

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Petition of Missouri-)
American Water Company for Approval to)
Change a Water and Sewer Infrastructure)
Rate Adjustment)

Case No. WO-2023-0008

RESPONSE TO STAFF RECOMMENDATION

COMES NOW the Office of the Public Counsel (the “OPC”), in accordance with the deadline established by the Public Service Commission of the State of Missouri (the “Commission”) in its September 14, 2022 Order (Doc. 4) and response to the Staff of the Commission’s (“Staff”) Recommendation (the “Recommendation”) (Doc. 5) respectfully states:

In its Recommendation, Staff suggested that the Commission allow Missouri American Water Company (“MAWC”) to recover through its water Water and Sewer Infrastructure Rate Adjustment (“WSIRA”) amounts different than MAWC requested in its original Petition to Change a Water and Sewer Infrastructure Rate Adjustment (the “Petition”). If the Commission allows MAWC to recover from its water customers the additional amount proposed by Staff, then MAWC will exceed the fifteen percent (15%) cap identified in § 393.1506.1 RSMo.¹ for its water services. For this reason, the Commission should allow MAWC to recover from its water customers only an amount that would not exceed the fifteen percent cap.

I. Background

A. Procedural Background

On September 9, 2022, MAWC requested that the Commission allow it to change both its water and sewer WSIRA rates. (*See generally* Petition, Case No. WO-2023-0008, Doc. 2; Petition, Case No. SO-2023-0009, Doc. 2). In requesting the changes to its water and sewer WSIRA rates,

¹ All references are to the 2016 version of the Revised Statutes of Missouri as supplemented by the 2021 cumulative supplement, unless specifically stated.

MAWC filed the same Petition in two separate cases—one for its water WSIRA rate and another for its sewer WSIRA rate. (*See id.*).

On that same day, MAWC filed the same Motion to Consolidate in both cases. (Motion to Consolidate, Case No. WO-2023-0008, Doc. 3; Motion to Consolidate, Case No. SO-2023-0009, Doc. 3). In the Motion to Consolidate, MAWC requested that the Commission consolidate the water and sewer cases and designate the water case as the lead case. (*See id.* 1).² In support of its request, MAWC stated that the “cases reference the same subject matter, will involve similar parties, and will contain common questions of law and fact.” (*Id.*). It further noted, “[c]onsolidation would promote administrative efficiency for filings and any discovery.” (*Id.*). Finally, MAWC stated “[p]revious cases of this nature have been consolidated for the ease of filings and discovery.” (*Id.*).

On September 14, 2022, the Commission issued its Order Directing Notice, Setting Deadlines, Directing Filings, Consolidating Cases, and Suspending Tariffs (the “September 14, 2022 Order”). (Sept. 14, 2022 Order, Case No. WO-2023-0008, Doc. 4; Sept. 14, 2022 Order, Case No. SR-2023-0009, Doc. 4). The Commission also filed the same Order in both the water and sewer cases. (*See id.*). In pertinent part, the Commission granted MAWC’s Motion to Consolidate. (*Id.* 2-3).³ In doing so, the Commission noted “Commission Rule 20 CSR 4240-2.110(3) permits the consolidation of pending actions that involve related questions of law or fact. Since the cases will involve common facts, parties, and issues, the Commission will consolidate

² Because MAWC filed the same document in both cases, the referenced citation to the Motion to Consolidate will be the same for either case number. For brevity, the OPC provides only a single citation.

³ Similar to the Motion to Consolidate, because the Commission filed the same document in both cases, the referenced citation to the September 14, 2022 Order will be the same for either case number. For brevity, the OPC provides only a single citation.

these cases.” (*Id.* 2). The Commission designated the water case, Case Number WO-2023-0008, as the lead case. (*Id.* 3).

Also in the September 14, 2022 Order, the Commission established a deadline for certain filings in this matter. (*Id.*). In relevant part, the Commission stated that “[a]ny other party wishing to respond or object to Staff’s recommendation or other objections or recommendations shall do so no later than December 15, 2022.” (*Id.*).

On December 8, 2022, in accordance with the deadline established in the September 14, 2022 Order, Staff filed its Recommendation. (Doc. 5).

On December 14, 2022, MAWC filed its Response to Staff’s Recommendation (“MAWC’s Response”). (Doc. 6). In its Response, MAWC stated that it “agrees with Staff’s recommended WSIRA revenues . . .” (*Id.* 1). It also attached exemplar tariff sheets to effectuate the changes to both its water WSIRA and sewer WSIRA. (*Id.* Apps. A & B).

B. Factual Background

In its Petition, MAWC requested that the Commission allow it to change its water and sewer WSIRA rates to recover specified amounts of revenue for each of its water service areas and each of its sewer service areas. (*See* Pet. App. C 1).⁴ MAWC formulated the revenues identified in its Petition using three (3) months of actual information—May 1, 2022 to July 31, 2022—and three (3) months of estimated information—August 1, 2022 to October 31, 2022. (*See* Workpaper Supporting Pet. App. C). The revenues MAWC identified included adjustments due to over collections and under collections from prior WSIRA rate cases, as required by § 393.1509.5(2) RSMo. (*Id.*). Shown in Tables 1 and 2 below are the amounts MAWC requested.

⁴ MAWC filed the same document as the Petition in both cases. (*Compare* Petition, Case No. WO-2023-0008, Doc. 2 *with* Petition, Case No. SO-2023-0009, Doc. 2). Therefore, the citation to the Petition is the same for either case.

MAWC's Requested Water Revenues		
	St. Louis County	Other Water
Total Revenue Requirement	\$11,190,526	\$1,525,310
Reconciliation Adjustment	\$888,619	\$41,512
Total WSIRA Revenue Requirement	\$12,079,145	\$1,566,823

Table 1

MAWC's Requested Sewer Revenues		
	Arnold	Other Sewer
Total Revenue Requirement	\$9,904	\$63,001
Reconciliation Adjustment	\$1,104	(\$4,402)
Total WSIRA Revenue Requirement	\$11,009	\$58,599

Table 2

In the Petition, MAWC asserted that the “proposed WSIRA on an annualized basis does not produce revenues in excess of 15 percent (15%) of the base water or sewer base requirement approved by the Commission in Case No. WR-2020-0344.” (Pet. 4).

In the Memorandum accompanying Staff’s Recommendation, Staff noted that MAWC had “updated its numbers, and Staff calculated the new WSIRA rates.” (Recommendation Mem. 2). Staff stated that it had “replaced the estimated costs filed in the Petition and updated the balances with the actual cost for that period.” (*Id.* 5). Staff recommended that the Commission allow MAWC to recover different amounts through its water and sewer WSIRAs than MAWC requested in the original Petitions. (*Id.* 7). Specifically, Staff recommended that MAWC recover the following:

Staff's Recommended Water Revenues		
	St. Louis County	Other Water
Total Revenue Requirement	\$11,672,499	\$2,865,935
Reconciliation Adjustment	(\$124,411)	(\$294,226)
Total WSIRA Revenue Requirement	\$11,548,088	\$2,571,709

Table 3

Staff's Recommended Sewer Revenues		
	Arnold	Other Sewer
Total Revenue Requirement	\$1,307	\$46,938
Reconciliation Adjustment	(\$2,384)	(\$40,152)
Total WSIRA Revenue Requirement	(\$1,077)	\$6,786

Table 4

In addressing the fifteen percent cap, Staff averred that the “cumulative amount of WSIRA revenues that will result from this Petition does not exceed 15% . . .” (*Id.* 2-3). In making this statement, Staff looked at the aggregate totals of MAWC’s authorized revenues from its prior general rate proceeding and each of its WSIRA cases. (*Id.*)

II. Response

In its Recommendation, Staff suggested that the Commission allow MAWC to recover different amounts of WSIRA revenue than MAWC sought in its original Petitions. Analyzing the water WSIRA revenues separately from the sewer WSIRA revenues shows that MAWC will exceed the fifteen percent cap established in § 393.1506.1 RSMo. for its water WSIRA. Because the statute prohibits MAWC from recovering through its WSIRA more than fifteen percent of its base revenues from its most recent general rate proceeding, the Commission must allow MAWC to recover only those amounts that would not exceed fifteen percent of its base water revenues.

A. Applicable Legal Standards

The WSIRA statute allows an eligible water or sewer corporation to request the establishment of or change to a WSIRA by

fil[ing] a petition and proposed rate schedules with the commission to establish or change a WSIRA that will provide for the recovery of the appropriate pretax revenues associated with the eligible infrastructure system projects, less the appropriate pretax revenues associated with any retired utility plant that is being replaced by the eligible infrastructure system projects.

§ 393.1506.1 RSMo. However, the statute imposes a cap—fifteen percent of the water or sewer corporation’s base rate revenues from the water or sewer corporation’s most recent general rate case—on the amount that a water or sewer corporation may recover through a WSIRA. *Id.* Specifically, the statute states

The WSIRA shall not produce revenues in excess of fifteen percent of the water or sewer corporation’s base revenue requirement approved by the commission in the

water or sewer corporation's most recent general rate proceeding; provided, however, that neither WSIRA revenues attributable to replacement of customer-owned lead service lines, nor any reconciliation amounts described in subdivision (2) of subsection 5 of section 393.1509, shall count toward the program cap.

Id.

Section 393.1509.5(2) of the Revised Statutes of Missouri describes the reconciliation process referred to in the sentence describing the cap. That statute requires a review to reconcile “the differences between the revenues resulting from a WSIRA and the appropriate pretax revenues as found by the commission for that period.” § 393.1509.5(2) RSMo. The statute states in full:

At the end of each twelve-month calendar period that a WSIRA is in effect, the water or sewer corporation shall reconcile the differences between the revenues resulting from a WSIRA and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed WSIRA to the commission for approval to recover or credit the difference, as appropriate, through a WSIRA.

Id.

B. In Determining Whether MAWC Will Exceed the Fifteen Percent Cap in § 393.1506.1 RSMo., the Commission Must Consider MAWC's Water WSIRA Separately from its Sewer WSIRA

When determining whether MAWC will exceed the fifteen percent cap established in § 393.1506.1 RSMo., the Commission must consider MAWC's authorized water WSIRA revenues separately from MAWC's authorized sewer WSIRA revenues.

In its Recommendation, Staff asserted “the cumulative amount of WSIRA revenues that will result from this Petition does not exceed 15%.” (Recommendation Mem. 2-3). In support, it provided the following information:

Revenue Requirement in WR-2020-0344	\$348,000,000
WSIRA Cap per Legislation	15%
WSIRA \$ Cap	\$52,200,000 [□]
Prior Approved - WSIRA WO-2021-0428	\$19,002,781
Prior Approved - WSIRA WO-2022-0176	\$17,812,512
Current Case - WSIRA WO-2023-0008	\$14,125,506 [□]

(*Id.* 3 (footnotes omitted)). The amounts provided for in this list result from looking at the aggregate total of both MAWC’s water and sewer revenues in each of the cases identified. (*See, e.g.,* Order Approving Stipulation & Agreement 2, Case No. WR-2020-0344, Doc. 202 (stating “[t]he agreement provides for a total revenue requirement for Missouri-American of \$348 million (\$335,240,042 for water operations and \$12,759,958 for sewer operations)”). However, Staff provided no explanation for why it considered the aggregate total of MAWC’s water and sewer revenues.

Rather, the plain language of the WSIRA statutes—§§ 393.1500-1509 RSMo.—appear to require the Commission to consider MAWC’s water WSIRA separately from its sewer WSIRA. In describing the WSIRA, the Missouri Water and Sewer Infrastructure Act generally refers to a “water *or* sewer corporation.” *See, e.g.,* § 393.1506.1 RSMo. (stating that “a water *or* sewer corporation that provides water *or* sewer service to more than eight thousand customer connections may file a petition and proposed rate schedules with the commission to establish or change a WSIRA . . .” (emphasis added)); § 393.1509.5(1) RSMo. (describing how to calculate a WSIRA and design a WSIRA rate, and referring to a “water or sewer corporation”). Further, §393.1503

RSMo. defines a “water corporation”⁵ separately from a “sewer corporation.”⁶ *See* §§ 393.1503(4), (6) RSMo. Neither definition refers to a corporation providing both water and sewer service.

Further, nothing in the background of these cases justifies considering the aggregate total of the water and sewer revenues when determining whether MAWC has exceeded the statutory cap. Here, MAWC filed separate cases to request Commission authorization to change its water and sewer WSIRA charges. (*See* Case No. WO-2023-0008 (MAWC’s request to change its water WSIRA); Case No. SO-2023-0009 (MAWC’s request to change its sewer WSIRA)). In its Petitions, MAWC asserted that “[t]he proposed WSIRA on an annualized basis does not produce revenues in excess of 15 percent (15%) of the base water or sewer base requirement approved by the Commission in Case No. WR-2020-0344.” (Pet. 4 (emphasis added)). It then requested that the Commission consolidate the two cases because the “cases reference the same subject matter, will involve similar parties, and will contain common questions of law and fact.” (Motion to Consolidate 1). MAWC averred that “[c]onsolidation would promote administrative efficiency for filings and any discovery.” (*Id.*). In granting the request for consolidation, the Commission

⁵ Section 393.1503 RSMo. of the Revised Statutes of Missouri defines a “water corporation” as “the same as defined in section 386.020.” § 393.1503(6) RSMo. Section 386.020 defines a “water corporation” as

includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

§ 386.020(59) RSMo.

⁶ Section 393.1503 RSMo. of the Revised Statutes of Missouri defines a “sewer corporation” as “the same as defined in section 386.020.” § 393.1503(4) RSMo. Section 386.020 defines a “sewer corporation” as

includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

§ 386.020(49) RSMo.

concluded only that the cases “will involve common facts, parties, and issues.” (Sept. 14, 2022 Order 2). Further, in its Response to Staff’s Recommendation, MAWC filed separate tariff sheets to effectuate the proposed changes to its water WSIRA and sewer WSIRA. (*Compare* MAWC Resp. App. A (exemplar tariff sheets to effectuate a change to MAWC’s water WSIRA); *with* MAWC Resp. App. B (exemplar tariff sheets to effectuate a change to MAWC’s sewer WSIRA)).

Although the cases may involve commonalities, nothing requires the Commission to consider the aggregate total of the revenues generated from MAWC’s water and sewer operations in determining whether MAWC has exceeded the statutory cap set forth in § 393.1506.1 RSMo. Rather, based on the statutory language of the WSIRA statutes and the background of this matter, the Commission should consider MAWC’s water WSIRA separately from its sewer WSIRA.

C. If MAWC Recovers the Full Amount Suggested by Staff, its Water WSIRA Will Exceed the Fifteen Percent Cap Established in § 393.1506.1 RSMo.

Separating the water WSIRA from the sewer WSIRA, shows that MAWC’s recovery through its water WSIRA will exceed the fifteen percent cap identified in § 393.1506.1 RSMo. Because § 393.1506.1 RSMo. necessarily prohibits recovery above the fifteen percent cap, the Commission must authorize MAWC to recover only an amount that will not exceed the fifteen percent cap.

In describing the cap on recovery through the WSIRA, § 393.1506.1 RSMo. states:

The WSIRA shall not produce revenues in excess of fifteen percent of the water or sewer corporation’s base revenue requirement approved by the commission in the water or sewer corporation’s most recent general rate proceeding; provided, however, that neither WSIRA revenues attributable to replacement of customer-owned lead service lines, nor any reconciliation amounts described in subdivision (2) of subsection 5 of section 393.1509, shall count toward the program cap.

§ 393.1506.1 RSMo. To determine whether MAWC will exceed the fifteen percent cap identified in the statute, one must first identify the pertinent numbers.

First, MAWC’s most recent general rate proceeding was Case Number WR-2020-0344. (See Recommendation 2-3). In that case, the Commission approved a Stipulation and Agreement that identified MAWC’s revenue requirement for its water services as \$335,240,042, as shown in Table 5 below. (Order Approving Stipulation & Agreement 2, Case No. WR-2020-0344).

Most Recent General Rate Proceeding Base Water Revenue Requirement (WR-2020-0344)	
Authorized Water Revenues	\$335,240,042

Table 5

Next, the Commission must determine the amount of revenues it has already authorized MAWC to collect through its water WSIRA. Two prior WSIRA cases exist: WO-2021-0428 and WO-2022-0176.⁷ In Case Number WO-2021-0428, the Commission authorized MAWC to establish a water WSIRA and to collect \$16,135,000 from its St. Louis County water customers and \$2,659,795 from its Other water customers, for a total of \$18,794,795 in authorized revenues through its water WSIRA. (See Order Approving Water & Sewer Infrastructure Rate Adjustments 5, Case No. WO-2021-0428, Doc. 17). In Case Number WO-2022-0176, the Commission authorized MAWC to change its water WSIRA and to collect \$ 15,373,804 from its St. Louis County water customers and \$2,235,288 from its Other water customers, for a total of \$17,609,092. (See Order Approving Agreement Ex. 1 “Agreement” App. A “WSIRA Revenue Requirements Calculation” 1, Case No. WO-2022-0176, Doc. 21). Therefore, MAWC’s water WSIRA includes authorized revenues of \$36,403,887, or 10.86% of its base water revenues from WR-2020-0344. These amounts are shown in Table 6 below.

⁷ Because MAWC’s WSIRA had not yet been in place for twelve months during the pendency of these prior cases, neither case included an amount attributable to the reconciliation referenced in § 393.1509.5(2) RSMo.

Authorized Water Revenues from Prior WSIRA Cases			
	St. Louis County	Other Water	Total
WO-2021-0428	\$16,135,000	\$2,659,795	\$18,794,795
WO-2022-0176	\$15,373,804	\$2,235,288	\$17,609,092
Total			\$36,403,887

Table 6

Next, the Commission must determine how much it will authorize MAWC to recover in this WSIRA filing. Staff has recommended that the Commission allow MAWC to recover \$11,548,088 from its St. Louis County water customers and \$2,571,709 from of its Other water customers, for a total of \$14,119,797. (Recommendation Mem. 7).

However, because MAWC’s WSIRA has now been in effect for greater than twelve calendar months, these amounts include a reconciliation adjustment. (*See id.* 6-7). Specifically, because MAWC over recovered through its water WSIRA, Staff reduced the total water WSIRA revenue requirement by (\$124,411) for St. Louis County water customers and (\$294,226) for Other water customers. (*See id.*). Section 393.1506.1 of the Revised Statutes of Missouri mandates that these reconciliation amounts not be included in calculating the WSIRA cap. § 393.1506.1 RSMo. (“any reconciliation amounts described in subdivision (2) of subsection 5 of section 393.1509, shall [not] count toward the program cap.”). Therefore, the Commission must add back the reductions Staff included in its suggested amount of water revenues to account for MAWC’s over collection. *See id.* In doing so, the applicable amount of revenue requirement becomes \$11,672,499 for St. Louis County water customers and \$2,865,935 for Other water customers, or \$14,538,434 total. This is shown in the “Total Revenue Requirement” row in Table 7 below.

Staff's Recommended Water Revenues in WO-2023-0008			
	St. Louis County	Other Water	Total
Total Revenue Requirement	\$11,672,499	\$2,865,935	\$14,538,434
Reconciliation Adjustment	(\$124,411)	(\$294,226)	(\$418,637)
Total WSIRA Revenue Requirement	\$11,548,088	\$2,571,709	\$14,119,797

Table 7

Adding the total revenue requirement amounts from Staff's Recommendation in this case—the "Total Revenue Requirement" row in Table 7—to the Commission-authorized amounts from the prior WSIRA cases results in a total of \$50,942,321. These amounts are shown in Table 8 below.

Cumulative Authorized Water WSIRA Revenues			
	St. Louis County	Other Water	Total
WO-2021-0428	\$16,135,000	\$2,659,795	\$18,794,795
WO-2022-0176	\$15,373,804	\$2,235,288	\$17,609,092
WO-2023-0008	\$11,672,499	\$2,865,935	\$14,538,434
Total			\$50,942,321

Table 8

To determine whether this amount exceeds the fifteen percent cap in § 393.1506.1 RSMo., one divides the total amount of revenues identified in Table 8, by the total amount of authorized water revenues in Table 5: \$50,942,321/\$335,240,042. This equals .15196 or approximately 15.2%, as shown in Table 9 below.

Calculation of § 393.1506.1 RSMo. Cap
\$50,942,321 ÷ \$335,240,042 = .15196 or 15.2%

Table 9

Based on these calculations, if the Commission authorizes MAWC to recover the full amount of water revenues suggested in Staff's Recommendation, the Commission would allow MAWC's water WSIRA to exceed the statutory cap established in § 393.1506.1 RSMo. Such a result is prohibited by § 393.1506.1 RSMo. ("The WSIRA shall not produce revenues in excess of fifteen percent of the water or sewer corporation's base revenue requirement approved by the commission in the water or sewer corporation's most recent general rate proceeding . . ."). Therefore, the Commission must not allow MAWC to recover the full amount suggested by Staff in its Recommendation.

III. Conclusion

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission authorize MAWC to recover an amount less than that suggested by Staff in its Recommendation, specifically an amount that will not allow MAWC to exceed the statutory cap in § 393.1506.1 RSMo.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 15th day of December 2022.

/s/ Lindsay VanGerpen