

**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 |) | |

REPLY BRIEF OF MIDWEST ENERGY CONSUMERS GROUP

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Reply Brief of Midwest Energy Consumers Group

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

I. Overview

Other parties invite the Commission to depart from setting rates for customers based on the cost to provide service. Based on the evidence in this case and the applicable law, those efforts must be rejected. These efforts by certain parties fall into three broad categories.

- First, the OPC¹, Staff², Consumers Council³ want to ignore the evidence in this docket and simply assign the increase on an equal percentage to every class. These parties would depart totally from cost-based ratemaking.
- Second, MAWC starts from a more reasonable premise of following the Base Extra Capacity method for functionalizing, classifying, and allocating the water cost of service across customer classes but it departs from cost of service with respect to certain specific items related to costs assignment to the Public fire protection classes, allocations for purchased power costs, Rate J distribution multipliers, and system load

¹ OPC Br. p. 7, “The Commission should therefore adopt the recommendation of its Staff and order an equal percentage increase across all rates and districts.”

² Staff Br. p. 6. “Recognizing that the largest change, applicable to rate design, since MAWC’s last rate case, is an increase in the Company’s costs, leads to the conclusion that an equal percent increase to current rates across all classes to meet those rising costs is clearly just and reasonable.”

³ Consumer Council Br. p. 3, recommending an “equal percent increase across all rates and district[.]”

factors.

- Third, MAWC, Staff, OPC, and Consumers Council would depart from cost-based rates and Missouri law to establish a UAT tariff that could raise everyone else's rates by 10%.

For the reasons contained in this Reply below and as detailed in MCEG's initial brief, the Commission should decline the invitations to abandon setting rates for customers based on the cost to provide service. Instead, the Commission should issue an order containing the proposed resolutions identified in MCEG's initial brief.

II. CCOS / Revenue Allocation

A. Reply to Staff, OPC, Consumers Council

A part of Staff's brief seems to agree with MCEG's position on cost-based rates when it states "[c]ustomers should be billed for the costs that they cause a utility to incur, and those costs may vary by location."⁴ This aligns with Staff's opposition to consolidated tariffs: "Further consolidation is not warranted at this time as the benefits of consolidation are already taken into account, and *there still needs to be some semblance of keeping costs closer to the cost of providing service to the various service territories.*"⁵ Staff goes on to say without equivocation that "Staff's position is that the current level of consolidation *already dilutes cost causation, and further consolidation of rates is not recommended.*"⁶ But then Staff draws the opposite conclusion for its recommendations and says "an equal percent increase to current rates across all classes to meet those rising costs is clearly just and reasonable."⁷ This inconsistency cannot be justified by the evidence in the record. The Staff's approach to advocate for an equal percent increase moves rates

⁴ Staff Br. p. 6.

⁵ Ex. 217, pp. 4-5. Emphasis added.

⁶ Ex. 217, p. 5. Emphasis added.

⁷ Staff Br. p. 6.

further away from the cost of service and further dilutes cost causation which is something their own testimony says should not be done. The only apparent argument by Staff in support of its revenue allocation recommendation is that the “resulting rates ordered by the Commission in Case No. WR-2022-0303 are presumed to be just and reasonable, as it is the duty of the Commission to set such rates.”⁸ This is a fundamental misunderstanding of ratemaking and the law by the Staff. It may be true that the rates charged to customers approved in the last case are presumed valid. But those rates were based on the approval of a negotiated stipulation and agreement – they were not based on the Staff’s flawed CCOS model in that case. The flawed allocations in the Staff’s prior CCOS model are due no deference. Moreover, in this case the Company is not seeking to continue its rates previously approved nor is staff advocating that the rates charged to customers remain constant. Instead, MAWC is asking for new rates to be established. Those new rates should be based on the cost to provide service to customers within a class.

The OPC takes the position that “[a]n equal percent increase across all rates and districts is the best method to appropriate the current rate increase.”⁹¹⁰ OPC’s argument is that the Commission should throw cost-based rates out the window because the increase in this case is “quite large” and to “mitigate rate shock”.¹¹ There is no basis in law or fact for their approach. OPC also asserts that “[t]o tell certain customers that they are getting hit with a 25% increase is concerning on its own, but to tell them that they will see a 30% to 40% increase just so some other customers can get 10% to 20% increase will be adding insult to injury.”¹² First, there is no insult

⁸ Staff Br. p. 6.

⁹ OPC Br. p. 7.

¹⁰ Except, of course, that OPC believes customers taking service under its proposed income-based UAT rate should receive a massive discount on their bills.

¹¹ OPC Br. p. 5.

¹² OPC Br. p. 7.

to setting rates based on a cost-of-service study. In fact, many prior Commissions have endorsed the reasons why setting rates on cost of service is fairer to customers and more efficient:

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.¹³

Missourians expect to pay the costs they cause the utility to incur to provide them service. MEGC proposes that be done according to a CCOS study. OPC would rather customers pay whatever OPC decides is appropriate, with some in this case getting a 75% discount on their bills (likely a significant decrease) while all others pay 25% more. Second, MEGC 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*. There is a place for gradualism in ratemaking, but abandoning cost of service principles entirely is unwarranted and unreasonable.

Consumers Council admits it is not trying to set rates based on cost of service stating “[t]here are other equally important ratemaking principles, in addition to a purely cost-based analysis, that should always be taken into account by the Commission. Those other traditional ratemaking principles include gradualism, efficiency of use, public acceptance, and the avoidance of rate shock”.¹⁴ Notably, Consumers Council cites no Statute, regulation, or Commission

¹³ *Report and Order*, Case No. ER-2011-0028, pp. 115-116; See also, *Report and Order*, Case No. ER-2010-0036, p. 87.

¹⁴ Consumer Council Br. p. 3. Internal footnotes omitted.

guidance for its proposition these putative guides are valuable. Instead, Consumers Council merely includes a footnote to reference a book on utility regulation (that book is James Bonbright, *Principles of Public Utility Rates*, Columbia University Press, 1961, page 291.)¹⁵ So what does that page actually say? Below is a reproduction of Consumer Council's cited section:

CRITERIA OF A SOUND RATE STRUCTURE 291

one presentation. The sequence of the eight items is not meant to suggest any order of relative importance.

1. The related, "practical" attributes of simplicity, understandability, public acceptability, and feasibility of application.
2. Freedom from controversies as to proper interpretation.
- ✓ 3. Effectiveness in yielding total revenue requirements under the fair-return standard.
4. Revenue stability from year to year. ✓
5. Stability of the rates themselves, with a minimum of unexpected changes seriously adverse to existing customers. (Compare "The best tax is an old tax.")
6. Fairness of the specific rates in the apportionment of total costs of service among the different consumers.
7. Avoidance of "undue discrimination" in rate relationships.
8. Efficiency of the rate classes and rate blocks in discouraging wasteful use of service while promoting all justified types and amounts of use:
 - (a) in the control of the total amounts of service supplied by the company:
 - (b) in the control of the relative uses of alternative types of service (on-peak versus off-peak electricity, Pullman travel versus coach travel, single-party telephone service versus service from a multi-party line, etc.).

First, its notable that the excerpt is not about revenue allocation among the classes. This list is about how the rate structure can be designed. Even if one accepts Consumers Council's premise that these are appropriate guides in designing rates Consumers Council does not explain or reason how an equal percent allocation of any increase to the customer classes in this case complies with its own list. Whatever limited value this book provides for the issues in this case – its text is specifically about "rate structure" but rate structure is not a contested issue for the Commission to

¹⁵ Consumer Council Br. p. 4, footnote 7.

determine at this time because those issues were resolved within the stipulations and agreements filed – the fact is that Consumer’s Council provided no argument or explanation about how weighing these factors supports an equal percent revenue allocation among the classes.

In contrast, MEGC points out that the Commission has repeatedly recognized the need for cost-based rates in its rate case orders because it “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.”¹⁶ In addition, it’s also important to reiterate again that MEGC’s recommendation incorporates gradualism by supporting 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.

B. Reply to PWSD

PWSD departs from cost of service by relying on staff’s flawed CCOS results from the prior case. As MEGC explained in its initial brief, Staff’s CCOS in the prior rate case is not competent and substantial evidence in this rate case.¹⁷ However, PWSD’s inclusion of Ex. 700 in its brief is helpful to highlight the unreasonableness of the Staff’s position on revenue allocation. For the sake of illustrating how unreasonable Staff’s approach is we can look at Ex. 700 in the PWSD brief. In the prior case, the Staff’s CCOS showed that in District 2 (outside of Stl) the classes should receive the following increases.

¹⁶ *Report and Order*, Case No. ER-2011-0028, pp. 115-116; See also, *Report and Order*, Case No. ER-2010-0036, p. 87.

¹⁷ Even in the prior rate case, Staff’s CCOS study was so flawed that it could not have been reasonably relied upon to set rates.

| Customer Classification | Percent Increase |
|----------------------------|---------------------|
| (1) | (9) |
| Residential | 27.9% |
| Commercial | 1.7% |
| Industrial | 6.5% |
| Other Public Authority | 5.3% |
| Sales for Resale | -21.6% |
| Private Fire Service | 37.1% |
| Public Fire Service | - |
| Total Sales | 17.8% ¹⁸ |

To look at the relative index for each class so we can compare staffs results to those of MECG, we would divide the allocated increase by the overall increase of 17.8%. This gives us a relative index by the classes as follows:

| District 2 (All other) | | |
|------------------------|--|--------|
| | Cost of Service Percent increase (Staff prior case) | Index |
| Residential | 27.9% | 1.57 |
| Commercial | 1.7% | 0.10 |
| Industrial | 6.5% | 0.37 |
| Other Public Authority | 6.3% | 0.35 |
| Sales for Resale | -21.6% | (1.21) |
| Private Fire Service | 37.1% | 2.08 |
| | | - |
| System increase | 17.8% | 1.00 |

This means that the Staff's prior CCOS would give the residential class an indexed increase of 1.57, if it applied its analysis. MECG's CCOS study – which has the benefit of being based on the facts and information in *this* case and has been subject to review and cross-examination at the hearing – would give the residential class a smaller index of 1.22. If the Staff is relying on its prior study for this case, why shouldn't the Commission allocate the revenue requirement increase to

¹⁸ See Ex. 700.

the classes in accordance with that study's findings? Staff offers no explanation. Following the results of the Staff's prior CCOS study would give some customer classes, including PWSD, a more favorable allocation in this case. However, that prior study was unreliable and cannot be the basis upon which rates are set in this case.

PWSD also raises the red herring that MAWC and MECG's CCOS studies are based on a future test year and should be rejected.¹⁹ PWSD is wrong that this is of consequence for the CCOS results. What the CCOS does is assign to different classes costs that exist in the future test year as well as a historic test year. The only difference is that one set of costs is projected, and the other is historical with known and measurable adjustments. The allocation methods for the various types of costs would be the same regardless of test year. The arguments of Ms. York in the MECG CCOS are consistent and reliable regardless of the test year applied – it follows cost causation.

C. Reply to MAWC

MAWC starts from a more reasonable premise of following the Base Extra method for functionalizing, classifying, and allocating the water cost of service across customer classes but it departs from cost of service for certain specific items it glosses over in its initial brief including: costs assignment to the Public fire protection classes; allocations for purchased power costs; Rate J distribution multipliers; and system load factors. First, MAWC fails to allocate Source of supply and Water treatment costs the Public Fire protection class despite admitting it is incurring those costs. Second, MAWC allocates purchased power expense using Factor 1 which does not recognize how MAWC incurs purchased power expense. 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

¹⁹ PWSD Br. p. 6.

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. So use of Factor 1 should be rejected. Third, MAWC's Rate J distribution multiplier in the CCOSS should be corrected to reflect the 6.5% as supported by the company's data request responses. This is the information available in this case and is the best evidence until the company performs an updated mains study as it has done in prior cases. Fourth, the system load factors MAWC 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 M1.²⁰

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.

III. Unlawful UAT

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.²¹

Some 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

²⁰ York Ex. ____

²¹ See *State ex rel. Laundry, Inc. v. Public Service Com'n* 34 S.W.2d 37, 44 (Mo. 1931).

limitations in their stipulated UAT. There are no defined outcomes identified to be studied. Calling a program a “pilot” in this manner does not make it any less discriminatory and it does not resolve the legal prohibition.

Other proponents of the UAT claim it is cost-based in their briefs. The testimony of MAWC’s witness at hearing refuted that premise when he testified: “[I]t’s a program that’s -- whose eligibility is based on income...[.]”²² Consumers Council alleges in its brief that “...assistance that would be available under the UAT program for eligible participants would indeed be cost based...” and that “[n]o party has disputed the evidence in this case, offered by the water utility itself, that customers who use more water, cause higher costs to serve per gallon.”²³ First, the level of assistance is not cost based. The UAT tariff would give the following discounts:

DISCOUNT – The discount off the service charge/minimum bill and usage rate under this tariff will be as follows:

| | Total Discount |
|--|---------------------------|
| Tier 1 (0%-50% of FPL or 0%-20% of SMI): | 75% |
| Tier 2 (51%-100% of FPL or 21%-40% of SMI): | 55% |
| Tier 3 (101%-150% of FPL or 41%-60% of SMI): | 25% |

These discounts of 75%, 55%, and 25% off the qualifying customer’s bill and usage are not tied to fixed costs, volumetric costs, embedded, marginal or any other costs related to what the company calls “basic water service”. In fact, MAWC’s pre-filed testimony summarizes that the “driving principle” behind the UAT proposal is “to provide all participating customers discounts such that the expected bill for Basic Water Service (50 gallons of water per household member per day) will be no more than 2% of their annual household income.”²⁴ The eligibility is based on income, not on a difference in service. The amount of the discount itself is based on income, not on difference in cost for that service. One could imagine a basic water rate that would be broadly

²² Tr. Vol. 10, pp. 195-196.

²³ Consumer Council, Br. p. 4.

²⁴ Ex. 22, p. 24.

applicable to customers based on difference in service, but that is not what the UAT proponents put forward here. They chose to develop a discriminatory program and the Commission should reject it since it is not permitted under current Missouri law.

Second, Consumers Council's statement that "[n]o party has disputed the evidence in this case, offered by the water utility itself, that customers who use more water, cause higher costs to serve per gallon"²⁵ is wrong. In fact, the cost-of-service studies in this case tend to prove otherwise. Take, for example, the issue in this case related to distribution mains and the rate J multiplier. MECG's witness testified that 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.²⁶ 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.²⁷ This is accomplished through a distribution multiplier to each customer classes usage. Using more water does not cause higher costs per gallon. There are a variety of factors that go into the cost to serve customers. MAWC's witness on the UAT testified that:

The Base/Extra allocation methodology for cost of service, which is described in more detail by Company Witness McClellen, is widely regarded as the industry standard, is effectively designed to reward load factor (or capacity factor). This means that steadier flatter consumption patterns are allocated less cost per gallon of water served than consumption patterns that are peakier or more seasonal. This makes logical sense, in that the cost of investments used to serve higher amounts

²⁵ Consumer Council, Br. p. 4.

²⁶ Id.

²⁷ Ex. 18, p. 11.

of water can be spread over a larger usage base with a resulting lower volumetric rate than the same cost of the same size investment that serves smaller amounts of water because the investment is not utilized as efficiently.²⁸

It is worth pointing out that Consumers Council pretends to be advocating for cost of service for an unlawful UAT discount while at the same time urging the Commission to ignore the cost-of-service studies in this case for everyone else.

For its part, MAWC's brief also feigns that its UAT is based on cost of service. But their own witness testified that it is based on income. MAWC claims that it sets rates for different classes based on consumption or usage patterns and implies this UAT is no different.²⁹ In general, the classes of customers like A, J, or B are based on consumption or usage patterns and characteristics of service – but MAWC is not proposing a new UAT class based on service characteristics that could be studied and then assigned costs to serve them. Instead, the company is proposing a discount *based on income* that customers can only qualify for *based on income*. This approach unlawfully discriminates against other customers who would have the qualifying usage patterns or character of service.

The last point that proponents of the UAT coalesce on is that the Commission need not worry about the program being a blank check because it has taken years for the American Water to sign customers up in other jurisdictions. If the proponents themselves don't think their program to *give away other customers money* will efficiently allow eligible customers to participate – then perhaps it's not a good program design. Setting aside the proponents assurances that they will not be able to competently administer the program – it is unreasonable for the Commission to approve a blank check.

²⁸ Ex. 22, pp. 30-31.

²⁹ MAWC Br. p. 7.

To reiterate - 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 ($\$58,185,236^{30}/\$555,985,000^{31} = .1046$). By that measure, the UAT alone could raise rates for all other customers by over 10%. It bears repeating 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.³²

In summary, the UAT as proposed is an unlimited program that is not based on cost or difference in service and, if administered well, will lead to all customers paying 10% more for water and sewer service. This Commission should reject these discriminatory and unreasonable rates.

IV. Conclusion

MECG asks the Commission to issue an order containing the proposed resolutions identified in its initial brief. Doing so will reasonably allocate the rate increase 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 this Reply Brief.

Respectfully,

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³⁰ Appendix A, EFIS Doc. No. 274.

³¹ *Revenue Requirement Stipulation and Agreement*, EFIS Doc. No. 176, p. 2.

³² Tr. Vol. 10, p. 203.

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to all counsel of record this
18th day of April 2025:

/s/ Tim Opitz
