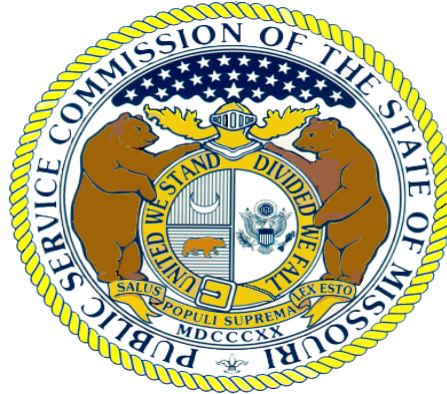


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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)

File No. WR-2015-0301

REPORT AND ORDER

Issue Date: May 26, 2016

Effective Date: June 25, 2016

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OF THE STATE OF MISSOURI**

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

REPORT AND ORDER

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Chief Regulatory Law Judge: **Morris L. Woodruff**

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Procedural History

On July 31, 2015, Missouri-American Water Company (Missouri-American or Company) submitted revised tariff sheets to implement a general rate increase for water and sewer service throughout its service territory to increase its annual revenues by \$51 million. The proposed tariff sheets bore an effective date of August 30, 2015. In order to allow time to study the tariff sheets and to determine if the rates resulting therefrom are just, reasonable and in the public interest, the Commission suspended the proposed tariff sheets until June 28, 2016.

In its order suspending the tariff sheets, the Commission directed that notice of the filing be given and invited applications to intervene. The following entities requested intervention: the Missouri Industrial Energy Consumers (MIEC); the Missouri Department Economic Development – Division of Energy; Triumph Foods, LLC; the City of Warrensburg, Missouri; the City of St. Joseph, Missouri, the City of Joplin, Missouri; Public Water Supply District Nos. 1 and 2 of Andrew County, Missouri; the City of Riverside, Missouri; the City of Brunswick, Missouri; Stonebridge Village Property Owners Association; and Utility Workers Union of America Local 335, AFL-CIO. The Commission granted all requests to intervene.

In January 2016, the Commission held local public hearings across the state. Those hearings were held in Jefferson City, Branson, Joplin, Warsaw, Warrensburg, Riverside, St. Joseph, Brunswick, Mexico, Arnold, and St. Louis County.

An evidentiary hearing was scheduled to begin on March 14, 2016. Before the start of the hearing, the parties requested and were granted time to formalize an agreement. As a result, the first week of the hearing was cancelled. On March 16, several parties filed a

non-unanimous stipulation and agreement that indicated the parties' agreement to increase Missouri-American's annual revenues by \$30.6 million.¹ No one objected to that stipulation and agreement, and the Commission approved it and a second stipulation and agreement in an order issued on April 6.

The approved stipulations and agreements did not resolve all the issues. An evidentiary hearing was held regarding the remaining issues on March 21, 22 and 23. The parties filed initial post-hearing briefs on April 8, with reply briefs following on April 22.

The Issues

District Consolidation/Consolidated Pricing

Background:

This issue concerns the means of allocating Missouri-American's revenue requirement to its various groups of customers. The amount of the increase in the company's revenue requirement that will result from this case has already been determined through the approved stipulation and agreement of the parties.

Findings of Fact:

Water District Consolidation

1. Missouri-American currently provides water service to 19 distinct water systems in Missouri. Those water systems vary in size from the St. Louis Metro system, which counts 366,815 customers, to the Redfield system, which counts 23 customers. In all, Missouri-American serves 459,429 water customers. Of those 19 water systems, only

¹ Missouri-American's annual revenue increase was subsequently reduced to \$30.413 million by agreement of the parties as ordered by the Commission on May 11, 2016.

four – St. Louis Metro, St. Joseph, Joplin, and Jefferson City – serve more than 8,000 customers.²

2. Missouri-American also provides wastewater (sewer) service to 11,790 Missouri customers through 13 sewer systems. Those 13 sewer systems range in size from Arnold with 6,877 customers, to Ozark Meadows with 26 customers.³

3. The described water and sewer systems are themselves consolidations of still smaller water and sewer systems. For example, the Maplewood/Riverside/Stonebridge water system with 1,385 customers is comprised of separate systems located in Pettis, Stone, and Taney Counties.⁴ Furthermore, the St. Louis Metro system includes systems in St. Louis County, Warren County, and St. Charles County.⁵

4. Missouri-American's costs of providing service must be allocated to these various water and sewer systems for purposes of developing the rates that the customers served by those systems must pay.⁶

5. Some costs can be directly assigned to a particular system, such as the cost of a treatment facility or the mains and pipes that serve that system. Other costs, such as a customer call center, billing services, or other corporate services are allocated to the various water and sewer systems in a less definite manner, based on allocation factors determined by whomever is examining the company's books and records, in this case by the company and by Staff's auditors.⁷ As a result, the company's cost to serve a particular

² Cassidy Surrebuttal, Ex. Staff-16, Page 2, Lines 16-37.

³ Cassidy Surrebuttal, Ex. Staff-16, Page 3, Lines 1-16.

⁴ Marke Direct, Ex. OPC-9, Page 9, Lines 1-8.

⁵ Busch Direct, Ex. Staff-9, Page 9, Lines 9-10.

⁶ Busch Direct, Ex. Staff-9, Page 4, Lines 2-4.

⁷ Busch Direct, Ex. Staff-9, Page 4, Lines 8-12.

system is not a definite or unquestionable number.

6. The allocation of costs and resulting rates to the water and sewer systems can be accomplished using two methods. The first is district-specific pricing wherein the auditor attempts to collect all the costs of providing service to each individual district and develops rates based on that district's cost of service. Thus, in theory, the ratepayers in any district pay rates designed to recover the cost of providing service to that district.⁸ Under district-specific pricing residential customers in St. Joseph, Brunswick, and Joplin would all pay their own, distinct rate.

7. The second method is single-tariff pricing. In single-tariff pricing all costs of the utility are combined and rates are developed on a system-wide basis. Thus, all customers in a given rate class, for example, residential customers, will pay the same customer charge and commodity rate for the water they consume, no matter where within the company's service territory they live.⁹ So, for example, residential customers in St. Joseph will pay the same rates as residential customers in Brunswick and in Joplin.

8. District-specific pricing and single-tariff pricing are the two extremes on the spectrum of possible methods of allocating costs and designing rates. Allocating costs and designing rates can also be done by consolidating the system into larger districts for purposes of allocating costs and determining rates. Under this consolidated pricing method, residential customers in St. Joseph and Brunswick might pay one rate, while a residential customer in Joplin might pay a different rate.¹⁰

9. In a 2000 rate case, the Commission decided that Missouri-American should

⁸ Busch Direct, Ex. Staff-9, Page 4, Lines 16-22.

⁹ Busch Direct, Ex. Staff-9, Page 5, Lines 15-21.

move away from its then existing single-tariff pricing toward district-specific pricing.¹¹ As a practical matter, Missouri-American has never actually reached pure district-specific pricing. Currently, Missouri-American's rates are calculated using eight water districts established by stipulation and agreement of the parties in the company's last rate case. The seven largest districts – St. Louis Metro, Mexico, Jefferson City, Warrensburg, Joplin, Platte County, and St. Joseph - have rates designed based on their estimated cost of service. The eighth district is a consolidation of the remaining service territories, broken into additional sub-districts.¹²

10. In this case, Missouri-American initially proposed to consolidate the existing water districts into 3 new districts based on their current level of rates:¹³

Zone 1	Zone 2	Zone 3
St. Louis Metro	Mexico	Brunswick
Joplin	Platte County	Spring Valley - Lake Manor
St. Joseph	Jefferson City	Ozark Mountain-LTA
Warrensburg		Rankin Acres-Whitebranch
Maplewood/Riverside/Stonebridge – Saddlebrooke - Emerald Pointe Water		
Tri-States		

11. Staff also proposed consolidation into three new water districts:¹⁴

District 1	District 2	District 3
St. Louis Metro (St. Louis County, Warren County, and	St. Joseph	Joplin

¹⁰ Busch Direct, Ex. Staff-9, Page 6, Lines 5-7.

¹¹ *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increases*, File No. WR-2000-281 Report and Order, 9 Mo. P.S.C. 3d 254, 291 (2000).

¹² Busch Direct, Ex. Staff-9, Page 6, Lines 8-18.

¹³ Herbert Rebuttal, Ex. MAWC-9, Pages 2-3, Lines 26, 1-3, and Schedule PRH-6.

¹⁴ Busch Direct, Ex. Staff-9, Page 9, Lines 7-14.

St. Charles		
Mexico	Platte County	Stonebridge
Jefferson City	Brunswick	Warrensburg
Anna Meadows		Whitebranch
Redfield		Lake Taneycomo
Lake Carmel		Lakewood Manor
		Rankin Acres
		Spring Valley
		Tri-States
		Emerald Pointe
		Maplewood
		Riverside Estates

12. Staff’s proposed consolidation is based on geographical location and operating characteristics. District 1 includes existing water districts in east-central Missouri, District 2 contains districts located in the northwest portion of the state, and District 3 contains the districts in the southwest part of the state.¹⁵ Each of Staff’s proposed Districts includes at least one larger district as an anchor for the District. That allows costs within each District to be spread to a larger customer base.¹⁶ Further, the water systems in the various districts share many of the same labor and management personnel and operating characteristics, and thus share similar corporate costs. The systems within the proposed Districts also share similar sources for their water.¹⁷ Finally, labor costs will tend to be similar in each of the three Districts proposed by Staff.¹⁸

13. Missouri-American does not oppose Staff’s plan for water district consolidation.¹⁹

14. On March 22, 2016, during the course of the evidentiary hearing, Public

¹⁵ Busch Rebuttal, Ex. Staff-11, Pages 3-4, Lines 20-23, 1-3.
¹⁶ Busch Rebuttal, Ex. Staff-11, Pages 4-5, Lines 22-23, 1-3.
¹⁷ Busch Direct, Ex. Staff-9, Page 10, Lines 1-19.
¹⁸ Busch Surrebuttal, Ex. Staff-12, Pages 9-10, Lines 20-23, 1-3.

Counsel, MIEC, Brunswick, St. Joseph, and Joplin filed a non-unanimous stipulation and agreement regarding rate design, district consolidation and sewer revenue. Staff objected to the stipulation and agreement, so, by Commission rule, the stipulation and agreement became merely a joint position of the parties to which they are not bound.²⁰ Nevertheless, the signatory parties continue to support that joint position.

15. The joint position proposes to maintain the current 8 water districts with slight modifications. The current 8 water districts are as follows:²¹

Joplin
Jefferson City
Mexico
Platte County
St. Joseph
St. Louis Metro
Warrensburg
District 8 (This district includes all the other smaller water systems served by Missouri-American. Brunswick is currently in District 8

16. The joint position would consolidate Anna Meadows and Hickory Hills, which are recently acquired systems, into the St. Louis Metro district for water only. It would consolidate Brunswick into the St. Joseph district. Redfield, another recently acquired system, would be consolidated into the Jefferson City district. Finally the remaining

¹⁹ Herbert Rebuttal, Ex. MAWC-9, Page 3, Lines 11-15.

²⁰ Commission Rule 4 CSR 240-2.115(2)(D).

districts currently in District 8 would become a new consolidated Branson district. All other water systems would remain in their current districts. In addition, the Platte County district would receive a five percent reduction in its residential rates, with ten percent of the reduction reallocated to Joplin and ninety percent reallocated to the St. Louis Metro district.²²

17. At the hearing, the City of Riverside proposed yet another three-district consolidation. Under that option, Joplin and St. Joseph would each remain in their own district, with all other water systems being consolidated into a single district.²³

18. The fifth and final consolidation option would be to consolidate all the existing districts into one, and return to single-tariff pricing.²⁴

19. Missouri-American intends to retire the aged water treatment facility in the Platte County district by 2018.²⁵ The anticipated capital expense associated with replacing that water treatment facility makes Platte County an unattractive consolidation partner for the other existing districts.

20. The various water systems operated by Missouri-American are spread across the state and, because of the distance separating them are not physically interconnected.²⁶ Thus, for example, a customer in Joplin will never receive water from a treatment plant in

²¹ Smith Direct, Ex. OPC-15, Page 14, Line 1.

²² Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Revenue.

²³ This consolidation plan was proposed by the City of Riverside. See, Transcript, Pages 110-111, Lines 21-25, 1-4. Missouri-American subsequently presented calculations about the effect such consolidation would have on customer rates at Transcript, Page 356, Lines 14-23 and Ex. MAWC-51.

²⁴ Missouri-American calculated the rate impact of that option in Ex. MAWC-53.

²⁵ Dunn Direct, Ex. MAWC-4, Pages 23-26.

²⁶ Marke Direct, Ex. OPC-9, Page 6, Lines 1-7.

Warrensburg.²⁷

21. Despite the inherent differences in the various water systems, Missouri-American's annual cost to serve a residential customer is fairly consistent across the existing districts. For most districts, the annual cost to serve a customer is in the \$400 to \$500 range. The annual cost to serve a residential customer in the St. Louis Metro district, which serves 366,815 customers, is \$481.86 per year. The most significant outliers are Brunswick, which serves 330 residential customers at an annual customer cost of \$702.92, and Platte County, which serves 6,216 customers at an annual customer cost of \$1,031.48.²⁸

22. The consistency in costs to serve customers between districts is attributable to the fact that most of the costs of providing service to Missouri-American's customers are very similar, if not the same, from district to district because a portion of Missouri-American's statewide costs are allocated to the various districts. So, for example, Missouri-American's costs of capital will be the same for each of the districts. When Missouri-American buys pipe, meters, and other supplies, the cost of those supplies will be the same in all districts. Similarly, management salaries for Missouri-American's executives will be allocated equally to customers in each of the districts.²⁹

23. Consolidation of water rates will help address some structural problems within the water industry. Currently, water service in the United States and in Missouri tends to be very fragmented. As of 2010 there were over 52,000 Community Water Systems operating in the United States. Most of those systems are classified as small or very

²⁷ Transcript, Page 676, Lines 3-14.

²⁸ Herbert Rebuttal, Ex. MAWC-9, Schedule PRH-6.

small.³⁰

24. The same fragmentation problem can be seen in Missouri-American's service territory, where the St. Louis Metro water system serves 366,815 customers, while the remaining 18 systems serve a total of 92,624 customers. And more than half of those non-St. Louis metro customers are in either Joplin or St. Joseph.³¹

25. The fragmentation of the industry with many small systems serving very few customers creates affordability problems. The Federal and state governments have recently imposed many new regulations designed to protect public and environmental health. Those regulations are needed, but they impose a heavy burden on small systems with few customers. For example, the Environmental Protection Agency estimates that compliance with the Safe Drinking Water Act costs an average of \$4 per household per year for systems serving more than 500,000 people. But for systems serving no more than 100 customers, that annual cost rises to \$300 per household.³²

26. An easy demonstration is that a \$1 million water or sewer system capital project will cost each customer in a consolidated system with 460,000 customers a total of \$2.17. But if that \$1 million project is required in a system like Brunswick that serves 400 customers, the cost per customer is \$2,500. The same project in a system like Redfield would cost each of the system's 23 customers \$43,478.

27. Given those economies of scale problems, Missouri has many struggling small water and sewer companies. James Busch, the Regulatory Manager of the

²⁹ Busch Surrebuttal, Ex. Staff-12, Page 9, Lines 8-19.

³⁰ McDermott Direct, Ex. MAWC-12, Pages 6-7, Lines 16-19, 1-9.

³¹ Cassidy Surrebuttal, Ex. Staff-16, Page 2, Lines 17-37.

³² McDermott Direct, Ex MAWC-12, Pages 7-8, Lines 17, 1-3.

Commission's Water and Sewer Department,³³ explained that seven small water or sewer systems in Missouri are currently operating under the control of a receiver, and that the situation for small water and sewer companies is not improving.³⁴ He offered the opinion that: "[i]f consolidated pricing allows for 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."³⁵

28. Mr. Busch also explained that the Commission's Staff spends a significant portion of its time speaking with owners and managers of many water and sewer utilities. That includes companies that are interested in possibly purchasing small water and sewer utilities that may not yet be in receivership. Through those interactions, Staff has become aware that "consolidated pricing is a major consideration in the decision to own and operate systems in Missouri and on whether or not to expand. It is Staff's opinion, based on its years of experience, that a move toward further consolidation will send a positive signal to those companies."³⁶

29. Mr. Busch has been the manager of the Commission's water and sewer department since 2008,³⁷ and the Commission is aware of his work with struggling water and sewer companies. His testimony in this regard is very credible.

30. In contrast to the fragmented rates common in the water and sewer industry, public electric and natural gas utilities generally charge their customers uniform rates no matter where within their system they happen to live. For example, a customer of a large

³³ Busch Surrebuttal, Ex. Staff-12, Page 1, Lines 16-18.

³⁴ Busch Surrebuttal, Ex. Staff-12, Page 13, Lines 1-17.

³⁵ Busch Surrebuttal, Ex. Staff-12, Page 13, Lines 20-23.

³⁶ Busch Surrebuttal, Ex. Staff-12, Page 14, Lines 4-11.

electric utility, such as Ameren Missouri, will pay the same rate for electricity whether they live in the middle of St. Louis or in a rural area of the Ozarks.³⁸ Obviously, an electric system is different than a water or sewer system in that the entire electric system is interconnected by a transmission grid. However, there can be no doubt that it costs more to serve an individual customer at the end of a miles-long line through the woods than it does to serve a customer in an apartment building in a densely populated urban area.³⁹

31. By spreading out the cost of mandated environmental upgrades over a larger number of customers, consolidated-tariff pricing will better promote improved and uniform water and environmental quality throughout Missouri-American's water and sewer service territory.⁴⁰ However, that ability to spread costs also carries with it the risk that Missouri-American will have an incentive to overbuild its water and sewer system to maximize shareholder profits if the constraints of customer affordability are reduced.⁴¹

32. To address that concern, Staff proposes that Missouri-American be required to file a five-year capital expenditure plan with the Commission for review by January 31 of each year after the effective date of rates in this case. Staff, and every party to this case, would then have the ability to review Missouri-American's plans and could make recommendations regarding investment and the need to make investments in any service area. All expenditures would be subject to full review in Missouri-American's future rate

³⁷ Transcript, Page 418, Lines 23-25.

³⁸ McDermott Direct, Ex. MAWC-12, Pages 12-13, Lines 23, 1-5.

³⁹ Busch Surrebuttal, Ex. Staff-12, Pages 10-11, Lines 19-23, 1-6.

⁴⁰ Busch Rebuttal, Ex. Staff-11, Page 8, Lines 5-14.

⁴¹ Marke Direct, Ex. OPC-9, Page 22, Lines 1-15. See also, Busch Rebuttal, Ex. Staff-11, Pages 8-9, Lines 18-23, 1-4.

cases.⁴²

33. A concern was raised that consolidated pricing would reduce Missouri-American's incentive to perform due diligence before acquiring new water systems and could impact the price Missouri-American is willing to pay to acquire new systems.⁴³ However, Missouri-American and other potential purchasers understand that this Commission has generally not recognized acquisition premiums for purchased systems. As a result, such systems are usually purchased based on the selling utility's rate base valuation, which keeps purchase prices in line with the system that is in place and avoids undue costs being passed to ratepayers.⁴⁴

34. Consolidated pricing will also tend to reduce administrative and regulatory costs by lowering the costs of billing and collections and by reducing the regulatory costs of having to calculate and file multiple rates within a rate case.⁴⁵ Staff agrees that consolidated pricing can significantly reduce the cost of preparing a future rate case.⁴⁶

35. All water systems will eventually require large capital investments.⁴⁷ If the cost of making those investments is spread among consolidated districts, in the long term any perceived short-term unfairness will be balanced out.

36. Since 2000, the Commission has set rates for Missouri-American based on a district-specific pricing theory. During that time Joplin and St. Joseph have incurred costs

⁴² Busch Rebuttal, Ex. Staff-11, Page 11, Lines 3-10.

⁴³ Collins Direct, Ex. MIEC-5, Page 6, Lines 15-21.

⁴⁴ Busch Rebuttal, Ex. Staff-11, Page 11, Lines 11-23.

⁴⁵ McDermott Direct, Ex. MAWC-12, Page 16, Lines 10-17.

⁴⁶ Busch Direct, Ex. Staff-9, Page 8, Lines 1-9. See also, Busch Surrebuttal, Ex. Staff-12, Page 15. Lines 5-15.

⁴⁷ Transcript, Pages 672-673, Lines 20-25, 1-20.

for major infrastructure projects that have not been spread among other districts.⁴⁸ However, rate payers do not pay all the expenses for a major capital project immediately. Instead, those costs are amortized over many years and recovered by the company through rates over that extended period of time. Thus, capital projects completed in recent years have not been fully paid for through rates and, because of consolidation, the remaining balance of those costs will be spread to other districts.⁴⁹

Sewer District Consolidation

The facts found regarding water district consolidation also apply to the question of sewer district consolidation and are incorporated herein. Additional facts regarding sewer district consolidation follow.

37. Staff proposed to consolidate Missouri-American’s 12 existing sewer districts into five districts:⁵⁰

Sewer District 1	Sewer District 2	Sewer District 3	Sewer District 4	Sewer District 5
Arnold	Platte County	Cedar Hills	Jefferson City	Stonebridge
		Warren County	Maplewood	Saddlebrooke
		Anna Meadows	Ozark Meadows	Emerald Pointe
		Meramec		

Staff based its sewer district recommendations on geographic location, reasoning that the workers responsible for any given district will also have responsibility for nearby systems.⁵¹

38. Missouri-American proposed to consolidate its existing sewer districts into just

⁴⁸ Haase Rebuttal, Ex. Jop-1, Page 2, Lines 15-18.

⁴⁹ Transcript, Page 425, Lines 2-14.

⁵⁰ Busch Direct, Ex. Staff-9, Page 9, Lines 15-20.

two districts, with Arnold in one district and every other system in the second.⁵²

39. Arnold is by far Missouri-American's largest sewer system with 6,877 customers, far outpacing the second largest sewer district, Jefferson City, with 1,374 customers.⁵³ As such, it is reasonable for Arnold to be separated into its own district.

40. Arnold is also the source of a disagreement in this case. On April 27, 2015, Missouri-American's then-President Frank L. Kartmann sent a letter on behalf of Missouri-American to the City of Arnold, which was in the process of approving the sale of the Arnold system to Missouri-American. In that letter, Kartmann assured the City of Arnold that, absent any extraordinary circumstances, "the Arnold sewer bill for a 5,000 gallon monthly residential customer, currently at \$24.33 per month (based on \$73.00 per quarter), will not increase beyond \$33.58 per month during the first 4 years of Missouri-American's ownership."⁵⁴

41. At the time Staff filed its direct testimony, based on Staff's calculation of Missouri-American's revenue requirement, it estimated that the total increase in the cost of service for Missouri-American's sewer operations would be only \$39,345. Based on that estimate, Staff recommended leaving sewer rates at their current levels. Staff would have accounted for the resulting \$39,345 shortfall by taking it from its proposed District 2 for water service. Staff reasoned that taking the sewer shortfall from the water service side of the equation was reasonable because Missouri-American's overall corporate costs must be allocated in some manner between the company's water and sewer operations. Staff

⁵¹ Busch Direct, Ex. Staff-9, Pages 10-11, Lines 22-23, 1-2.

⁵² Herbert Direct, Ex. MAWC-7, Page 21, Lines 7-9.

⁵³ Cassidy Surrebuttal, Ex. Staff-16, Page 3, Lines 1-17.

⁵⁴ Ex. Staff-32.

believed the reallocation of \$39,345 was within the zone of reasonableness for those corporate allocations.⁵⁵

42. Despite its proposal to consolidate the sewer districts, Staff recommended that all existing sewer rates be left at their current levels.⁵⁶

43. In its cost allocation study, Missouri-American limited its allocation of corporate and joint and common costs to \$20 per year, per customer in small districts with less than 3,000 customers. In doing so, it reasoned that smaller districts do not require the same level of service as larger districts. It looked at the level of overhead costs the small districts typically incur and used that as the basis for the \$20 per customer allocation. The remaining corporate and joint and common costs were then allocated to the larger districts.⁵⁷ If the limited allocations to the small district are not used, the traditional allocation methods would allocate between \$50 and \$300 in costs per customer to the small districts, while the allocations would be less than \$20 per customer in the larger districts.⁵⁸

44. Staff did not accept Missouri-American's limited allocation of costs to the smaller districts and instead allocated those costs to the districts using what it believes to be an appropriate allocation factor.⁵⁹

45. The increase in Missouri-American's annual revenue requirement agreed to by the parties and established in this case is significantly larger than the amount Staff had recommended at the time it filed its direct testimony. Based on the then agreed upon

⁵⁵ Busch Direct, Ex. Staff-9, Pages 11-12, Lines 20-23, 1-5.

⁵⁶ Busch Direct, Ex. Staff-9, Page 11, Lines 15-16.

⁵⁷ Tinsley Direct, Ex. MAWC-35, Page 14, Lines 16-24.

⁵⁸ Tinsley Rebuttal, Ex. MAWC-36, Page 27, Lines 16-19.

\$30.6 million increase to the company's revenue requirement, the sewer shortfall was estimated to be \$2,055,059. \$1,489,263 of that shortfall was attributed to Arnold.⁶⁰

46. At the hearing, Staff Indicated the non-Arnold sewer shortfall was \$565,000 and proposed to assign and collect those additional costs from the three water districts proposed by Staff, with 80 percent of the \$565,000 to be collected from District 1, and 10 percent from each of District 2 and 3.⁶¹ Under Staff's proposal, existing sewer rates would not be changed as a result of this case.⁶²

47. Staff's proposal did not account for the \$1,489,263 sewer revenue shortfall attributable to Arnold. Staff took the position that unless Missouri-American was willing to increase Arnold's rates above the cap promised in Kartmann's letter to the City of Arnold, it believed that no additional allocations to the water district should be made and Missouri-American's shareholders could absorb those extra costs. The Staff's cost study showed that Arnold's rates would have to be increased by 44 percent to cover its full costs.⁶³

48. Mr. Busch testified for Staff that Mr. Kartmann told him in a phone conversation that Missouri-American shareholders would be responsible for any revenue shortfall resulting from the commitment to Arnold. Mr. Busch indicated that Staff did not believe it would be fair for other ratepayers to pick-up that shortfall on behalf of Missouri-American's shareholders. He also testified that he became concerned about Kartmann's commitment to Arnold only after it became apparent that there would be a significant

⁵⁹ Bolin Rebuttal, Ex. Staff-7, Page 3, Lines 13-20.

⁶⁰ Ex. MAWC-52. The amount of the shortfall will be changed to some extent by the revised stipulated revenue requirement increase of \$30.413 million. See footnote 1.

⁶¹ Transcript, Page 453, Lines 17-20.

⁶² Transcript, Pages 454-455, Lines 10-25, 1-13.

⁶³ Transcript, Page 457, Lines 6-20.

shortfall.⁶⁴

Conclusions of Law:

A. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must be “just and reasonable” and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... water corporation or sewer corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... water, sewer [service] ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No ... water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In sum, the statute says that utilities cannot give any “undue or unreasonable” preference or disadvantage to any particular customer, or class of customers, or locality.

B. Some parties argue that Section 393.130 requires the use of district-specific pricing and forbids the use of single-tariff pricing or even consolidated-tariff pricing. They are wrong.

C. The most cited case interpreting the meaning of “undue or unreasonable”

⁶⁴ Transcript, Pages 457-458, Lines 24-25, 1-19.

preference is *State ex rel. Laundry v. Public Service Commission*,⁶⁵ a 1931 decision by the Missouri Supreme Court. The *Laundry* decision arose from a complaint brought before the Commission by two laundry companies contending that they should be allowed to receive water service at the same reduced rate made available to ten manufacturing customers. In its decision, the Missouri Supreme Court found that the laundries were similarly situated to the manufacturing customers and should have been allowed to take water at the reduced manufacturer's rate. Specifically, the Court held that principles of equality "forbid any difference in charge which is not based upon difference in service" and found "there is no dissimilarity or difference in the service of furnishing and supplying water [to the manufacturing customers] and the service of furnishing and supplying water to the complainants herein".⁶⁶ *Laundry* does not say that only cost differences can be considered when the Commission decides whether there is any undue or unreasonable preference.

D. While a difference in charge must be based upon a difference in service, differences in services are not based solely on differences in cost to provide that service. In a 1978 case, *State ex rel. City of Cape Girardeau v. Public Service Commission*,⁶⁷ the City of Cape Girardeau challenged the design of the electric rates imposed on the city by the Missouri Utilities Company. The city contended that the rates charged to its citizens should be lower than the rates charged to surrounding rural areas because it was less expensive for the company to serve its customers within the more concentrated areas of the city. In denying the city's challenge, the Missouri Court of Appeals held that section 393.130(3)

⁶⁵ 34 S.W.2d 37 (Mo. 1931)

⁶⁶ *Laundry*, at 46.

forbids discrimination against persons as well as locations. The Commission's order and report made it clear that it was aware of this dual obligation and in this case chose to emphasize equity to the individual user by maintaining a rate system designed on the basis of cost to a class of customer rather than to an area. ... We cannot hold as a matter of law that the city was entitled to the relief it sought merely by showing a lower cost of service to the city area as a whole⁶⁸

The Missouri Court of Appeals further found that the record supported the Commission's decision to charge a single rate in both rural and urban areas even if it was assumed that it cost the company less to serve the Cape Girardeau urban area.⁶⁹

E. Similarly, in *State ex rel. City of West Plains v. Public Service Commission*,⁷⁰ the Missouri Supreme Court addressed the question of whether a telephone company could lawfully charge rates that included a surcharge to recover the license and occupation city taxes from the residents of the cities that imposed those taxes on the phone company. For purposes of this discussion, the most important portion of the Missouri Supreme Court's opinion is as follows:

We are able to discern no legitimate reason or basis for the view that a utility must operate exclusively either under a systemwide rate structure or a local unit rate structure, or the view that an expense item under a systemwide rate structure must of necessity be spread over the entire system regardless of the nature of the item involved. Experts in utility rates may well conclude that a 'hybrid system' or 'modified system' of rate making, wherein certain expense items are passed on to certain consumers and certain items are thereby treated on a local unit basis and others on a systemwide basis, is the system which will produce the most equitable rates. And it would appear to be the province and the duty of the commission, in determining the questions of reasonable rates, to allocate and treat costs (including taxes) in the way in which, in the commission's judgment, the most just and sound result is reached. ... And, in any event, the fact that an order may ignore 'the theory and practice of rate making and utility operation upon a systemwide basis'

⁶⁷ 567 S.W.2d 450 (Mo. App. St. L. 1978).

⁶⁸ *Cape Girardeau*, at 453.

⁶⁹ *Cape Girardeau*, at 453.

⁷⁰ 310 S.W.2d 925 (Mo. banc 1958).

does not, standing alone, tend to demonstrate the unlawfulness or unreasonableness of that order.⁷¹

Thus, the Missouri Supreme Court recognized that the Commission is not bound by statute to implement any particular theory of ratemaking. In this case, it is not bound to a theory of either district-specific or single-tariff pricing. Rather, the Commission must weigh the evidence presented and arrive at a decision that implements just and reasonable rates.⁷²

F. There is one more court decision that needs to be addressed. The Commission's 2000 Missouri-American rate case, in which the Commission announced its intention to move toward district-specific tariff pricing, was appealed by the City of Joplin. The Commission's decision had moved all other then-existing districts to district-specific pricing, but kept Joplin at the rates it had been paying under single-tariff pricing. If Joplin had also been moved to district-specific pricing along with the other districts, it would have seen a rate decrease amounting to \$880,000 per year. The Circuit Court of Cole County reversed the Commission's order for failing to offer sufficient findings of fact and conclusions of law to support its decision to reallocate Joplin's rate decrease to other districts. Because of procedural disputes the matter did not reach the court of appeals for decision until Missouri-American had filed its next rate case and new rates had been established. The Circuit Court of Cole County dismissed the appeal as moot, and that dismissal was appealed.

G. In *State ex rel. City of Joplin v. Public Service Commission*,⁷³ the Court of Appeals held that the City of Joplin's appeal was not moot because the legal principle upon

⁷¹ *West Plains*, at 933.

⁷² Section 393.130.1, RSMo (Cum. Supp. 2013).

⁷³ 186 S.W.3d 290 (Mo. App. W.D. 2005)

which the City of Joplin appealed was recurring and could evade appellate review. The Court expressed concern that the Commission's decision was unjustly discriminatory towards Joplin, but found that the Commission's inadequate findings of fact and conclusions of law precluded meaningful judicial review and remanded the matter to the Commission to prepare new, sufficient findings and conclusions. The decision did not mandate the use of district-specific pricing.

H. Section 393.320, RSMo (Cum. Supp. 2013), passed in 2010, establishes a procedure whereby a large water or sewer utility (more than 8,000 customers) attempting to acquire a small water or sewer system (8,000 or fewer customers) may establish a ratemaking rate base for the small system to be acquired. The purpose of the statute is to make it easier for a large water or sewer utility to acquire small systems. For purposes of this decision, the most relevant provision in the statute is subsection 6, which 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.

I. This statute is important for two reasons. First, it shows that the legislature is aware of the affordability problems faced by small water systems and allows those problems to be ameliorated by consolidation with a larger service area for ratemaking purposes. That shows that the legislature is not hostile to the concept of consolidated-tariff pricing. It would be unreasonable to conclude that the legislature approved of consolidated tariff pricing for small water systems acquired after the statute passed in 2010, but forbade

it, and required district-specific pricing, for the small water systems acquired before the passage of the statute.

J. Second, the statute tends to undercut one argument presented in favor of consolidated tariff pricing; the argument that consolidated-tariff pricing is needed to reassure potential buyers of struggling water systems. If the statute already allows for consolidation of newly acquired water systems into larger districts, then it appears that no further reassurance of potential buyers is required. However, the application of the statute is limited in that it defines a “large water public utility” as a public utility that provides water to more than 8,000 customer connections.⁷⁴ In effect, Missouri-American is the only “large water public utility” currently operating in this state. 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.

K. Commission Rule 4 CSR 240-2.115(2)(D) provides that a non-unanimous stipulation and agreement to which an objection is made, becomes merely a joint position of the parties signing the agreement. The signatory parties are not bound by their agreement and the Commission can adopt their joint position only if it is supported by competent and substantial evidence.

L. This rule is important because the parties that adhere to the Joint Position seem to assume that the Commission can adopt their position that some consolidation and reallocation of costs is appropriate because it is in their stipulation and agreement, while also adopting their other position that district-specific pricing is required by the controlling

⁷⁴ Section 393.320.1(1), RSMo (Cum. Supp. 2013).

statute. The two positions cannot be reconciled.

Decision:

The Commission's task in this case is to devise a rate structure that is just and reasonable for all Missouri-American's customers, no matter where they live within the company's service area. The Commission must also ensure that the rates it authorizes do not unduly or unreasonably grant a preference or impose a prejudice on any person, corporation, or locality. That is a difficult task that requires a great deal of balancing differing interests. Missouri-American's cost to serve its customers is one factor to be balanced, but it is not the only factor.

The needs of the customers must be met no matter where they happen to live, or how recently the company's infrastructure in their area was installed or replaced.

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. Consolidation will limit rate shock when new infrastructure must be installed in a district with a small population, and all districts will eventually face that prospect.

Consolidation is not without risk. It averages rates and inevitably some customers will pay more than they pay now, and some will pay less. At least in the short term that will be seen by some as unfair, but, over the long term, the effects of consolidation will even out across the state. It is not reasonable to keep patching the current group of rate districts to deal with the needed, but unaffordable, infrastructure repairs and improvements as they occur.

There is also a concern that consolidation will give Missouri-American an incentive

to build more infrastructure than is needed so as to increase its rate base and increase profits for its shareholders. To avoid that problem, the Commission will adopt Staff's five-year capital planning report proposal.

The Commission will adopt Staff's consolidation plan as the best option at this time. Missouri-American has essentially abandoned its initial consolidation plan, and anyway, it did little to accomplish the purposes of a consolidation plan since it did little to spread costs. Similarly, the plan put forward in the Joint Position did not capture the benefits to be gained from consolidation and seemed to be little more than a plan to give a little something to various parties to obtain their signature on the compromise document.

Full single-tariff pricing is an attractive option, but since none of the parties proposed that option during the case it was not fully considered by the parties. Because of that lack of scrutiny, the option has many unknowns, and the Commission is not willing to take that leap at this time.

The Commission may need to make take that leap in Missouri-American's next rate case as it will likely be facing the prospect of a major new capital construction project in the Platte County district, a district that will have difficulty affording a major capital expense. For that reason, the Commission will expect the parties to fully examine single-tariff pricing in the next rate case.

Consolidation is also needed on the wastewater side of Missouri-American's business. The existing sewer districts are even more fragmented than the water districts. A separate problem has arisen regarding sewer service because of a promise made by Missouri-American's President to the City of Arnold. That promise to limit any sewer rate increases to Arnold's customers for four years after Missouri-American purchased the

system was made without consultation with Staff, or approval from the Commission. As a result, it will be the responsibility of Missouri-American's shareholders to support that promise if it has any effect.

The Commission will adopt Missouri-American's limitation on the allocation of corporate expense to small water and sewer companies. That may eliminate the so-called sewer shortfall that Staff had proposed to collect from Missouri-American's water customers.

The Commission will direct that the existing sewer districts be consolidated into two districts as proposed by Missouri-American. That will leave Arnold in its own sewer district, responsible for its own share of costs. If Arnold's rates need to rise above \$33.58 per month, the promised rate, to cover its share of costs, Missouri-American's shareholders shall be responsible for those extra costs.

For the other district, assuming there will be no shortfall in sewer revenue after the allocation of corporate expense to small companies is implemented, the rates currently paid by the individual sewer systems shall remain unchanged, as originally proposed by Staff. If there is a revenue shortfall for sewer, it shall be recovered pro rata among all the consolidated sewer systems and their individual rates shall be adjusted as necessary.

This treatment of sewer rates is necessary because no party actually addressed the rebalancing of sewer rates during the hearing, and the Commission does not wish to adjust those rates without more information. In the next rate case, the Commission intends to move the consolidated sewer systems toward a single, balanced rate.

Rate Design & Customer Charge

Background:

After a utility's revenue requirement is determined – in this case by agreement of the parties, approved by the Commission – a determination must be made as to how, and from whom, the utility will be allowed to recover the required revenue. That is the issue of rate design.

Findings of Fact:

1. Only Missouri-American and Staff performed cost of service allocation studies in this case, although experts engaged by other parties examined those studies and suggested revisions to them. Missouri-American's study was presented in the direct testimony of Paul Herbert.⁷⁵ Staff's study was presented in its Report on Class Cost of Service and Rate Design.⁷⁶

2. Missouri-American's study allocated costs to serve fourteen different water districts and summed those costs to arrive at a state-wide cost of service.⁷⁷ It separately performed a state-wide class cost of service study to allocate costs to four classes of customers. Those classes are:

Rate A, consisting of residential, commercial, small industrial, and other public authorities customers, Rate B, consisting of sales for resale customers, Rate J, consisting of large users, and Rate F, private fire protection customers. The cost of service associated with public fire protection was identified and reallocated back to the Rate A and Rate J classifications.⁷⁸

⁷⁵ Ex. MAWC-7.

⁷⁶ Ex. Staff-3.

⁷⁷ Herbert Direct, Ex. MAWC-7, Page 4, Lines 6-16.

⁷⁸ Herbert Direct, Ex. MAWC-7, Page 4, Lines 17-22.

Staff used the same four customer classifications in its cost of service study.⁷⁹

3. Both Missouri-American and Staff used the Base-Extra Capacity Method in preparing their studies. That method is outlined in the American Water Works Association manual of water supply practices and is the method generally accepted by the industry. It has been used in past Missouri-American rate cases by both Staff and Missouri-American.⁸⁰

4. In the Base Extra Capacity Method, costs of service are generally classified into the following four primary cost components as described in Staff's testimony:

Base costs are the costs that vary with the amount of water used and operation under average load conditions. Base costs are allocated to customer classifications according to the amount of water consumed.

Extra capacity costs are the costs associated with meeting the requirements that are in excess of the average load conditions. The extra capacity costs include operation and maintenance expenses and capital costs for system capacity above what is required for the average rate of use.

Customer costs are those costs associated with serving customers, regardless of the amount of water consumed. Those costs include customer accounting and collection expenses, meter-reading, billing, and capital costs related to meters and services.

Fire protection costs are those costs directly assigned to fire protection functions.⁸¹

5. Staff's study used nineteen factors to allocate the various costs to the customer classes. A description of each of those factors can be found in Staff's Report on Class Cost of Service and Rate Design.⁸² Missouri-American used a similar set of factors

⁷⁹ Staff Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 2.

⁸⁰ Staff Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 2.

⁸¹ Staff Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 2.

⁸² Ex. Staff-3, Pages 3-5.

to allocate those costs.⁸³

6. Since Missouri-American and Staff use the same cost allocation method and cost allocation factors, their studies reach the same general results.

Purchased Power Allocation

7. MIEC's witness, Brian Collins, generally agreed with Missouri-American's cost of service study, but he challenged the allocation factor used to allocate Purchased Fuel / Power for Pumping costs for the St. Louis Metro district. The Missouri-American study allocated those costs under Factor 1, which allocates costs based on class annual water volume. Collins argued that such pumping costs vary in part on customer peak demands and should be allocated on that basis,⁸⁴ using Factor 3, which is tied to average flow and maximum day demand requirements.⁸⁵

8. Collins' proposed modification would have the primary effect of shifting some costs from Rate J, which is the large user class, to Rate A, which is the residential and commercial class.⁸⁶

9. Collins cites the American Water Works Association's Manual M-1, Principles of Water Rates, Fees and Charges, Sixth Edition, as support for his modification of Missouri-American's cost study.⁸⁷ In his reply to Collins, Missouri-American's witness, Paul Herbert, quoted that manual as saying "the demand portion of power costs should be allocated to extra capacity **to the degree that it varies with the demand pumping**

⁸³ Herbert Direct, Ex. MAWC-7, Schedule C.

⁸⁴ Collins Direct, Ex. MIEC-5, Pages 9-10, Lines 14-22, 1-2.

⁸⁵ Collins Direct, Ex. MIEC-5, Page 10, Lines 10-17.

⁸⁶ Collins Direct, Ex. MIEC-5, Page 11, Lines 8-18. See *also*, Smith Rebuttal, Ex. OPC-16, Pages 5-6, Lines 17-21, 1-6.

⁸⁷ Collins Direct, Ex. MIEC-5, Page 10, Lines 3-9. The manual cited by Collins is not in the record.

requirements.” (emphasis added in Herbert’s testimony).⁸⁸ Herbert analyzed Missouri-American’s power bills and concluded that only approximately 4.5 percent of the total purchased power expense can be attributed to extra demand. A reallocation of 4.5 percent of the total purchased power costs would reduce the amount of costs allocated to Rate J by only \$24,160, or about 0.35 percent of the total costs allocated to Rate J. That is an insignificant amount.⁸⁹

Declining Block Rates

10. Missouri-American proposes to implement a one-block uniform volumetric rate throughout its water districts for all rate classes.⁹⁰ Currently, Missouri-American uses a one-block uniform volumetric rate in its St. Louis Metro district, but uses a declining block volumetric rate structure for non-residential customer rate classifications for other districts, most notably the St. Joseph district. Staff proposes to continue that structure for its proposed districts that do not include the St. Louis Metro area.⁹¹

11. The Public Water Supply Districts of Andrew County, Nos. 1 and 2 are parties to this case. They appeared and participated at the hearing, but did not present any testimony. Legal Counsel for the Water Supply Districts offered an opening statement at the hearing and filed post-hearing briefs addressing the continuation of declining block rates under which they take service through the St. Joseph district. The Water Supply Districts purchase their entire water supply from Missouri-American and then resell that water to their customers. They currently benefit from declining block rates and ask that

⁸⁸ Herbert Rebuttal, Ex. MAWC-9, Page 8, Lines 4-6.

⁸⁹ Herbert Rebuttal, Ex. MAWC-9, Pages 7-8, Lines 4-27, 1-15.

⁹⁰ Herbert Direct, Ex. MAWC-7, Page 14, Lines 12-17.

⁹¹ Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 6.

they be continued.⁹²

12. In a single block rate structure the commodity rate a customer pays remains constant regardless of the amount of water the customer uses. A declining block rate establishes one or more additional rate blocks by which the customer pays less per gallon of water as usage increases. In other words, the additional gallons consumed in the higher usage rate block are cheaper than the first gallons consumed in the lower usage rate block.⁹³

13. It is also possible to design volumetric rates using inclining blocks. Under such a structure, customers would pay more for water as they increase their usage. Such a structure would be designed to encourage water conservation by discouraging discretionary water usage, such as outdoor watering or other summer use.⁹⁴

14. Conservation of water is important for more than just a need to conserve the supply of water. Water and wastewater supply processes are energy intensive. Large amounts of electricity are required to pump water through the pumping stations, treatment facilities and distribution system.⁹⁵ Thus, the promotion of water efficiency leads to the promotion of energy efficiency.⁹⁶

15. The establishment of inclining block rates would further promote efficiency, but none of the parties advocated for the establishment of inclining block rates in this case, although the Division of Energy's witness suggested they should be implemented in a

⁹² The Public Water Districts' opening statements on this issue can be found at Transcript Pages 312-320 and Page 564. The statements of counsel and briefs are not evidence and are cited only to provide background information on this issue.

⁹³ Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 6.

⁹⁴ Herbert Supplemental, Ex. MAWC-8, Page 5, Lines 9-16.

⁹⁵ Epperson Direct, Ex. DE-1, Pages 3-4, Lines 14-21, 1-18.

⁹⁶ Hyman Direct, Ex. DE-4, Page 3, Lines 2-3.

future rate case.⁹⁷

16. Inclining block rates are difficult to design in a way that will ensure Missouri-American recovers its approved revenue requirement.⁹⁸ The data required to properly design inclining block rates is not available in this case.⁹⁹

Customer Charge

17. A customer charge is the fixed amount a customer is charged on each bill without regard to the amount of water they consume. In contrast, volumetric charges on the customer's bill vary with the amount of water consumed.¹⁰⁰ Missouri-American's revenue requirement has already been determined, and the company will be allowed an opportunity to recover that revenue requirement through a combination of a customer charge and volumetric rates. That means a decrease in the allowed customer charge will necessarily increase the volumetric charge. Of course, that also means an increase in the customer charge will decrease the volumetric charge.¹⁰¹

18. Customer charges should be established at a level that will allow the utility to recover "customer-related costs" based on the number of customers served by a utility, not based on the amount of water they consume. In general, customer-related costs would include things like meter-reading, billing, and meter and service line-related costs.¹⁰²

19. In general, utilities prefer to recover as many of their fixed costs as possible through the customer charge, recognizing that not all fixed costs can be described as

⁹⁷ Hyman Direct, Ex. DE-4, Page 6, Lines 13-19.

⁹⁸ Transcript, Pages 788-789, Lines 13-25, 1-5.

⁹⁹ Transcript, Page 819, Lines 13-25.

¹⁰⁰ Herbert Supplemental, Ex. MAWC-8, Page 2, Lines 10-13.

¹⁰¹ Herbert Supplemental, Ex. MAWC-8, Page 4, Lines 19-21.

¹⁰² Hyman Direct Ex. DE-4, Page 4, Lines 1-14.

customer costs.¹⁰³ Utilities prefer to recover their fixed costs through fixed customer charges because that rate structure removes the risk that the company will not sell enough volumes of water to cover its fixed costs. The other side of the coin is that consumer groups and environmental groups prefer to require the utility to recover its costs through volumetric rates. That allows customers more control of their total bill if they can reduce their use of water.¹⁰⁴

20. If Missouri-American were to attempt to recover all its fixed costs through a customer charge, in other words, through a straight-fixed variable rate structure, its monthly customer charge for a customer with a 5/8 inch meter, which would be a typical residential customer, would need to be approximately \$56.¹⁰⁵

21. Missouri-American did not request a straight-fixed variable rate structure in this case. Instead, it performed a cost study that supported a fixed monthly customer charge of \$16.90 for a customer with a 5/8 inch meter.¹⁰⁶ Missouri-American would collect that same customer charge from all customers statewide.¹⁰⁷ Missouri-American currently collects 21.5 percent of its total revenues from its existing customer charge. If its proposed increased customer charge were adopted, it would collect approximately 25 percent of its total revenues from its customer charge.¹⁰⁸

22. Staff also performed a cost study. However, rather than propose a single-statewide customer charge, Staff recommends that a different customer charge be

¹⁰³ Transcript, Page 613, Lines 3-19.

¹⁰⁴ Transcript, Page 782, Lines 12-18.

¹⁰⁵ Herbert Direct, Ex. MAWC-7, Page 20, Lines 14-19.

¹⁰⁶ The amount of the customer charge would increase proportionately as customer meter sizes increase.

¹⁰⁷ Transcript, Page 625, Lines 1-4.

established in each of the three consolidated district recommended by Staff. Staff would set the customer charge at \$16.46 for District 1¹⁰⁹, \$14.83 for District 2, and \$14.56 for District 3.¹¹⁰

23. Both Missouri-American and Staff altered their proposed customer charges during the course of the rate case proceeding. Missouri-American initially proposed a customer charge of \$17.40, but reduced that amount to \$16.90 when it re-ran its model using the lower revenue requirement agreed to by the parties.¹¹¹ Staff initially proposed monthly customer charges of \$11.06 for District 1, \$10.57 for District 2, and \$9.32 for District 3.¹¹² Staff increased its recommended customer charge for various reasons, including a recognition that the agreed-upon revenue requirement increase was significantly greater than originally modeled by Staff.¹¹³

24. The most significant cause for the difference between the customer charge recommendations of Staff and Missouri-American results from their differing treatment of public fire protection costs in their cost studies. Staff would have Missouri-American recover those costs through its volumetric rates, while Missouri-American would recover them through the customer charge.¹¹⁴

25. Missouri-American contends public fire protection costs are fixed costs that do not vary with water usage, so they must be recovered through customer charges.¹¹⁵ But

¹⁰⁸ Transcript, Page 395, Lines 13-23.

¹⁰⁹ Staff's proposed District 1 includes the current St. Louis Metropolitan district.

¹¹⁰ Transcript, Page 796, Lines 1-4.

¹¹¹ Transcript, Pages 624-625, Lines 25, 1-11.

¹¹² Report on Class Cost of Service and Rate Design, Ex. Staff-3, Schedules 2-1, 2-2 and 2-3.

¹¹³ Transcript, Page 795, Lines 4-25.

¹¹⁴ Transcript, Page 796, Lines 10-25.

¹¹⁵ Herbert Rebuttal, Ex. MAWC-9, Page 4, Lines 30-39.

the mere fact that such costs are fixed does not make them customer-related costs that should be recovered through the customer charge. Missouri-American points to nothing about fire protection costs that would make them customer-related. The Commission finds that such costs are not customer-related and, therefore, should be recovered through volumetric rates rather than through the customer charge. As a result, Staff's cost study relating to the customer charge is more reliable, and the customer charge amount advocated by Staff is more appropriate.

26. The other difference between the customer charge recommendations of Missouri-American and Staff is that Missouri-American advocates a single, state-wide customer charge, while Staff would vary that charge between its three proposed districts. The Commission finds that there is little difference between districts in the costs attributed to customer costs. As Mr. Herbert testified for Missouri-American;

All customers have a similar service line and meter, all have their meter read for billing either monthly or quarterly, all are billed from a centralized billing facility, and all receive customer service from a shared call center."¹¹⁶

The Commission agrees that there is no compelling reason to create the additional complication and confusion that would result from having slightly different customer charges in the three districts.

27. Staff did not offer testimony at the hearing about what its recommended customer charge would be if a single charge were calculated to be applied to all districts. However, Staff's witness agreed to make that calculation and to provide that information to the Commission after the hearing.¹¹⁷ Staff did so in a pleading filed on April 7, reporting that Staff's system-wide customer charge would be \$15.33 for a customer with a 5/8 meter.

¹¹⁶ Herbert Rebuttal, Ex. MAWC-9, Page 5, Lines 16-19.

28. No other party performed a cost study to support a proposed customer charge. However, the Division of Energy offered criticisms of the Missouri-American and Staff studies to advocate for a lower customer charge.¹¹⁸ Martin Hyman, witness for the Division of Energy, challenged the inclusion of uncollectable account expense for recovery through the customer charge in the cost studies of both Missouri-American and the Staff. He argued that “each customer within a class is not equally responsible for costs associated with uncollectable expenses. Therefore, uncollectable expenses should not be collected on a uniform basis through the customer charge.” He further argued that “uncollectable accounts expense generally varies with the level of revenue and should be recovered through variable charges which change with the amount of use.” Hyman offered no facts in support of either of those statements.¹¹⁹

29. In its initial brief, Public Counsel removed both the public fire protection costs and the uncollectable costs from Missouri-American’s calculation of the customer cost and arrived at a customer charge of \$13.76, which Public Counsel contends is appropriate.¹²⁰

30. Paul Herbert, witness for Missouri-American, contends that uncollectable accounts do not vary with usage, rather they vary with the number of customers. He also demonstrated that uncollectables are overwhelmingly attributable to the residential class.¹²¹ The Commission finds Mr. Herbert’s testimony in this regard to be credible. There is no reason to believe that customers who do not pay their bills use more water than others, or that they fail to pay their bill when they use more water. Rather, a percentage of customers

¹¹⁷ Transcript, Pages 815-817, Lines 20-25, 1-25, and 1-8.

¹¹⁸ Transcript, Pages 770-771, Lines 22-25, 1-12.

¹¹⁹ Hyman Direct, Ex. DE-4, Page 13, Lines 7-13.

¹²⁰ Public Counsel’s Initial Brief, Page 11.

will not pay their bills regardless of how much water they use. Thus, as the total number of customers rises, uncollectables will also rise. That makes it a customer-related cost that is appropriately recovered through the customer charge on an equal basis from all customers, rather than through volumetric charges that would collect more from those customers who consume larger volumes of water.¹²²

31. The Joint Position held by the signatories to the objected-to rate design stipulation and agreement advocates for a single statewide customer charge of \$14.42 per month for a 5/8 inch meter customer. That is the current St. Louis Metro customer charge.¹²³

32. Generally, regulated prices are not set at a utility's marginal cost of providing service, because to do so would deny the utility its ability to recover its prudently incurred sunk costs.¹²⁴ No marginal cost study has been performed in this case, and Public Counsel's witness, Dr. Marke, acknowledged that performing a reliable marginal cost study in this case would represent a "herculean" task.¹²⁵

Conclusions of Law:

A. Section 393.130.1, RSMo (Cum. Supp. 2013) requires that all charges made by a water corporation must be "just and reasonable".

¹²¹ Herbert Rebuttal, Ex. MAWC-9, Page 9, Lines 4-25.

¹²² Transcript, Page 579, Lines 1-11.

¹²³ Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Review, Page 1.

¹²⁴ McDermott Rebuttal, Ex. MAWC-13, Page 11, Lines 22-26.

¹²⁵ Marke Surrebuttal, Ex. OPC-12, Page 4, Lines 19-20.

Decision:

Purchased Power Allocation

MIEC proposed to modify Missouri-American's class cost of service study to change the allocation factor used to allocate Purchased Fuel / Power for Pumping Costs. If adopted, that proposal would tend to shift some costs from the large user class, Rate J, to the residential and commercial class, Rate A. That shift of costs would have a direct effect only on Missouri-American's class cost of service study. It would not have a direct effect on the rates charged by the company. Missouri-American's witness demonstrated that when properly understood, the proposed change to the allocation factor would have only an insignificant effect on the allocation of costs within the study. The proposed modification is neither necessary nor appropriate and shall not be made.

Declining Block Rates

Missouri-American proposes to use a one-block uniform volumetric rate in all its water districts for all rate classes, thereby eliminating some existing declining block rates for non-residential rate classifications for some of its districts. The Commission believes it is important to encourage the conservation of water, and as a result, conservation of the energy needed to pump and treat that water. Declining block rates discourage conservation of water and are therefore inappropriate. The Commission will adopt Missouri-American's proposal to use a one-block uniform volumetric rate in all its water districts for all rate classes. In the next rate case, the Commission asks the parties to file information on inclining block rates so the Commission can consider the information in setting just and reasonable rates in that case.

Customer Charge

In determining the amount of the customer charge that Missouri-American may recover from its customers, the Commission has attempted to set a charge that will be fair to both the company and its customers. The best way to do that is to look to a cost of service study to determine which of the company's costs can best be identified as customer costs for which the company should be allowed to recover through the customer charge. For the reasons described in the Commission's findings of fact, the cost study prepared by Staff best establishes the cost basis for a reasonable and appropriate customer charge. Although Staff proposed to use that study to establish distinct customer charge amounts for each of its three water districts, the Commission believes that it is more appropriate to establish a single state-wide customer charge for Missouri-American. Therefore, the Commission will order Missouri-American to implement a customer charge in the amount recommended by Staff, modified to establish a single state-wide customer charge.¹²⁶

The Division of Energy and Public Counsel urge the Commission to exercise its discretion to order as low a customer charge as possible. Division of Energy desires a low customer charge with a correspondingly high commodity charge because it believes that will provide customers with more incentive to conserve water. Public Counsel desires a low customer charge because it believes a low charge will benefit lower income customers whom it believes tend to use less water.

¹²⁶ As previously indicated, Staff represented that amount to be \$15.33 per month for customers with a 5/8 meter. Customer charges for customers with larger sized meters shall be established in the same manner based on Staff's customer cost study.

The Commission has an obligation to establish just and reasonable rates that are fair to all concerned. It is fair for Missouri-American to be able to recover customer-related costs through a customer charge. Anything else is unfair to not only the company, but also to customers who use higher amounts of water and thus are disadvantaged by the higher volumetric rates that must accompany a lower customer charge. There is no absolute definition of what is, or is not, a customer cost,¹²⁷ but Staff's customer cost study has done a good job of identifying those costs and is the appropriate basis for establishing a just and reasonable customer charge.

Low-Income Tariffs

Findings of Fact:

1. Missouri-American proposes to implement a special low-income water rate that would offer eligible low-income customers an 80 percent discount on the customer charge for a residential 5/8 inch meter. Discounting the customer charge would help keep water service affordable to qualified customers, while sending appropriate pricing and demand-side efficiency signals to the customers through the undiscounted volumetric charge.¹²⁸ Since the Commission has established a customer charge of \$15.33 in this report and order, the program would discount the customer charge for eligible customers by \$12.26, leaving a customer charge of \$3.07 for eligible customers.

2. Eligibility for the discount would be based on a determination of eligibility for participation in the Missouri Low Income Home Energy Assistance Program (LIHEAP).

¹²⁷ Public Counsel and Division of Energy have edged toward defining customer costs as the incremental cost of adding one more customer to the company's system. Incremental or marginal cost is not an appropriate definition of customer cost because a calculation of incremental or marginal costs, even if possible, would not allow the company to recover its sunk costs for things like meters and service lines, which all parties seemingly agree are a part of customer costs.

Eligibility requirements for LIHEAP assistance are based on income, household size, available resources, and responsibility for payment of home heating costs.¹²⁹ A customer's eligibility for LIHEAP would be determined by their local Community Action Agency.¹³⁰

3. Missouri-American proposed that the low-income discount program be implemented throughout all its Missouri service area. Based on 2014 poverty figures, it estimated that 57,900 customers would be eligible statewide.¹³¹ The company further estimated that 30 percent of eligible customers would actually participate in the discount program, at an annual cost to the company of \$960,000.¹³²

4. Because the exact cost of the program cannot be known at this time, Missouri-American proposed that it be allowed to defer the cost of the program as a regulatory asset for possible recovery in its next rate case.¹³³

5. Because of the uncertainties associated with the low-income discount program, several parties suggested the program be implemented as an experimental pilot program. Missouri-American's witness suggested that the St. Joseph district be chosen as the site for the pilot program based on the fact that many witnesses at the local public hearing in St. Joseph expressed concerns about the affordability of their water bills.¹³⁴

6. One of the purposes of the pilot program would be to study the impact of the low-income discount on the amount of uncollectable charges (bad debt) experienced by

¹²⁸ Tinsley Surrebuttal, Ex. MAWC-37, Page 5, Lines 5-13.

¹²⁹ Tinsley Surrebuttal, Ex. MAWC-37, Page 5, Lines 15-23.

¹³⁰ Transcript, Page 841, Lines 4-12.

¹³¹ Transcript, Page 841, Lines 16-21.

¹³² Transcript, Page 842, Lines 18-25.

¹³³ Transcript, Page 846, Lines 1-5.

¹³⁴ Transcript, Page 851, Lines 2-4.

Missouri-American.¹³⁵

7. Implementation of the low-income pilot program in a limited portion of Missouri-American's service territory would better allow for study and comparison of the effects of the program on a range of communities.¹³⁶

8. The exact cost of the low-income pilot program cannot be known in advance. But limiting the program to a smaller population will significantly reduce the cost from that estimated by Missouri-American for a program applicable to all its customers.

Conclusions of Law:

A. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must be "just and reasonable" and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... water corporation or sewer corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... water, sewer [service] ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No ... water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

¹³⁵ Transcript, Pages 849-850, Lines 21-25, 1-16.

¹³⁶ Transcript, Page 865, Lines 15-18.

In sum, the statute says that utilities cannot give any “undue or unreasonable” preference to any particular customer, or class of customers.

B. Note that the statute does not prohibit any such preference, only preferences that are “undue or unreasonable”. The parties have not identified, and the Commission has not found, any court decisions that have directly addressed the question of whether a low-income rate would be an “undue or unreasonable” preference.

C. The parties suggest the Commission adopt the low-income rate proposed by Missouri-American as a limited, experimental rate. The Missouri Supreme Court has long held that the Commission has the authority to grant interim test or experimental rates as a matter of necessary implication from practical necessity.¹³⁷ By experimenting with this low-income rate, the Commission will be better able to evaluate the reasonableness of the rate and any preference in Missouri-American’s next rate case.

Decision:

The Commission will authorize Missouri-American to implement a residential low-income program providing eligible low-income customers with an 80 per cent discount on the customer charge for a residential 5/8-inch meter. This will be an experimental pilot program that shall end on the effective date of new rates to be established in Missouri-American’s next general rate proceeding. An experimental pilot program will allow the parties and the Commission to evaluate the effectiveness of such a program as well as the administrative requirements, delivery systems, marketing and participation rates involved in such a program. The program will be reviewed in Missouri-American’s next rate case.

The Commission will not identify a specific city or area in which the low-income pilot

¹³⁷ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n*, 535 S.W.2d 561, 567, n 1 (Mo. App. 1976).

program should be implemented. Instead, the Commission will direct Missouri-American to work with Staff, Public Counsel, and any other interested stakeholders to identify a city, district, or other portion of its water service territory that will be most suitable for implementation of the pilot program. In making that choice, Missouri-American and the other stakeholders should consider the relative poverty of the customers and the existing level of bad debt within the chosen area. While the Commission is establishing the broad parameters of the program in this order, Missouri-American and the interested stakeholders may craft the details of the program as they see fit.

Missouri-American customers in the chosen area may establish eligibility by contacting their local community action agency and establishing that they would qualify for the Missouri Low Income Home Energy Assistance Program (LIHEAP), whether or not they actually participate in LIHEAP. Customers shall reestablish eligibility on an annual basis.

Missouri-American is authorized to record on its books a regulatory asset that represents the actual discounts provided to those customers participating in the Low-Income Program, along with any third-party administrative costs. Missouri-American shall maintain this regulatory asset on its books until the effective date of rates resulting from Missouri-American's next general rate proceeding. The amortization period for the deferred regulatory asset associated with the Low Income Program shall be determined in the next Missouri-American general rate proceeding.

Missouri-American shall file a tariff consistent with this order no later than 120 days after the effective date of this order.

Union Issues

Background

The parties identified three issues raised by Missouri-American's union. The parties agreed among themselves that the Union issues would be presented to the Commission based on prefiled testimony and written briefs. Those issues follow

1. Should the Commission condition any rate increase upon Missouri-American filling unfilled bargaining unit positions?

2. Should the Commission order semi-annual reporting of various items as urged by the Unions? and

3. Should the Commission order Missouri-American to comply with and implement American Water Works' valve maintenance program?

The Commission will take up all three issues together.¹³⁸

Findings of Fact

1. Utility Workers Union of America, Local 335 is the union representing approximately 355 members who work for Missouri-American.¹³⁹

2. The vice-president of the union local, Alan Ratermann, offered pre-filed testimony on behalf of the union. He expressed concern that Missouri-American is not hiring enough bargaining-unit employees to fill vacant positions with the company. As of October 31, 2015, Missouri-American employs 68 fewer bargaining-unit employees than it did on December 31, 2010.¹⁴⁰ Ratermann is concerned that the reduced employment

¹³⁸ No testimony regarding the Union issues was presented at the hearing and the parties are deemed to have waived cross-examination of the witnesses who offered that pre-filed testimony.

¹³⁹ Ratermann Direct, Ex. Union-1, Page 2, Lines 3-4.

¹⁴⁰ Ratermann Direct, Ex. Union-1, Page 2, Lines 14-16.

levels could affect Missouri-American's ability to offer safe and adequate service, but he offered no specific facts to support a conclusion that the company has failed to offer safe and adequate service.¹⁴¹

3. Missouri-American fills positions as business needs dictate. It may reduce its workforce when it finds a more efficient way to perform operations, such as by replacing obsolete equipment and automating processes.¹⁴² The Commission finds that Missouri-American employs a suitable workforce sufficient to provide safe and adequate service.

4. The union also expressed concern that Missouri-American is failing to properly maintain the many valves present in its water distribution system. It believes Missouri-American should undertake a valve exercising program, through which valves are opened and closed periodically to ensure they are capable of operating properly.¹⁴³

5. The union points out that Missouri-American's corporate parent, American Water Company, has developed a valve inspection and maintenance practice for its subsidiaries, and contends Missouri-American should be ordered to comply with those practices,¹⁴⁴ including a requirement to hire additional employees to engage in the valve maintenance program.¹⁴⁵

6. Finally, the union contends the Commission should require Missouri-American to file detailed semi-annual reports about its valve inspection and maintenance practices.¹⁴⁶

7. American Water Company does not require Missouri-American to follow its

¹⁴¹ Ratermann Direct, Ex. Union-1, Page 3, Lines 9-20.

¹⁴² Wood Rebuttal, Ex. MAWC-41, Page 10, Lines 12-19.

¹⁴³ Ratermann, Direct, Ex. Union-1, Page 5, Lines 16-22.

¹⁴⁴ Ratermann, Direct, Ex. Union-1, Pages 6-7, Lines 7-23, 1-4.

¹⁴⁵ Ratermann Direct, Ex. Union-1, Page 8, Lines 17-19.

¹⁴⁶ Ratermann Direct, Ex. Union-1, Page 8, Lines 9-17.

recommended valve exercising practice. Rather, Missouri-American is free to adopt all or part of that practice to meet its needs.¹⁴⁷

8. Missouri-American exercises its valves and performs required repair and maintenance as it operates, maintains, and repairs the rest of its water distribution system. It assigns valve maintenance work as fill-in work for crews when main breaks are at a low level.¹⁴⁸

9. Establishment of a required valve maintenance program and the imposition of reporting requirements about such a program would increase costs for Missouri-American.¹⁴⁹ Such costs would ultimately be recovered from ratepayers.

Conclusions of Law

A. Section 393.130.1, RSMo (Cum. Supp. 2013), requires every water and sewer corporation, including Missouri-American, to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

B. Section 393.140(1), RSMo 2000 gives this Commission general supervisory authority over all water and sewer corporations, again including Missouri-American. Subsection (2) of that statute authorizes the Commission to examine or investigate the operations of such utilities and to:

order such reasonable improvements as will promote the public interest, preserve the public health and protect those using such ... water or sewer system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable

¹⁴⁷ Wood Rebuttal, Ex. MAWC-41, Page 11, Lines 18-24.

¹⁴⁸ Wood Rebuttal, Ex. MAWC-41, Page 12, Lines 2-14.

¹⁴⁹ Wood Rebuttal, Ex. MAWC-41, Pages 12-13, Lines 18-24, 1-5.

devices, apparatus and property of ... water corporations and sewer corporations.

Based on the authority given by that statute, the Commission may exercise a great deal of control over Missouri-American's operations.

C. But, while the Commission has authority to regulate Missouri-American to ensure it provides safe and adequate service, the Commission does not have authority to manage the company. The Missouri Court of Appeals has explained:

The utility's ownership of its business and property includes the right of control and management, subject, necessarily to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may chose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.¹⁵⁰

Therefore, except as necessary to ensure the provision of safe and adequate service, the Commission does not have the authority to dictate to the company how many employees it must hire to perform the work of the company.

D. Section 393.140, RSMo 2000, gives the Commission authority to inspect and investigate water and sewer systems and to examine the records and books of water and sewer corporations, including Missouri-American.

Decision:

The evidence presented by the Union does not demonstrate that Missouri-American has failed to provide safe and adequate service. Therefore, the Commission will not dictate to the company how many new employees it must hire. Furthermore, there is no

¹⁵⁰ *State ex rel. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177, 181-182 (Mo.App. W.D. 1960), (continued on next page ...)

demonstrated need for the Commission to direct Missouri-American to undertake any particular valve maintenance program at this time. To do so would be an unwarranted intrusion on the management of the company.

The Commission further concludes there is no need to impose a new reporting requirement on Missouri-American as Staff can already obtain whatever information it needs from the company. Further, additional reporting requirements would ultimately increase costs for Missouri-American's ratepayers.

Quality of Water in Platte County

Findings of Fact:

1. Customers in some subdivisions in Platte County have experienced problems with the quality of their water. At the Local Public Hearing held in Riverside on February 1, 2016, several customers testified about excessive amounts of scale buildup in their pipes and appliances resulting from the water delivered to their homes by Missouri-American.¹⁵¹

2. During cross-examination, Missouri-American's President, Cheryl Norton, explained that Missouri-American must soften the water that comes from its treatment facility in Platte County so that calcium introduced in the softening process will inhibit corrosion in pipes and prevent lead from leaching into drinking water. Unfortunately, in certain homes, calcium intermittently settles out in large amounts.¹⁵² The large amounts of calcium damage the customers' pipes and appliances.¹⁵³ The calcium issue does not

citing *State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 30 S.W.2d 8, (Mo. banc 1930).

¹⁵¹ Transcript, Public Hearing, February 1, 2016, Riverside, Missouri.

¹⁵² Transcript, Page 121, Lines 3-22.

¹⁵³ Transcript, Page 122, Lines 16-23.

affect the safety of the drinking water.¹⁵⁴

3. The problem has been going on for several years. Missouri-American has not yet been able identify its cause,¹⁵⁵ but believes the introduction of carbon dioxide into the system will reduce the amount of scale that is forming in the customers' houses.¹⁵⁶

4. Missouri-American indicates it is working with customers to assess the damages that have resulted from the water quality problems.¹⁵⁷

Conclusions of Law:

A. Section 393.130.1, RSMo (Cum. Supp. 2013) requires Missouri-American to provide safe and adequate water to its customers.

B. Section 393.140(2), RSMo 2000 gives the Commission authority to investigate the quality of the water supplied by Missouri-American.

C. Section 386.230, RSMo 2000 gives the Commission authority to act as an arbitrator in any controversy between a public utility and another party. However, such arbitration is voluntary and all parties to the controversy must agree in writing to the arbitration.

D. The Missouri Supreme Court has held:

[t]he Public Service Commission is an administrative body only, and not a court, and hence the commission has no power to exercise or perform a judicial function, or to promulgate an order requiring a pecuniary reparation or refund. The commission has no power to declare or enforce any principle of law or equity and as a result it cannot determine damages or award pecuniary relief.¹⁵⁸

¹⁵⁴ Dunn Surrebuttal, Ex. MAWC-6, Page 14, Lines 1-5.

¹⁵⁵ Transcript, Page 122, Lines 6-15.

¹⁵⁶ Dunn Surrebuttal, Ex. MAWC-6, Page 13, Lines 6-22.

¹⁵⁷ Transcript, Page 125, Lines 8-17.

¹⁵⁸ *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668-669 (Mo. 1950) (citations omitted).

Decision:

The Commission is concerned about the quality of the water Missouri-American delivers to some of its customers in Platte County. In its reply brief, the City of Riverside asks the Commission to order Missouri-American to agree to:

- 1) Enter into arbitration proceedings pursuant to Section 386.230, RSMo;
- 2) Establish a new case for each and every customer who has suffered damages as a result of this problem so that the customers can bring evidence of their damages before the Commission and the Commission can award adequate compensation to the customers; or
- 3) Reduce rates to the level established in the tariff of 2008, when this problem was first reported to Missouri-American, until all customers who have suffered damages are compensated and the quality of water is restored.

The Commission has no authority to force Missouri-American into an arbitration proceeding and it has no authority to determine or award damages to Missouri-American's customers. As a result, it cannot take the steps requested by the City of Riverside. However, the Commission will direct Missouri-American to prepare a report describing the resolution of the problems experienced by its customers in Platte County. Missouri-American shall file that report in this case no later than 90 days after the effective date of this Report and Order.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Missouri-American Water Company on July 31, 2015, and assigned tariff numbers YW-2016-0026, YW-2016-0027, YW-2016-0028, YW-2016-0029, YW-2016-0030, YW-2016-0033, YS-2016-0031, YS-2016-0032, YS-2016-

0034, YS-2016-0035, YS-2016-0036, YS-2016-0037, YS-2016-0038, YS-2016-0039, and YS-2016-0040, are rejected.

2. Missouri-American Water Company is authorized to file tariffs sufficient to recover revenues as determined by the Commission and to otherwise comply with this order.

3. Missouri-American Water Company shall file a five-year capital expenditure plan with the Commission for review by January 31 of each year after the effective date of rates in this case. The required annual plans shall be filed in this case file until Missouri-American files its next general rate case, at which time they shall be filed in that new case file.

4. Missouri-American Water Company shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than July 6, 2016.

5. This report and order shall become effective on June 25, 2016.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and Coleman, CC., concur;
and certify compliance with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 26th day of May, 2016.