

3. On August 5, 2024, the Staff of the Public Service Commission and Missouri American Water Company (“MAWC” or “the Company”) jointly filed a proposed procedural schedule.

4. Pursuant to the Commission’s July 30th *Order*, the movants file their proposed procedural schedule and respond to the proposed procedural schedule of Staff and the Company.

5. The movants’ filing is made on the basis of the following critical facts:

- I. The movants’ proposed procedural schedule adopts the **exact same** dates as those proposed by Staff and the Company
- II. The movants’ proposed procedural schedule differs from Staff and the Company only in how the rounds of testimony are structured. **It requires absolutely no additional work on the part of any party to the case.** It does, however, ensure all parties have an equal and equitable **opportunity** to both present and defend their case.
- III. The MAWC/Staff proposed procedural schedule exhibits **clear and obvious bias in favor of the Company** because it eliminates all other parties’ ability to defend their respective positions without shortening the schedule in any way.
- IV. Staff has expressly stated to the parties that the decision to modify the procedural schedule to favor MAWC and disfavor

intervenor is being made at the direction of the Chair of the Commission.

- V. The MAWC/Staff proposed procedural schedule will lead to a much longer and more contentious hearing, significantly decrease the chances of this case reaching settlement, and is effectively guaranteed to increase litigation costs for all parties including the Staff and the Company itself.
- VI. The Staff and MAWC's proposed procedural schedule threatens the movants and other intervenor's right to due process.
- VII. The movants' proposed modifications to the MAWC/Staff proposed procedural schedule will avoid all the foregoing problems without the need to change any of the dates put forward by the Staff and the Company or force any party to perform additional work but still allows for the Commission to experiment with a new process that includes combining testimony rounds.

6. The remainder of this pleading will outline and explain the facts addressed in point 5.

Points I & II: The movants’ proposed procedural schedule primarily mirrors the Staff and Company’s proposal

The movants are recommending a procedural schedule that uses the exact same dates proposed by the Company and Staff. This includes all modifications to the Commission’s historically ordered procedural schedules in terms of the timing of discovery. In addition, the movants have adopted the Staff and Company’s proposal for the first three rounds of testimony and further consolidates the Staff and Company’s fourth and fifth rounds of testimony into one round in compliance with the expressed interests of the Commission. To illustrate these points, here is a simple table showing the difference between the testimony rounds in the two proposals:

Date	Staff and Company Proposal	Movants’ Proposal	Comparison
07/01/2024	Company Direct Testimony and MFR	Company Direct Testimony and MFR	Same
12/06/24	Non-Company Parties Rev Req Direct and Rebuttal Testimony	Non-Company Parties Rev Req Direct and Rebuttal Testimony	Same
12/20/24	Non-Company Parties Rate Design / CCOS Direct and Rebuttal Testimony	Non-Company Parties Rate Design / CCOS Direct and Rebuttal Testimony	Same
01/10/25	Non-Company Parties Cross Rebuttal	Non-Company Parties Cross Rebuttal/ Company Rebuttal Testimony	Movants combine Staff and Company proposal for this round and next round
01/24/25	Company Rebuttal Testimony	All party Surrebuttal	Movants bring back Surrebuttal

As the table shows, the movants' proposal incorporates the Staff and Company's proposal in its entirety and only adds back the surrebuttal round that is anticipated in the Commission's own rules.¹ 20 CSR 4240-2.130(7)(D). In doing so, the movants' proposal meets the Commission's stated objectives by consolidating rounds of testimony. It does not deny **any** party a round of testimony – and hence neither favors nor requires additional work from any party – but it does **allow** all parties to file true, meaningful surrebuttal if they so choose.

In order to assuage concerns that had been raised by the Company in prior discussions regarding the inclusion of surrebuttal, the OPC individually has previously offered these additional conditions that would further limit and streamline the Commission's rate case process:

1. Surrebuttal would only be allowed to respond to rebuttal testimony;
2. Surrebuttal would only be allowed to contradict positions filed in rebuttal testimony (no surrebuttal offered in support of rebuttal testimony);
3. No additional or different recommendations could be raised for the first time in surrebuttal;
4. Any party wishing to have filed surrebuttal must have filed testimony in one of the prior rounds; and
5. The Commission should construe the requirements of surrebuttal narrowly and strike testimony liberally.

Given (1) that the Commission's rules contemplate surrebuttal testimony, (2) that adding surrebuttal will not lengthen the proposed schedule in any way, and (3) that

¹ The joint proposed procedural schedule filed by Staff and the Company claims to offer surrebuttal to the non-company parties, but this is mostly false. The MAWC/Staff schedule offers no ability for non-company parties to file surrebuttal testimony to either (1) non-company party cross-rebuttal or (2) the Company's rebuttal testimony. This is addressed in greater detail in the following section of this pleading.

the additional recommended restrictions will prevent abuse of the testimony process, there is absolutely no justifiable reason for why the Commission should not order the movants' simple proposed modification to the Staff and Company proposed procedural schedule.

Point III: The explicit bias in the MAWC/Staff proposed procedural schedule

The current evidentiary practice before the Commission operates on a simple, written-testimony basis that can be broken down into three parts. First, each party is permitted to present their case-in-chief. Then all other parties are allowed to respond to each other party's case-in-chief. Finally, each party is permitted to defend their own case-in-chief from all the other parties. These three parts (present, respond, defend) are defined as direct, rebuttal, and surrebuttal testimony respectively by the Commission's rules. 20 CSR 4240-2.130(7)(D). They reflect a balance of interests between all parties and offer an equal and equitable opportunity for each party to present its entire case **before** the evidentiary hearing. This table illustrates the current paradigm:

Testimony	Purpose
Company direct	All testimony and exhibits presenting the Company's case-in-chief
Non-Company direct	All testimony and exhibits presenting the non-Company parties' cases-in-chief
All party rebuttal testimony	Responds to the respective case-in-chief of all other parties
All party surrebuttal testimony	Allows each party an opportunity to defend against the rebuttal of each other party

The MAWC/Staff proposed procedural schedule seeks to eliminate this equality in how the testimony rounds are structured by removing the non-company parties' ability to defend their case in chief **with absolutely no other meaningful change**. This is meant to introduce clear and obvious bias in favor of the Company.

The MAWC/Staff proposed procedural schedule starts with the novel idea of combining the non-company parties' direct and rebuttal testimonies. This is not necessarily a problem in itself, but it does inherently limit the non-company parties' rebuttal to only be a response to the Company's case-in-chief (as that is the only direct that would have been offered at that point). This is resolved by having a round of non-company party cross-rebuttal where each non-company party can challenge each of the other non-company parties' cases. However, the MAWC/Staff proposed procedural schedule then offers **no** subsequent round of testimony to allow the non-company parties to defend their respective case-in-chief from the criticism levied by any of the other non-company parties.² In other words, non-company parties get to (1) put on their case-in-chief and (2) respond to other parties but **never** defend their own case-in-chief. This is not the case with the Company.

² The MAWC/Staff proposed procedural schedule refers to this third round of testimony as "Non-Company Cross Rebuttal/ Surrebuttal" but this is misleading. Because the prior round of combined direct/rebuttal only would allow non-company parties to file rebuttal responding to the Company's direct (as that is the only direct that would have been filed at that point) the only surrebuttal that would be **possible** in the third round would be responses to other non-company parties' response to the Company's case-in-chief. It would be absolutely impossible for one non-company party in this third round of testimony to respond to another non-company party's response to the first non-company party's case-in-chief, which is what the movants are advocating for. This is because the second non-company party's response to the first non-company party's case-in-chief would not be provided until this same third round of testimony.

The MAWC/Staff proposed procedural schedule ends with what is called “Company Rebuttal/Surrebuttal/Sur-Surrebuttal.” This round of testimony must pull double duty as both rebuttal testimony and surrebuttal testimony because it responds to both the non-company parties direct and rebuttal. 20 CSR 4240-2.130(7)(D). In this manner, the MAWC/Staff proposed procedural schedule allows MAWC to (1) present its case-in-chief, (2) respond to all other parties, and (3) defend its case-in-chief over two rounds of testimony. Every single other party to the case is only permitted to present its case-in-chief and respond to all other parties in written testimony, never to defend their own case-in-chief. To illustrate:

Testimony	Purpose
Company direct	All testimony and exhibits presenting the Company’s case-in-chief
Non-Company direct/rebuttal	All testimony and exhibits presenting the non-Company parties’ cases-in-chief and response to the Company’s case-in-chief
Non-Company cross rebuttal/surrebuttal	Non-Company parties respond to the respective case-in-chief of only non-company parties and respond to other non-company parties’ response to the Company’s case in chief
Company only rebuttal/surrebuttal	Allows MAWC and only MAWC to defend against the rebuttal of each other party

The fact that the proposed schedule allows the Company **and only the Company** to defend its case-in-chief is clear, open, and obvious bias in favor of the Company. Fortunately, the movants have offered a simple solution to correct this problem while still allowing the combination of testimony.

The movants’ proposal is extremely simple. Just combine the non-Company cross rebuttal with the Company rebuttal and then give everyone the opportunity to file surrebuttal. This brings all parties immediately back to the same playing field as every party will be allowed an opportunity to both present and defend its position in written testimony:

Testimony	Purpose
Company direct	All testimony and exhibits presenting the Company’s case-in-chief
Non-Company direct/rebuttal	All testimony and exhibits presenting the non-Company parties’ cases-in-chief and responding to the Company’s case-in-chief
Non-Company cross rebuttal/Company rebuttal	Non-Company parties respond to the respective case in chief of other non-company parties and the Company responds to the case-in-chief of all other parties
All party surrebuttal	Allows each party an opportunity to defend against the rebuttal of each other party

This is extremely fair and balanced and requires no additional time in the schedule thanks to combining two unnecessarily bifurcated rounds of testimony (the non-Company cross rebuttal and Company rebuttal). It further matches the Commission’s expressed goals of combining testimony.

MAWC’s current request for this case is expected to result in a 44% increase. Given the size of what is being asked for, it makes little sense for the Commission to make a change that drastically mutes the power of non-company parties to challenge MAWC’s case. Yet that is exactly what Staff and the Company now propose. This

change does not in any way shorten the rate case process. The MAWC/Staff proposed procedural schedule has just as many rounds of testimony as the traditional method. That bears repeating. **The MAWC/Staff proposed procedural schedule offers no change in the number of rounds of testimony, it only eliminates non-company parties' ability to defend their respective case-in-chief.** To illustrate:

Testimony Round	Traditional		MAWC/Staff		Movants	
	Company	Non-Company	Company	Non-Company	Company	Non-Company
1 st	Present case-in-chief		Present case-in-chief		Present case-in-chief	
2 nd		Present case-in-chief		Present case-in-chief and respond to Company		Present case-in-chief and respond to Company
3 rd	Respond	Respond		Respond to non-Company	Respond to non-company	Respond to non-Company
4 th	Defend	Defend	Respond to non-company and Defend		Defend	Defend

Eliminating every non-company party's ability to defend their case-in-chief at a time when the Company is asking for a 44% rate increase would not only ensure higher than reasonable rates, it would send a clear sign that the Commission favors the utilities over customers.

**Point IV: Staff's claim the Chair of the Commission has directed this bias
in favor of MAWC**

During the July 22nd procedural conference, the OPC offered to adopt the MAWC/Staff proposed procedural schedule with only the slight modification of adding surrebuttal for all parties (in compliance with the Commission's rules) as discussed herein. The issue was left unresolved, however, as each party requested time to consider what had been offered. The OPC then followed the procedural conference with an email sent the same day that outlined the movant's proposal in writing. This email again indicated a willingness to adopt the Staff/MAWC proposed dates and the proposal to consolidate certain rounds of testimony and asked in return simply to include full, meaningful surrebuttal testimony. The Company responded to the OPC's email with a Word document outlining the working draft of the Staff/MAWC schedule and Staff responded with an email concerning local public hearings (an issue discussed at the procedural conference), but neither party addressed the suggested modifications to the testimony structure.

Because the OPC had received no response to its proposed modifications to the testimony structure by Tuesday the following week, it sent out a follow-up email requesting feedback from Staff and the Company on July 30. Neither Staff nor the Company responded to this follow-up email, though another party sent a general response on July 31 that posed several questions to the group at large:

- a. Why are we changing the general process and procedures on an ad hoc basis when the regulations we have in effect provide

- opportunities for direct, rebuttal, and surrebuttal without limitations other than as described in the regulation?
- b. Are folks planning to note a reason for departing from the normal process in this case in the filing?
 - c. How do customers, the commission itself, or even the company benefit from departing from the normal process?

Counsel for Staff responded to this email on the same day stating:

The direction to try new processes/procedures came from Chair Hahn. This rate case was chosen as the best option for trying some new things. If you did not watch today's agenda meeting, I would recommend watching it; the Chair and other Commissioners all shared support for new processes with this procedural schedule.

Based on this statement, it appears Staff is claiming the decision to eliminate the non-company parties' ability to defend their respective case-in-chief was directed by Chair Hahn. However, the movants do not believe this to be true considering the statements made by the Chair during the agenda that Staff counsel referenced in the email.

As far as the movants could tell, the Chair of the Commission's comments during the agenda held on July 31st indicated an interest in seeing improvements to the rate case process that include earlier discovery and combining superfluous rounds of testimony. These are both reasonable requests and the movants have worked to ensure their proposal meets these goals. For example, the movants' proposal shares the **exact same** dates as the MAWC/Staff proposed procedural schedule and so offers the same benefits regarding earlier discovery. Further the movants' proposal adopts the MAWC/Staff effort to combine non-company party direct and rebuttal and also

seeks to combine the non-Company cross rebuttal and Company rebuttal which MAWC/Staff sought to keep separate. The movants' proposal, which again primarily mirrors what MAWC/Staff have proposed, thus meets the goals expressly stated by Chair Hahn at the July 31st agenda.

The movants have shown repeatedly that they are willing to work with the Company and Staff to develop and test new rate case processes and procedures. The procedure being recommended by the movants in this very case is proof of that point. All the movants are asking for (in contradiction to MAWC/Staff proposal) is the ability to defend their case-in-chief in writing. This is something that has always been permitted and which is even contemplated by the Commission's rules. Yet the Staff and MAWC have taken it upon themselves to eliminate the ability of the movants to defend their case-in-chief in writing without any explanation or justification save for the claim that this is the will of the Commission's Chair. The movants hope that Staff is incorrect and that the Commission's Chair did not direct its Staff to develop a procedural schedule that made no change to the number of rounds of testimony but rather simply cut off the ability of non-company parties to present their full case before the Commission. The public deserves to be represented and present evidence, at a minimum, to the same degree as the Commission allows for the monopolistic companies it regulates.

**Point V: The Negative side-effects of the MAWC/Staff proposed
procedural schedule**

If adopted, the MAWC/Staff proposed procedural schedule will most likely lead to a much longer and more contentious evidentiary hearing. This is due to the simple fact that being denied full and meaningful surrebuttal will result in the movants fighting to introduce what *would* have been the excluded surrebuttal evidence during the evidentiary hearing through alternative means. The movants will employ every avenue it can conceive of to present what it considers to be important evidence during the evidentiary hearing. This could include offering live surrebuttal testimony or extended direct testimony during the hearing, offering supplemental or updated written testimony, deposing opposing witnesses followed by **extensive** cross examination, and **substantial** increase in the number of non-prefiled exhibits offered during the hearing. Moreover, any objection to the introduction of such evidence could potentially lead the movants to making an offer of proof that would further slow the proceeding or create reversible error if denied. *State ex rel. Praxair, Inc. v. Mo. PSC*, 344 S.W.3d 178, 187 (Mo. banc 2011). In addition to significantly increasing the time it would take to hear the case, this would also most likely result in a much larger number of objections, motions, and other procedural matters that will complicate the proceeding and disturb the record. Allowing the movants to instead present all surrebuttal evidence, which no party can object to on its face, as part of the traditional surrebuttal testimony would greatly reduce the time needed to hear the case.

In addition to making the hearing more contentious, the MAWC/Staff goal of eliminating full and meaningful surrebuttal for non-company parties will significantly decrease the chances of this case reaching settlement. One of the benefits of the current Commission practice is that every party knows or should know every other parties' entire case before the evidentiary hearing commences due to all the testimony being pre-written. This allows all parties to come to settlement with a good idea of the respective risks they face. Under the MAWC/Staff proposal, however, the non-company parties, like the movants, will not have had the opportunity to present their full case to the Commission yet, and hence, the parties will not have a clear understanding of all the other parties' evidence prior to the hearing. As a result, the Commission should expect that the parties will be much less likely to reach agreeable settlement positions. If it is truly the intention of the Commission to promote settlement then then Commission should order a procedural schedule that requires all parties to present their entire argument **before** the hearing, which can only be done if the non-company parties are given an opportunity to present the evidence with which they will seek to defend their case-in-chief.

The two preceding issues form an entirely new third problem for the MAWC/Staff proposal: it is effectively guaranteed to increase litigation costs for all parties including the Staff and the Company itself. As already explained, the decreased chance to settle coupled with the increased difficulty of the hearing will result in much more time being spent on litigating this case. That increased time will directly result in increased costs for parties. Moreover, the evidentiary issues stated

above coupled with the due process issues stated below also present an increased likelihood that a party may take an appeal from this case, which would yield even more increased costs. For the sake of simplifying this case and preventing the increased costs that all parties will have to face if the MAWC/Staff proposal is adopted, the Commission should order the procedural schedule proposed by the movants.

Point VI: Concerns regarding due process

With regard to administrative proceedings (including those before the Public Service Commission) the courts have determined that:

[D]ue process is provided by affording parties the opportunity to be heard in a meaningful manner. The parties must have knowledge of the claims of his or her opponent, [and] have a **full** opportunity to be heard, **and to defend**, enforce and protect his or her rights.

Harter v. Mo. PSC, 361 S.W.3d 52, 58 (Mo. App. W.D. 2011) (emphasis added). As previously explained at length, the MAWC/Staff proposed procedural schedule's four rounds of testimony do not serve to shorten or reduce the overall number of rounds of testimony and instead only function to eliminate non-company parties' ability to fully present their case by denying them the ability to defend their case-in-chief. Such a complete denial of potentially relevant, substantive evidence is manifestly unjust and unreasonable. Moreover, there is no benefit to either the Commission or its Staff in denying non-company parties the ability to defend their case-in-chief. Instead, this action will only lead to increased rates and continued litigation.

Conclusion

Movants request the Commission issue an order establishing the procedural scheduled in this case as follows:

<u>EVENT</u>	<u>DATE</u>
Filing Date	07/01/2024
Discovery Conference	09/13/2024
Discovery Conference	10/16/2024
Local Public Hearings	10/28/2024—11/8/2024 ³
Technical Conference	11/14/2024
Non-Company Revenue Requirement Direct And Rebuttal	12/06/2024
Discovery Conference	12/12/2024
Technical Conference	12/17/2024
Non-Company CCOS & Rate Design Direct and Rebuttal	12/20/2024
Non-Company Cross Rebuttal/Company Rebuttal	01/10/2025
Discovery Conference	01/14/2025
All Party Surrebuttal	01/24/2025
List of Issues, Order or Witnesses, Order of Opening, and Order of Cross	01/30/2025
True-Up Data Provided to All Parties	01/31/2025
Last Day to Request Main Case Discovery	02/03/2025
Parties Provide Valuation of Positions to Staff for Reconciliation	02/06/2025
Last Day to Object to Discovery	02/07/2025
Statement of Positions	02/10/2025
Reconciliation	02/11/2025
Settlement Conference	02/13/2025—02/14/2025
Evidentiary Hearing	02/24/2025—03/07/2025
True-Up Direct	03/11/2025
Last Day to Request True-Up Discovery	03/24/2025
Initial Briefs	03/27/2025
True-Up Hearing	04/01/2025
Reply and True-Up Briefs	04/10/2025
Operation of Law	05/28/2025

³ Excluding October 30-November 1

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this fifth day of August, 2024.

/s/ John Clizer