

claiming it has a cumulative under-collection of \$5,870,309 in ISRS revenues for a three-year period, not a twelve month period as set forth by the statute. *EFIS* entry number 7.

4. OPC filed its initial *Motion to Dismiss* on December 28, 2015, citing a number of reasons MAWC's application/petition must be dismissed. *EFIS* entry number 6. The reasons contained in that *Motion to Dismiss* continue to persist and are now exacerbated by Staff's December 29, 2015, *Motion for Leave to File Recommendation Late and Staff Recommendation* ("*Staff Recommendation*"). OPC reincorporates all its prior arguments set forth in its December 28, 2015 *Motion to Dismiss* not expressly addressed herein.

5. In the *Staff Recommendation*, Staff is proposing a reduction to the cumulative ISRS under-collection amount proposed by MAWC. Staff recommends a \$1,597,985.00 reduction to the amount proposed due to different methodologies applied by Staff and MAWC. However, both Staff and MAWC ignore the fact that there is no statutory authorization for an eligible water corporation under the ISRS statute to file a cumulative ISRS reconciliation nor, for the Commission to authorize or approve such cumulative amount. Mo. Rev. Stat. § 393.1006(5)(2). In fact, prior reconciliation amounts have already been included in prior ISRS changes currently reflected in MAWC's ISRS. The preceding is evidenced by MAWC's response on January 7, 2016, when it states "in previous years the annual reconciliation has been performed in conjunction with MAWC's petitions to change the ISRS." *EFIS* entry number 9, *MAWC's Response to Staff Recommendation and OPC Motion to Dismiss*, ¶2. What MAWC seeks to do is to expand the reconciliation mandate of the statute, when in fact the reconciliation requirement is much narrower in application. Mo. Rev. Stat. § 393.1006(5)(2).

6. The Commission should reject MAWC's application/petition because it fails to comply with the plain language of § 393.1006(5)(2) which requires a reconciliation filing at the

end of each twelve (12)-month calendar period that an ISRS is in effect. The current application/petition on its face attempts to provide for reconciliation for a period of 3 years, which does not comply with the mandates of the statute. *Id.* Both MAWC and Commission Staff also fail to recognize that while the Commission may have authority in certain circumstances to waive the application of its rules, the Commission has no authority to waive the requirement of statute. *See State ex rel. Office of the Pub. Counsel*, 409 S.W.3d 522, 527 (Mo. App. W.D. 2013).

7. It appears the intent of the MAWC filing is to obtain from the Commission approval of the cumulative ISRS under-collection amount for the purposes of “carrying forward” that amount to be captured in base rates in MAWC’s current pending general rate case. Should the Commission approve of the reconciliation amount sought by MAWC in this pending application/petition, then it is likely that MAWC will assert such amount is to be treated as binding for that issue in the general rate proceeding currently pending. There is no statutory authorization for a “carrying forward” of ISRS under-collected revenues in base rates. Mo. Rev. Stat. §393.1006(6)(1) (Cum. Supp. 2013). The ISRS is to be “zeroed” out when “new base rates and charges become effective for the water corporation following a Commission order establishing customer rates in a general rate proceeding that incorporates...eligible costs previously reflected in an ISRS.” Mo. Rev. Statute § 393.1006 (6)(1) (Cum. Supp. 2013). The amount of unrecovered costs and what should be included into base rates over what period of time, are then issues that should be brought properly during MAWC’s general rate proceeding and not in an unauthorized, informational filing. As correctly noted by Staff, “the parties are actively engaged in addressing this issue in WR-2015-0301.” *Staff Recommendation* at ¶5. Any attempt to resolve this issue outside of the general rate proceeding results in the litigation of a

contested issue without all interested parties joined, which is in violation of Mo. Sup. Ct. R. 52.04(a). To the extent MAWC seeks to fix this ISRS under-recovery, a single issue, for ratemaking purposes, it is also an attempt at unpermitted single-issue ratemaking. *See State of Mo. ex rel. Pub. Counsel v. Mo. Pub. Serv. Comm'n.*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2012) (stating that Missouri courts have traditionally held that the Commission's determination of the proper rate for utilities is to be based on all relevant factors rather than on consideration of just a single factor which is generally prohibited).

WHEREFORE, the Office of the Public Counsel submits this *Response to Staff's Recommendation and Motion to Dismiss* and requests that the Commission dismiss this application/petition and for such other relief as maybe warranted.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, **on this 13th Day of January, 2016.**

/s/ Cydney D. Mayfield