

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 7th day of July, 2014.

In the matter of the Petition of)	
Missouri-American Water Company for)	File No. WO-2015-0211
Approval to Change its Infrastructure)	Tracking No. YW-2015-0267
System Replacement Surcharge (ISRS))	

ORDER DENYING REHEARING

Issue Date: July 7, 2015

Effective Date: July 7, 2015

The Office of the Public Counsel (“OPC”) filed an application for rehearing¹ (“motion”). The motion addresses the Commission’s report and order (“decision”).² The decision granted the petition and approved the tariff of Missouri-American Water Company (“MAWC”) to authorize an infrastructure system replacement surcharge (“ISRS”) for water service in St. Louis County. MAWC filed a response³ to the motion and OPC filed a reply.⁴ The Commission may grant re-hearing “if in its judgment sufficient reason therefor be made to appear.”⁵ OPC offers two arguments for re-hearing. Neither has merit.

¹ EFIS No. 36 (June 26, 2015) *The Office of the Public Counsel's Application for Rehearing.*

² Electronic Filing and Information System (“EFIS”) No. 35 (June 17, 2015) *Report and Order.*

³ EFIS No. 37 (July 1, 2015) *MAWC's Response to Public Counsel Application for Rehearing.*

⁴ EFIS No. 38 (July 6, 2015) *Reply in Support of Application for Rehearing.*

⁵ Section 386.500.1, RSMo 2000.

A. Provide v. Guarantee

The statutes require the Commission to set an ISRS that will “produce revenues”⁶ that “provide for the recovery of costs”⁷ as specified by statute. The ISRS statutes find a concise summary in the Missouri Court of Appeals’ opinion in *In re Laclede Gas Co.*⁸

[T]he obvious legislative intent . . . is to permit the . . . company to timely **recover** its **costs** for government-mandated infrastructure system replacement projects via a rate adjustment outside of a general rate case for a limited period of time.[⁹]

OPC characterizes the tariff as guaranteeing recovery instead of providing for recovery. OPC is incorrect. No guarantee appears in the decision, either by word or by concept. The tariff authorizes a rate based on gallons of water sold, which does not guarantee that MAWC will collect any amount certain. The Commission simply authorized an ISRS that affords MAWC a real opportunity to collect the amounts provided by law.

B. Population

OPC also argues that MAWC is not eligible for an ISRS because St. Louis County lacked the population required by statute in 2010. In support, OPC quotes the statute that generally determines county population (“population statute”):

1. The population of any political subdivision of the state . . . is determined on the basis of the last previous decennial census of the United States [¹⁰]

⁶ Section 393.1003.1, RSMo Supp. 2013; 4 CSR 240-3.650.

⁷ Section 393.1003.1, RSMo Supp. 2013 (emphasis added).

⁸ *In re Laclede Gas Co.*, 417 S.W.3d 815 (Mo. App., W.D. 2014).

⁹ *In re Laclede Gas Co.*, 417 S.W.3d 815, 823 (Mo. App., W.D. 2014) (emphasis added).

¹⁰ Section 1.100, RSMo 2000 (emphasis added).

OPC argues that the population statute controls MAWC's eligibility for an ISRS because that eligibility depends on county population under the statute specifically authorizing MAWC's ISRS ("authorizing statute").

The authorizing statute provides:

Notwithstanding any provisions of chapter 386 and this chapter to the contrary, **as of August 28, 2003**, a water corporation providing water service in a county with a charter form of government and with more than one million inhabitants may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules [. ¹¹]

MAWC argues that the emphasized language sets a date certain, as of which to determine population, making the authorization statute a specific exception to general rule in the population statute. MAWC's reading is more persuasive than OPC's reading. ¹²

Even if that were not so, the population statute further provides:

2. Any law which is limited in its operation to counties . . . having a specified population . . . shall be deemed to include all counties . . . which thereafter acquire such population . . . as well as those in that category at the time the law passed [. ¹³]

That language shows that, even if St. Louis County's population drops below the specified level, it will still be included in the ISRS law as a county with the specified population at the time the law passed. ¹⁴

¹¹ Section 393.1003.1, RSMo Supp. 2013 (emphasis added).

¹² The recitation of legislative history in OPC's reply is unpersuasive, compared to the plain language as discussed in MAWC's response.

¹³ Section 1.100, RSMo 2000 (emphasis added).

¹⁴ That language also avoids the potential for special legislation that OPC discusses in its reply.

C. Conclusion

The motion represents matters that OPC elected to raise, not at the hearing on the merits of the petition and tariff, but for the first time on seeking re-hearing.¹⁵ Nevertheless, the Commission has duly considered the motion. The Commission concludes that the motion does not show sufficient reason for a rehearing so the Commission will deny the motion.¹⁶

THE COMMISSION ORDERS THAT:

1. *The Office of the Public Counsel's Application for Rehearing is denied.*
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Jordan, Senior Regulatory Law Judge

¹⁵ OPC's earlier filings merely endorsed the position of the Commission's staff.

¹⁶ Section 386.500.1, RSMo 2000.