964. While not fatal to his study, as Mr. Harwig testified, this may limit the utility of Mr. Hubbs' study.

The second point, a distinction between mains 12" and larger and those 10" and smaller should be recognized, as Mr. Harwig testified, to do a more precise job of cost allocation between those large users who could not take service from the smaller mains, but can take from the larger 12" mains. Mr. Hubbs recognized the distinction and agreed that subsidies among customers would be minimized if the cost of distribution mains were allocated only to the customers in the class who made use of them. Tr. 970. He also recognized that not all industrial and wholesale customers could be adequately served by the smaller mains in the system (Tr. 969) thereby conceding Mr. Harwig's point.

However, Mr. Hubbs refused to take the obvious step of correcting his cost study because of a lack of data. Tr. 965-66.

Mr. Hubbs indicated that he would have liked to have done a further segregation of larger users, but lacked the data to perform his analysis. Tr. 965. Studies that had recognized the distinction in three other states were "not appropriate" even though Mr. Hubbs had not reviewed them (Tr. 966). Mr. Hubbs then argued that the "facts in this case are completely different than that," but then cited to Brunswick, the smallest district, with roughly 500 customers. Mr. Hubbs made no reference to St. Joseph which is where Mr. Harwig, because of budget constraints, had made the corrective allocation. Mr. Hubbs thus really ducked the question, both as to the appropriateness of the out-of-state studies, and the higher degree of precision employed by Mr. Harwig.

The result of Mr. Hubbs' failure to recognize the transmission/distribution distinction creates an anomalous situation in which the commodity rates for these large customers are higher than for residential customers served from much smaller mains. Tr. 962. While Mr. Hubbs sought to argue that average costs were lower, he conceded that a commodity-based increase had more impact on industrials. Tr. 963.

The issue also has implications for the public water supply districts service from the St. Joseph district. These wholesale customers are among the largest customers on the St. Joseph district and are severely impacted by Mr. Hubbs' failure to recognize this important distinction between transmission and distribution mains. Correcting his study, at least in the case

of the St. Joseph district, brings these rates more into line and avoids the necessity for other mitigation measures.

At the final analysis, Mr. Harwig suggested that class rates in this case be adjusted based on an equal percentage or "across the board" approach, simply because of the significant impact that the proposed increase would have even with the large disallowance St. Joseph Industrials and Riverside have proposed.

D. Public Counsel' "Economies of Scale" Argument.

Public Counsel proposed a dramatic interclass revenue shift, based on what its witness termed "economies of scale." This position met with virtually universal rejection from the other parties, even those who had not sponsored witnesses on this issue.

Public Counsel's approach, advocated by Hong Hu, started with the accepted Base-Extra capacity allocation method. Then adjusted the allocation factors for what she termed "economies of scale" by a factor of .5 applied to all capacity-related facilities. This method is in error and should be rejected for several reasons:

First, the Base-Extra capacity method is widely accepted as giving balanced recognition to system peak usage as well as system average usage. Somewhat similar to the Base-Excess allocation method used in some electric and gas cases, the Base-Extra capacity methodology uses ratios of daily and hourly peak to system load factors to assign costs on a cost causal basis.

Contrary to the assertions of Witness Hong, the method is not a coincident peak method, rather is a non-coincident peak method. The Base-Extra capacity method uses maximum day and maximum hour volumes to determine peak allocation factors.

Second, to be consistent, a methodology should be used throughout the system to be allocated. Ms. Hong disclaimed being an engineer, admitted that she had no knowledge of the size or driving factors for pipe and other functions of the treatment plant. Tr. 621-22. At the same time she acknowledged that the new treatment plant was the driving factor behind the rate increase request by MAWC. Tr. 623. She had made no study of sources of supply and had made no adjustments thereto. Tr. 621. She stated that she did not know whether her square root method would be appropriate for a treatment plant. Tr. 622. She also did not apply her square root calculation to meter costs. Tr. 623.

Third, no regulatory commission has accepted her method, nor was she able to cite to any regulatory commission that has approved the methodology. Tr. 618. In contrast, Base-Extra is widely accepted and already recognizes economies of scale as they are generally understood to exist. Tr. 211-12.

Ms. Hong's sometimes confusing testimony was at times difficult to follow. She appeared to have difficulty understanding that if some part of something is "extra," some part of the something is not extra and that the comparison, if it is to be meaningfully made, must have some basis. Tr. 619-21. What data

she utilized was not current and was not synchronized to this test year. Tr. 623, 626. She admitted that she had performed no independent evaluation of factors for this case. Tr. 624. Instead, she admitted that she could not get data from the company, so had used data from an earlier case and from another (and now departed) Public Counsel witness as her starting point. Tr. 623, 626.

As with MAWC, providing data to other parties also appeared to be a challenge. Although she admitted that we St. Joseph Industrials had tendered a data requests seeking all her work papers (Tr. 631), she nevertheless determined to withhold what she claimed was an AWWA-compliant class cost of service study because it had been done "for my own purpose of comparison" and was "back of the envelope." Tr. 630.

Ms. Hong also appeared to have two major frustrations. First, her testimony was that the AWWA Manual had not appeared to have considered the viewpoints of persons that she believed it should. When confronted with the listing of the members of the AWWA committee responsible for the manual, she was forced to concede the there were regulators and theoretical persons on the committee. Tr. 633-35. She then appeared to change her assertion to be that the manual itself didn't reflect that the view points that she wanted had been discussed. However, she acknowledged that she was not privy to what discussions had been held, did not know who participated in the discussions or what ideas had been advanced. Tr. 636. She suggested that the Manual

did not appear to reflect "what she had discovered," (Tr. 637, ll. 4-5) apparently forgetting that she had earlier testified that she had performed no independent work in the case at all but had relied on a predecessor's work. Tr. 623-24). She later acknowledged that the notion of economies of scale existed when the AWWA Manual was developed. Tr. 665.

The second area of Ms. Hong's discontent was with the Base-Extra capacity method itself. She sensed that it produced an equivalent result to single peak, stating that she had "proven" that the Base-Extra capacity method was equivalent to single peak responsibility. Hong, Surrebuttal, Ex. 32, p. 4.[17/] When pressed about her proof, however, her conviction seemed to waiver. "I did say that it's similar or identical. So, I mean, even if it's not . . . ." Tr. 639. Subsequently, her position was transformed to: "What I said is if it produced similar result, then my opposition is still -- still stands." Tr. 639. Translation: I've made up my mind; don't confuse me with facts.

The **facts** are that the Base-Excess capacity method is not equivalent to a single peak capacity method. Exhibits 68, 69 and 70 show three different sets of allocators. If the two methods were identical as Ms. Hong claims, then the results will match in each case. They don't. Instead, the three exhibits

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[17/]The full quotation is:

> "I have proven that the traditional B&EC method is equivalent to a single peak responsibility method . . . ."

Hong, Surrebuttal, Ex. 32, p. 4

demonstrate that there is no equivalence between the methods at all. Certainly, one can force a set of special facts in which both methods would produce the same result, but as Mr. Stout testified, he had "never seen such as system" in which the precise situation concocted by Ms. Hong to show "equality," i.e., where the residential customer class would have a peak that was off the non-coincident peak, occurred.

Terminology also seemed to be a problem for Ms. Hong. She testified that having someone propose a methodology in Missouri equated in her mind to having that approach be "generally accepted." Tr. 648. In this view, some method could be "generally accepted," yet not have been approved by a single regulatory commission anywhere. All that it would require was just that some party have proposed it in Missouri. Tr. 648. If nothing more, this is a uniquely convenient approach.

The implications of Ms. Hong's aberrant significant for larger users, including the public water supply districts whose rates could go up over 268% using her method. While admitting that the residential user is the high peak user on the system (Tr. 628-29), the real impact of her proposal is to shift more revenues from the residential class to other customers. Tr. 670. Yet she agreed that there could be community damage if large industrials and other sources of employment were to leave. Tr. 679. Indeed, there was such testimony in this proceeding. Increases in costs cannot be passed on in a truly competitive market. St. Joseph Public Hearing, Tr. 56-57. Already some

customers are exploring other supply options, even at the current rates. St. Joseph Public Hearing, Tr. 53-54.

Another industrial customer, Brad Allen, the Joplin plant manager for Gilster-Mary Lee, a private brand manufacturer, testified at the Joplin public hearing. His testimony is particularly pertinent on this point:

> Gilster Mary Lee strongly supports true cost base water rates for a number of reasons. Any increased costs, particularly one from which we receive no additional benefit, will hurt our ability to remain efficient in what I've described as a hyper competitive market. Our customers consistently challenge us to get to the true costs of our products. Anything but a true cost in our utilities will prevent us from meeting their expectations. In this extremely competitive market, it is our customers -- our customers will not accept price increases and will not pass them on to consumers. Today, millions of dollars in business literally swings on as little as five to ten cents a case.

Joplin Public Hearing, Tr. 47. Mr. Allen also commented that his own plant was particularly concerned regarding a proposed increase of as much at 60 percent because of its specific competitive situation. Id. This type of testimony should be given full consideration by the Commission.

The approach Ms. Hong suggest is counterproductive to the group she claims to represent and may, in fact, work to their ultimate detriment. Her method is internally inconsistent, built on a flawed basis with outdated data and studies, and should not be approved in this case.

E. Motivation to Increase Rate Base and Revenue

As a function of the public utility equation, set forth in Ms. McKiddy's Direct testimony, Schedule 29, it is clear that an increase in rate base will result in higher rates, earnings and higher revenue for the utility. The utility will attempt to assert that this is offset by lowered costs of operations, but when discussion of a rate base addition is the topic, it must be kept in mind that the increase in depreciation, which is recognized as an expense for regulatory purposes, represents a paper expense to the utility.

It is clear that the system of cost of service regulation creates an incentive on the part of the public utility to avoid the erosion of depreciation by continuing to invest in rate base additions. That is bad only if it is not recognized and is not offset by the sharp eye of the regulator that assures that only that investment that is truly needed and is truly cost-justified is permitted rate base treatment.

That, of course, is what this case is about. The Commission is the counterbalance to the monopoly power of the utility. The Commission is the counterbalance to the legal requirement that once investment is included in rate base as used and useful, the utility is entitled as a matter of constitutional law to an opportunity to earn a reasonable rate of return on its value. The decision to include a dollar in rate base is not one that should be taken lightly by the Commission. In this case,

that decision will stalk the streets and byways of St. Joseph for the next generation.

It would be our wish that this Commission, and its members, would be proud of the decision that they would make in this case. It would be our hope that this Commission and these Commissioners, were they to some day walk the streets of Joplin, or St. Joseph, or Warrensburg, Riverside or St. Charles, could proudly and happily meet the residents of those communities also walking those streets and say that they were part of the Commission that brought justice and fairness to the water rates they pay as a member of those communities. It would be our hope that they would proudly be able to meet others on those streets, rather than to feel that they must avert their face and cross to the other side of the street. The choice is yours.

V. COMMISSION REQUESTED BRIEFING.

During the hearing, Chair Lumpe requested that the parties brief the issue of the legality of a capital improvements surcharge. That analysis follows.

A. Issue of Capital Improvements Surcharge

To a large extent, we are of the sense that a capital improvements surcharge, provided it was set during a full rate case where all relevant issues are considered by the Commission, would be permissible. However, if it were the thought that such surcharge could be varied independently and without a full rate case procedure akin to the purchased gas adjustment charge, we do

not believe that this is within the power of the Commission to authorize.

As we understand the context of the question and the concept that has been considered, a capital improvements surcharge would separately state a correctly calculated portion of the rate as being related to specific capital improvements in the customer's service district. At the same time, so-called "joint and common costs" would be allocated to each district.

Given that model, the suggested capital improvements surcharge is really nothing more than a different way of presenting the rate that is charged to the customer. Thus the customer would pay the same total amount whether the capital improvements surcharge were shown on their billing or not. The advantage would be that the customer would be informed as regards the portion of their billing that related to the capital improvements installed by the company in their district.

The governing authority for this question is the case of State ex rel. Util. Consumers Council v. Public Service Commission, 585 S.W. 41 (Mo. banc 1979) ("UCCM"). The UCCM case invalidated the fuel adjustment charge for Missouri utilities. Among other things, UCCM holds that in setting rates the Commission must consider **all** relevant factors, even when a decision is made not to suspend a proposed tariff. The UCCM court distinguished a prior case, Hotel Continental v. Burton, 334 S.W.2d 75 (Mo. 1960) which had upheld a tax adjustment clause by which a separate line item for gross receipts tax was stated on the

customers' bills. The UCCM court said that the "tax was a direct charge, exactly proportioned to the customer's bill, the amount of which was directly determined by the amount of that bill." UCCM, at 52. This would not be true of a capital improvements surcharge.

Nor would a separately stated surcharge for capital improvements vitiate the statutory prohibition discussed earlier against one customer or community granted a preference over another.

Thus, while that surcharge could be established in the context of a full rate case, it would represent nothing more than a different and perhaps more informative means of presenting a customer's bill. Any sort of an automatic adjustment, since such would directly affect the earnings of the utility, could not be approved under UCCM.

VI. CONCLUSION.

WHEREFORE, for the foregoing reasons and arguments, these Intervenors respectfully pray that the Commission should disallow inclusion of imprudent capital expenditures in rate base, reject the concept of single tariff pricing, and otherwise

direct that rates be calculated in accordance with the recommendations contained herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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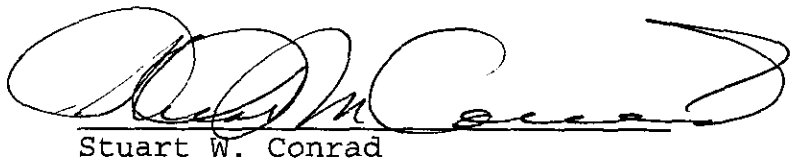

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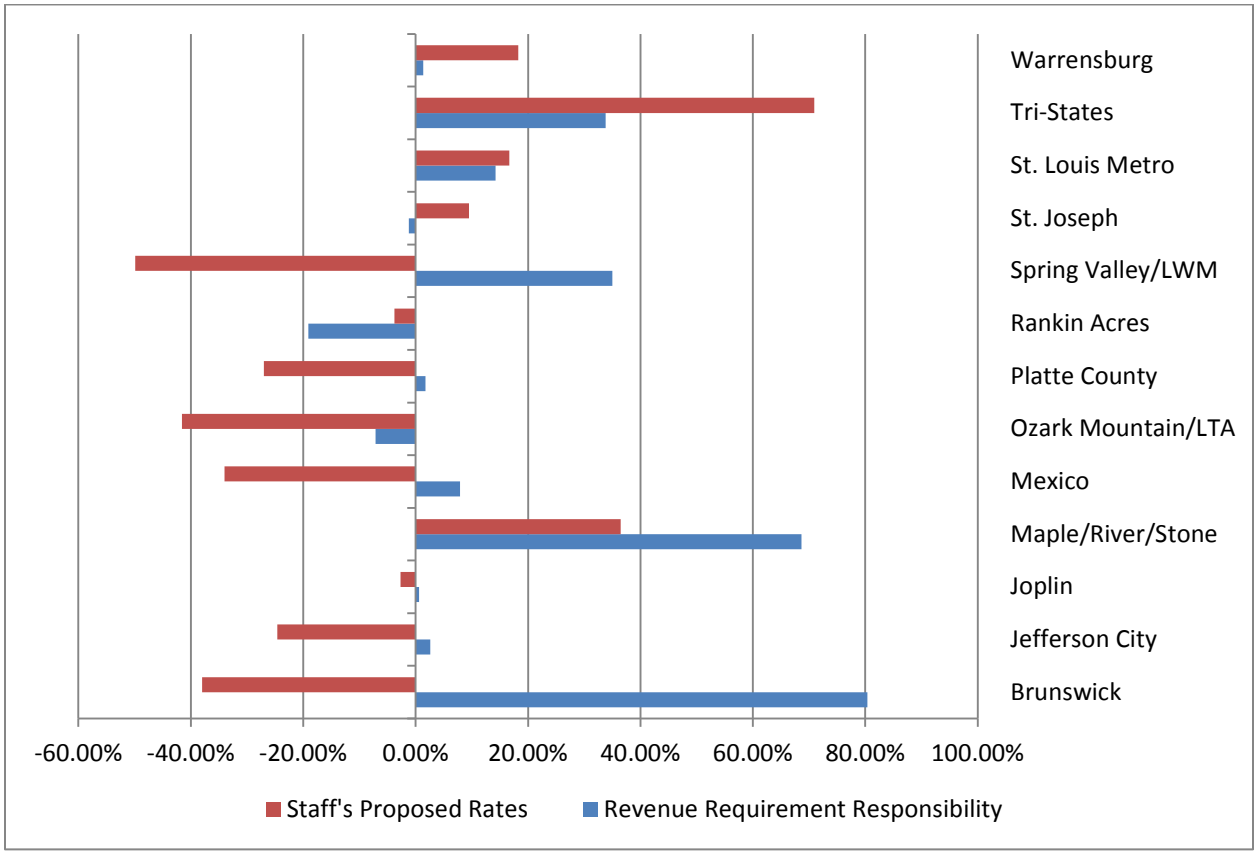
Appendix B



"Staff's Proposed Rates" from MAWC Ex. 49R1, p. 4.

"Revenue Requirement Responsibility" from MAWC Ex. 52.