

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

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

**STAFF’S RESPONSE IN OPPOSITION TO
THE OFFICE OF PUBLIC COUNSEL’S MOTION**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”),
by and through counsel, and for its *Response in Opposition*, states as follows:

The Public Service Commission’s (“Commission”) *Order Directing Staff to Prepare Scenarios* (“Order”)¹ is lawful, just and reasonable. When determining water and sewer rates to be charged to customers, the Commission is authorized by § 393.270.4 and .5, RSMo to consider all facts which in its judgment have any bearing upon a proper determination of the question.² Due to the multiple moving parts of rate design, wherein multiple issues require consideration to understand the impact of the rates upon the ratepayer, the Commission is within the bounds of its authorization to pose hypotheticals to Staff to evaluate whether the possible rate impacts are just and reasonable.

¹ EFIS Document 406, Case No. WR-2015-0301.

² See also, ***State ex rel. Missouri Water Co. v. Public Service Commission***, 308 S.W.2d 704 (Mo. 1957)(regarding property valuation); ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41[, 56] (Mo banc 1979)(regarding FACs); and ***Midwest Gas Users' Association v. Public Service Commission***, 976 S.W.2d 470 (Mo. App. W.D. 1998)(regarding PGAs).

The *Order* is lawful, just, and reasonable

The Commission has the authority to set its own rules of evidentiary procedure.³ Chapter Two of 4 CSR 240 sets out the rules of practice and procedure before the Commission, of which § 536.070, regarding rules of evidence and similar provisions of Chapter 536, RSMo., “operate[] to fill gaps not addressed within the PSC statutes.”⁴

Two Commission regulations, 4 CSR 240-2.110(8) and 4 CSR 240-2.130(16), operate to allow the Commission to direct Staff to prepare additional scenarios for the Commission to review. 4 CSR 240-2.110(8) provides who, when and how the record in a proceeding may be reopened. That language restricts “parties” to reopening only within an allotted time.⁵ The regulation places no restrictions on either the Commission or the presiding officer; indeed, it is the Commission that can reopen the record.⁶ Regulation 4 CSR 240-2.130(16) further supports a post-brief reopening of the record, stating:

(16) The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

³ Section 386.410.1, RSMo. “All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission.”

⁴ ***State ex rel. A&G Commercial Trucking v. Public Service Comm’n***, 168 S.W.3d 680, 682-83 (Mo. App. W.D. 2005).

⁵ 4 CSR 240-2.110(8) states “[a] party may request *that the commission reopen* the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument.” Emphasis added.

Nothing about this regulation suggests that regulations is intended to restrict the Commission, or a presiding officer, from reopening the record, upon *sua sponte* motion, or at their discretion, for taking additional evidence.

⁶ 4 CSR 240-2.110(8)

Nothing in 4 CSR 240-2.130(16) prohibits the ordering of the production of further evidence after briefing has concluded. Nor does the Commission's *Order* at issue suggest the additional scenarios would not be part of the evidentiary record in the case.

The Commission may consider the ordered scenarios when reaching a decision

While the Commission is a creature of statute whose powers are limited to those powers conferred expressly or clearly implied as necessary,⁷ the Commission has broad discretion to set just and reasonable rates.⁸ In the statutory task of setting just and reasonable rates,⁹ the Commission's principal interest is to serve and protect ratepayers.¹⁰

The Commission's *Order* explicitly states its concern is regarding the impact on customer rates.¹¹ Rate design directly affects the amount of money that a utility customer will see listed upon his or her bill. Because the Commission may order Staff to provide such scenarios, and reopen the record at its discretion, the Commission is acting lawfully; and therefore, "these considerations [convenience, expediency and necessity] and others become part of the broad discretion accorded the commission to set just and reasonable rates."¹² Thus, consideration of the requested scenarios are

⁷ ***State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n***, 585 S.W.2d 41, 49 (Mo. 1979).

⁸ ***State ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n***, 850 S.W.2d 903, 910-11 (Mo.App. W.D. 1993)(citing ***State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n***, 585 S.W.2d 41, 49 (Mo. 1979)).

⁹ Section 393.140(5), RSMo.

¹⁰ ***State ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n***, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993)(citing ***State ex rel. Crown Coach Co. v. Pub. Serv. Comm'n***, 238 Mo. App. 287, 179 S.W.2d 123, 126 (1944)).

¹¹ EFIS Document 406.

¹² ***State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n***, 585 S.W.2d 41, 49 (Mo. 1979).

within the Commission's discretion to review and consider, particularly when setting just and reasonable rates.

Due Process is satisfied

Under both the federal and state constitutions, the fundamental requirement of a due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."¹³ "This does not mean that the same type of process is required in every instance; rather, due process is flexible and calls for such procedural requirements as the particular situation demands."¹⁴ While the Commission ordered Staff to prepare the requested scenarios, the Commission invited other parties to respond.¹⁵ Nothing about the *Order* suggests that the Commission shall solely rely on the provided scenarios, instead of the record as a whole.

Conclusion

The Commission's *Order*, and the underlying request to Staff to provide rate design scenarios to the Commission for its consideration are not unlawful, or unjust, or unreasonable. Within its authority, the Commission has broad discretion of considerations when setting just and reasonable rates. Regardless of whether the scenario is considered or not, "[i]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable,

¹³ *Jamison v. Dept. of Soc. Servs., Div. of Family Servs.*, 218 S.W.3d 399, 405 (Mo. banc 2007).

¹⁴ *Id.*

¹⁵ EFIS Document 406, Case No. WR-2015-0301.

judicial inquiry ... is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.”¹⁶

WHEREFORE, Staff respectfully requests the Commission deny the Office of the Public Counsel’s Motion for Reconsideration.

Respectfully submitted,

/s/ Jacob T. Westen

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on this 16th day of May, 2016, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Jacob T. Westen

¹⁶ **State ex rel. Office of Public Counsel v. Public Service Com'n**, 367 S.W.3d 91, 108 (Mo. App., S.D. 2012)(quoting, **Fed. Power Comm'n v. Hope Nat. Gas Co.**, 320 U.S. 591, 602, 64 S. Ct. 281, 288, 88 L. Ed. 333 (1944))