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

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| 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 |

## MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, APPLICATION FOR REHEARING

**COMES NOW** the Office of the Public Counsel ("OPC") and for its *Motion for Reconsideration or, in the Alternative, Application for Rehearing*, states as follows:

The Commission issued its *Report and Order* in the above styled case on May 7, 2025. The Commission's decision in that *Report and Order* is unlawful, unjust, and unreasonable, in that, the Commission's decision has disregarded and thereby misapplied relevant law and further demonstrates a misunderstanding regarding the proposed Universal Affordability Tariff ("UAT"). The OPC therefore requests the Commission reconsider its *Report and Order*, or, in the alternative, order a rehearing pursuant to Commission rule 20 CSR 4240-2.160.

Failure to Consider and Properly Apply Relevant Law

The decision segment of the Commission's *Report and Order* relating to the UAT issue sets forth the rationale of the Commission in three sequential paragraphs helpfully beginning with "First," "Second," and "Third." However, only the first of

these three paragraphs presents a legal analysis of the issue.[1] That first paragraph consists of the following two sentences:

> First, the UAT Pilot would charge different rates to customers receiving the same service. Thus, it does not appear to comply with Section 393.130, RSMo.

The last sentence of the preceding paragraph is then further supported by a footnote citation to a Missouri Supreme Court decision from 1931. There is no additional citation to law (either from statute or case law) in the remainder of the Commission's decision on this issue. This presents several problems.

First, the Commission itself is clearly not certain of the accuracy of its own legal conclusion given that it stated only the UAT did not "appear" to comply with cited statute. This use of the word "appear" is concerning on its own simply because it implies that the Commission did not engage in a meaningful legal review of the issue at hand. Instead, this language, when coupled with the overall abruptness of the paragraph, suggests the Commission simply chose to dismiss a novel means of addressing customer rate affordability based on its assumptions.

The foregoing notwithstanding, the Commission's interpretation of the law as it applies to the UAT is also simply wrong. The cited statutory sections (§393.130.2 and 393.130.3) state:

> 2. No gas corporation, electrical corporation, 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 gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it

[1] The second two present policy considerations, which will be addressed below.

> 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 gas corporation, electrical corporation, 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.

[(emphasis added)]. This same emphasis appears in the language of the Missouri Supreme Court decision cited by the Commission: "[I]t 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." [*State ex rel. Laundry, Inc. v. Public Service Com'n*, 34 S.W.2d 37, 44 (Mo. 1931) (emphasis added)]. These provisions, often cited as the anti-discrimination provisions, have been elaborated upon numerous times by Missouri's courts and was evaluated at length in the *Reply Brief* filed by the OPC. The critical point found in these citations of law that has been overlooked is that "[a] discrimination as to rates is not unlawful where based upon a reasonable classification corresponding to actual differences in the situation of the consumers or the furnishing of the service[.]" [*Smith v. Pub. Serv. Com.*, 351 S.W.2d 768, 771 (Mo. 1961)(emphasis added)].

The Courts have made it very clear that the necessary evaluation that the Commission must undertake in determining whether section 393.130 has been violated is to determine whether the customers receiving different rates are being served "under identical conditions." [*State ex rel. Laundry, Inc.*, 34 S.W.2d at 44]. This

has been re-affirmed multiple times, including by the Missouri Supreme Court itself. [*see Smith v. Pub. Serv. Com.*, 351 S.W.2d 768 (Mo. 1961)]. MAWC's witness in this case, Mr. Charles Rea, presented voluminous evidentiary testimony that showed customers who would receive service under the UAT had different usage patterns than other residential customers. [*see generally* Ex. 22, *Direct Testimony of Charles B. Rea*]. This evidence thus shows these customers are not being served "under identical conditions" which consequently invalidates the legal issue related to section 393.130.

It is important to note that the testimony evidence provided by Mr. Rea on behalf of MAWC was:

1. Presented without rebuttal or contradiction in pre-filed testimony;
2. Accepted into the evidentiary record without objection; and
3. Presented a fact pattern that matched the logic adopted by the Missouri Supreme Court when it determined that certain rates did not violate section 393.130 [*see Smith v. Pub. Serv. Com.*, 351 S.W.2d 768 (Mo. 1961)].

And yet, the Commission has inexplicably devoted not a single finding of fact toward addressing his analysis, despite it having been presented at length in briefing. [*see Reply Brief of Office of the Public Counsel*].

The fact that the Commission's decision does not even recognize, let alone address, the evidence or argument surrounding the central legal question in either its findings of fact, conclusions of law, or written decision, is, again, extremely concerning. For this reason alone, the Commission should grant either rehearing or

reconsideration in this case with the express purpose of addressing the legal arguments concerning section 393.130.

Necessity of Addressing the Commission's Misunderstanding of the UAT

The second and third paragraphs of the Commission's decision regarding the UAT set forth policy concerns related to the UAT program. These policy concerns appear to center on the fact that the UAT "program has no limits on time frame or costs and no defined target outcomes" and that "there is no defined budget for the UAT." These policy concerns would be understandable if the UAT were viewed exclusively in terms of a customer assistance program like others currently being provided by MAWC. Yet that is not what the UAT is intended to accomplish. It thus seems that the Commission has significantly misunderstood what the UAT is.

The UAT is intended to address the current subsidization of MAWC's high-income residential customers by its low-income residential customers. As explained by MAWC's Witness Mr. Rea:

> If a) seasonal water service is more expensive on a per unit basis to serve than basic water service from a cost of service and cost causation perspective, b) higher income customers are more likely to have significant higher cost seasonal water use than lower income customers, and c) a single volumetric rate applies to all service for all customers, both Basic Water Service and seasonal service as is the case in the Company's service territory, the result is that lower income customers are actually subsidizing higher income customers under the Company's current rate design.

[Ex. 22, *Direct Testimony of Charles B. Rea*, pg. 37 lns. 3 – 9 (emphasis added)]. The UAT is therefore not a customer assistance program in the same vein as the others

currently being provided by MAWC. It is instead a mechanism seeking to employ the principles of cost-causation to undo an already existing subsidy:

> . . . lower income customers that do not use water for seasonal discretionary purposes are actually subsidizing higher income customers that do use water for seasonal discretionary purposes. It therefore cannot be credibly asserted that a discount tariff that reduces costs for lower income customers is an undue subsidy. To the contrary, it is helping to reduce a subsidy that already exists in the other direction.

[*Id.* at pg. 37 ln. 20 – pg. 38 ln. 1 (emphasis added)].

To reiterate, the evidence presented in this case shows that the UAT is designed to address and eliminate an already existing inter-class subsidy. This means:

- The UAT is not a bill assistance program.
- It does not create any form of government "handout."
- All costs associated with the tariff would be deferred to the next rate case where costs could be better allocated to cost-causing customers (and/or shareholders).

For these reasons, the Commission's policy concerns regarding the need for a cap on the UAT (either in terms of dollars or participant numbers) as well as its concerns regarding the need for a defined "time frame" or "target outcomes" is fundamentally unnecessary. The Commission should therefore grant either rehearing or reconsideration in this case so that the UAT can be properly interpreted, understood, and reviewed.

The Commission is at Liberty to Cure its Concerns with the UAT

As previously stated, the Commission's primary concerns regarding the UAT as set forth in its *Report and Order* are derived entirely from the perceived lack of constraints regarding the program's time length, participant size, and budget. The immediately preceding section of this motion discuss why these issues should not be considered problematic due to the nature of the UAT. If the Commission were to find that unpersuasive, however, it is also necessary to note that these supposed problems are all ones that the Commission can quite easily solve by simply ordering the adoption of the UAT subject to whatever restraints it deems appropriate.

There is nothing preventing the Commission from ordering limitations be placed on either the cost, timeframe, or number of participants in the proposed UAT. If those truly represent the Commission's concerns, then it need only order the cure, or else order the parties to present a cure, and the concerns will be addressed. By instead choosing to disallow the UAT in its entirety, the Commission is ordering that low-income residential customers continue to subsidize higher income residential customers at least until MAWC concludes its next rate case, which is not expected to occur for several years. The OPC therefore again requests the Commission grant either rehearing or reconsideration in this case so that it may order a cure to whatever concerns it has with the UAT proposed by the parties.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission reconsider the *Report and Order* issued on May 7, 2025, or, in the

alternative, order a new hearing to address the issues raised herein, as well as any other relief that is just and reasonable under the circumstances.

Respectfully submitted,

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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 sixteenth day of May, 2025.

/s/ John Clizer