

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

In the Matter of Missouri-American Water)	
Company’s Request for Authority to)	Case No. WR-2015-0301
Implement a General Rate Increase for)	Case No. SR-2015-0302
Water and Sewer Service Provided in)	
Missouri Service Areas.)	

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel (“OPC”) pursuant to Section 386.500 RSMo and for its Application for Rehearing of the Public Service Commission’s (“Commission”) May 26, 2016 Report and Order (“Order”) states OPC seeks rehearing of the Commission’s Order raising rates for Missouri American Water Company (“MAWC”) because the Order is unlawful and unreasonable as follows:

A. Including Bad Debts in the Customer Charge is Poor Public Policy

1. The Order’s resolution of the customer charge issue is a significant step backwards in Missouri rate design policy. The Order announces a new Commission policy guaranteeing the utility recovery of bad debt costs by increasing the customer charge and signifies bad debt recovery has a higher priority than water efficiency incentives, conservation incentives, and energy efficiency incentives provided by a lower customer charge.¹ The Order also suggests a new Commission policy guaranteeing the utility recovery of bad debt costs has a higher priority to the Commission than helping customer with their bill management. The Order’s findings and conclusions on the customer charge are unreasonable because they are: (1) not supported by competent and

¹ Order, p. 39. Bad debt costs are also referred to as “uncollectibles”.

substantial evidence; (2) against the weight of the evidence; (3) arbitrary; (4) capricious; and (5) constitute an abuse of the Commission's discretion. The Order's findings and conclusions regarding the customer charge rate are an unreasonable in terms of water conservation policy and policies enabling customers to have better control over their bills. The Order adopts the wrong policy for Missouri and should be reheard.

2. Historically, this Commission has set the customer charge for utilities at levels that did not include bad debts. For example, last year the Commission found the customer charge for Kansas City Power & Light Company includes "meter reading, billing, postage, customer accounting service expenses, a portion of costs associated with meter investment, and the service line."² All of these costs can be attributed to *each customer*. Bad debts of *other customers* are in no way a cost incurred by any customer other than those that do not pay their bill and cause the utility to incur bad debts. In another recent case, the Commission defined customer-related costs as "the minimum costs necessary to make electric service available to the customer, regardless of how much electricity the customer uses."³ Bad debts, however, are not a minimum cost of making water service available to the customer and are significantly different than the customer costs recognized by the Commission because most customers do not cause a utility to incur bad debts. Costs truly incurred by every customer includes meters, meter reading, billing, and the service line among others. These are proper customer costs.

² *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2014-0370, *Report and Order*, 2015 Mo. PSC LEXIS 789, September 2, 2015.

³ *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service*, Case No. ER-2014-0258, *Report and Order*, 2015 Mo. PSC LEXIS 380; 320 P.U.R.4th 330, April 29, 2015.

3. Shifting cost recovery from the volumetric charge to the customer – or fixed - charge reduces a customer’s incentive to practice water conservation and implement water efficiency measures. It is poor public policy to remove a portion of those incentives by adding more costs to the customer charge. Instead, the Commission should be looking for ways to reduce the customer charge to promote conservation and customer bill control. The Commission has repeatedly recognized the interplay between the customer charge and policies promoting efficient use of utility services. Just last year the Commission concluded, “Shifting customer costs from variable volumetric rates--that a customer can reduce through energy efficiency--to fixed customer charge will reduce incentive efforts to conserve energy.”⁴

4. There is no evidence MAWC is struggling to recover its bad debt costs through volumetric rates. The utility has the opportunity to recover these costs regardless of whether those costs are recovered through the volumetric rate or the customer charge. Reclassifying those costs indicates the Commission wants to guarantee revenue recovery of MAWC’s bad debt costs yet the Order makes no attempt to explain why increasing the customer charge is of such importance that the Commission is willing to harm the customer’s water and energy efficiency efforts and create additional burdens for Missouri’s low-income water consumers. The Order’s only justification is: (1) it is fair to MAWC to recover bad debts through the customer charge; and (2) it is fair to large volume water users. These are the only groups that the Order protects. The Order does not appropriately recognize conservation and efficiency incentives benefit all customers –

⁴ *In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area*, Case No. ER-2014-0351, *Report and Order*, 2015 Mo. PSC LEXIS 562, June 24, 2015.

low volume and high volume water customers alike. A common theme heard by customers across all usage levels is the importance of having greater control over their bill – a plea improperly ignored by this Order.

5. Shifting more costs into the customer charge is also against the public interest because it gives MAWC’s disincentive to reduce bad debt costs. In the recent past, the Commission found utilities have substantial control over their level of bad debts “by being more or less aggressive in its collection efforts” and by using a number of collection tools available to utilities.⁵ The same analysis should apply to MAWC because it too can exercise substantial influence over the level of bad debt costs. OPC is not aware of any evidence in the record suggesting MAWC's current bad debt practices are reasonable and not in need of changes that could help reduce bad debts. By reducing MAWC's incentive to control costs, the Order is contrary to the public interest. Utilities have significantly less control over the costs traditionally included in the customer charge – that is, those costs that are truly caused by the individual customer as outlined above. Reducing incentives to control costs is not in the public interest and, for this reason, the Order should be reheard to better consider this issue and customer charge impacts.

B. Rate Consolidation Decision is Unlawful and Unreasonable

6. OPC seeks rehearing of the Commission’s Order consolidating Missouri MAWC’s separate water districts into three water districts because the Order unlawfully

⁵ *In the Matter of Laclede Gas Company's Tariff Designed to Permit Early Implementation of Cold Weather Rule Provision and to Permit Laclede to Collect Bad Debt Through the PGA*, Case No. GT-2009-0026, *Report and Order*, 2009 Mo. PSC LEXIS 317, April 15, 2009.

and unreasonably prejudices the large water systems by requiring them to subsidize the rates paid by small water systems.

7. The Order violates Section 393.130 RSMo because it authorizes an “undue or unreasonable preference or advantage” to customers in certain localities and authorizes an “undue or unreasonable prejudice or disadvantage” for customers in other localities. Ordering subsidization of one water system by another, objecting water system, is unlawfully discriminatory as stated by the Court of Appeals in a prior case involving MAWC. That Court stated, “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.” *State ex rel. City of Joplin v. P.S.C.*, 186 S.W.3d 290 (Mo. App. 2005). The Court reversed and remanded the Commission’s order “as to its rate determination...that apparently discriminate against Joplin district ratepayers.” *Id.* The Commission’s Order in the present case admittedly consolidated for the purpose of subsidizing high-cost water systems through rates paid by distant lower-cost water systems when it states, “Consolidated pricing will help to meet the needs of all customers by sharing the cost of providing needed services among a larger group of customers, making the cost of service more affordable for all.”⁶ This ordered subsidization is unlawful and unreasonable, and the Commission exceeded its authority by setting rates that discriminates against certain locations by requiring them to pay more than the cost of service.

⁶ *Order*, p. 27.

8. The Order supports its subsidization by issuing a number of fact findings not supported by the record before the Commission. The Order's findings and conclusions on rate consolidation are unreasonable because they are: (1) not supported by competent and substantial evidence; (2) against the weight of the evidence; (3) arbitrary; (4) capricious; and (5) constitute an abuse of the Commission's discretion. There are a very concerning substantial number of fact findings issued by the Commission that purport to support the Commission's rate consolidation decision that fail this test of reasonableness. First, the finding "[t]he systems within the [Staff's] proposed Districts also share similar sources of water" is unreasonable.⁷ District 1 would combine St. Louis Metro, served by water from the Missouri and Meramec Rivers, with Mexico, served by groundwater. District 3 would combine Joplin, served by water from Shoal Creek and groundwater, with a number of small districts served by groundwater only. The methods and costs for extracting and treating surface water are substantially different than for groundwater. These sources and costs are not similar, and the Order's findings to the contrary are not supported by the evidence.

9. The Order's second finding that "(d)espite the inherent differences in the various water systems, Missouri-American's annual cost to serve a residential customer is fairly consistent across existing districts" is unreasonable⁸ and not supported by the record. In the same paragraph as this finding, the Order states the annual cost to serve a residential customer in the St. Louis Metro district is **\$481.86** per year, the cost to serve a residential customer in Brunswick is **\$702.92** per year, and the cost to serve a residential customer in Platte County is **\$1,031.48** per year – a range of **\$549.62**. These differences

⁷ *Id.*, p. 9.

are also evident in District 2, where the **\$1,031.48** cost to serve Platte County is more than *twice* the **\$418.39** cost to serve the unconnected St. Joseph water system. Accordingly, customers served by the St. Joseph water system will be financially responsible for the majority of any main or treatment facility installed in Platte County despite the fact those customers will not receive a single drop of water from the Platte County water system. St. Joseph is also being consolidated with the high-cost Brunswick water system at **\$702.92** annually. Customers in St. Joseph will also pay the majority of any improvements in Brunswick while receiving no service from the Brunswick system.

10. Likewise, St. Louis Metro customers will pay for over ninety-five percent (95%) of *any* upgrade to the water systems in Jefferson City or Mexico, with no value to St. Louis Metro's 350,000 customers including its many low-income residents. Comparatively, Mexico has approximately 4,000 customers and Jefferson City has approximately 9,000 customers. A similar result will occur for Joplin and St. Joseph, which will pay the majority of costs for improvements at distant and unconnected water systems due to the Commission's rate grouping. The Order states since "all water systems will eventually require large capital investments...in the long term any perceived short-term unfairness will be balanced out." However, there will be no "balancing" since the large water systems will *always* pay the lion's share of any investment in any one water system within their respective districts.

11. The Order's third finding on rate consolidation is unreasonable in that it states there is a "fragmentation problem" in MAWC's service territory creating

⁸ *Id.*, p. 12.

“affordability problems.”⁹ The fact there are separate water systems does not in any way “create” affordability concerns – the affordability issues are created by the fact a particular water system has high costs and many residential customers are low-income or on a fixed income. These problems are not “created” by the fact other unconnected systems cost less to operate because there is no real relationship between the two systems. The affordability problems in high cost water systems would exist regardless of whether other, less-costly water systems also exist.

12. The Order’s fourth finding that “Federal and state governments have recently imposed many new regulations designed to protect public and environmental health” and that these unidentified regulations “impose a heavy burden on small systems with few customers”¹⁰ is also unreasonable. The only state government applicable to this case is Missouri and the Order identifies no such Missouri regulation and identifies only the Safe Drinking Water Act. But the citation to this Act is from a MAWC white paper with sources from over a decade ago. The evidence does not support a finding of recent regulations imposing any new burden on small systems and it does not support the Order’s finding such regulations are creating affordability concerns. The Order continues this unsupported claim when it later refers to “spreading out the cost of mandated environmental upgrades” – also not supported by the record. Therefore, the Order’s reference to new regulations imposed by “Federal and state governments” is unreasonable.

13. The Order’s fifth finding that requiring MAWC to file a five-year capital expenditure plan will somehow offset the “incentive to overbuild its water and sewer

⁹ *Id.*, p. 13.

system to maximize shareholder profits” is also unreasonable. It is impossible for other parties to prove a particular investment is only being made to maximize shareholder profits and removing the natural disincentive to overbuild will result in excessive expenditures and higher rates for all customers contrary to public interest.

14. The Order is also unreasonable and unlawful because of its reliance upon testimony evidence stating, “if consolidated pricing allows MAWC or other entities to acquire troubled systems to keep them out of receivership, then consolidated pricing is a favorable change that could provide benefit to Missouri citizens without any undue burden or cost.”¹¹ This testimony is contrary to the weight of the evidence as well as Section 393.320 RSMo, which already requires newly acquired small water systems to be consolidated into an existing water district and thereby eliminates this so-called “benefit” of consolidation. Section 393.320 RSMo applies to large water companies purchasing small water companies and MAWC, currently, is the only large water company in the state under the meaning of this statute. The Order ignores this fact and justifies consolidation by stating, “**Some other entity** that wanted to buy multiple water or sewer systems in Missouri and consolidate them for ratemaking purposes would not be able to take advantage of this statute and might **still need the reassurance** that consolidated-tariff pricing may be available.”¹² Reassuring unknown water systems of the Commission’s openness to consolidation is an unreasonable rationale for approving district consolidation and is an unlawful attempt to issue a rulemaking through a rate case. MAWC ratepayers should not be forced to pay huge rate increases due to

¹⁰ *Id.*

¹¹ *Id.*, p. 14.

¹² *Id.*, p. 26, emphasis added.

consolidation so future, hypothetical water companies may wish to acquire other systems and consolidate them.

WHEREFORE the Order is unlawful, unreasonable, arbitrary, capricious, contrary to the weight of the evidence and constitutes and abuse of the Commission's discretion. The Office of the Public Counsel respectfully seeks rehearing for all the reasons identified above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 24th day of June 2016.

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