

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

In the Matter of Missouri-American Water)	
Company's Request for Authority to)	File No. WR-2024-0320
Implement General Rate Increase for Water)	File No. SR-2024-0321
and Sewer Service Provided in Missouri)	
Service Areas)	

INITIAL BRIEF OF MIDWEST ENERGY CONSUMERS GROUP

Tim Opitz, Mo. Bar No. 65082
Opitz Law Firm, LLC
308 E. High Street, Suite B101
Jefferson City, MO 65101
T: (573) 825-1796
tim.opitz@opitzlawfirm.com

ATTORNEY FOR MIDWEST
ENERGY CONSUMERS GROUP

April 4, 2025

Table of Contents

I.	Introduction / Overview of the issues	1
II.	Cost based rates are how the Commission can follow its mandate to set just and reasonable rates.	3
	3.a.i –What allocation factors should be used for allocating the revenue requirement among rate classes?	4
	3.a.ii – What is the appropriate allocation of revenue requirement among the rate classes? Should the Commission utilize the Class Cost of Service Studies filed in this case to determine the appropriate allocation of the revenue requirement to each class? How should the revenues associated with special contracts be treated in developing the class cost of service?	12
	3.a.iii – How should source of supply costs be allocated to the Public Fire protection class?	13
	3.a.iv – How should Water treatment costs be allocated to the Public Fire Protection class?	15
	3.a.v – How should purchased power expenses be allocated?	15
	3.a.vi – Rate J Multiplier	17
	1) <i>For All other Missouri Water district what Rate J distribution multiplier should be used?</i>	17
	2) <i>Should MAWC study the length of distribution mains serving Rate J customers both inside and outside of St. Louis County?</i>	18
	3) <i>For St. Louis County, what Rate J distribution multiplier should be used?</i>	19
	3.a.vii – For Both Districts, should system load factors be reduced to reflect peak demand that the water systems were designed to serve?	20
III.	The Universal Affordability Tariff is unlawful and should be rejected.	22
	3.e. – Universal Affordability Tariff: Should MAWC’s proposed Universal Affordability Tariff be approved by the Commission for water and wastewater service?	22
IV.	Conclusion	26

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

In the Matter of Missouri-American Water)	
Company's Request for Authority to)	File No. WR-2024-0320
Implement General Rate Increase for Water)	File No. SR-2024-0321
and Sewer Service Provided in Missouri)	
Service Areas)	

Initial Brief of Midwest Energy Consumers Group

COMES NOW, the Midwest Energy Consumers Group, (“MECG”), and for its Initial Brief, respectfully states:

I. Introduction / Overview of the issues

Commission decisions must be both lawful and reasonable.¹ The decision is lawful when the Commission has statutory authority to render its decision.² The decision is reasonable when it is supported by substantial, competent evidence on the whole record, is not arbitrary and capricious, and is not based on an abuse of discretion.³

Within several stipulations and agreements parties have resolved most of the issues in this case. However, two broad categories of dispute remain for the Commission to decide. First, parties do not agree on the class cost of service and how the revenue increase should be allocated to the the customer classes. Second, parties do not agree about the legality or reasonableness of the universal affordability tariff program (“UAT”).

In this case, the positions supported by MECG provide the path for the Commission to issue a lawful and reasonable order on Cost of service, revenue allocation, and UAT. The positions

¹ See Mo. Pub. Serv. Comm'n v. Union Elec. Co., 552 S.W.3d 532, 538-39 (Mo. banc 2018). See also Section 386.510 RSMo. (providing for judicial review of "the reasonableness or lawfulness of the original order" from the PSC).

² See Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n, 409 S.W.3d 371, 375 (Mo. 2013) (Lawfulness is determined by examining whether “statutory authority for its issuance exists....”).

³ State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n, 344 S.W.3d 178, 184 (Mo. banc 2011).

of other parties do not.⁴

First, on class cost of service and revenue allocation MECG, MIEC, and MAWC present testimony supporting the “widely accepted Base-Extra Capacity method for functionalizing, classifying, and allocating costs to MAWC’s various customer classes” with some differences discussed below.⁵ The Commission Staff does not offer a cost-of-service study in this case. Nor does OPC. Instead, the Staff takes the unsupported, unreasonable, and arbitrary position that an equal percent allocation of the revenue increase is appropriate because “[i]t is Staff’s position that the CCOS study prepared by Staff in MAWC’s prior rate case adequately allocates the cost of providing water service to each customer classification in each of the districts.”⁶ As MECG will discuss below, the staff’s one sentence of testimony is wholly inadequate to support a lawful or reasonable Commission decision on this point.

Second, on UAT, the discounted rate sheet for certain favored customers in the company’s Rate A customer class is unlawful. The signatories to the *Amended Non-Unanimous Second Partial Stipulation and Agreement* put forward a program that violates Section 393.130, RSMo and Missouri Supreme Court precedent forbidding differences in rates charged not based on a difference of service.⁷ The proponents attempt to evade the prohibition on this discrimination by calling the discounted rate a “pilot”. A true pilot or experimental program would be a small-scale program with a defined scope, defined budget, and defined outcomes to be studied. Here, the UAT proponents brazenly push forward an unlimited program, that is not based on cost or difference in service and will lead to all customers paying 10% more for water and sewer service with the full

⁴ MAWC’s Base-Extra Capacity method used in its filed CCOS is supported by evidence in the record. However, MECG’s Witness York points out that additional modifications to that study are appropriate. MAWC’s position on the lawfulness of the UAT is not supported by existing Missouri Law.

⁵ Ex. 500, p. 6.

⁶ Ex. 217, p. 9.

⁷ See *State ex rel. Laundry, Inc. v. Public Service Com’n* 34 S.W.2d 37, 44 (Mo. 1931).

awareness that these discriminatory rates based on income and not usage or service characteristics are unlawful under Missouri law.

II. Cost based rates are how the Commission can follow its mandate to set just and reasonable rates.

The Commission's mandate is to set just and reasonable rates.⁸ Over the years, the Commission has repeatedly recognized the need for cost-based rates in its rate case orders. For example, in ER-2011-0028, the Commission stated:

In general, it is important that each customer class carry its own weight by paying rates sufficient to cover the cost to serve that class. That is a matter of simple fairness in that one customer class should not be required to subsidize another. Requiring each customer class to cover its actual cost of service also encourages cost effective utilization of electricity by customers by sending correct price signals to those customers.⁹

Even when the Commission has not made movement towards setting rates based on a class cost of service study the Commission has reiterated that it “continues to believe that cost-based rates are appropriate.”¹⁰

Setting rates based on cost-of-service is good public policy because doing so promotes equity among classes and encourages economic efficiency. First, if revenues are allocated to classes and align closely with the class cost responsibility, equity is maintained because each class pays its fair share of costs. Second, if retail rates align with cost of service, they reflect accurate

⁸ Section 393.150 RSMo; Section 393.270 RSMo; *State ex rel. Utility Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. 1979) (“The ultimate purpose of such action is to fix a rate which is just and reasonable both to the utility and to its customers.”).

⁹ *Report and Order*, Case No. ER-2011-0028, pp. 115-116; See also, *Report and Order*, Case No. ER-2010-0036, p. 87.

¹⁰ *Report and Order*, Case No. ER-2022-0337, p. 24.

pricing signals that drive consumer behavior, which in turn results in more efficient use of the system and minimizes system costs.

The starting point in setting cost-based rates is a class cost of service study (“CCOSS”). By relying on a CCOSS, the Commission has a guiding principle in allocating revenue requirement to classes and informing rate design supported by evidence. Resolving issues 3.a.i through 3.a.vii as described below results in a CCOSS that can be relied on to set rates in this case and that advances sound regulatory policy objectives.

3.a.i –What allocation factors should be used for allocating the revenue requirement among rate classes?

Proposed findings: First, the Public Fire protection class should receive an allocation of the Source of supply and Water treatment costs. Second, purchased power expense should be allocated both on a base and extra-capacity demand, rather than only on base usage. Third, the Rate J distribution multiplier in the CCOSS should be corrected to reflect the 6.5% as supported by the company’s data request responses. Fourth, the system load factors used to assign costs between the base and extra-capacity functions should be modified consistent with the customer class load characteristics indicated by the customer class peaking factors and to reflect the methodology described in the AWWA Manual M1.

The Company’s water CCOSS for its Other MO district relies on the Base-Extra Capacity method for cost allocation. This is a generally acceptable approach for functionalizing, classifying, and allocating the water cost of service across customer classes.¹¹ However, MCEG’s Jessica York identifies certain modifications to the Company’s CCOSS that should be made to improve the accuracy and reasonableness of the study. First, the Public Fire protection class should receive an allocation of the Source of supply and Water treatment costs.¹² Second, purchased power expense should be allocated both on a base and extra-capacity demand, rather than only on base usage. Third, the Rate J distribution multiplier in the CCOSS should be corrected to reflect the

¹¹ Ex. No. 500, p. 7.

¹² Ex. No. 500, p. 7.

6.5% as supported by the company's data request responses.¹³ Fourth, the system load factors used to assign costs between the base and extra-capacity functions should be modified consistent with the customer class load characteristics indicated by the customer class peaking factors and to reflect the methodology described in the AWWA Manual M1.¹⁴

Making these adjustments results in a CCOS showing that, to reach cost of service in the Other Mo Service district, certain customer classes should receive a larger than system average rate increase relative to other classes. In table JAY-2 in the testimony of Jessica York this relative increase is shown as an index number. For Other MO, to reach cost of service the residential class of customers should receive an increase with an index of 1.22 times the system increase. In Contrast, for Other MO customers in Rate J to reach cost of service that class should see an increase with an index of 0.18. This means that, while Rate J should see an increase – it should receive one that is 0.18 times the system average because they are currently paying rates closer to cost of service than other classes . Below is an excerpt showing the index for each class required to reach cost of service taken from the testimony of Jessica York at p. 5, Table JAY-2.¹⁵

<u>Line</u>	<u>Customer Class</u>	<u>Index</u>	<u>—</u>
		(4)	
	Other MO		
1	Residential	1.22	
2	Non-Residential	0.43	
3	Rate J	0.18	
4	Rate B	0.66	
5	Rate P	4.40	
6	Private Fire	5.53	
7	Total	1.00	

Notably, this is directionally consistent with the results of MAWC's CCOS. The excerpt from Table JAY-1 in Jessica York's testimony showing the index for each class under the company's

¹³ Ex. 400.

¹⁴ Ex. 400.

¹⁵ Ex. 500, p. 5, Table JAY-2.

direct filing below¹⁶:

Other MO		
9	Residential	1.16
10	Non-Residential	0.39
11	Rate J	0.64
12	Rate B	1.16
13	Rate P	5.60
14	Private Fire	4.15
15	Total	1.00

For the Other MO district both studies show that Residential customers should see a larger than system average increase and that non-residential and Rate J customer classes should receive significantly less than the system average increase to reach cost of service. The recommendations of MECG's Jessica York differ directionally only for the Other Mo Rate B. While the company's CCOS study would give Rate B a larger than average increase with an index of 1.16, the MECG study shows that Other Mo Rate B should have an index of 0.66 a far more favorable result for that class.

The overall directional consistency between the results of the MAWC study and the MECG study is because both experts follow the widely accepted Base Extra method for functionalizing, classifying, and allocating the water cost of service across customer classes. Even though MECG and MAWC differ on certain specific allocation factors (described in more detail in issues below) at a minimum it can be said that both MECG and MAWC made efforts to look at cost of service and evaluated allocation factors to use.

The same cannot be said for the Commission Staff in this case. Commission Staff did not file a cost-of-service study in this case. Nor did Staff attempt to modify or otherwise substantively evaluate the CCOS proposed by the company. Instead, the Staff's pre-filed testimony says:

Staff did not prepare a CCOS study for MAWC's water and sewer operations in this case,

¹⁶ Ex. 500, p. 4, Table JAY-1.

because it appears with MAWC's submitted CCOS and the Staff prepared CCOS from the last rate case, there was not much difference in the cost allocations.¹⁷

Staff states it then "applied the applicable percent increase to current rates" in this case.¹⁸ Staff summarizes that its "position is that the CCOS study prepared by Staff in MAWC's prior rate case adequately allocates the cost of providing water service to each customer classification in each of the districts."¹⁹

There are several problems with this approach that should make it evident that the Staff's approach did not produce competent or substantial evidence upon which the Commission can rely. First, in general, the Commission relies on its technical staff to audit, evaluate, and provide substantive assessments on the costs that utilities incur to provide service. Besides the company, the Staff is the party with the most resources, expertise, and institutional knowledge in most cases. Customers pay, through their rates in the form of a PSC assessment, for the Staff to exist and have the resources to evaluate both the overall revenue requirement and the class cost of service in each rate case. It is inexplicable that the Staff chose not to do so in this case where the largest water and sewer company in the state of Missouri requested an increase in base rates of over 40%.

Second, even in a circumstance where forgoing a full cost of service study was arguably necessary or appropriate – at a minimum – the Commission (and parties that rely on the Staff's efforts to protect customers' interests in rate cases) should be able to rely on a more thorough analysis than a conclusory statement that it "appears with MAWC's submitted CCOS and the Staff prepared CCOS from the last rate case, there was not much difference..."²⁰ No detail or factual information is provided about the magnitude or scope of any difference. No detail or factual

¹⁷ Ex. No. 217, p. 3.

¹⁸ Ex. No. 217, p. 3.

¹⁹ Ex. No. 217, p. 9.

²⁰ Ex. No. 217, p. 3.

information is provided about whether any benchmarks or allocations were used in Staff's comparison. There is not any detail or factual information about what the allocations in the prior case were or why they would be appropriate to use again in this present case. In addition to being devoid of any underlying information, the Staff's conclusion lacks any reference to ratemaking or regulatory policy. What is the policy rationale for its recommendation? Compare MAWC's testimony on CCOS, where its witness lists several high-level guiding principles to follow when establishing rates including: Cost basis, revenue stability, efficiency of use, gradualism, avoidance of discrimination, simplicity and feasibility.²¹ Or MECG's testimony where it adopts a revenue spread capping the index to any particular class at 1.25 due to the principle of gradualism. Staff made no similar effort to explain its recommendation. There is no factual basis and there is no policy basis for the CCOS approach taken by staff in this case.

Third, to the extent that there was a factual or policy basis to simply reference a prior CCOS in this new case (there is not) the Staff's study in the prior case (WR-2022-0303) was deeply flawed and unreliable. MECG's witness Jessica York has first-hand knowledge of Staff's prior CCOS study because she critiqued it as a witness in that prior rate case, too. In MECG's pre-filed Cross-Rebuttal testimony in the present case, Ms. York dedicates several pages revisiting the Staff's errors.²² During the evidentiary hearing, Ms. York expounded on those errors in Staff's prior study:

[Ms. York]: Okay. And this – I explain this in my cross-rebuttal/surrebuttal testimony. I pointed out that in the last case, the Staff had originally not applied the distribution multipliers that it had supported in its direct testimony to its actual class cost of service model for Rate J or the sale-for-resale classes. I showed that the

²¹ Ex. No. 18, pp. 23-24.

²² Ex. No. 501, pp. 2-6.

Staff's models included maximum day and maximum hour demand ratios by class from a prior rate case with no evidence to prove that those factors were still representative of the load characteristics of the classes as of the last rate case.²³

...

I also pointed out that there was some other unsupported data points, including the source of average day rate of flow used to develop allocation factor three and other things like the horsepower of the pumps used to develop factors six and seven.

So then in rebuttal testimony, in Staff's rebuttal in the last case they did make some corrections for those issues. They did end up applying those distribution multipliers to the industrial and sale-for-resale classes. They did update the customer class max day and max hour demand ratios. And they had modified some other data points that were used to develop their allocators like the annual usage by customer class, let's see, max date, demand ratios, maximum hour demands ratios, the weightings of the base max day extra capacity and fire protection components in the development of factor three. Weightings of base max hour extra capacity and fire protection components in factor four. And the weighting was used to develop factor five as well.

And the issue that I had in that case even with those corrections, Staff's testimony did not really explain any of those things, any of the changes they made other than acknowledging that they had updated the distribution multiplier issue. So my position in that case was that because Staff's testimony was silent on the other changes that it made to its models, it really hadn't supported those changes

²³ Tr. Vol. 10, p. 175, lines 6-18.

and so we were still hesitant to be relying on that model in the last case.²⁴

The plethora of errors in the Staff's prior CCOS study were not addressed in that case and they were not addressed in this case either. Simply put, it is unreasonable to rely on the staff's flawed study in this case just as it would have been to rely on it in the prior case.

Fourth, during the evidentiary hearing the Staff's subject matter witness on this issue testified that she had limited experience or direct knowledge of the Staff's prior CCOS:

[Mr. Opitz]: And you did not perform that analysis in that prior case personally?

[Ms. Marek]: I did not.

[Mr. Opitz]: And you did not develop the underlying work papers that supported that testimony in the prior case?

[Ms. Marek]: That is correct.

[Mr. Opitz]: And you did not include as attachments to either of the rounds of testimony in this case the results of that study?

[Ms. Marek]: Correct.

[Mr. Opitz]: Are you aware that in the prior case there was testimony calling into question the accuracy of the Staff's analysis on class cost of service?

[Ms. Marek]: Am I aware of that from the testimony in the prior case? Is that the question? I'm sorry.

[Mr. Opitz]: Are you -- in general are you aware that there was testimony in that case calling into question the accuracy of those Staff cost of service study results?

[Ms. Marek]: Based on the opening statements and -- yes, yes.

[Mr. Opitz]: Would you agree that in her testimony in this case Ms. York pointed out some of those errors that were identified in the Staff's prior cost of service study?

[Ms. Marek]: I do recall that from her testimony, yes.

[Mr. Opitz]: Staff's position is that the same allocation factors used in the last case are sufficient for this one. Is that correct?

²⁴ Tr. Vol. 10, pp. 175-177.

[Ms. Marek]: Yes.

[Mr. Opitz]: Can you tell me, what are those allocation factors?

[Ms. Marek]: I cannot, no.²⁵

To review: Staff's witness did not perform the CCOS in the prior rate case, was aware that there were significant errors in the prior CCOS study, and could not say what allocation factors staff relied upon.

Fifth, the Staff's purported determination that there was "not much difference" between the studies or its conclusion that "the CCOS study prepared by Staff in MAWC's prior rate case adequately allocates the cost of providing water service to each customer classification" cannot be relied upon. How can either of these statements in the Staff's pre-filed testimony be true when the subject matter witness testified that she had seen the summary of the Staff's class cost of service study results from MAWC's last rate case only when counsel for the Public Water Supply Districts presented it to her at the hearing?

[Mr. Fischer]: Ms. Marek, I'd like to show you this exhibit which I've taken from the rebuttal testimony of Staff witness Carry Roth in that last rate case. It was Exhibit 127. Have you previously seen this schedule?

[Ms. Marek]: When you presented it to me, yes.

[Mr. Fischer]: You've seen this before?

[Ms. Marek]: Yes. When you presented it to me.

The Staff's approach to CCOS in this case is not based in fact or policy and cannot reasonably be relied upon for any purpose. The Commission should rely upon the competent and substantial evidence related to CCOS and appropriate allocation factors as presented by MECG's witness Jessica York.

²⁵ Tr. Vol. 10, p. 154-155.

3.a.ii – What is the appropriate allocation of revenue requirement among the rate classes? Should the Commission utilize the Class Cost of Service Studies filed in this case to determine the appropriate allocation of the revenue requirement to each class? How should the revenues associated with special contracts be treated in developing the class cost of service?

Proposed finding: The Company’s Base-Extra Capacity method proposed by the company as modified by Jessica York is a reliable and appropriate Class Cost of Service Study (“CCOSS”) that shows the cost to serve each customer class. To follow cost-causation principles the revenue requirement in this case should be allocated to the classes in a way that brings all classes closer to cost of service, subject to MECG’s proposed limitation that no class receive an increase greater than 1.25 times the district average.

As described above, the starting point in setting cost-based rates is a class cost of service study. It should be used as the primary guiding principle in allocating revenue requirement to classes and informing rate design. In this case, the Commission should adopt the recommendations of Jessica York to the Other MO CCOSS study. However, whether or not those recommended corrections are adopted, MECG supports an allocation that brings all classes closer to cost of service subject to the limitation that no class receive an increase greater than 1.25 times the district average to account for gradualism. Using the company’s claimed revenue requirement the revenue spread proposed by MECG is reflected in the table below:

TABLE JAY-2								
MECG's CCOSS vs. Primary Proposed Revenue Spread for Other MO								
Line	Customer Class	Current Revenue ¹	Increase to Reach COS ¹			MECG Proposed Increase ²		
		(1)	Amount	Percent	Index	Amount	Percent	Index
		(1)	(2)	(3)	(4)	(5)	(6)	(7)
Other MO								
1	Residential	\$ 68,796,681	\$ 39,676,170	57.7%	1.22	\$ 40,574,294	59.0%	1.25
2	Non-Residential	30,997,236	6,350,317	20.5%	0.43	9,460,015	30.5%	0.65
3	Rate J	10,574,416	881,866	8.3%	0.18	1,942,711	18.4%	0.39
4	Rate B	4,406,843	1,377,786	31.3%	0.66	1,819,888	41.3%	0.88
5	Rate P	1,091,501	2,268,309	207.8%	4.40	643,736	59.0%	1.25
6	Private Fire	1,926,258	5,022,247	260.7%	5.53	1,136,051	59.0%	1.25
7	Total	\$ 117,792,935	\$ 55,576,695	47.2%	1.00	\$ 55,576,695	47.2%	1.00
Sources								
¹ Schedule JAY-2.								
² No class receives an increase greater than 1.25x district average. Remaining revenue deficiency is spread uniformly across non-capped classes.								

See Ex. 500, pp. 5-6. Since the parties have reached a revenue requirement stipulation and agreement the dollar amount allocated to the customer classes would change, but importantly the index would remain the same.

3.a.iii – *How should source of supply costs be allocated to the Public Fire protection class?*

Proposed finding: Both the Private and Public Fire service classes should receive an allocation of Source of Supply, Power and Pumping, and Water Treatment costs in the water CCOSS, using the allocation factor labeled by the Company as Factor 3.

Both the Private and Public Fire service classes should receive an allocation of Source of Supply, Power and Pumping, and Water Treatment costs in the water CCOSS, using the allocation factor labeled by the Company as Factor 3. Factor 3 reflects a base and maximum-day extra-capacity allocator with a fire protection component.²⁶ In response to a data request in this case, MAWC agreed it would be appropriate to allocate some source of supply costs to the fire service customer classes. This response is attached to the testimony of MCEG's Jessica York as Schedule JAY-1, p. 2 and reproduced below in pertinent part (highlighting added)²⁷:

²⁶ Ex. 500, p. 9.

²⁷ Ex. 500, Schedule JAY-1, p. 2.

MIEC 1-15

DATA INFORMATION REQUEST
Missouri-American Water Company
WR-2024-0320
General Rate Case

Requested From: Ashley M. Randell

Date Requested: 10/18/2024

Information Requested:

"Please refer to Schedule MWM-1, page 1 of 29.

- a. Please explain why Source of Supply expenses have not been allocated to the Public Fire class.
- b. Please explain why Water Treatment costs have not been allocated to the Public Fire class.
- c. Please confirm that potable water is used to serve the Public Fire class. If not confirmed, please provide a detailed explanation supporting the response."

Requested By: Jaime N. Reifsteck (jreifsteck@chgolaw.com)

Information Provided:

- a. It would be appropriate to allocate some portion of the fixed costs associated with Source of Supply costs to fire service customer classes, although many water cost of services analyses do not do so because Source of Supply costs are largely associated with providing volumes of water over the long-term and not for emergency situations.
- b. Water Treatment costs were not allocated to fire service classes because water treatment costs are incurred primarily to provide potable water service, and potable water is not generally needed for firefighting purposes.
- c. Potable water is used to serve the Public Fire class.

Responsible Witness: Max W. McClellan

The company also confirmed that potable water is used to serve the Public Fire class.²⁸ Although non-potable water *could* be used for fire protection service the question is what type of water is *actually* used by MAWC to provide fire protection service.²⁹ Further bolstering this point, fire service classes receive an allocation of storage costs, which are also associated with potable water.

²⁸ Ex. 501, pp. 8-9.

²⁹ Ex. 500, p. 9.

Just as this storage cost is appropriate because it is a cost actually incurred for the fire class, a portion of the water treatment costs should also be allocated to the fire classes.³⁰

Because MAWC is in fact using treated water to provide fire protection service it is just and reasonable to allocate a portion of water treatment costs to the Public Fire class, just as it has done for the Private Fire class.³¹

3.a.iv – How should Water treatment costs be allocated to the Public Fire Protection class?

Proposed finding: MAWC is using treated water to provide fire protection service it is just and reasonable to allocate a portion of water treatment costs to the Public Fire class, just as it has done for the Private Fire class. The appropriate allocation factor is labeled by the Company as Factor 3

As noted above, both the Private and Public Fire service classes should receive an allocation of Source of Supply, Power and Pumping, and Water Treatment costs in the water CCOSS, using the allocation factor labeled by the Company as Factor 3. The company confirmed that potable water is used to serve the Public Fire class. Because MAWC is in fact using treated water to provide fire protection service it is just and reasonable to allocate a portion of water treatment costs to the Public Fire class, just as it has done for the Private Fire class.³²

3.a.v – How should purchased power expenses be allocated?

Proposed finding: These expenses should be allocated using Factor 3. Use of Factor 3 is consistent with the proper allocation of other Source of Supply, Water Treatment, and Power and Pumping expenses that have been classified as serving both base and maximum day-extra capacity requirements. In addition, Factor 3 more accurately allocates purchased power expense between customer classes because it allocates costs between customer classes based on average flow and peak day demand.

³⁰ Id.

³¹ Ex. 501, pp. 8-9.

³² Ex. 500, pp. 8-9.

These expenses should be allocated using Factor 3. The company's CCOSS inappropriately uses Factor 1 to allocate fuel and purchased power expenses.³³ Factor 1 reflects an assumption that Fuel and Purchased Power expenses are base costs, which tend to vary with the quantity of water used, plus costs associated with supplying, treating, pumping, and distributing water to customers under average load conditions, without the elements necessary to meet peak demands.³⁴ For this issue, Factor 1 is inappropriate because it does not recognize how MAWC incurs purchased power expense. Purchased power expense is based on demand and energy consumption. Demand costs are based on the highest power demand in a month, not on average daily usage.³⁵ This means that the demand component of purchased power expense does not vary with the amount of water consumed, instead it varies with the peak day and peak hour power consumption. In addition, the energy component of purchased power costs also varies with time and seasonal use and does not vary evenly with the daily amount of water consumed.³⁶ This is not merely a hypothetical issue - MAWC purchases power from Ameren Missouri. Ameren Missouri has tariffs containing seasonally differentiated energy charges for all rate schedules and seasonally differentiated demand charges for commercial and industrial customers with meters capable of measuring demand. For MAWC, then, its cost of energy within its purchased power expense does not evenly vary across all water consumed but rather the price changes due to peak periods and seasonal rates.³⁷

For these reasons the Commission should reject MAWC's use of Factor 1 for this cost item. Use of Factor 3 is consistent with the proper allocation of other Source of Supply, Water

³³ Ex. 500, p. 10.

³⁴ Ex. 500, p. 10.

³⁵ Id.

³⁶ Id.

³⁷ Id.

Treatment, and Power and Pumping expenses that have been classified as serving both base and maximum day-extra capacity requirements. In addition, Factor 3 more accurately allocates purchased power expense between customer classes because it allocates costs between customer classes based on average flow and peak day demand.³⁸

3.a.vi – Rate J Multiplier

As an overview, all customer classes use transmission mains (defined by MAWC to be mains with diameters of 10-inches and larger), as a result, all customers classes are allocated a share of transmission mains costs.³⁹ Importantly from a cost of service perspective, some large customers take service solely from transmission mains, and therefore, should not receive an allocation of distribution mains (smaller mains) cost.⁴⁰ In recognition of this distinction, for each customer class, MAWC has estimated the portion of water sales served directly from the transmission system and has excluded those sales from an allocation of distribution cost.⁴¹ This is accomplished through a distribution multiplier to each customer classes usage.

Here, the sub issues that follow (1, 2, and 3) address the appropriate calculation of that multiplier for this case and benefit of requiring MAWC to complete a robust mains study for its districts as it had done in the past. This study would be included in the company's next rate case filing and would be significant progress towards determining and establishing cost-based water rates.

1) *For All other Missouri Water district what Rate J distribution multiplier should be used?*

Proposed finding: For the Other MO water district the Rate J distribution multiplier should be 6.5%.

³⁸ Ex. 500, pp. 10-11.

³⁹ Ex. 500, p. 12.

⁴⁰ Id.

⁴¹ Ex. 18, p. 11.

For the Other MO water district the Rate J distribution multiplier should be 6.5% rather than the company's proposed 8.73%. Based on the company's response provided in response to MIEC 1-12, the company's initial calculation based its distribution multiplier on water sales by main size for a subset of the industrial customers taking service in the Other MO district. To reach a more appropriate multiplier, two modifications to the company's calculation should be made. First, MAWC's calculation omits certain customers from the Rate J distribution multiplier without explanation. Correcting that to include all customers in the subset results in a multiplier of 6.5% that would be more appropriate to use in this case. Second, using water consumption to develop the distribution multiplier likely overstates the portion of distribution system investment and expenses that is required to provide service to large customers. MAWC should also consider the length of distribution main serving the Rate J customers, consistent with its past practice for St. Louis County Rate J customers.⁴²

2) Should MAWC study the length of distribution mains serving Rate J customers both inside and outside of St. Louis County?

Proposed finding: For this case, the appropriate distribution multiplier of 6.5% as calculated from the MAWC response to Data Request MIEC 1-12 is the best available data to use in this case. In order to better inform the CCROSS in future cases, the Commission should direct MAWC to conduct a study of the length of distribution main serving its Rate J customers in the Other MO service area as MAWC's witness Mr. Herbert did in the 2008 rate case for St. Louis County customers.

Yes. In the past it was determined that while Rate J customers may have a significant portion of water consumption served by small distribution mains, the actual length of distribution mains used to connect these customers to the transmission system represents a very small fraction of the total distribution system, and this should be recognized in developing an appropriate multiplier. In WR-2008-0311, this kind of study was done by MAWC witness Paul Herbert for the St. Louis County

⁴² Ex. 500, pp. 13-14.

Rate J customers. When evaluating the size and length of distribution mains used to serve these customers he concluded that although certain Rate J customers are connected to smaller mains, the length of those mains are only a fraction of the total distribution main system. While he did not conduct the same detailed analysis for Rate J customers outside of St. Louis County, he did recognize that one of the six largest industrial customers in Joplin was served from a distribution main, but that it was located a short distance from transmission mains. Thus, he concluded it was reasonable to exclude the usage for that customer from the Rate J class for purposes of allocating distribution costs.

Absent a study of that nature, it is appropriate in this case to use the distribution multiplier of 6.5% as calculated from the MAWC response to Data Request MIEC 1-12 as the best available data. In order to better inform the CCOSS in future cases, the Commission should direct MAWC to conduct a study of the length of distribution main serving its Rate J customers in the Other MO service area as its witness Herbert did in the 2008 rate case for St. Louis County customers.⁴³

3) *For St. Louis County, what Rate J distribution multiplier should be used?*

Proposed finding: The Rate J distribution multiplier offered by Jessica York is appropriate to rely on in this case.

The Commission should use the Rate J distribution multiplier offered by Jessica York. For the St. Louis District this is a 1.17% distribution multiplier.⁴⁴ Ms. York derived this number using the previously known length of main study from 2008 used to connect Rate J customers to the transmission system (225,000 feet of small distribution mains).⁴⁵ Then, using the length of distribution mains in the St. Louis County District from the Company's CCOSS in this case, the

⁴³ Ex. 500, pp. 14-16.

⁴⁴ Ex. 400, p. 17.

⁴⁵ Ex. 400, p. 16.

length of distribution mains in that district is 19,253,897 feet.⁴⁶ Comparing these figures is a ratio of 1.17%.⁴⁷ Even assuming that the Commission adopts the proposed rate J multiplier for the St. Louis District proposed by Ms. York, the Commission and customers of MAWC would benefit from an updated study of the length of distribution main serving Rate J customers as has been previously discussed.

3.a.vii – *For Both Districts, should system load factors be reduced to reflect peak demand that the water systems were designed to serve?*

Proposed finding: The system maximum day load factor should be modified to be consistent with the maximum day system load factor indicated by the customer class peaking factors. For the Other MO district this results in a maximum day system load factor of 58.2%.

System capacity (or load) factors are used to assign portions of the cost to the base and extra-capacity cost components in the Water CCOSS.⁴⁸ Higher system load factors equate to a larger portion of costs being allocated on base, or average water consumption, and a smaller portion of costs being allocated on extra-capacity demands.⁴⁹ There are a few issues MEEG identified with the MAWC CCOSS system capacity factors. First, the system load factor on the maximum day, excluding fire, was based on an average over the three-year period from 2021 through 2023.⁵⁰ Second, the MAWC system capacity factors are inconsistent with the customer class load characteristics suggested by the customer class maximum day and maximum hour peaking factors.⁵¹

It is inappropriate to base the system max day capacity factor on an average of multiple years because a water system is designed to provide water during a peak event for the life of the

⁴⁶ Id.

⁴⁷ Ex. 400, p. 16.

⁴⁸ Ex. 500, p. 16.

⁴⁹ Id.

⁵⁰ Ex. 500, p. 17; Ex. 500, Schedule JAY-1, pp. 2-3.

⁵¹ Id.

system (could be 100 years), and including any unusual outlier event would cause a significant increase in peak day demand.⁵² Outlier events are typically caused by weather events and generate increases in water demand by weather-sensitive customers. A maximum day system load factor based on average over multiple years does not capture the additional capacity the utility must invest in to serve water demands that occur during abnormal or outlier weather periods.⁵³ Moreover, the AWWA Manual M1 indicates that to develop peaking factors by class, it is important to identify the highest ratio of system maximum day demand to system average day demand that has occurred over a representative number of recent years.⁵⁴ This means there is a need for a single, high peak period demand ratio and not an average over multiple years.⁵⁵

Specific to the Other MO Water CCOS the system maximum day load factor should be modified to be consistent with the maximum day system load factor indicated by the customer class peaking factors. As shown in Table JAY-4, this results in a maximum day system load factor of 58.2%.⁵⁶ This load factor aligns with the district specific load factors identified by MAWC in prior rate cases, which means it classifies and allocates capacity costs in a manner that is more aligned with cost causation.

⁵² Ex. 500, p. 19.

⁵³ Id.

⁵⁴ Ex. 500, p. 19; AWWA Manual M1, Seventh Edition at p. 373.

⁵⁵ Ex. 500, p. 19.

⁵⁶ Ex. 500, pp. 18-22.

TABLE JAY-4							
Calculated Class Load Factors vs. <u>MAWC's System Load Factor (Max Day Excluding Fire)</u>							
Line	Description	Residential (1)	Non-Residential (2)	Rate J (3)	Rate B (4)	Contracts (5)	Total (6)
1	Average Day Use (kgal)	174,225	90,882	93,325	43,907	27,751	430,089
2	Max Day Use (kgal)	348,697	192,745	109,655	52,832	35,334	739,263
3	Load Factor	50.0%	47.2%	85.1%	83.1%	78.5%	58.2%
4	MAWC Applied System Load Factor						71.3%
Source: Schedule MWM-2, page 22.							

As shown in the table, the customer class peaking factors indicate a system load factor of about 58.2%.⁵⁷ The company's proposal to use a system load factor of 71.3% in its water CCOSS overstates the system capacity factor and assigns too much of the cost of service to the base usage cost component and not enough to the extra-capacity demand component.⁵⁸ The Commission should adopt the recommendations of MECG's Jessica York.

III. The Universal Affordability Tariff is unlawful and should be rejected.

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

Proposed finding: The UAT proposal is unlawful in that it unjustly discriminates between customers without a difference in service; the costs associated with the proposed program appear to be unlimited, not known, and not measured at this time; and the future rate treatment is not known at this time.

The commission should not approve this unlawful program that is not constrained by any budget, has no clear deliverables, is not tied to cost of service, and establishes an extraordinary regulatory tracker to consider costs incurred in one period for recovery in a different period.

⁵⁷ Ex. 400, p. 21.

⁵⁸ Id.

Section 393.130, RSMo states:

2. 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 or for any service rendered or to be rendered or in connection therewith, 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.

3. 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 interpreting that statute, the Missouri Supreme Court said: “[R]ates or charges to be valid must not be unjust, unreasonable, unjustly discriminatory, or unduly preferential. Our statute demands reasonable and non-discriminatory rates ... it is not admissible for a public service company to demand a different rate, charge, or hire from various persons for an identical kind of service under identical conditions.”⁵⁹

The signatories to the *Amended Non-Unanimous Second Partial Stipulation and Agreement* put forward a program that violates Section 393.130, RSMo and Missouri Supreme Court precedent forbidding differences in rates charged not based on a difference of service.⁶⁰ The proponents attempt to evade the prohibition on this discrimination by calling the discounted rate a “pilot”. A true pilot or experimental program would be a small-scale program with a defined scope, defined budget, and defined outcomes to be studied. Here there is no budget limitations in their stipulated UAT. There are no defined outcomes identified to be studied.

In fact, during the hearing, MAWC’s witness Mr. Rea admitted that this program is not

⁵⁹ *State ex rel. Laundry, Inc. v. Public Service Com’n* 34 S.W.2d 37, 44 (Mo. 1931).

⁶⁰ *See State ex rel. Laundry, Inc. v. Public Service Com’n* 34 S.W.2d 37, 44 (Mo. 1931).

based on difference in service:

[Mr. Opitz]: And you don't disagree that there may be low-income customers who are seasonal users of water?

[Mr. Rea]: As I said, if you look at median household incomes across our territory and the communities that we serve and the seasonal use of water in those communities, there is a strong correlation between income and seasonal use of water. **Are there low-income customers somewhere that may use more water in the summertime than they do in the wintertime. Yes.** But generally speaking
—

[Mr. Opitz]: And there's high-income customers who may use less water in the summer too. Right?

[Mr. Rea]: That is certainty true.

[Mr. Opitz]: And they wouldn't be eligible. They'd be discriminated against under this tariff?

[Mr. Rea]: Why would they discriminated against? I don't understand.

[Mr. Opitz]: Because they would not be eligible based solely on their income rather than the nature of their service class.

[Mr. Rea]: **It's a program that's -- whose eligibility is based on income...**⁶¹

Mr. Rea went on to testify his belief that, eventually, “all customers would be paying” for the administrative costs and the cost of the discounts.⁶² When asked, the witness would not give an estimate of the potential regulatory asset.⁶³ Still, MAWC’s witness confidently decreed that captive customers of a monopoly should be forced to pay these unknown and unlimited program costs.

It turns out – MAWC and the signatories to the UAT stipulation (the Commission Staff, the OPC, Consumer’s Council, and AARP) are quite generous with its customer’s money. On

⁶¹ Tr. Vol. 10, pp. 195-196. Emphasis added.

⁶² *Id.*

⁶³ See Tr. Vol. 10, pp. 200-201.

April 2nd, MAWC filed an informational sheet⁶⁴ showing that signatories would give a discount to over 19% of MAWC's customers ($85,663^{65} / 445,445^{66} = 0.1923$). The estimated cost of the UAT is \$58,185,236 over two years. Comparing this to the total company revenue requirement agreed to in this case shows the incredible cost of this proposal ($\$58,185,236^{67} / \$555,985,000^{68} = .1046$). By that measure, the UAT alone could raise rates for all other customers by over 10%. Incidentally, the Commission should note that this forced contribution would be borne by customers alone. MAWC makes no commitment to financially contribute to this program to address the fact that – by the company's own estimates – *19% of its customers cannot afford its rates*. To the contrary, MAWC's Mr. Rea testified that the company would not agree to absorbing any part of the cost of the program.⁶⁹

The truth of the matter is that this is not a “pilot program” in any rational interpretation. at its core, the UAT is a rate discount that forces the captive customers of a monopoly utility to spend \$58 million dollars towards a charitable program. To recap, in the UAT:

- There is no limit on the budget.
- There is no demonstration by MAWC that the program is designed to reduce bad debt expense. In fact, MAWC's witness says that reducing bad debt expense is not the purpose of the program.⁷⁰
- There is no effort to show that non-participating customers would see a benefit.

⁶⁴ This filing, though requested by the Commission during the hearing was not provided until after the evidentiary record was closed and includes information that goes beyond what was requested by the Commission. To the extent that it purports to be offered as a path for recovery of any costs in the future, MECG objects. As an illustrative exhibit it shows the program would raise rates by 10% and serves to highlight the unreasonableness of the UAT program design. In any event, this program is discriminatory and unlawful under Missouri law.

⁶⁵ Appendix A, EFIS Doc. No. 274.

⁶⁶ Tr. Vol. 10, pp. 197-198 (discussing number of MAWC customers).

⁶⁷ Appendix A, EFIS Doc. No. 274.

⁶⁸ *Revenue Requirement Stipulation and Agreement*, EFIS Doc. No. 176, p. 2.

⁶⁹ Tr. Vol. 10, p. 203.

⁷⁰ Tr. Vol. 10, p. 225. (Mr. Rea: “..in my opinion the purpose of the program is not to reduce a bad debt expense.”).

- There is no demonstration of an economic benefit.
- There are no learning objectives in the tariff.
- It is not appropriately designed to consider conservation or efficiency. A customer qualifying as low-income under this tariff would receive a 75% discount to their water bill regardless of whether they used 4,000 gallons a month per household or 40,000 gallons.
- It discriminates against similarly situated customers with the exact same usage patterns as the eligible customers. Not only are customers using the same service ineligible for the discount – they will fund it with a 10% increase to their own bills.

It is astonishing the level of exposure that MAWC, PSC Staff, OPC, AARP, and Consumers Council proved willing to sign all customers up for without *any* guardrails or customer protections. This unlawful discriminatory tariff is a total departure from cost-of-service and ratemaking principles, contrary to Missouri law, and in all other respects unreasonable. The Commission must reject the UAT program.

IV. Conclusion

Many of the issues presented for Commission determination have been resolved among the parties by stipulation and agreement and are pending before the Commission. MCEG is a signatory to the Revenue Requirement Stipulation and Agreement filed on March 17th, 2025.⁷¹ MCEG appreciates the efforts of parties to resolve those issues and asks that the Commission approve the Revenue Requirement Stipulation and Agreement.

For all other issues remaining, MCEG asks the Commission to issue an order containing the proposed resolutions identified in this brief. Doing so will reasonably allocate the rate increase

⁷¹ EFIS Doc. No. 176.

to customers based on cost of service and ensure that the final order in this case complies with sound regulatory policy and Missouri law.

WHEREFORE, MECG submits its Initial Brief.

Respectfully,

/s/ Tim Opitz

Tim Opitz, Mo. Bar No. 65082

Opitz Law Firm, LLC

308 E. High Street, Suite B101

Jefferson City, MO 65101

T: (573) 825-1796

tim.opitz@opitzlawfirm.com

ATTORNEY FOR MIDWEST
ENERGY CONSUMERS GROUP

Certificate of Service

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 4th day of April 2025:

/s/ Tim Opitz
