

**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.)

Case No. WR-2015-0301
Case No. SR-2015-0302

**REPLY BRIEF OF THE
OFFICE OF THE PUBLIC COUNSEL**

**Marc Poston (# 45722)
Chief Deputy Public Counsel
Office of the Public Counsel
P. O. Box 2230
Jefferson City, MO 65102
(573) 751-5558 (Telephone)
(573) 751-5562 (Fax)
marc.poston@ded.mo.gov**

April 22, 2016

Table of Contents

A.	Regulatory Policy	4
1.	Reduced O&M Expenses Do Not Warrant Additional Revenue Guarantees	4
2.	Acquisition of Small Water and Wastewater Systems Do Not Warrant Additional Revenue Guarantees	5
3.	Infrastructure Investments Do Not Warrant Additional Revenue Guarantees	5
4.	The Claim of Declining Usage is Not Supported by the Record	6
5.	Fixed Cost Claim is Misleading	6
6.	MAWC Customer Comments	8
B.	Monthly Customer Charge	9
C.	Subsidization / Rate Consolidation	11
1.	There is No Evidence Rate Subsidies Will Avoid Rate Shock	12
2.	All Parties Recognize Cost Differences Between Water Systems	13
3.	Section 393.320 RSMo Already Provides Acquisition Incentives	16
4.	McDermott’s Testimony on Consolidation Trends is Not Supported by Competent and Substantial Evidence	17
5.	Marginal Cost Studies are Not Necessary to show Rate Consolidation Results in Subsidies	18
6.	MAWC Filing a Five-Year Plan Will Not Lessen the Incentive to Over-Invest	19
7.	Exhibits 48R, 49R, 50R, 51R and 53R are Unreliable and Do Not Constitute Competent and Substantial Evidence	19
D.	Arnold Sewer	20
E.	Conclusion	21

**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.)	

PUBLIC COUNSEL'S REPLY BRIEF

The Office of the Public Counsel ("OPC") offers this reply to the briefs filed by Missouri American Water Company's ("MAWC" or "Company") and the Public Service Commission's Staff ("Staff"). OPC's initial brief addressed most of the arguments raised by the other parties in their initial briefs. However, responses are warranted to some of the arguments on the issues of regulatory policy, the monthly customer charge, subsidizing water systems, and Arnold sewer issues.

OPC reminds the Public Service Commission ("Commission") that MAWC has the burden of proving its proposed changes in this case are just and reasonable.¹ As explained in OPC's initial brief, and further explained below, MAWC failed to satisfy its burden of proof on the remaining issues in this case. MAWC either relied upon no evidence to make its arguments or relied upon evidence that is neither competent nor substantial as required.²

¹ Section 393.150.2 RSMo.

² *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41 (Mo. 1979) ("UCC").

A. REGULATORY POLICY

In the regulatory policy section of its brief, MAWC makes three claims it suggests warrant special ratemaking treatment. All three claims, addressed separately below, are not proper rate design considerations because designing rates does not involve rewarding a utility for taking actions that generate profits for shareholders. This is exactly what each of the three claims involves. These profit-producing actions should not also be used to garner additional shareholder profits through rate designs that shift additional risk away from shareholders and onto ratepayers by guaranteeing more revenues. MAWC's President, Ms. Cheryl Norton, testified that American Water Works, the parent company of MAWC, was recently added to the S&P 500 and its stock is at an all-time record high.³ This is not a company in need of additional earnings help.

1. Reduced O&M Expenses Do Not Warrant Additional Revenue Guarantees

MAWC claims it reduced Operations & Maintenance ("O&M") expenses since the last rate case implying this warrants additional changes that shift risks from the Company to the customer. This includes increasing the customer charge that guarantees a higher amount of revenue recovery. An important fact MAWC does not explain is it already benefited from those reductions due to regulatory lag. Rates approved in the last rate case were set based upon higher O&M expenses and MAWC continued to charge the higher rates despite the expense reductions. MAWC has not been before the Commission for a rate case in four years and benefited from the O&M reductions during that period. MAWC claims O&M expense was reduced by \$13.5 million annually⁴ meaning MAWC

³ Transcript (Tr.) 134.

⁴ MAWC Brief, p.3.

has recovered \$13.5 million more annually for O&M expenses than what it actually incurred. Once rates are reset in this case, MAWC's customers should realize those expense reductions. Any decision that provides MAWC with greater assurances of revenue recovery due to the O&M reductions would effectively eliminate a portion of the customer's benefit from the reduced O&M expenses.

**2. Acquisition of Small Water and Wastewater Systems
Do Not Warrant Additional Revenue Guarantees**

MAWC also states it has recently acquired six water systems and six wastewater systems and “some of them were in dire condition – such as Tri-States Utility, Inc...and the Hickory Hills Water & Sewer Co., Inc.”⁵ MAWC acquired only those systems that made financial sense to the Company's growth strategy and not out of the altruism they present with their statement.⁶ MAWC's acquisition strategy was further helped by Section 393.320 RSMo, which requires newly acquired small systems to be combined with an existing district, and improves the Company's ability to acquire systems. It is this combination of favorable investment risks and favorable legislation, not MAWC's good will that allowed MAWC to make those acquisitions. More importantly, providing MAWC with paybacks or rewards for acquisitions of small, expensive water and wastewater systems is no basis for just and reasonable rates.

**3. Infrastructure Investments Do Not Warrant Additional
Revenue Guarantees**

Lastly, MAWC states it has made “substantial investments in the State of Missouri” since its last general rate case. MAWC fails to explain that the Company has a substantial financial incentive to make those investments because MAWC earned and

⁵ *Id.*

continues to earn a return on its capital investments. Accordingly, MAWC's infrastructure investments should not be also used to justify other policies that move more risk onto ratepayers and guarantee more revenue for the Company.

4. The Claim of Declining Usage is Not Supported

Despite the parties' settlement on the issue of customer usage, MAWC continues to claim a decline in usage as an additional reason to guarantee more revenue recovery for the Company. As noted in OPC and Staff testimony, MAWC's usage claims are not supported by the evidence. MAWC provided inconsistent data to the parties and failed to disclose a serious issue involving faulty meters reporting no usage when usage occurred that could further impact MAWC's usage data.⁷

OPC urges the Commission not to factor MAWC's unproven usage claims into its resolution of any remaining issue. The parties agreed to a level of usage for the purpose of setting rates, which the Commission approved, and any rate design decision that attempts to address MAWC's usage claims would undermine that agreement and subsequent order.⁸ OPC entered into that agreement with the understanding all usage issues were resolved. If the Commission were to attempt to address MAWC's usage claims through rate design, OPC would not receive the benefit of the bargain it reached.

5. Fixed Cost Claim is Misleading

OPC cautions the Commission not to be misled by MAWC's argument that 91% of its costs are fixed or that this is inconsistent with rate designs that recover 25% of costs through a fixed charge. Comparing these two concepts for purposes of setting a customer

⁶ Tr. 443-444.

⁷ Mantle Rebuttal, OPC Ex. 7, pp. 17-23; Cassidy Surrebuttal, MO PSC Ex. 16, p.2.

⁸ Order Approving Non-Unanimous Stipulation and Agreement, April 6, 2016, EFIS No. 371.

charge is improper because the purpose of a customer charge is not to recover a certain percentage of fixed costs; the purpose is to recognize each customer causes monthly costs on the utility company specific to that customer.⁹ For example, no party would argue MAWC does not incur service line, meter, and billing costs when it adds a customer and no party would argue these costs are inappropriate for a customer charge. In a month's time, however, an additional individual customer does not cause a utility to increase its storage capacity, cause it to replace a water main, or cause it to replace a pump. The utility would incur those costs regardless. Including costs not customer-specific ignores the purpose of the customer charge, which is to ensure each customer pays for the monthly costs associated with that customer.¹⁰

The remaining system costs that are not customer-specific, and are caused by factors such as necessary storage and necessary main capacity, are most definitely variable costs in the long-run because they are influenced by usage. Over the long-run, the less water a customer uses, the less costs the company incurs for storage and main capacity associated with that customer. This provides economic-based justification for recovering the vast majority of costs, including those the Company claims are "fixed," in a variable rate based upon usage. Accordingly, OPC cautions the Commission against relying upon MAWC's incorrect fixed cost argument as a basis for making any decisions in this case related to rate design.

MAWC's claim that it needs ratemaking changes to address a "fixed cost" recovery concern is nothing more than a solution in search of a problem. This is

⁹ Hyman Surrebuttal, DE Ex. 6, p.20.

¹⁰ *Id.*

evidenced by an MAWC data request response where the Missouri Industrial Energy Consumers (“MIEC”) asked:

In the last 10 years, has MAWC ever been unable to pay its variable costs? In the last 10 years, has MAWC ever not collected enough customer revenues to meet its depreciation expenses? In the last 10 years, has MAWC ever been unable to pay its tax (Federal, State, payroll, property) obligations? **In the last 10 years, has MAWC been able to recover all of the fixed costs included in the customer rates?** If the answer is no, for any period of time in the last 10 years, for each such period of time, did MAWC earn a positive return on investment? Provide all documentation supporting the responses to this data request.¹¹

MAWC’s response stated simply, “MAWC has been able to pay these costs over the past 10 years.”¹² MAWC has no issues with recovering the costs it claims are fixed, and therefore, no special ratemaking treatment is warranted.

6. MAWC Customer Comments

When considering regulatory policy, OPC encourages the Commission to read through the customer comments filed in EFIS. Attached to this reply brief for the Commission’s convenience are copies of a number of those comments.¹³ A common theme heard throughout the local public hearings was that MAWC has poor customer service. In the EFIS comments, many customers wrote to explain the hardships *any* rate increase would cause. The most vocal customers appear to be the elderly and others on a fixed income such as social security recipients. Many of these elderly customers raised the same concern that their social security benefit is not increasing this year, so any increase to their water bill will have an impact.¹⁴ The concerns they raise include

¹¹ Marke Rebuttal, OPC Ex. 11, pp. 35-36, emphasis added.

¹² *Id.*

¹³ See Appendix A.

¹⁴ EFIS Public Comment No. P201601447.

whether a water rate increase would impair their ability to afford other necessities such as food and medicine.

In addition, other MAWC's customer comments indicated a good understanding of the interplay between rates and water usage, with one customer, Gail P., commenting, "I'm old and alone and don't use much water. They shouldn't raise the base rate they should raise the water charge."¹⁵ Gail recognizes as a low-use customer that any increase to the customer charge rather than the volumetric rate would be the worst outcome for her usage level. Other comments shared Gail's concern. OPC asks the Commission to read through and consider the attached comments when it decides the remaining issues.

B. MONTHLY CUSTOMER CHARGE

The arguments of Staff and MAWC for higher customer charges fail to recognize the primary goal in designing rates. As explained by the Commission in a 2007 MAWC order, "[t]he primary goal of a rate design structure is to balance economic efficiency with equity and affordability considerations."¹⁶ The customer charges proposed by MAWC and the Staff fail to adequately address any one of these primary considerations. As explained in OPC's initial brief, a higher customer charges rate design does not satisfy the primary goal of rate design structure because it decreases water conservation objectives and shifts more costs to low-use customers, primarily low-income customers.

MAWC argued in favor of monthly customer charges that go well beyond what is appropriate for the cost the Company incurs to add one customer, otherwise known as

¹⁵ EFIS Public Comment No. P201601443

¹⁶ *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Case No. WR-2000-281, Report and Order on Second Remand, December 4, 2007.

“customer costs.” MAWC’s brief confirms its customer charge calculation includes public fire costs because, according to MAWC, those costs are fixed. Here, MAWC is confusing two separate concepts in that the purpose of the monthly customer charge has never been to recover “fixed costs”; the purpose has always been to recover only those costs specific to a customer.¹⁷ When MAWC adds a customer onto its system, MAWC does not incur additional public fire costs. MAWC’s arguments attempt to take advantage of the fact a customer charge is a fixed *rate* that does not vary month to month to argue certain fixed *costs* should also be included in what has traditionally included only customer-related costs. MAWC purposefully ignores the clear distinction between the two and the Commission should recognize this.

MAWC is critical of Staff’s position to include the public fire costs in the volumetric rate and argues “[b]y placing recovery of these costs on the volumetric charge, large users will pay a disproportionately greater amount of these costs.”¹⁸ Consistent with most of its arguments in their brief, MAWC provides no rate impacts on any party nor do they provide any evidence suggesting the large users they refer to actually oppose recovering the public fire costs through volumetric rates.

Similarly, MAWC makes the argument that uncollectible expenses should also be recovered through the customer charge. To OPC’s knowledge, the unpaid bills of other customers have never been considered a customer-related cost and have never been recovered through the customer charge for any public utility in Missouri. MAWC’s brief cites to no past Commission decisions or decisions from any other public utility in the country that recover this expense through the customer charge.

¹⁷ Tr. 783.

¹⁸ MAWC Brief, p. 30.

For the last half-century, the foremost economic authority on public utility ratemaking is James C. Bonbright's "Principles of Public Utility Rates."¹⁹ Missouri courts have quoted Bonbright's treatise in Public Service Commission appeals.²⁰

Bonbright defines customer costs as:

...those operating and capital costs found to vary with the number of customers regardless or almost regardless of...consumption. Included as a minimum are those costs of metering and billing along with whatever other expenses the company must incur in taking on another customer.²¹

OPC urges the Commission to recognize the purpose of the customer charge, and to avoid including costs in the customer charge violating Bonbright's *Principles* and the long-standing recognition that the customer charge should include no more than the costs MAWC "must incur in taking on another customer."

One fact is agreed upon by all parties – increasing the customer charge harms low-use customers. There are many reasons why a customer could have low water usage: they may be conscientious about wasting water; they may live in an apartment; they may have small families or live alone; or they may have efficient appliances. Irrespective of their reasons, a raise in the customer charge will penalize them for using less.

C. SUBSIDIZATION / RATE CONSOLIDATION

MAWC naturally has an incentive to urge the Commission to order rate subsidies through rate consolidation because it eases the administration of the separate water systems and allows MAWC to make investments with fewer concerns with the costs of

¹⁹ Tr. 265; Bonbright, James C. *Principles of Public Utility Rates*, 1st ed. Public Utility Reports, 1961.

²⁰ See *State ex rel. Lake Lotawana v. Public Service Com.*, 732 S.W.2d 191 (Mo. Ct. App. 1987); *State ex rel. Empire Dist. Electric Co. v. Public Service Com.*, 714 S.W.2d 623 (Mo. Ct. App. 1986); *UCC*, 585 S.W.2d 41 (Mo. 1979).

²¹ *Bonbright*, p. 347.

those investments. The result is fewer cost controls. Staff recognizes these problems with consolidation when it argues “[s]ingle-tariff pricing is a firm departure from the transparency of cost-of-service ratemaking, and is a move that Staff does not support in this case.”²² The Staff does not explain why it supports single-tariff pricing on a regional basis yet opposes it on a statewide basis. The impact is the same in that both a regional consolidation and a statewide consolidation depart from well-established cost causation principles.

1. There is No Evidence Rate Subsidies Will Avoid Rate Shock

MAWC’s initial brief raised a number of arguments to support its proposal to require certain water districts to subsidize the rates of other water districts to which we address below. MAWC’s arguments are consistently based upon claims that are not supported and should not be relied upon because findings of fact in Commission orders must be based upon with competent and substantial evidence.²³

The crux of MAWC’s rate subsidy proposal is, “[c]hanges in rate base, particularly as a result of the Safe Drinking Water Act, have a significant potential to create rate disparities for certain districts” and “[t]he cost of specific programs should be shared by all customers, rather than selectively burdening those of the affected districts.”²⁴ According to MAWC, this will avoid “rate shock.”²⁵ MAWC’s alleged expenses caused by the Safe Drinking Water Act should not be relied upon because it does not cite to a single future expense incurred due to this.²⁶ MAWC’s “rate shock”

²² Staff Brief, p. 23.

²³ *UCC*, 585 S.W.2d 41 (Mo. 1979).

²⁴ MAWC Brief, p. 9, emphasis added.

²⁵ *Id.*

²⁶ *Id.*

claims are also unsupported because they cite to no evidence calculating an impact that any alleged future plant expense would have on any particular water district, on any customer, or on any class of customers. The missing evidence is precisely the type of data the Commission needs to conclude there is a problem. Factual claims must be supported by competent and substantial evidence.²⁷

MAWC argues subsidies are good because the recipient may otherwise experience rate shock later due to future plant expenses that at this time are unknown. In other words, they want the Commission to *guarantee* large rate increases in 2015 for customers in one water district to prevent the *potential* for cost-based rate increases in 2018 for customers in another.

An important fact to recognize is due to St. Louis Metro water district's size (81% of MAWC's customers), St. Louis Metro would pay the vast majority of the water system costs for any system consolidated with it.²⁸ Hypothetically, if the Commission were to order a state-wide consolidation, St. Louis Metro customers would pay 81% of all plant investments in other water districts.²⁹ If the Commission were to order St. Louis Metro to be combined as proposed by Staff or MAWC, the percentage to be paid by St. Louis Metro would be even higher because the St. Louis Metro proportion would be greater.

2. All Parties Recognize Cost Differences Between Water Systems

MAWC also argues all water districts are similar because all systems involve pumps, mains, and storage.³⁰ But the facts do not support a conclusion that costs are the same for each water district. The facts support a conclusion costs between systems varies

²⁷ *UCC*, 585 S.W.2d 41 (Mo. 1979).

²⁸ Tr. 229.

²⁹ Tr. 176,

considerably. MAWC's own witnesses admitted there are distinct cost variations between districts by saying there are cost differences between the water systems that use groundwater from wells as compared to the water systems that use surface water.³¹ OPC witness Mr. Ralph Smith testified that "MAWC's districts have substantially different characteristics including source of supply, processing and treatment requirements, and customer density and other characteristics" and "[f]or a number of the districts MAWC proposes to consolidate, the cost of service appears to vary substantially."³²

MAWC cites to its witness Mr. Paul R. Herbert and makes the unusual argument that having different rates for different water systems is unreasonable because taken to "it's logical conclusion," cost-based rates should vary per customer depending on the customer's distance from the treatment plant.³³ Mr. Herbert essentially creates a form of cost-based ratemaking no party is recommending and points out the absurdity of such a rate design to support his argument that cost-based rates are unreasonable. The statutes require similar rates for similarly situated customers³⁴ and it is reasonable to conclude customers of similar usage served by the same system are similarly-situated. It becomes more difficult to conclude customers served by separate and distinct water systems, each with its different water treatment methods and costs, are similar.

In the Commission's 2007 MAWC rate case order addressing the issue of single-tariff pricing versus district-specific pricing, the Commission found:

[M]oving from statewide average pricing to district-specific pricing would increase the correlation of rates and costs, increase economic efficiencies,

³⁰ MAWC Brief, p. 9.

³¹ Tr. 369.

³² Smith Direct Testimony, OPC Ex. 15, pp. 7, 10.

³³ MAWC Brief, p.14.

³⁴ Sections 393.130 and 393.140 RSMo.

and send more appropriate pricing signals to customers. In addition, it would not be discriminatory under § 393.130.3, though that section precludes charging customers in different localities different rates, because it falls within the exception set forth in § 393.140(11), which allows different classes of customers to be charged different rates as long as the rates are consistent among "like," or similarly situated, customers. Increasing the relationship between costs and rates is a rational and fair component in rate setting and, in this case, the Commission concludes that its approval of district-specific pricing comports with § 393.140(11).³⁵

The Commission found district-specific pricing would: (1) better correlate rates and costs; (2) increase economic efficiencies; and (3) send more appropriate pricing signals to customers.³⁶

MAWC's request the Commission ignore all the cost differences between water systems is concerning because it leads to muting the natural price signals that occur when rates are based on actual cost.³⁷ Muting the price signal occurs when the price is below its costs, causing customers to use more water than they would otherwise due to the fact that a portion of the costs to serve them will be subsidized.³⁸ The result will be inefficiently-designed rates because increasing usage will eventually cause increased investment in the higher cost systems.

OPC asks the Commission to recognize the findings and conclusions it reached on this very issue in 2007 when it concluded:

[S]ingle-tariff pricing results in rates that do not reflect the actual cost of serving particular customers. Missouri-American's various districts differ

³⁵ *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, Case No. WR-2000-281, Report and Order on Second Remand, December 4, 2007.

³⁶ *Id.*

³⁷ Tr. 745-746; Marke Rebuttal, Ex. 11, p. 7.

³⁸ *Id.*

significantly in such cost drivers as water supply source, water treatment process, proximity of the supply source, aggregate demand, and customer density. In district-specific pricing, by contrast, customers pay rates based solely on the actual cost of serving their community³⁹

3. Section 393.320 RSMo Already Provides the Incentive to Acquire Small Systems

MAWC and Staff again raise the argument that a benefit of their subsidy proposals is they help the larger utilities acquire small systems because it enables a larger utility to spread the small system costs across a larger service area.⁴⁰ This is one of the primary reasons both claim as a reason to order rate subsidies. As explained in OPC's Initial Brief, providing utilities with incentives to acquire distressed small systems cannot possibly be a benefit of further consolidation because the Commission is already required to consolidate newly acquired systems within a larger service area under Section 393.320 RSMo.⁴¹ MAWC's brief somewhat recognizes this when it concludes the statute "evidences a legislative preference, if not intent, for consolidating smaller water systems when acquired by a large water utility."⁴² There should be no question MAWC will be able to consolidate any newly acquired systems into an existing district as doing so is mandatory.

³⁹ Case No. WR-2000-281, Report and Order on Second Remand, December 4, 2007.

⁴⁰ MAWC Brief, p. 11; Staff Brief, p. 16.

⁴¹ 393.320.6 states "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."

⁴² MAWC Brief, p. 20.

MAWC has and continues to acquire systems without the consolidation requested in this case. The evidence does not show MAWC will change its current growth strategy of acquiring water systems nor does it show the existence of any distressed water system MAWC would acquire only with additional consolidation. The evidence shows there is no current concern with the ability of a large water company to consolidate newly acquired small systems within an existing service area – the General Assembly addressed that problem just three years ago when it enacted Section 393.320.

4. McDermott’s Outdated Hearsay Testimony Cannot Be Relied Upon to Determine How Other State Commissions Are Addressing Rate Consolidation Issues

MAWC argues there is a national “trend” towards rate consolidation. The data relied upon by MAWC to support this assertion is not supported by competent and substantial evidence. When questioned during the hearing, Dr. Karl A. McDermott testified the data was not based upon any review of actual state commission orders or tariff changes.⁴³ Instead, employees working for Dr. McDermott contacted various state commissions and relied upon assertions made by state commission employees as to whether such a consolidation trend existed.⁴⁴ If the Commission considers rate and tariff decisions by other state commissions to be relevant, the Commission should not rely upon double hearsay testimony⁴⁵ for evidence of what other states are doing. The Commission does not know what questions were asked, what answers were provided, or what criteria were used to conclude there is a rate consolidation trend. If Dr. McDermott thought this was a relevant point, he should have done a more thorough job of

⁴³ Tr. 659.

⁴⁴ Tr. 655.

determining the extent other states' consolidate their rates by reviewing their approved tariffs. These are unsupported and much of this testimony is simply repeated from the last rate case from five years ago.⁴⁶ Dr. McDermott's testimony is unreliable and cannot constitute competent and substantial evidence.

5. Marginal Cost Studies are Not Necessary to Show Rate Consolidation Results in Subsidies

MAWC's initial brief argues the only way to determine whether its rate consolidation proposal creates a subsidy is to conduct a marginal cost study. The *American Heritage Dictionary* defines *subsidy* as: "1. Monetary assistance granted by a government to a person or group in support of an enterprise regarded as being in the public interest. 2. Financial assistance given by one person or government to another."⁴⁷ MAWC and Staff seek to create subsidies because rates would be raised for certain customers to provide monetary assistance for others. MAWC's claims regarding a marginal cost study are unpersuasive because MAWC's witness Dr. McDermott himself criticized the use of a marginal cost study as leading to rates that would result in the utility never investing in the system in the future.⁴⁸ In other words, MAWC argues only a marginal study can show whether a subsidy would occur, but also argues a marginal cost study should not be performed. Once again MAWC has not satisfied its burden of proof to show their proposals are just and reasonable.⁴⁹ If MAWC truly believed a marginal cost study needed to be performed to understand the extent of a subsidy, the burden was

⁴⁵ *Double hearsay* is an out-of-court statement relying upon an out-of-court statement, where neither person allegedly making the statement is available in court for cross-examination.

⁴⁶ Marke Rebuttal, OPC Ex. 11, p.10.

⁴⁷ <https://ahdictionary.com/word/search.html?q=subsidy>

⁴⁸ McDermott Rebuttal, MAWC Ex. 13, p. 11.

⁴⁹ Section 393.150.2 RSMo.

on MAWC to conduct that study and provide evidence to show its proposal is in the public interest.

6. MAWC Filing a Five-Year Plan Will Not Lessen MAWC's Incentive to Over-Invest

Staff and MAWC suggest if MAWC were to file a five-year investment plan with the Commission, this would somehow lessen MAWC's incentive to over-invest. OPC supports an order requiring MAWC to submit a five-year or ten-year plan but that plan should not be the basis for concluding that MAWC's submission of a plan would act as a deterrent from overinvestment. These parties provide no explanation as to exactly *how* submitted a plan five years in advance will reduce the intrinsic incentive to over-invest. Instead it will only provide the parties with knowledge of proposed investments. This proof standard is nearly impossible to meet because showing over-investment would be upon Staff or OPC. This should not be considered a remedy that lessens the company's incentive to over-invest. The price signal will still be masked because the investment will be spread over customers not served by the investment.

7. Exhibits 48R, 49R, 50R, 51R and 53R are Unreliable and Do Not Constitute Competent and Substantial Evidence

MAWC submitted, and then revised and resubmitted on multiple occasions, several exhibits that purport to represent impacts of the various rate design proposals on the different water systems and customer classes. While OPC agrees a bill impact analysis would be helpful, the accuracy of MAWC's exhibits is highly questionable. During the evidentiary hearing, Mr. Herbert testified he did not do any of the calculations and could not answer questions as to how the calculations were done and what costs were

included or excluded.⁵⁰ This concern is increased due to the fact that MAWC has made repeated, ongoing corrections to these exhibits since the evidentiary hearing yet has not filed all of the corrections. Moreover, the other parties had no opportunity to cross-examine MAWC's witnesses on the ever-changing exhibit calculations. OPC cautions the Commission from considering the exhibits as a true reflection of rate impacts under any one consolidation proposal.

The last argument MAWC makes in support of rate consolidation is "this case presents a unique opportunity for the Commission to implement consolidated pricing without a great deal of disruption to the customers of all the districts."⁵¹ What may constitute a "great deal of disruption" to MAWC is likely different from what constitutes a great deal of disruption to a customer getting hit with a significant rate increase due to the subsidies under rate consolidation. If the goal is avoiding disruption, the *Rate Design Agreement* entered into between OPC and the majority of the municipal interveners does the best job of avoiding disruptions while, at the same time, addressing needs espoused by each party, including parties that did not sign the *Rate Design Agreement*.⁵²

D. ARNOLD SEWER

MAWC committed to Arnold customers its rates would not go above \$33.58 per customer.⁵³ MAWC now wants customers in other districts to pay for the \$700,000 shortfall created by this commitment.⁵⁴ OPC urges the Commission to recognize MAWC should live with the commitments it made by having shareholders absorb the shortfall,

⁵⁰ Tr. 365.

⁵¹ MAWC Brief, p. 12.

⁵² Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Revenue, March 22, 2016, EFIS No. 235 ("*Rate Design Agreement*")

⁵³ Staff Ex. 32.

not other customers.. MAWC alone made its commitments to help ease public opposition to the Arnold acquisition and it alone should be required to fulfill that commitment.

MAWC also states the Commission should recognize the treatment of Arnold sewer in the *Rate Design Agreement* while rejecting its other aspects. OPC opposes MAWC's attempt to select specific provisions it supports from the *Rate Design Agreement* because the *Agreement* is a complete-package and particular provisions should not be pulled out of the *Agreement* without accepting all provisions. OPC supports the Staff's position that MAWC shareholders be responsible for MAWC's commitments regarding Arnold's sewer system.

E. CONCLUSION

OPC respectfully urges the Commission to resolve the remaining issues by ordering MAWC to implement the the *Rate Design Agreement*

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Chief Deputy Counsel

PO Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

⁵⁴ MAWC Brief, p. 26.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 22nd day of April 2016.

Kevin Thompson
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Kevin.Thompson@psc.mo.gov

Department Staff Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Timothy W Luft
727 Craig Road
St. Louis, MO 63141
Timothy.Luft@amwater.com

James M Fischer
101 Madison Street, Suite 400
Jefferson City, MO 35101
jfischerpc@aol.com

Larry W Dority
101 Madison, Suite 400
Jefferson City, MO 65101
lwdority@sprintmail.com

Bryan Wade
901 St. Louis St., Suite 1800
Springfield, MO 65806
bryan.wade@huschblackwell.com

Joshua Harden
4520 Main Street, Suite 1100
Kansas City, MO 64111
joshua.harden@dentons.com

Karl Zobrist
4520 Main Street, Suite 1100
Kansas City, MO 64111
karl.zobrist@dentons.com

Greg A Campbell
7730 Carondelet Ave., Suite 200
Clayton, MO 63105
gcampbell@hammondshinners.com

Emily Perez
7730 Carondelet Ave., Suite 200
St. Louis, MO 63105
eperez@hammondshinners.com

Gary Drag
3917A McDonald Ave.
St. Louis, MO 63116-3816
GDDrag@lawofficeofgarydrag.com

Stephanie S Bell
308 East High Street, Suite 301
Jefferson City, MO 65101
sbell@bbdlc.com

Marc H Ellinger
308 E. High Street, Ste. 301
Jefferson City, MO 65101
mellinger@blitzbardgett.com

Joseph P Bednar
304 E High St
Jefferson City, MO 65101
jbednar@spencerfane.com

Keith A Wenzel
304 East High Street
Jefferson City, MO 65101
kwenzel@spencerfane.com

Joel S Hane
702 Felix St.
St. Joseph, MO 64501
joel.hane@tshhlaw.com

Lee C Tieman
702 Felix Street
St. Joseph, MO 64501
lee.tieman@tshhlaw.com

Leland B Curtis
130 S. Bemiston, Suite 200
St. Louis, MO 63105
lcurtis@chgolaw.com

Edward J Sluys
130 S. Bemiston, Suite 200
St. Louis, MO 63105
esluys@lawfirmemail.com

Alexander Antal
301 West High St.
P.O. Box 1157
Jefferson City, MO 65102
Alexander.Antal@ded.mo.gov

Edward F Downey
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
efdowney@bryancave.com

Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

/s/ Marc Poston
