BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas	))))))	**Case No.** WR-2024-0320

STATEMENTS OF POSITION

COMES NOW the Office of the Public Counsel ("OPC") and for its *Statements of Position*, states as follows:

1. The Public Service Commission ("PSC") issued an *Order Setting Procedural Schedule* in the above styled case on August 7, 2024, that included in its ordered procedural schedule a deadline for parties to file their statements of position on February 10, 2024.

2. On January 31, 2025, the PSC issued an *Order Granting Motion for Extension and Amending Procedural Schedule* that amend its prior order to now require parties to file their statement of position no later than 12:00 pm on February 21, 2025.

3. Pursuant to these Commission orders, the OPC now files its *Statements of Position* on all issues remaining for determination in the above styled case.

4. Because not all issues in the case have been raised and/or addressed by the OPC, this filing will only provide a detailed position statement for those issues on

which the OPC has a definitive position and then provide a general statement of position on all remaining issues.

Issue 1: Overview and Regulatory Policy

a. **Production Cost Tracker (if not RSM): Should MAWC be allowed to implement a production cost tracker?**

OPC Position: No. There are several reasons for this. First, a tracker would remove incentive for MAWC to keep production costs low.[1] Second, MAWC already earns a significant return on its investments to compensate it for the risk of increasing costs and the risk of increasing production costs in particular is one of the risks it is compensated for.[2] Third, the definition of costs to be included in the tracker is not specific enough, which leaves the opportunity for non-production costs to be included in the tracker.[3] Finally, MAWC did not provide any testimony that showed that it could not earn its authorized ROE without a production cost tracker.[4]

b. **Rate Case Test Year—Discrete Adjustments: What, if any, discrete adjustments should the Commission make related to matters that will be known and measurable prior to the operation of law date in this case?**

OPC Position: The Commission should not order any discrete adjustments related the inclusion of utility plant because "not all of the actual costs incurred for all of the plant that is to be placed in service between the true-up date of December 31, 2024,

[1] Direct/Rebuttal Testimony of Lena M. Mantle, pg. 34, ln 26.
[2] *Id*. at lns. 1 – 2.
[3] *Id*. at lns. 20 – 23.
[4] *Id*. at pg. 36 lns. 1 – 3.

and the operation of law date will be known or measurable at the time of the Commission's decision in this case, especially if any of the plant is placed into service shortly before May 31, 2025."[5] The Commission should further disallow the discrete adjustments listed on page eleven of the direct/rebuttal testimony of Staff witness Kimberly K. Bolin because "most of these are adjustments that will not be known and measurable as of the operation of law date, May 31, 2025."[6] If, however, the Commission does decide to include discrete plant adjustments notwithstanding the preceding, "any depreciation expense and return on plant that is not in place by May 31, 2025, be refunded to customers either as a bill credit or through a deferral in the next rate case."[7] In addition, the accumulated depreciation reserve to use if the Commission does decide to include discrete plant adjustments notwithstanding the preceding should be $677,485,588 prior to adjustments related to other issues.[8]

c. Regulatory Deferrals

i. Should MAWC be allowed to defer depreciation expense as soon as new plant investment is placed into service?

OPC Position: No. What MAWC is requesting is known as plant in service accounting.[9] There is a Missouri law that allows this treatment for electric companies.[10] This law does not apply to water companies.[11] What MAWC is requesting in this case is therefore not permitted under existing statutes. In addition,

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[5] Direct / Rebuttal Testimony of Kimberly K. Bolin, pg. 10 lns. 11- 14.
[6] *Id*. at pg. 11 ln. 37 – pg. 12 ln. 1
[7] *Id*. at pg. 13 lns. 4 – 9.
[8] Direct/Rebuttal Testimony of John A. Robinett, pg. 9 lns. 2 – 9.
[9] *Id*. at pg. 1 ln. 20 – pg. 2 ln.3.
[10] *Id*. at pg. 2 lns. 6 – 17.
[11] *Id*. at lns. 17 – 18.

MAWC is requesting far more favorable treatment than what is allowed for electric utilities under existing Missouri law.[12] MAWC should not be permitted to do more without a law than electric utilities are allowed to do under the law.

ii. Should MAWC be allowed to capitalize post-in-service carrying costs?

OPC Position: No. This is another component of plant in service accounting.[13] MAWC should not be permitted to do this for the same reasons as articulated in issue c.i.

Issue 2: Labor & Related

a. Incentive/Performance Compensation: Should incentive/performance compensation be included in MAWC's cost of service?

OPC Position: No.[14] "MAWC has not shown that its incentive compensation plans have contributed to, or driven, operational efficiencies"[15] Instead, these incentive benefits are largely dependent on "financial success relating to earning per share ("EPS")"[16] "Ratepayers should not have to help compensate MAWC's employees to meet goals that clearly and directly benefit shareholders while only meeting minimum service obligations."[17]

[12] *Id*. at pg. 3 ln. 11 – pg. 5 ln. 6.
[13] *Id*. at pg. 1 ln. 20 – pg. 2 ln.3.
[14] Direct/Rebuttal Testimony of Angela Schaben pg. 1 lns. 16 – 19.
[15] *Id*. at pg. 2 lns. 20 – 21.
[16] *Id*. at ln. 11.
[17] *Id* at pg. 4 lns. 6 – 8.

<u>Issue 3: Class Cost of Service (CCOS)/Rate Design</u>

b. Rate Design: What are the appropriate rate structures and rate designs for MAWC customers? What are the appropriate customer charges? What are the appropriate commodity rates?

OPC Position: The existing customer charge should be maintained.[18]

e. Universal Affordability Tariff: Should MAWC's proposed Universal Affordability Tariff be approved by the Commission for water and wastewater service?

OPC position: Yes.[19]

ii. **If so, what accounting treatment should be ordered for the cost**?

OPC Position: The costs should <u>not</u> be recovered through the RSM because statute limits the RSM to revenue variation resulting from increases or decreases in usage.[20] It does not include variations in revenues due to tariffed discounts.[21]

iii. If so, should the Commission order stakeholders to meet quarterly to address implantation of the tariff?

OPC Position: Yes.[22]

f. Billing Determinants - Normalized Residential Customer Usage: What is the appropriate methodology to calculate normalized residential customer usage?

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[18] Direct/Rebuttal Testimony of Geoff Marke at pg. 24 lns.5 – 25.
[19] Direct Testimony of Roger D. Colton at pg. 43 ln. 4 – pg. 70 ln. 19; Cross-Rebuttal Testimony of Geoff Marke pg. 3 ln. 20 – pg. 4 ln. 8.
[20] Direct/Rebuttal Testimony of Lena M. Mantle, pg. 24, lns. 16 – 18.
[21] *Id.*
[22] Cross-Rebuttal Testimony of Geoff Marke pg. 4 lns. 9 – 19.

OPC Position: The appropriate methodology is to average the annual usage per day per customer over the 2021, 2022, and 2023 calendar years. Residential usage per customer has slightly increased over the past five years.[23] While it is not apparent that there was a COVID-19 impact on usage, a three year average would contain less of any impact of COVID-19.[24] The residential usage values that MAWC used to determine its residential billing determinants are not appropriate because: (1) they are a predicted values even though the Commission ordered a test year of 12 months ending December 2023 with a true-up period through December 2024, (2) the results of the models estimated by MAWC do not make sense,[25] and (3) MAWC's models do not represent reality.[26]

<u>Issue 4: Rate Base</u>

a. **CWC**

   i. **What are the appropriate expense lag days for support services, current federal income tax, and current state income tax?**

OPC Position: The income tax expense lag should be 365 days.[27] This adjustment should be made in order "to reflect the collection of, yet nonpayment of income tax for the entire 365 day year."[28]

[23] Direct/Rebuttal Testimony of Lena M. Mantle, pg. 3 ln. 9; Supplemental Testimony of Lena M. Mantle, pg. 5 lns. 12 – 13.
[24] Direct / Rebuttal Testimony of Jarrod J. Robertson, pg. 9, lns 5 – 6.
[25] Cross-Rebuttal Testimony of Lena M. Mantle, pg. 8, lns. 11 – 19.
[26] *Id.* pg. 10, lns. 15 – 22
[27] Direct/Rebuttal Testimony of John S. Riley (Public and Confidential) pg. 5 ln. 12.
[28] *Id.* at lns. 5 – 6.

ii. What are the appropriate billing lag days for CWC?

OPC Position: The billing lag, which is the time to prepare and mail out the bills after the meter has been read, was established to be 2 days in the 2022 rate case.[29] The Company has extended this lag time to 5 days in its study, but this does not make sense as "[o]ne would expect that the meter reading/billing time would be as efficient as the 2022 study given the fact that MAWC touts the remote reading ("AMI") meters as a leap forward in efficiency."[30] "With AMI meters, one could expect a speedier process. The usage information can be downloaded at night and be ready for dissemination to the customer by way of bill generation the next day." [31]

d. AFUDC: How should AFUDC be calculated going forward?

OPC Position: AFUDC should be calculated in the same manner moving forward as was done in this case.

<u>Issue 5: Production Costs & Other Expense Items</u>

g. Rate Case Expense: Should rate case expense be shared between ratepayers and shareholders and, if so, how?

OPC Position: Yes. Rate case expense should be shared 50/50 as has been ordered by the Commission in past cases.[32]

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[29] *Id*. at pg. 6 lns. 2 – 4.
[30] *Id*. at lns. 6 – 8.
[31] *Id*. at 8 – 10.
[32] Direct/Rebuttal Testimony of Angela Niemeier pg. 31 lns. 19 – 22.

ii. Should MAWC recover expenses attributable to MAWC's lead/lag study?

OPC Position: No.[33] MAWC did not commission a lead/lag study in either the 2015 or the 2017 cases but did to so in 2022.[34] This means that the Company went seven years without a study.[35] Given these facts, the Company did not need to commission a new lead/lag study a mere two years later.[36] Instead, "[t]he Company could just as easily put together a new CWC calculation, inhouse, by updating the balances."[37]

Issue 7: Maintenance Expense

a. Tank Painting/Engineered Coating: Should tank painting costs be treated as an expense or be capitalized?

OPC Position: Tank painting costs should be treated as an expense.[38] This is consistent with the American Water Works M1 Manual.[39]

Issue 8: Income Taxes

a. Excess ADIT (Amortization and Tracker): What is the correct amount association with the excess ADIT?

OPC Position: The total Accumulated Deferred income tax balance should be increased by $18,466,219 to reflect the NOL adjustment discussed in the testimonies of John S. Riley.[40]

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[33] Direct/Rebuttal Testimony of John S. Riley pg.7 lns. 3 – 4.
[34] *Id*. at lns. 7 – 11.
[35] *Id*. at ln. 13.
[36] *Id*. at lns. 13 – 15.
[37] *Id*. at lns. 15 – 16.
[38] Direct/Rebuttal Testimony of Angela Schaben pg. 1 lns. 16 – 19.
[39] *Id*. at pg. 17 ln. 18 – pg. 18 ln. 4.
[40] Direct/Rebuttal Testimony of John S. Riley pg.11 lns. 17 – 20. The number included in testimony will be subject to correction at the hearing.

i. Should a NOL or a NOL remeasurement be recognized in excess ADIT?

OPC Position: No.[41] "MAWC has stated that it did not intend to include an NOL balance in rate base, however, it chose to include NOL balances in the EADIT and amortize it like the deferred liability. This is an incorrect methodology for two reasons. The first is that NOLs are not amortized and secondly, the profits of 2017 through 2021 would have reduced these possible NOL balances to zero."[42]

b. Income Taxes: Should income tax expense be included in MAWC's cost of service?

ii. Should MAWC's income tax expense be subject to a tax gross-up?

OPC Position: No. "Due to the Company's NOL position, the Company is not in a situation where additional income taxes need to be calculated to sustain the Commission's established return on equity. In simple terms, the tax gross up does not need to be applied to the income tax calculations when determining the revenue requirement that should be ordered by the Commission."[43] If a utility is in a position where it does not pay any taxes, then the Commission does not need to increase the utility's income tax expense to account for the tax on the money included in the utility's revenue requirement. You don't need money to pay taxes if you don't pay taxes.[44]

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[41] *Id*. pg. 11 lns. 15 – 16.
[42] *Id*. at pg.12 lns. 3 – 7.
[43] *Id*. at pg. 14 lns. 21 – 24.
[44] *Id*. at pg. 17 lns. 5 – 7.

c. **Accumulated Deferred Income Taxes (ADIT): What amount should be included in accumulated deferred income taxes?**

OPC Position: An amount consistent with the OPC's response to issue 8.a.i.

<u>Issue 9: ROE/Capital Structure/Cost of Debt</u>

a. **What is the appropriate return on equity to be used to determine the rate of return?**

OPC Position: The Commission should use an allowed return on equity of 9.25% for determining MAWC's rate of return. Public Counsel witness David Murray used cost of equity models and assumptions consistent with those investors use. Mr. Murray estimates that the cost of equity for MAWC of 7.25% to 8.25% is currently around 25 basis points lower than his recent cost of equity estimate of 7.5% to 8.5% for Ameren Missouri Case No. ER-2024-0319.[45] In the Ameren Missouri rate case, Mr. Murray recommended an allowed return on equity of 9.5% to determine Ameren Missouri's revenue requirement. Mr. Murray's findings are logically consistent with higher price-to-earnings (P/E) ratios for both water utility stocks in general and American Water specifically, as compared to those of the electric utility industry. In fact, American Water's price-to-earnings (P/E) ratios have been higher than its water utility peers since early 2020.[46] American Water's business risk profile is consistent with a pure-play water utility holding company. The investment community recognizes the water utility industry as a lower-risk investment compared to the

[45] Direct/Rebuttal Testimony of David Murray, pg. 3, lns. 17-19.
[46] *Id.* at pg. 12, ln. 9 – pg. 13, ln. 9

electric utility industry. Mr. Murray took all of these factors into consideration in determining his 9.25% ROE recommendation is fair and reasonable.

b. What capital structure should be used to determine the rate of return?

OPC Position: The Commission should set MAWC's rate-of-return ("ROR") based on a capital structure consisting of 45% common equity and 55% long-term debt, as Public Counsel witness David Murray recommends. Mr. Murray's recommended common equity ratio for MAWC is based on the high-end of American Water's recent typical common equity ratio range of 40% to 45%. While American Water's recent actual common equity ratios have been at the high-end of the range, American Water does not intend to maintain a 45% common equity ratio.[47] American Water communicates to investors that it does not intend to allow its common equity ratio to fall below 40%, which was the trigger for American Water's recent large block issuance of $1.7 billion of common equity in early 2023.[48] MAWC's target for its common equity ratio is primarily for ratemaking.[49] MAWC's common equity capital ratio is supported by American Water's affiliate-borrowing from American Water Capital Corporation ("AWCC"), which at December 31, 2023, had an embedded cost of 3.75%, compared to MAWC's embedded cost of long-term debt 4.41% as of the same date. MAWC's embedded cost of long-term debt is primarily driven (97.86% weighting of all debt as of December 31, 2023) by MAWC's affiliate borrowings from

[47] *Id.* at pg. 40, lns. 17-24.
[48] *Id.* at pg. 36, lns. 25-27.
[49] *Id.* at pg. 37, lns. 1-14.

AWCC.[50] Mr. Murray's recommended capital structure matches AWCC's consolidated cost of debt of 4.13% to the capital structure third-party debt investors are invested.[51]

c. What is the appropriate cost of debt to use to determine the rate of return?

OPC Position: MAWC should be allowed a cost of debt of 4.13%, which applies 97.86% weight to AWCC's embedded cost of long-term debt of 4.07% at December 31, 2023, and 2.14% to MAWC's four legacy debt issuances from the 1990s.[52] MAWC's recommended embedded cost of long-term debt, which is 4.41% as of December 31, 2023, is a function of affiliate promissory notes assigned to MAWC from AWCC.[53] Mr. Murray discovered that the cost of debt MAWC receives from AWCC is higher than the cost of debt American Water receives from AWCC (3.75% vs. 4.41%). Mr. Murray's recommended cost of debt is based on all third-party debt issuances AWCC executes and MAWC executes. As a test of reasonableness, Mr. Murray testifies that Missouri's other large electric and gas utilities have embedded costs of debt in the range of 4.24% to 4.45% as recently as June 30, 2024.[54] The embedded cost of AWCC long-term debt assigned to MAWC as of June 30, 2024, was 4.53%, which compares to AWCC's consolidated embedded cost of long-term debt of 4.22%.[55]

[50] *Id* at pg. 37, lns. 15-24; pg. 40, lns. 7-16.
[51] *Id.*
[52] *Id.* at pg. 40, lns. 7-16.
[53] *Id.*
[54] *Id.* at pg. 50, lns. 9-20.
[55] *Id.* at pg. 51, lns. 1-6.

<u>Issue 12: Miscellaneous Service Charges: Should the Commission order any increase or decrease to the miscellaneous service charges in MAWC's tariff?</u>

OPC Position: No.

<u>Issue 20: Support Services (Service Company): What is the appropriate amount of Service Company costs to include in MAWC's cost of service?</u>

OPC Position: An amount that excludes business development shared service costs; external affairs and public policy costs; and investor relations costs.[56] These costs should not be borne by ratepayers as they primarily benefit shareholders.[57] For example, business development works to expand MAWC's rate base through acquisitions and the exploration of future acquisitions.[58] Meanwhile, "[t]he external affairs/public policy costs incurred from the External Affairs department could range from charitable foundation programs to lobbying and maintaining relationships with government officials."[59] Finally, investor relations, as the name implies, also deal with shareholders, not ratepayers. Therefore, MAWC's ratepayers should not bear any of the costs associated with these programs.

<u>Issue 21: Paperless Billing Program: Should MAWC's proposed tariff sheets associated with its Paperless Billing Program be approved by the Commission?</u>

OPC Position: No.[60] "Missouri American Water Company's position is to change their paperless billing practice of using an 'opt-in' approach to an 'opt-out' approach for

[56] Direct/Rebuttal Testimony of Angela Schaben pg. 1 lns. 16 – 19
[57] *Id.* at ln. 15.
[58] *Id.* at pg. 19 ln. 3 – 5.
[59] *Id.* st lns. 15 – 18.
[60] Cross-Rebuttal Testimony of Manzell Payne, pg. 5 ln. 24.

their customer base."[61] This "contradicts the customer protections that are to be provided by Commission Rules" and further appears to violate the rules directly.[62] Problems with the approach are further demonstrated by "the lack of empirical data by the Company to support their claim of preference and lack of knowledge by customers, problems faced by customers with the Company's MyWater portal, the current lack in participation by customers in paperless billing, the confusing bill inserts, the inconclusive data from pilot programs of other American Water Companies (such as Indiana), and a logical flaw in MAWC's proposal."[63] For all these reasons, the Commission should deny the proposed changes to MAWC's tariff sheets associated with paperless billing.

Issue 22: MyWater Software: Is MAWC providing customers accurate and reliable information through the use of its existing customer facing software (MyWater account)?

OPC Position: In at least one instance, the answer is no.[64] Extensive input from one concerned customer shows that MAWC's existing system offers poor customer service experience at multiple levels of Company operations; inaccurate and/or fluctuating hourly/daily/monthly water usage; and an inability to read customer meter usage information either at the meter or on the MyWater software application.[65] In short, this customer is not receiving what he paid for: the promise of accurate, visible water

[61] *Id*. at pg. 4 lns. 12 – 13, pg. 5 lns. 12 – 22.
[62] *Id*. at pg. 4 ln. 27 – pg. 5 ln. 1.
[63] *Id*. at lns. 4 – 8.
[64] Direct/Rebuttal Testimony of Geoff Marke pg. 28 ln.11 – pg. 31 ln. 18.
[65] *Id*. at pg. 30 lns. 21 – 24.

usage data on his MyWater account and a responsive customer service experience.[66] In addition, further analysis of the customers records shows "the consistent changes in volumetric water usage may also pose billing issues in situations where MAWC provides the water service but a public entity provides the sewer service."[67] "In those cases, MAWC provides the consumption data to the public sewer's billing department," so "[i]f those numbers are not accurate or are subject to changes after the fact, then it would appear reasonable to assume that those customers are not being billed accurately for their sewer service (from a separate entity) as well."[68]

a. **Should the Commission order a cost disallowance of the return on MAWC's in-service meter account?**

OPC Position: Yes. Customers should receive what they were promised and what they have paid for.[69] The Commission should therefore "order a cost disallowance of the return on portion of the meters in service account."[70] "Subject to plant update at true-up this amount represents $22,836,753."[71] This does not represent a "cost disallowance associated with the meters themselves, but merely [represents an isolation of] the premium profit associated with that investment until MAWC can demonstrate that its meters and accompanying software perform as promised."[72]

[66] *Id*. at pg. 31 lns. 11 – 13.
[67] Cross-Rebuttal Testimony of Geoff Marke pg. 2 lns. 17 – 19.
[68] *Id*. at lns. 19 – 23.
[69] Direct/Rebuttal Testimony of Geoff Marke lns. 24 – 25.
[70] Cross-Rebuttal Testimony of Geoff Marke pg. 3 lns. 5 – 7.
[71] *Id*. at lns. 6 – 7.
[72] *Id*. at lns. 11 – 13.

Issue 24: Depreciation

a. Depreciation Rates: Should the Commission Modify MAWC's currently ordered depreciation rates?

OPC Position: No.[73]

i. Should the Commission order MAWC to file a depreciation study with the filing of the Company's next general rate increase request?

OPC Position: Yes.[74] However, this requirement should also "be codified in a Commission rulemaking."[75] This is already required of electric and gas utilities.[76] The information provided in these reports is extremely important for many reasons.[77] Therefore "the best course of action is to open a rule making docket and create rules that require the large water and wastewaters to perform and present depreciation studies, depreciation data bases, property unit catalogs, and continuing property records as minimum filing requirements just as the Commission requires the electric and natural gas utilities to perform and provide as minimum filing requirements for their general rate increase requests."[78]

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[73] Cross-Rebuttal Testimony of John A. Robinett, pg. 1 lns. 20 – 21.
[74] *Id.* at ln. 18.
[75] *Id.* at ln. 18.
[76] *Id.* at pg. 2 lns. 1 – 12.
[77] *Id.* at pg. 2 ln. 18 – pg. 3 ln. 3.
[78] *Id.* at pg. 3 lns. 7 – 12.

c. **Depreciation Reserve: What is the appropriate amount of depreciation reserve expense to be included in MAWC's cost of service?**

OPC Position: The depreciation reserves of account 346 Meters should be credited $32,864,889 to reflect a zero-reserve balance as of May 31, 2025 as a discrete adjustment.[79] If the Commission does not order discrete adjustments the balance credited should be $34,262,980 for the end of the true-up period of December 31, 2024.[80] These adjustments are necessary to remove the current negative balance of this account. The negative balance of this reserve account, which has persisted for more than half a decade, is the direct result of MAWC's decision to prematurely retire Advanced Meter Reading infrastructure.[81] As such, this adjustment should not create a regulatory asset so that ratepayers are not paying for two meters at the same time.[82] "This is especially true when the first meter was retired long before it would otherwise have been necessary to do so."[83] "Allowing a utility to make an investment and then almost immediately double-back on its decision and replace that investment represents an unjust and unreasonable cost that would not exist in a competitive market."[84] The rate base value of these meters "should therefore be removed from the Company's books."[85]

[79] Direct/Rebuttal Testimony of John A. Robinett, pg. 13 lns. 3 – 4.
[80] *Id*. at lns. 4 – 6.
[81] *Id*. at pg. 10 ln. 2 – pg. 12 ln. 14.
[82] *Id*. at pg. 13 lns. 9 – 12.
[83] *Id*. at lns. 12 – 13.
[84] *Id*. at lns. 13 – 16.
[85] *Id*. at ln. 22.

Issue 25: Plant in Service; What is the appropriate balance of plant in service to include in MAWC's cost of service?

OPC Position: The plant balances for account 392.3 for cars/automobiles should be adjusted to remove the $30,498,905 in additional plant spend that MAWC has indicated is expected to occur between January 2024 to May 2025.[86] This massive increase would result in a plant balance that is six times the highest level in-service in the last 20 years.[87] As such, "MAWC's projected spend on cars for January 2024 through May 2025 is not consistent with their historical spend on cars and MAWC has provided no specific testimony or support to justify this massive increase in expenditure."[88] "Therefore, the Commission should not allow these costs as a discrete adjustment in this case."[89]

Issue 29: Miscellaneous tariff changes: What if any of the proposed tariff changes included in the direct/rebuttal testimony of Staff witness David A. Spratt should the Commission order?

OPC Position: "Mr. Spratt points out that the tariff needs to be updated to remove an old rule, and some language should be corrected."[90] In particular, Mr. Spratt recommends removing Rule 3E which prohibits MAWC from being held liable "unless due to contributory negligence."[91] This provision violates Missouri law and should

[86] Direct/Rebuttal Testimony of John A. Robinett, pg. 7 lns. 10 – 11.
[87] *Id*. at lns. 13 -15.
[88] *Id*. at pg. 8 lns. 4 – 6.
[89] *Id*. at lns. 6 – 7.
[90] Cross-Rebuttal Testimony of Manzell Payne, pg. 2 lns. 4 – 5.
[91] *Id*. at lns. 6 – 10.

therefore be removed.[92] “Similar language has been removed from all water and sewer company tariffs based on Staff’s advice.”[93]

Issue 30: Income Eligible Programs: Should MAWC begin holding quarterly meetings with Staff, OPC, and any other interested interveners on its current income eligible programs?

OPC Position: Several income eligible programs were approved in the settlement entered into in MAWC’s last rate case.[94] However, MAWC has failed to participate in these programs or otherwise adhere to the stipulation in a meaningful manner.[95] The blame for these failures does not rest solely with MAWC, but it remains an issue that should be addressed.[96] Thus, the OPC recommends that “MAWC begin holding quarterly meetings with Staff, OPC, and any other interested intervenors similar to what is in place with other regulated utilities” and that funding for these programs “remain at its current level, but that tariff be adjusted to allow for fungibility” among the programs.[97]

Issue 31: RSM: Should the Commission approve a RSM for MAWC?

OPC Position: No. MAWC has neither shown that a RSM is necessary for it to earn a sufficient ROR nor that having an RSM would provide benefits to the Company’s customers that outweighed the shift of risks to them.[98]

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[92] *Id*. at pg. 2 ln. 11 – pg. 3 ln. 4.
[93] *Id*. at pg. 3 lns. 14 – 15.
[94] Direct/Rebuttal Testimony of Geoff Marke at pg. 25 lns.7 – 14.
[95] *Id*. at ln. 16.
[96] *Id*. at pg. 25 ln.23 – pg. 26 ln 2.
[97] *Id*. at pg. 26 lns. 18 – 22.
[98] Direct/Rebuttal Testimony of Lena M. Mantle, pg. 5, lns. 23 – 25.

If so, how should the RSM be structured in terms of:

i. **Authorized revenues for purpose of the RSM**

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, the Commission should set the authorized revenues at the amount of revenue for each class calculated as the normalized billing units multiplied by final rates.

ii. included customer classes and the treatment of each class,

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, OPC has no position on what classes should be included. The Commission should order the RSM rate be different for each class and the revenue target for each class be the authorized revenue for that class. There should be no class subsidization.

iii. the calculation of surcharge credits or surcharges,

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, the Commission should order charges/credits be calculated as the difference between each class's authorized and billed revenues and divide that difference by the expected usage of the class in the recovery period.

iv. the return of over-collections to customers,

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, the Commission should order credits be calculated as the difference between each class's authorized and billed revenues and divide that difference by the expected usage of the class in the recovery period.

v. the inclusion of production costs, if any,

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, the Commission should not include production costs in the RSM. "Section 386.266.4 RSMo. only allows MAWC to request an interim rate mechanism that ensures its revenues billed equal the revenue requirement set in the last rate case for the residential, commercial, public authority, and sale for resale customer classes. It does not include provisions for any costs incurred by MAWC."[99]

vi. impact upon low-income customers,

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, OPC has no position on the impact of the RSM on low-income customers.

vii. or other factors?

OPC Position: The Commission should not approve an RSM for MAWC. However, if it does, it should order tariff sheets be developed that accurately and clearly describe the RSM.

Issue 32: Drought Resiliency

i. Should the Commission require MAWC to develop a drought resiliency plan for service areas not currently covered by existing MAWC drought resiliency plans?

OPC Position: Yes.[100] MAWC's current drought resiliency planning is both deficient and incomplete.[101] The documents reviewed by the OPC's witness Dr. Marke were

[99] *Id.* at pg. 20, lns. 21 – 24
[100] Cross-Rebuttal Testimony of Geoff Marke pg. 5 lns. 17 – 21.
[101] *Id.* at lns. 2 – 6.

seemingly random, incomplete/inconsistent, and not up to date.[102] The Commission should therefore order MAWC to develop "a uniform living document . . . for each of MAWC's systems"[103] and "these plans be filed in EFIS at least initially in this docket and subsequently updated annually in Non-Case E-Filings."[104] In addition, the "OPC should be included in a dialogue with MAWC, Staff, MO DNR and the Missouri State Emergency Management Agency ("SEMA") that includes at least two planned meetings around what MAWC's resource plans include, how often they are updated, and how the Company can properly account for future resource demands."[105]

ii. Should the Commission require MAWC to update the plans if MAWC deems it to be necessary and file plans in subsequent rate cases?

OPC Position: Yes, for the reasons outlined above.[106]

<u>All Remaining Issues</u>

For issues and sub-issues 2 [b – f (all subparts included)]; 3[a (all subparts included), c, d, e.i, f]; 4 [b, c (all subparts included)]; 5 [a – f, h – j]; 6 (all subparts included); 7 [a.i – 7aiii, b – e]; 8bi; 10; 11; 13 (all subparts included); 14; 15; 16 ;17; 18; 19; 21a; 23; 26; 27; and 28 the OPC does not take a definitive position at this time but in general supports the position taken by the Commission's Staff to the extent that position is not inconsistent with a position stated herein. The OPC reserves the right to take a definitive position on any of these issues in its filed briefs.

[102] *Id*. at lns. 14 – 16.
[103] *Id*. at lns. 18 – 21.
[104] *Id*. at pg. 7 lns. 3 – 4.
[105] *Id*. at pg. 6 lns. 20 – 24.
[106] *Id*. at pg. 7 lns. 3 – 4.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on all issues addressed herein and take such other action as is reasonable and prudent under the circumstances.

Respectfully submitted,

By: /s/ John Clizer

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CERTIFICATE OF SERVICE

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

/s/ John Clizer