

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

In the Matter of Missouri-American Water        )  
Company's Request for Authority to Implement    )  
General Rate Increase for Water and Sewer     )  
Service Provided in Missouri Service Areas     )

**File No. WR-2017-0285**  
**File No. SR-2017-0286**

**INITIAL POST-HEARING BRIEF OF ST. JOSEPH, MISSOURI**

COMES NOW the City of St. Joseph, Missouri, intervenor and a member of the "Coalition Cities" with Warrensburg and Jefferson City in this matter, and for its Initial Post-Hearing Brief states as follows:

**SUMMARY OF POSITION:**        The Coalition Cities urge the Public Service Commission to reject the statewide (Single-Tariff Pricing) proposal of Missouri-American Water Company ("MAWC" or "Company") in this case and also to reject the proposal of PSC Staff to maintain the existing three-district consolidated tariff rate design for the Company. Instead, the Coalition Cities ask the Commission to order Company to calculate rates and produce tariffs designed to recover the revenue requirement agreed upon by Stipulation and Agreement in this case on the basis of the eight rate districts that existed prior to the Commission's 2016 decision in Case No. WR-2015-0301.

The Coalition Cities have paid the capital costs for their own water service, including some significant plant upgrades, for many years without receiving any financial subsidies from other customers of the Company. For example, St. Joseph ratepayers, from Year 2000 to 2016, paid the full amount charged in MAWC rates for the \$70 million St. Joseph treatment plant that went into service in 1999.<sup>1</sup> Since then,

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<sup>1</sup> *Report and Order*, Case No. WR-2000-281, 9 MoPSC3d 254, R&O issued August 31, 2000; Jenkins cross, T-625, l. 13 – 626, l. 4.

under the current three-district rate design, St. Joseph customers have continued to pay those costs *and* the lion's share of the costs of two other service areas, as they now are in a district with two higher-cost service areas (Brunswick and Platte County).<sup>2</sup> The addition of the 1999 water treatment plant to rates increased the water rates of St. Joseph customers by double- and triple-digits (80%-268%).<sup>3</sup>

Similarly, water rates in Jefferson City increased approximately 47% in 2012 to recognize in rates the costs of significant improvements to the intake pipelines and pumping equipment that deliver water to the Company's central treatment plant.<sup>4</sup> Jefferson City water customers of MAWC alone paid for the revenue requirement effects of that major capital expenditure until they became part of District 1 under the current three-district rate design in 2016.

If either Company's or Staff's rate design proposal is adopted by the Commission in this case, *absent a rate-offset mechanism*, customers in the Coalition Cities will be required to share in the costs of capital investments in other, distant service areas, despite having already borne alone for years the costs of capital investments in their own service areas. To do so would violate legal and regulatory principles of long-standing and would be fundamentally unfair to customers in the Coalition Cities. If either the Company's or Staff's rate design proposal is adopted by the Commission in this case, the Commission should order the Company to engage in a collaborative or

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<sup>2</sup> McGarry Direct, Exh. 329, pp. 12-14; Busch cross, T-669-671.

<sup>3</sup> *Report and Order*, Case No. WR-2000-281, 9 MoPSC3d 254-297, *Dissenting Opinion of Vice Chair Dianne Drainer* (pp. 293-295) and *Dissenting Opinion of Commissioner Connie Murray* (pp. 296-297).

<sup>4</sup> Corrected Appendix A (page 2) to Non-Unanimous Stipulation and Agreement, Case No. WR-2011-0337, filed March 2, 2012; See, *Order Approving Non-Unanimous Stipulation and Agreement*, Case No. WR-2011-0337, issued March 7, 2012.

working docket process to calculate an appropriate rate-offset mechanism to insulate the Coalition Cities, in whole or in part, from having to pay a full share of capital improvements in other cities and districts in addition to having borne the full cost of capital improvements in their own cities since Year 2000.

**I. THE COMMISSION SHOULD REJECT COMPANY’S SINGLE-TARIFF PRICING  
PROPOSAL AND STAFF’S THREE-DISTRICT RATE DESIGN**

In this case, MAWC has proposed uniform statewide pricing for most customers. Company calls its plan, “Consolidated Tariff Pricing,” although it is clearly Single-Tariff Pricing.

Staff proposes to continue the three rate districts that the Commission established in Company’s immediately-preceding rate case, Case No. WR-2015-0301. According to the Missouri Court of Appeals, Staff’s plan is *actually* “Consolidated Tariff Pricing,” as distinguished from Company’s Single-Tariff Pricing plan.<sup>5</sup>

To address these proposals, the Coalition Cities retained and presented a highly-qualified expert witness with decades of national experience in the field of utility regulation, Mr. Michael J. McGarry, Sr. Mr. McGarry’s credentials are presented in his Direct Testimony, Exhibit 329, on pages 1-4 and Appendix A thereto. Mr. McGarry presented Direct, Rebuttal and Surrebuttal testimony in this case.

According to Mr. McGarry, both the Company and Staff rate design proposals defy the historic and venerable legal and regulatory principles of “used and useful” and

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<sup>5</sup> *Mo. Pub. Serv. Comm’n. v. Office of Pub. Counsel (In re Missouri-American Water Company’s Request)*, 526 S.W.3d 253 (Mo. App. W.D. 2017).

“cost causation.” These legal and regulatory principles provide that customers should only pay reasonable rates based on assets that are “used and useful” and in rate base and costs related to (caused by) providing service to those customers.<sup>6</sup> MAWC’s proposed Single-Tariff Pricing violates these legal requirements by forcing customers in one geographic area to subsidize the rates of other customers in other totally separate areas.<sup>7</sup>

Likewise, Staff’s three-district proposal requires some MAWC customers to subsidize others and pay for plant in service areas not their own and other costs unrelated to providing their water service, as demonstrated in Exhibit 329.<sup>8</sup> As shown in the chart and accompanying text on pages 12-14 of Exhibit 329 (McGarry Direct), St. Joseph is paying higher rates currently than it otherwise would *because* it is bearing not only its own costs, but those of the higher-cost Brunswick and Platte County service areas. Since customers in the Coalition Cities have already borne the cost of significant capital investments that will remain in service for many years, those customers should not be burdened with having to pay for infrastructure twice (*i.e.*, their own and then that of others).<sup>9</sup>

The principle of cost-causation – that costs should be paid by the customers who cause those costs to be incurred – is fundamental in utility law and regulatory policy and

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<sup>6</sup> McGarry Direct, Exh. 329, p. 11, ll. 1-8 and footnote 10; p. 13, l. 10 – p. 14, l. 4; McGarry Rebuttal, Exh. 330, p. 4, ll. 16-17 and footnote 5, p. 5, ll. 3-7 and footnote 7.

<sup>7</sup> McGarry Direct, Exh. 329, p. 10, l. 27 – p. 11, ll. 1-13 and footnote 10.

<sup>8</sup> McGarry Direct, Exh. 329, p. 12, l. 1 – p. 14, l. 11.

<sup>9</sup> McGarry Direct, Exh. 329, p. 15, ll. 14-16.

was cited by virtually every rate design witness in this case.<sup>10</sup> Likewise, the principle of “used and useful” is rudimentary in utility law and regulatory policy.<sup>11</sup>

The customers of St. Joseph, Jefferson City and Warrensburg did not cause the costs of the new Platte County water treatment plant.<sup>12</sup> Such plant will never be “used and useful” as to the customers in those cities. The customers in the Coalition Cities will never receive water from the Platte County water treatment plant. However, under either MAWC’s proposed Single-Tariff Pricing or Staff’s three-district rate design, customers in those cities would be required to pay a portion of the costs of that treatment plant. This means the MAWC customers in those cities would be unjustly forced to subsidize the rates of customers in other parts of the state. Mr. Jenkins for MAWC testified that the Platte County treatment plant would increase rates within existing District 2 (which includes St. Joseph) by more than \$10.00 a month per customer.<sup>13</sup> As Mr. McGarry stated in his direct testimony: “To be clear, the issue of consolidated tariff pricing in this case (and the prior cases) is about public policy, not rate making or operational cost efficiency or economy of scale. What is sought here is a policy mandate that allows some ratepayers to subsidize others so that water, an absolute must for existence, is affordable to all at the expense of some.”<sup>14</sup>

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<sup>10</sup> McGarry Rebuttal, Exh. 330, p. 4, ll. 11-17 and footnote 5, p. 5, ll. 3-14; Jenkins cross, T-634, ll. 18-20; Collins, Questions from the Bench, T-896, ll. 5-7; Collins Direct, Exh. 503, pages 5-6.

<sup>11</sup> McGarry Direct, Exh. 329, p. 11, ll. 1-8 and footnote 10; p. 13, l. 10 – p. 14, l. 6; McGarry Rebuttal, Exh. 330, p. 4, ll. 16-17 and footnote 5.

<sup>12</sup> Marke cross, T-706, l. 24 – T-707, l. 7.

<sup>13</sup> Jenkins Direct, Exh. 18, p. 45.

<sup>14</sup> McGarry Direct, Exhibit 329, p. MJM-8, ll. 1-5.

As Mr. McGarry stated in his Rebuttal Testimony: “The question is as follows: why should customers in one part of the company’s service area, whose median income might be lower than another area, have to subsidize the rates of the wealthier in that more affluent area?”<sup>15</sup> Consolidated Tariff Pricing creates unjust cross-subsidies that could erode the efficiency of the water system, reducing the economic incentive for customers in high-cost districts to be more efficient in placing demands on the water utility because the prices they pay do not accurately reflect the cost of receiving water service.<sup>16</sup> “To better reflect cost causation, it is appropriate for the Company’s rates in each district to be compensatory and free of subsidies.”<sup>17</sup>

It was also established at hearing that no American Water Works affiliate has Single-Tariff Pricing on as wide a scale as it would be applied in Missouri under Company’s proposal. Only the American Water Works properties in Kentucky, Iowa and Maryland have true Single-Tariff Pricing today.<sup>18</sup> As Dr. Marke stated in response to a question from Mr. Coffman, “This would be an unprecedented single tariff state of this size where you have so much distance between, say, St. Louis and St. Joseph.”<sup>19</sup>

A driving cause for the Company’s Single-Tariff Pricing proposal seems to be to make it easier for the Company to absorb small, troubled water and sewer systems into

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<sup>15</sup> McGarry Rebuttal, Exh. 330, p. 6, l. 20 – p. 7, l. 16.

<sup>16</sup> McGarry Rebuttal, Exh. 330, pp. 5-6.

<sup>17</sup> Collins Direct, Exh. 503, pp. 5-6.

<sup>18</sup> Jenkins cross, T-625, ll. 8-10; T-630, ll. 13-25; T-631; Marke cross, T-684-687; T-688, l. 25–T-689, l. 4.

<sup>19</sup> Marke cross, T-689, ll. 2-4.

the Missouri-American system.<sup>20</sup> However, Missouri-American was acquiring such small, troubled systems before the current three-district rate design was implemented, including pre-2016 when the 8-District rate design was in effect.<sup>21</sup> Dr. Marke was unaware of any small systems that Missouri-American declined to acquire because it did not have Single-Tariff Pricing.<sup>22</sup> Mr. McGarry testified that: "In fact, MAWC has a long history of acquiring smaller companies absent, or without regard to, CTP. I presume that the decision to purchase other companies has more to do with the overall financials of the smaller company and whether the Company can earn a return that recovers its investment and rewards Company shareholders."<sup>23</sup>

There is also a risk that Single-Tariff Pricing provides an incentive to the Company to acquire uneconomic small systems, since they can pass along the costs to other ratepayers. Mr. Jenkins testified that, in Pennsylvania, the acquisition of small, troubled companies by the American Water Works affiliate there has *doubled or tripled* in the last five years.<sup>24</sup> While this activity may be advantageous for the customers who choose to live in areas served by small, troubled water systems, adding their cost of service to the bills of all other customers under Single-Tariff Pricing is patently unfair to the customers who did not cause those costs.

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<sup>20</sup> Jenkins Direct, Exh. 18, p. 40.

<sup>21</sup> Jenkins cross, T-627-628; Busch cross, T-662, ll. 5-21.

<sup>22</sup> Marke cross, T-706, ll. 8-15.

<sup>23</sup> McGarry Direct, Exh. 329, p. 10, ll. 2-6.

<sup>24</sup> Jenkins cross, T-635.

The Coalition Cities understand and appreciate the Commission's concern for small, troubled water systems. However, the Commission is legally bound to establish just and reasonable rates for *all* customers, including pre-existing customers. It is not just and reasonable to simply add the costs of troubled water systems to the costs *our* citizens pay when our citizens have paid their own way without subsidization from others. This is true whether or not the incremental costs added by troubled systems are huge or not. This is a sound reason for returning to eight districts, including a consolidated District 8 of smaller systems, making their rates more cost-based.<sup>25</sup>

Another concern about Single-Tariff Pricing is the risk that the Company will find it easier to "gold-plate" its system under STP.<sup>26</sup> Although the Commission, in questions and comments from the Bench, has tended to downplay that risk since any capital expenditure by Missouri-American would be subject to a prudence review, the Coalition Cities believe this is a very legitimate concern. First, Staff and Public Counsel resources are limited. As Mr. McGarry testified, "... the filing of a five-year capital plan does not mean that Staff, Public Counsel or other parties will have the time and resources to fully evaluate each element of such a plan until a subsequent rate case, after the capital has been expended and new facilities are permanently in place."<sup>27</sup> In fact, at hearing, both Staff and Public Counsel admitted they have not yet had time to review the latest 5-year capital expenditure plan filed by MAWC in response to the Commission's Report and Order in WR-2015-0301.<sup>28</sup> In addition, prudence reviews seldom result in Commission

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<sup>25</sup> McGarry Rebuttal, Exh. 330, pp. 5-10.

<sup>26</sup> McGarry Rebuttal, Exh. 330, p. 8, l. 16 – p. 9, l. 10.

<sup>27</sup> McGarry Rebuttal, Exh. 330, p. 9, ll. 3-6.



disallowance of the costs of a project that is already in the ground and being used.<sup>29</sup> It is understandable that the Commission would be reluctant to disallow construction costs that have already been invested by a regulated utility, because such a disallowance would have a direct, and potentially significant, effect on the Company's financial well-being, credit ratings and stock value. Thus, the threshold for disallowance is very high and is seldom met. Efforts to disallow some of the construction costs of the St. Joseph water treatment plant in the Year 2000 rate case were unsuccessful.<sup>30</sup>

Capital expenditures are more likely to be closely reviewed at the District level than on a Company-wide basis.<sup>31</sup> This is because parties closest to them and affected by them are more likely to review those expenditures than when they are presented on a statewide, total-company basis. Regulatory review of construction projects is more effective on a service area by service area basis than on a statewide basis. The 5-Year Capital Expenditure Plans ordered by the Commission in WR-2015-0301 are not an adequate replacement for service area by service area reviews of what is going into the ground, for what purpose and at what cost.

Another concern with consolidated tariff pricing is that of inter-generational inequities. Although, in theory, consolidated rates may even out over time such that each service area may have benefitted from a major capital improvement, the customers paying for the improvement will not be the same customers benefitting from

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<sup>28</sup> Busch cross, T-661, ll. 18-22; Marke cross, T-694, l. 6 – T-696, l. 21.

<sup>29</sup> Responses to Questions from the Bench, T-576-577.

<sup>30</sup> *Report and Order*, Case No. WR-2000-281, 9 MoPSC3d 254 (2000), at 272-276, 279-284, and Dissenting Opinions of Vice Chair Drainer and Commissioner Murray at 293-297.

<sup>31</sup> McGarry Rebuttal, Exh. 330, p. 9, ll. 6-10.

it. Most, if any, of the St. Joseph customers who have been paying for the 1999 water treatment plant since Year 2000 will not be still living by the time the next, new treatment plant is needed there. Yet they will have paid their own way, and then paid the lion's share of Platte County and Brunswick costs as well, for many years. Consolidated tariff pricing creates inter-generational inequities that are not just and reasonable.<sup>32</sup>

At hearing, Chairman Hall suggested that "if a lion's share of the costs to serve are, in fact, statewide costs that are just allocated based upon various factors as opposed to specifically serving a ratepayer, it would seem to me to be an argument towards ... single tariff pricing." (T-677, ll. 14-24) However, the fact is that "statewide" administrative and general (A&G) expenses are *not* the "lion's share" of Missouri-American's costs to serve. Data in Staff's Cost of Service Report (Exhibit 104) shows that, in fact, customer accounts and A&G expenses account for 25.7% of the Company's costs, which is consistent with industry norms. Attached as **Exhibit A to this brief** is a summary of those numbers from Staff's exhibits in this case, demonstrating that point.

In point of fact, there seemed to be broad agreement among the witnesses that, to the extent possible, it is better to directly assign costs rather than to allocate them.<sup>33</sup> Staff witness Busch, in response to questions from the Bench, stated that it would be possible to extract the Platte County treatment plant costs and St. Joseph treatment plant costs out of an accounting schedule and a cost of service study and directly

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<sup>32</sup> McGarry Direct, Exh. 329, p. 10, l. 18 – p. 11, l. 13; Marke cross, T-702-703.

<sup>33</sup> Heppenstall cross, T-643 -644.

assign capital costs to those service areas while allocating common costs.<sup>34</sup> However, both Company's and Staff's proposed rate designs create subsidizations of some customers by others by lumping costs together, without regard to which customers have already carried the heaviest weight of their own local costs.

For all these reasons, the Commission should reject both Company's Single-Tariff Rate Design and Staff's Consolidated, three-district rate design.

## **II. THE COMMISSION SHOULD ADOPT AN EIGHT-DISTRICT RATE DESIGN FOR MISSOURI-AMERICAN WATER COMPANY**

In contrast, district-specific pricing would establish reasonable rates on a cost-causation basis and avoid unlawful subsidization of some customers' rates by other customers.<sup>35</sup> The Commission should direct the Company to return to the eight rate districts that existed prior to the Report and Order in Case No. WR-2015-0301. The eight-district rate structure best reflects the actual cost of service (particularly the capital costs) of each of the MAWC service areas.<sup>36</sup>

In its *Order Approving Non-Unanimous Stipulation and Agreement* in Case No. WR-2011-0337 (issued March 7, 2012), the Commission established eight rate districts: Jefferson City, Joplin, Mexico, Platte County, St. Joseph, St. Louis Metro, Warrensburg, and District 8, which was a consolidated district that included Brunswick and a number of smaller water service systems. The eight-district approach complies with long-

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<sup>34</sup> T-676-678.

<sup>35</sup> McGarry Rebuttal, Exh. 330, p. 5, l. 3 – p. 7, l. 16.

<sup>36</sup> McGarry Direct, Exh. 329, pp. 5 -12.

established utility ratemaking laws and principles that customers should only pay reasonable rates based on assets that are “used and useful” and in rate base, and costs related to (caused by) providing service to those customers.<sup>37</sup>

Although the Office of the Public Counsel supports retention of the existing, three-district rate design in this case, it supported the 8-District rate design in the previous case, WR-2015-0301.<sup>38</sup> In his rebuttal testimony, MIEC witness Brian Collins stated that not only does he *not oppose* the Coalition Cities’ 8-District proposal in this case, but that in WR-2015-0301 MIEC had recommended that the 8-District rate design be maintained.<sup>39</sup>

The 8-District Rate Design employed by MAWC after WR-2011-0337 comes closest to recognizing the principles of cost-causation and “used and useful.” Customers in each of the seven, major service areas were responsible for the direct costs of service to them, and only capital investments that were serving their service area were included in their rates. District 8 was a consolidation of smaller systems with generally similar characteristics and properly reflected the cost of service in that consolidated district. The 8-District rate design comes closer to meeting Staff’s asserted purposes of: (1) taking the results from a Class Cost of Service Study (CCOS) and designing rates for each customer class in *each service territory* that will give the utility an opportunity to collect its Commission-approved revenue requirement; and (2) designing rates that will

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<sup>37</sup> McGarry Direct, Exh. 329, p. 11, ll. 1-8 and footnote 10; p. 13, l. 10 – p. 14, l. 4; McGarry Rebuttal, Exh. 330, p. 4, ll. 16-17 and footnote 5, p. 5, ll. 3-7 and footnote 7.

<sup>38</sup> Marke cross, T-693, l. 23 – T-694, l. 1; T-708, ll. 1-7.

<sup>39</sup> Collins Rebuttal, Exh. 504, p. 3, ll. 11-14.

be used to collect the appropriate levels of revenue from *each service territory* and from each customer class.<sup>40</sup> However, as Mr. McGarry testified: “Unfortunately, Staff deviates from this purpose by proposing the three-district approach, which consolidates numerous service territories into the three districts.”<sup>41</sup>

Moving away from Consolidated-Tariff Pricing is critical. As Mr. McGarry testified: “In my opinion, when weighing all the factors, the long-standing, widely accepted principles of cost-causation should be the primary concern as they promote the financial health of the Company, send clear and accurate price signals to the customers, and promote efficient use of resources (i.e., invested capital). The issue of affordability (which is the central theme of a CTP approach) can be ensured in other ways ....”<sup>42</sup>

A consolidated District 8 is legal and appropriate according to the Court of Appeals’ 2017 ruling. District 8 was made up of a number of smaller service areas of the Company and therefore appropriately reflected the capital costs of such systems, while benefitting those systems by the sharing a common allocation of administrative, operating and maintenance costs to the various rate districts. The Company can, and should be ordered to, simply add its newest acquired systems to District 8.

**Exhibit 136** provides the Commission with detailed information concerning the rate impacts of the Company’s single tariff proposal and continuation of the three-district pricing model. Prior to making its decision in this matter, the Commission should direct the Company and Staff to provide the same amount of detail concerning eight-district

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<sup>40</sup> Staff Cost of Service Report, Exh. 104, p. 6, ll. 15-19.

<sup>41</sup> McGarry Rebuttal, Exh. 330, p. 3, ll. 5-14.

<sup>42</sup> McGarry Surrebuttal, Exh. 331C, pp. 4-5.

prices, so that it can be fully informed of the impacts and see the benefits of that rate structure.

Only District-Specific Pricing would establish reasonable rates on a cost-causation basis and avoid unlawful subsidization of some customers' rates by other customers. For all these reasons, the Commission should adopt an 8-District rate design for Missouri-American in this case.

**III. IF THE COMMISSION ADOPTS EITHER COMPANY'S OR STAFF'S  
CONSOLIDATED RATE DESIGN, IT SHOULD ORDER THE IMPLEMENTATION OF  
A RATE-OFFSET MECHANISM**

If either the Company's or the Staff's rate design proposal is adopted by the Commission, absent a rate-offset mechanism, customers in the Coalition Cities will be forced to bear costs of capital investments in other distant service areas, despite having already borne alone for years the costs of capital investments in their own service areas. To mitigate that inequitable outcome, the Commission should direct the Company to use a "rate-offset" mechanism as proposed by Mr. McGarry.<sup>43</sup> Such an offset mechanism would at least provide customers in the Coalition Cities with some semblance of fairness for having shouldered alone the costs of major plant investments in their service areas and now being forced to bear such investments that only benefit customers in other cities and districts.<sup>44</sup>

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<sup>43</sup> McGarry Direct, Exh. 329, p. 14, l. 13 – p. 15, l. 22.

<sup>44</sup> McGarry Surrebuttal, Exh. 331C, p. 2, ll. 15-19.

Mr. McGarry offered several ideas about the development of the rate offset. First, he suggested calculating the depreciated capital investment since Year 2000 for each of the Coalition Cities, then dividing that amount by the estimated consumption for the period of the offset. That amount would be applied as a credit to the Coalition Cities on their customers' bills.<sup>45</sup> The amount of the credit would be added to the consolidated rate for other customers based on their consumption in the credit period.<sup>46</sup> Such a credit would be equitable to all customers. Since some customers have already borne the costs of significant capital investments that will remain in service for many years, these customers should not be burdened with having to pay for infrastructure twice.<sup>47</sup>

In his Surrebuttal Testimony (Exhibit 331C), Mr. McGarry elaborated on his rate-offset mechanism proposal. He emphasized that the purpose of the offset for the Coalition Cities is to ensure fairness to the Cities' water users so that they do not pay for major capital projects twice or for major investments in other cities or districts that bring no benefit to the Cities.<sup>48</sup> He described the offset process<sup>49</sup> and offered an example of an offset calculation.<sup>50</sup> He observed that numerous, expensive capital improvement

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<sup>45</sup> McGarry Direct, Exh. 329, pp. 14-15; McGarry Rebuttal, Exh. 330, pp. 10-12.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> McGarry Surrebuttal, Exh. 331C, p. 5, ll. 7-15.

<sup>49</sup> *Id.*, at pp. 5-6.

<sup>50</sup> *Id.*, at pp. 6-10.

projects are planned by MAWC in the near future which would provide no benefit whatsoever to the Coalition Cities.<sup>51</sup>

The rate-offset would be applied as a credit on customer bills in the Coalition Cities for a specific, finite period of time.<sup>52</sup> It would not be designed or intended to reimburse the Cities' customers for 100% of their investment in major capital investments that would be part of the offset and would be no greater than the annual revenue requirement cost (*i.e.*, return on plant plus depreciation expense) of any similar project from another district or city within a district (*e.g.*, Platte County).<sup>53</sup>

Mr. McGarry testified that his rate offset mechanism proposal is equally applicable to Staff's proposed 3-District rate design as to the Company's Single Tariff Pricing proposal, because the same conditions exist in a three-district approach as in a Single-Tariff Pricing approach. The fact that some customers have already paid for substantial investments in infrastructure prior to this case, but will be expected to share the burden of planned investments in older or newly-acquired systems, creates cross-subsidizations between systems that have no logical relationship to each other from geography, size or operating characteristics and is fundamentally unfair to the Coalition Cities.<sup>54</sup>

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<sup>51</sup> *Id.*, at pp. 10-11 and Confidential Exhibit MJM-SR-2.

<sup>52</sup> McGarry Direct, Exh. 329, p. 14, l. 22 – p. 15, l.6; McGarry Rebuttal, Exh. 330, p. 11, l. 13 – p. 12, l. 4; McGarry Surrebuttal, Exhs. 331C and 331P, p. 2, ll. 8-12, 20-21; p. 5, l. 17 – p. 11, l. 20.

<sup>53</sup> McGarry Rebuttal, Exh. 330, page 2, l. 3 – p. 3, l. 5.

<sup>54</sup> McGarry Rebuttal, Exh. 330, pp. 10- 11.



Contrary to Company's opening-statement and Mr. Jenkins' testimony in response to questions from the Bench,<sup>55</sup> the Coalition Cities' proposed rate offset mechanism is *not at all* an effort to backdoor into District-Specific Pricing. The Coalition Cities have eagerly invited a direct, front-door entry into District-Specific Pricing above. Rather, *if* the Commission determines instead to approve Company's STP rate design or to retain Staff's 3-District rate design, the rate offset would simply represent an effort to accomplish some semblance of fairness and equity for the Coalition Cities, which have paid their own way for years without subsidies from other service areas but now could be forced to also subsidize other service areas.

The proposed rate-offset is only for capital investment. If it was designed as a "back-door" to District-Specific Pricing, the offset would be calculated based on the full reflection of each investment in revenue requirement, which would include expenses. Rather than a "back-door" to District Specific Pricing, the rate-offset mechanism could be seen as a reasonable transitional step toward Single-Tariff Pricing or continued 3-District Pricing.<sup>56</sup>

Mr. McGarry, in presenting his "conceptual" example of a rate-offset mechanism, recognized that there are "many nuances with respect to timing, cost allocation and rate design that need to be worked out."<sup>57</sup> He therefore recommended that the Commission establish a working group or collaborative process to establish the details and report

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<sup>55</sup> Opening Statement by Mr. England, T- 549, ll. 1-3; Jenkins, T-613, ll. 19-23.

<sup>56</sup> See, Opening Statement of Mr. Lumley for Warrensburg, T-587.

<sup>57</sup> McGarry Surrebuttal, Exh. 331C, p. 7, l. 1-2.

back to the Commission.<sup>58</sup> He concluded: “These issues would have to be resolved. However, in the end, the Commission could assure itself that it had offered an opportunity for its CTP policy to be fair and balanced.”<sup>59</sup>

The Commission should order the Company to engage in a working group or collaborative effort to calculate and establish the details of the rate-offset mechanism.<sup>60</sup>

**IV. IF THE COMMISSION ADOPTS EITHER MAWC’S OR STAFF’S RATE DESIGN PROPOSAL, THE COMMISSION SHOULD ESTABLISH A WORKING GROUP OR COLLABORATIVE PROCESS TO DETERMINE A RATE OFFSET FOR CITIES/SERVICE AREAS THAT HAVE BORNE THE COSTS OF THEIR OWN SYSTEM UPGRADES SINCE 2000**

This issue is addressed in Section III of this brief, above. For the reasons discussed there, if the Commission adopts either Company’s or Staff’s rate design proposal in this case, it should order the Company to engage in a working group or collaborative effort to calculate and establish the details of the rate-offset mechanism, as discussed above.

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<sup>58</sup> McGarry Surrebuttal, Exh. 331C, pp. 7-10.

<sup>59</sup> McGarry Surrebuttal, Exh. 331C, p. 7, ll. 11-13.

<sup>60</sup> McGarry Surrebuttal, Exh. 331C, p. 7, ll. 5-13, p. 14, ll. 6-7. The Cities of Joplin and Riverside expressed support for the proposal to establish a working group or collaborative process for development of a rate-offset mechanism (Ms. Bell, T-588-590; Mr. Bednar, T-T-597-598). Staff took no position on the matter at hearing. (Ms. Klaus, T-555).

**V. IF THE COMMISSION ADOPTS EITHER MAWC’S OR STAFF’S RATE DESIGN PROPOSAL, THE COMMISSION SHOULD ESTABLISH A WORKING GROUP OR COLLABORATIVE PROCESS TO EXPLORE CAPITAL EXPENDITURE TRACKING MECHANISMS**

In his Surrebuttal Testimony, Mr. McGarry stated: “As I examined the list in this data request response and reviewed the arguments in direct and on rebuttal, what became clear to me is that what is needed is a capital cost tracker for major capital project investments of greater than \$2 million. The cost tracker would be specific to a district, and could be specific to a city, if the Commission would so choose.”<sup>61</sup> Although he conceded that he does “not typically like the idea of cost trackers,” he concluded that a capital cost tracker may be the best alternative.<sup>62</sup> Recognizing that introducing the idea so late in the proceedings might present problems for the parties, Mr. McGarry recommended that the Commission direct the parties, led by its Staff, to study the issue further in a working group or collaborative process and submit a recommendation prior to the Company’s next rate case.<sup>63</sup>

A capital expenditure tracking mechanism would enable Company, Staff, Public Counsel and all parties to keep closer track of capital project costs of the Company in real time.<sup>64</sup> This would, at the very least, be an enhancement of the current Commission requirement that MAWC file a 5-year capital expenditure plan annually, as ordered in

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<sup>61</sup> McGarry Surrebuttal, Exh. 331C, pp. 12-13.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

WR-2015-0301. (See discussion of the risk of gold-plating in Section I of this brief, pp. 8-9 above.)

The Commission should invite the parties, led by Staff, to engage in a working group or collaborative effort, to study the issue of a capital expenditure tracking mechanism further in a working group or collaborative process and submit a recommendation prior to the Company's next rate case.

### **CONCLUSION**

The Public Service Commission of Missouri is not bound by *stare decisis*.<sup>65</sup> It has the discretion to change its rate design for Missouri-American Water Company as it deems fit, based upon competent and substantial evidence upon the whole record, so long as its current decision is not otherwise unreasonable or unlawful. The Commission was not bound by *stare decisis* in Year 2000 when it decided to stop moving MAWC toward Single-Tariff Pricing, a decision which raised water rates in and around St. Joseph by 80% to 268%. Nor was the Commission bound by *stare decisis* in 2016 when it decided to consolidate MAWC's rate districts into three districts, further burdening St. Joseph customers with the costs of two higher-cost service areas (Brunswick and Platte County). The people of St. Joseph bore the brunt of both of those exercises of Commission discretion, possibly more directly and adversely than any other customers of Missouri-American Water Company. Seemingly lost in the bigger picture each time, the citizens of St. Joseph have been saddled with costs at every turn.

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<sup>65</sup> *State ex rel. Aquila, Inc. v. Pub. Serv. Comm'n*, 326 S.W.3d 20, 32 (Mo. App. W.D. 2010); *Mo. Pub. Serv. Comm'n. v. Office of Pub. Counsel (In re Missouri-American Water Company's Request)*, 526 S.W.3d 253 (Mo. App. W.D. 2017).

The City of St. Joseph urges the Commission, not bound by *stare decisis*, to reverse its 2016 decision and return to the 8-District Rate Design implemented by Stipulation and Agreement in 2012 in WR-2011-0337, based upon the evidence of record in this case and the arguments above. *If* the Commission determines either to retain the current 3-District rate design, as proposed by Staff, or to adopt full Single-Tariff Pricing as proposed by Missouri-American, the City of St. Joseph respectfully requests that the Commission also order the creation of a working group or collaborative process to further explore, and report to the Commission concerning, the rate-offset mechanism proposed by the Coalition Cities in this case. The City of St. Joseph further respectfully requests that the Commission order the creation of a working group or collaborative process to explore, and report to the Commission concerning, possible enhanced tracking mechanisms to more closely monitor capital expenditures by Missouri-American, as discussed above.

Respectfully submitted,

***/s/ William D. Steinmeier***

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the PSC Staff Counsel's office (at [staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov)), on the Office of the Public Counsel (at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)) and on parties of record on this 30<sup>th</sup> day of March 2018.

***/s/ William D. Steinmeier***

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William D. Steinmeier