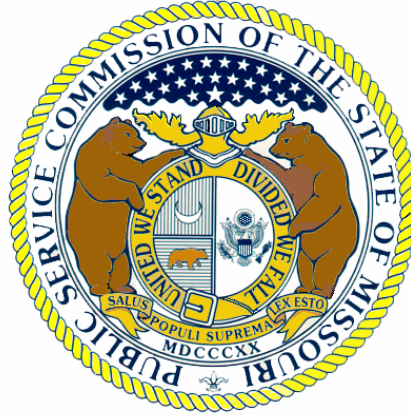


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of Missouri-American)
Water Company's Request for Authority)
to Implement a General Rate Increase)
for Water Service Provided in Missouri)
Service Areas)

Case No. WR-2007-0216, et al.
Tariff Nos. YW-2007-0407, YW-2007-0409
YW-2007-0410, YW-2007-0411, YW-2007-
0412, YW-2007-0413, YS-2007-0415, YS-
2007-0416, YS-2007-0417, JS-2007-0713,
and JS-2007-0714

REPORT AND ORDER

Issue Date: October 4, 2007

Effective Date: October 14, 2007

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Missouri-American)	<u>Case No. WR-2007-0216, et al.</u>
Water Company's Request for Authority)	Tariff Nos. YW-2007-0407, YW-2007-0409
to Implement a General Rate Increase)	YW-2007-0410, YW-2007-0411, YW-2007-
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TABLE OF CONTENTS

Appearances	2
Procedural History	4
Stipulation and Agreement – MAWC and MSD	7
Global Stipulation and Agreement	8
Stipulation and Agreement – MAWC and City of Jefferson	13
Discussion of Issues Requiring Decision by the Commission	14
Findings of Fact and Conclusions of Law	16
Findings of Fact and Conclusions of Law Common to All Issues	18
<i>The Parties</i>	18
<i>Jurisdiction</i>	22
<i>Burden of Proof</i>	23
<i>Presumption</i>	23
<i>Missouri-American's Operations</i>	24
<i>Missouri-American's Proposed General Rate Increase</i>	27
<i>Ratemaking Standards and Practices</i>	29
Findings of Fact and Conclusions of Law Regarding Specific Issues	38
<i>Proper Treatment of Global Non-Unanimous Stipulation and Agreement</i>	38
<i>Revenue Requirement and Rate Design</i>	39
<i>Rate Design – Class Cost of Service Allocations</i>	49
<i>City of Joplin's Contested Issues</i>	55
<i>Utility Workers Union of America Local 335's Issues</i>	74

<i>Capacity Charge Tariffs for Warren and Jefferson Counties</i>	<i>78</i>
<i>Remaining Items in the Global Agreement/Joint Recommendation</i>	<i>80</i>
Final Decision.....	83
Ordered Paragraphs.....	84

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REGULATORY LAW JUDGE: **Harold Stearley**

REPORT AND ORDER

Procedural History

Tariff Filings

On December 15, 2006, Missouri-American Water Company ("MAWC") submitted to the Missouri Public Service Commission certain proposed tariff sheets, Tariff File Numbers YW-2007-0407, YW-2007-0409, YW-2007-0410, YW-2007-0411, YW-2007-0412, and YW-2007-0413. This filing was docketed as Case Number WR-2007-0216, and the purpose of the filing, according to MAWC, is to implement a general rate increase for water service provided by the company. MAWC states that the revised water rates are designed to produce an additional \$41,387,823 in gross annual water revenues excluding gross receipts and sales taxes, a 24.8% increase over existing water revenues.

Also on December 15, MAWC filed certain tariff sheets designed to implement a general rate increase for sewer service provided by the company, Tariff File Numbers YS-2007-0415, YS-2007-0416, and YS-2007-0417. This filing was docketed as Case Number SR-2007-0217. MAWC states that the revised sewer rates are designed to produce an additional \$73,795 in gross annual sewer revenues excluding gross receipts and sales taxes, a 25.7% increase over existing sewer revenues.

The rate schedules attached to MAWC's tariff filings bore issue dates of December 15, 2006, with a proposed effective date of January 14, 2007. Together with its proposed tariff sheets and other minimum filing requirements, the Company also filed prepared direct testimony in support of its requested rate increases.

Suspension Orders and Interventions

The Commission issued its Suspension Orders and Notices on January 3, 2007,¹ suspending the proposed water and sewer tariff sheets for 120 days plus six months from the original proposed effective date, that is, until November 14. In those orders, the Commission also set an evidentiary hearing and a deadline for intervention applications. Intervention was granted to AG Processing, Inc., the City of Jefferson, the City of Joplin, the City of Parkville, the City of St. Joseph, the City of Warrensburg, the Metropolitan St. Louis Sewer District, the Missouri Energy Group, the Missouri Industrial Energy Consumers, Public Water Supply Districts Numbers 1 and 2 of Andrew County, Public Water Supply District Number 1 of DeKalb County, and the Utility Workers Union of America Local 335, AFL-CIO.²

Consolidation of Cases

On January 17, pursuant to Commission Rule 4 CSR 240-2.110(3), the Commission issued its order consolidating Case Numbers WR-2007-0216 and SR-2007-0217. The Commission found that these cases involved related issues of fact and law supporting consolidation. The Commission designated Case Number WR-2007-0216 as the lead case and directed that all further pleadings in these matters be filed under that case number.

On February 22, the Commission adopted the procedural schedule jointly proposed by the parties. The procedural schedule included dates for the filing of prepared testimony, revised dates for the evidentiary hearing, and a briefing schedule.

¹ All dates following the date of the suspension order reference the year 2007 unless otherwise noted.

² All entities granted intervention in Case Number WR-2007-0216 were also granted intervention in Case Number SR-2007-0217.

On April 2, MAWC filed revised sewer tariffs that were filed for the purpose of implementing a capacity charge for its Warren County and Jefferson County sewer districts, Tariff File Numbers JS-2007-0713 and JS-2007-0714. These tariff filings were filed outside of the existing rate cases and docketed under Case Number ST-2007-0443. The Office of the Public Counsel (“OPC”) filed a motion to suspend these new tariff filings and consolidate consideration of these tariffs into the existing rate case. The Home Builders Association of St. Louis and Eastern Missouri, Inc. (“HBA”) filed objections to the tariff filings and was granted intervention.

Ultimately on June 21, based upon a joint recommendation of all of the parties in this case, the Commission consolidated Case Number ST-2007-0443 with Case Number WR-2007-0216. The capacity charge tariffs were suspended to match the suspension date of the rate-case tariffs. In this manner the Commission can consider all related issues of fact and law between these matters and all relevant and interrelated factors, thus avoiding any possible specter of single-issue ratemaking. The Commission did not close ST-2007-0443, keeping that case open to receive filings specifically related to the capacity charge tariffs. The consolidation of these cases brought the HBA as a party into the existing rate cases.

Local Public Hearings

Between the dates of June 5 and June 14, pursuant to notice provided by the company to all of its customers, the Commission convened local public hearings for Case Numbers WR-2007-0216 and SR-2007-0217 within MAWC's service territory, at Hillsboro, Joplin, Kirkwood, Mexico, Parkville, St. Charles, St. Joseph, St. Louis, Warrensburg, and

Warrenton.³ The Commission heard the testimony of 40 witnesses at these local public hearings and received 3 exhibits into evidence.

Pre-Hearing Stipulation and Agreement between the Metropolitan St. Louis Sewer District and MAWC

On July 16, MAWC and the Metropolitan St. Louis Sewer District (MSD) jointly filed a stipulation and agreement to settle the MSD rate design issue. The issues addressed by this agreement related to the provision of water usage meter reading data and customer billing information and related services to MSD by MAWC, and the amount charged by MAWC for provision of this information. No party objected, and the stipulation became unanimous by operation of Commission rule on July 24.⁴ Consequently, the Commission approved that stipulation and agreement by separate order dated September 20, 2007, bearing an effective date of September 30, 2007.

Evidentiary Hearing – Preliminary Stage

Pursuant to the procedural schedule, the Commission convened an evidentiary hearing beginning on August 6 at its offices in Jefferson City, Missouri. On this first day of hearing the parties informed the Commission that the majority of the parties were entering into a Stipulation and Agreement as to all of the issues to be decided in this matter. Only the City of Joplin (“Joplin”) objected to the agreement.⁵

Joplin identified four issues it disputed in its prehearing brief, and in the testimony of

³ These local public hearings were completed prior to the consolidation order joining Case Number ST-2007-0443 to the general rate cases. Consequently, these local public hearings did not yield testimony on the capacity charge tariffs being considered in Case Number ST-2007-0443.

⁴ Commission Rule 4 CSR 240-2.115(2)(C).

⁵ On August 6, 2007, Utility Workers Union of America Local 335, AFL-CIO Local 335, the Missouri Energy Group and the City of Jefferson made no appearance.

its witness Ms. Leslie Jones.⁶ Joplin requested hearing dates to offer evidence and cross-examine witnesses on these issues. Based upon Joplin's request, proceedings were continued to August 14 and 15 to hear Joplin's evidence.

Global Stipulation and Agreement and City of Joplin's Objections

On August 9, prior to the resumption of the hearings, numerous parties filed a global Non-Unanimous Stipulation and Agreement ("Global Agreement") resolving all issues in this matter. The only non-signatory parties to the Global Agreement were Joplin, the City of Jefferson ("Jefferson City"), the City of St. Joseph ("St. Joseph") and the Utility Workers of America Local 335, AFL-CIO ("Local 335"). All parties were given the opportunity to file suggestions in support or in opposition to the Agreement. The original deadline for suggestions was subsequently extended to ensure adequate opportunity for all of the parties to respond.⁷

Joplin was the only non-signatory to the Global Agreement that objected to the agreement. Consequently, the Commission directed Joplin to further clarify the issues it disputed, identify the witnesses it wished to present and cross-examine with regard to those issues and update its prehearing brief if required. On August 10, Joplin identified, with particularity, the following issues for the hearing set to resume on August 14 and 15:

- (1) The Proper Basis for Allocation of MAWC's Corporate Administrative and General Expenses;
- (2) the Proper Method of Payroll Tax Normalization/Annualization;

⁶ Leslie Jones is the Finance Director for the City of Joplin. Hearing Exh. Joplin-1, Prefiled Rebuttal Testimony of Leslie Jones, p. 2-3.

⁷ *Order Directing the City of Joplin to Make Specific Filings, Resetting Hearing Schedule and Directing Response to Stipulation and Agreement*, issued August 9, 2007; *Order Extending Deadline for Filing Suggestions Regarding the Non-Unanimous Stipulation and Agreement, Setting Briefing Schedule, Ordering Proposed Findings of Fact and Conclusions of Law, Directing the Filing of Late-Filed Exhibits and Responses, and Addressing other Procedural Matters*, issued August 15, 2007. Transcript pp. 107-108.

- (3) the Proper Allocation of Corporate Depreciation; and,
- (4) the Proper Normalization/Annualization of Chemicals for Treating Water in the Joplin District.⁸

Joplin further stated that, at that time, it did not oppose the resolution of any additional issues encompassed in the Global Agreement, and identified the following witnesses it wished to present, or to have appear, at hearing for cross-examination: Joplin's Witness Leslie Jones; Staff Witnesses Steve Rackers, Roberta Grissum and Lisa Hanneken; and MAWC's Witnesses Ed Grubb, Don Petry and Greg Weeks.⁹ No other party identified any other witness it wished to be present at hearing for cross-examination.¹⁰

Resumption of Evidentiary Hearing and Post-Hearing Submissions

The evidentiary hearing resumed as scheduled on August 14 and concluded that same day.¹¹ MAWC's first witness, Mr. Edward J. Grubb, began his testimony with a correction to the calculation of the amount of chemical expense attributable to the Joplin District. This correction was not objected to by any other party and resolved this issue completely.¹² Because of this correction, and Staff's stipulation that the correction for

⁸ *List of Disputed Issues and Witnesses*, filed August 10, 2007.

⁹ *Id.*

¹⁰ While the Commission cannot cite to non-existent pleadings to prove a negative, a review of the docket sheet and the transcript confirms that no other party identified additional witnesses to provide testimony during the hearing.

¹¹ On August 14, 2007, Utility Workers Union of America Local 335, AFL-CIO Local 335, the Missouri Energy Group and the Metropolitan St. Louis Sewer District made no appearance. Additionally, several parties who were present asked for permission to be able to come and go as necessary for their participation. These parties were granted such leave but all were advised that if they were absent during the time that a scheduled witness was testifying that they would be considered to have waived cross-examination of that witness. Those parties all agreed that their absence would constitute a waiver of cross-examination. Transcript pp. 102-107. See, in particular Transcript p. 105, lines 20-23, p. 107, lines 3-11.

¹² Transcript pp. 148-154. In annualizing the amount of chemical expense, the MAWC determined the annual amount of water it expects to treat and multiplies it by the usage (per million gallons) of chemicals needed to treat the water. That product is multiplied by the price per pound of the chemical, which price is based upon contracts with chemical suppliers. (Tr. 150) In annualizing the amount of chemical expense for the Joplin District, MAWC found that the number of pounds needed to treat an annualized level of water for three of the

chemical expense would reduce Joplin's portion of MAWC's revenue requirement by \$236,416, the appearing parties mutually agreed that no cross-examination was required of Staff's witness Roberta Grissum, and MAWC's witness Greg A. Weeks. Consequently, they were excused from the witness list and the parties waived cross-examination as to these witnesses regarding any and all issues.¹³

With one exception, no party objected to the admission of prefiled testimony from any witness not requested to appear. MAWC objected to the prefiled rebuttal testimony of Alan Ratterman. Objections were sustained to Mr. Ratterman's testimony and it was excluded from the record.¹⁴ Ultimately, all parties waived cross-examination of all of the witnesses not requested to appear on August 14.¹⁵

eleven chemicals used in the Joplin District was overstated. As a result, the annualized chemical expense for the Joplin District was overstated by \$236,416. (Tr. 150) In order to correct for this error, MAWC proposed to take the amount of revenue increase attributable to Joplin, pursuant to the Global Agreement and reduce it by \$236,416. (Tr. 151) This has the additional impact of reducing the overall revenue requirement sought by MAWC by \$236,416, or reducing the overall increase to \$28,463,584.

¹³ Transcript p. 208.

¹⁴ Mr. Ratermann was a witness for the Utility Workers Union of America, Local 335 ("Local 335"). Mr. Ratermann's rebuttal testimony focused on asbestos-cement pipe removal, which he believed concerned the "health and safety of consumers and employees" of MAWC, and he advocated for insuring that adequate funds from the requested rate increase were allocated to address these health and safety issues. However, Commission Rule 4 CSR 240-2.130(7)(B) is not ambiguous and states that "where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct testimony." Mr. Ratermann's rebuttal testimony violates this rule in that it fails to respond to the direct testimony of any party. Mr. Ratermann failed to raise this issue in direct testimony and failed to raise this issue when he testified before the Commission at a local public hearing in this case on June 13, 2007, in Kirkwood. Tr. Vol. 9, p. 9-11. While Local 335 filed a written response to MAWC's objections that were first raised in a Motion to Strike filed on July 31, Local 335's response was not persuasive. Local 335 made no appearance at hearing to formally offer the Mr. Ratermann's rebuttal testimony into the record or to provide further argument in support of submission of this testimony. Finding Mr. Ratermann's prefiled rebuttal testimony to be improper under the Commission's rules; the Commission sustained the objections to its admission and excluded it from the record.

¹⁵ During the hearing, the Commission noted that it was not finally excusing witnesses in the event that other issues (issues other than those identified by the parties and adopted by the Commission) materialized during the hearing that would require the taking of additional testimony. (Transcript pp. 103, 108, 432-433.) The parties were provided with multiple opportunities to identify the issues in this matter and elicit witness testimony and cross-examination on those issues. No additional issues were identified by the parties other than those adopted by Commission Notice and Order. (See *Order Granting Motion to Modify Order and Amend Issues List*, issued August 30, 2007, and *Notice Regarding Issues List*, issued September 5, 2007.) No party requested a hearing on any issue other than those contested at the evidentiary hearing completed

Joplin's witness, Ms. Leslie Jones, was allowed to offer new direct testimony that advocated multiple changes in Joplin's original position. Consequently, as part of the post-hearing procedural schedule, the Commission directed Joplin to file a revised list of its issues and to provide certain exhibits to be filed as late-filed exhibits pursuant to the Commission's traditional practice.¹⁶ The remaining parties were given the opportunity to file objections to these exhibits, as well as given the opportunity to submit rebuttal testimony to Ms. Jones's new adduced testimony.¹⁷ No party objected to any of the exhibits once they were submitted in their final form and they were received into the record for all purposes.¹⁸ No party submitted rebuttal testimony to Ms. Jones's live testimony.

In total, the Commission admitted the prefiled testimony of 26 witnesses, heard cross-examination testimony from 4 of those same witnesses, received new testimony from and allowed cross-examination of Joplin's sole witness, and received 75 exhibits into evidence. The Commission wishes to emphasize that a full hearing was held on all of the

on August 14, 2007. No party has requested that any other witness, other than those testifying at the hearing, provide additional testimony or be subject to cross-examination. The Commission determined the case was finally submitted for decision on September 17, 2007 and that it requires no additional testimony to decide the issues in controversy. Consequently, the Commission shall finally excuse all witnesses to this matter as part of this Report and Order.

¹⁶ Commission Rules 4 CSR 240-2-1.30(14) and (17).

¹⁷ Transcript pp. 352, 422, 424-426. *Order Extending Deadline for Filing Suggestions Regarding the Non-Unanimous Stipulation and Agreement, Setting Briefing Schedule, Ordering Proposed Findings of Fact and Conclusions of Law, Directing the Filing of Late-Filed Exhibits and Responses, and Addressing other Procedural Matters*, issued August 15, 2007. *Order Clarifying Post-Hearing Procedural Schedule*, issued August 20, 2007

¹⁸ Joplin submitted an amendment to their late-filed exhibit, Joplin-2, on August 24. Joplin had amended their original filing by attaching four pages of a confidential settlement agreement that had been circulated among the non-MAWC parties prior to hearing. Objections to the amended exhibit were lodged by OPC and AGP. Those objections were sustained and the amended exhibit was stricken from the record. See Commission's "Order Extending Time for Responses to Late-Filed Exhibits and Striking Amendment to Late-Filed Exhibit," effective date of August 27, 2007. See also Commission's *Order Admitting Post-hearing Exhibits into Evidence and Acknowledging Parties' Waivers of Providing Rebuttal Testimony to the City of Joplin's Supplemental Direct Testimony at Hearing*, issued August 29.

issues for which a hearing was requested.¹⁹

Joplin's Post-Hearing Filings

On August 17, Joplin filed its revised list of disputed issues and its revised positions on those issues. Joplin identified its new positions as follows:²⁰

(1) The Proper Basis for Allocation of MAWC's Corporate Administrative and General Expenses – Worker's Compensation, injuries and damages, Other Post-Employment Benefits ("OPEB") and pensions should be allocated based upon payroll, which is how they are allocated pursuant to the Global Agreement. Joplin no longer disputes this issue.

(2) The Proper Basis for Allocation of MAWC's Corporate Administrative and General Expenses – all other administrative and general expenses should be allocated based upon total number of customers as opposed to payroll, which is how they are allocated pursuant to the Global Agreement.

(3) The Proper Basis for Allocation of MAWC's Corporate Customer Accounts Expenses – those allocated from corporate accounts to the districts should be allocated based upon the total number of customers as opposed to payroll, which is how they are allocated pursuant to the Global Agreement.

(4) The Proper Allocation of Corporate Depreciation – should be allocated to the districts based upon length of main as opposed to payroll, which is how they are allocated pursuant to the Global Agreement.

¹⁹ As a matter of due process, the Commission allowed all of the parties the full and fair opportunity for a hearing on the issues they identified as being contested before the Commission. All of the parties to this action were given multiple opportunities to identify any disputed issues, the witnesses it desired to present with regard to those issues and the witnesses it desired to cross-examine. This case does not present any of the same issues as were identified in *State ex rel. James M. Fischer v. Public Service Commission of Missouri*, 645 S.W.2d 39 (Mo. App. 1982). In *Fischer*, the Commission allowed OPC the opportunity to present a proposal for a gas company's rate design and to cross-examine opposing witnesses; however, it had previously decided that the only issue it would consider was whether to approve a stipulation and agreement submitted by all parties except OPC, thus negating the meaningfulness of the hearing. In this case, the Commission made no such prior decision, and did not prejudge any element or issue presented. As the remainder of the Report and Order demonstrates, the Commission thoroughly complied with its statutorily mandated fact-finding requirements and based its decision on substantial and competent evidence on the record as a whole.

²⁰ *Revised List of Disputed Issues*, filed by Joplin on August 17, 2007.

(5) The Proper Allocation of Corporate and other General Taxes -- should be allocated based upon the total number of customers as opposed to payroll, which is how they are allocated pursuant to the Global Agreement.

(6) The Proper Normalization/Annualization of Chemicals for Treating Water in the Joplin District – MAWC revised its calculations on this factor and this issue is no longer in dispute. (See FN 8).

(7) The Proper Method of Payroll Tax Normalization/Annualization – corporate payroll was annualized from \$289,000 in actual corporate payroll (in administrative and general expenses category) to add \$700,000.²¹

Joplin stated in its August 17 pleading that, “at this time,” it did not oppose the resolution of any additional issues encompassed in the Global Agreement.²²

Post-Hearing Stipulation and Agreement between Jefferson City and MAWC

On August 23, the City of Jefferson (“Jefferson City”), MAWC, Staff, and OPC jointly filed a Stipulation and Agreement to resolve separate issues Jefferson City had with MAWC concerning fire suppression and certain infrastructure improvements; specifically, back-up power generation, water storage and small main replacement.²³ No party objected and the stipulation became unanimous by operation of Commission rule on August 31.²⁴ The Commission reviewed the agreement, found it to be reasonable and approved that stipulation and agreement by separate order dated September 6, 2007, bearing an effective date of September 16, 2007.

²¹ In its August 17, 2007 pleading Joplin maintained that the increase was not supported by any fact and that as currently calculated the amount is overstated. On August 22, 2007, Joplin filed its *Statement of Filing of Calculations by the City of Joplin*. In this filing, Joplin acknowledged that: “Additionally, there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones’ testimony on August 14, 2007.”

²² *Revised List of Disputed Issues*, filed by Joplin on August 17, 2007.

²³ The signatory parties to this stipulation and agreement stated: “As a result of this Stipulation, no changes shall need to be made to the Nonunanimous Stipulation and Agreement filed previously in this case on August 9, 2007.

²⁴ Commission Rule 4 CSR 240-2.115(2)(C).

Case Submission

The parties filed late-exhibits, briefs, reply briefs and proposed findings of fact and conclusions of law according to the post-hearing procedural schedule. The last briefs were filed on September 17 and the case was deemed submitted for the Commission's decision on that date.²⁵

Discussion of Issues Requiring Decision by Commission

On August 1, as required by the procedural schedule, the parties jointly filed a list of issues to be determined by the Commission. Each party was allowed the opportunity to file a statement of its position with respect to each issue. On August 2, AG Processing, Inc. filed an amendment to the issues list, and on August 23, the Commission formally adopted the unopposed issues list, as amended.²⁶

On August 29, all of the parties, with the exception of Local 335, filed a motion with the Commission to modify the issues list. The parties moving to modify had condensed Joplin's revised list of issues into two issues. Specifically, the moving parties including Joplin affirmatively asserted and conceded that the only two issues requiring a decision by the Commission were:

1. The proper basis for allocating MAWC's corporate expenses to the various districts, to include administrative and general expenses, customer accounts, depreciation, and other general taxes; and,

²⁵ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1). Two Post-Submission motions were filed in this matter. MAWC moved the Commission to strike Local 335's Proposed Findings of Fact and Conclusions of Law on September 19, 2007, and Joplin moved the Commission to compel its Staff to provide additional information in response to the Commission's September 10, 2007 order directing certain filings. The Commission shall rule on these motions in later portions of this Report and Order.

²⁶ The original issues list, as formulated by the parties and adopted by the Commission, identified thirty-eight contested issues for Commission determination.

2. Payroll tax payment as annualized for the Joplin District and certain depreciation issues.²⁷

The moving parties further affirmatively stated: “None of the other issues addressed by the Global Agreement [filed on August 9, 2007] have been objected to or are in dispute.”²⁸

On September 4, Local 335 advised the Commission that they had not joined in the request to amend the issues list and considered three issues it raised during the course of this proceeding to be live issues in addition to the modified issues list as delineated above.

Those issues were:

1. whether MAWC has provided adequate training of its employees in dealing with asbestos-cement and lead-jointed pipe;
2. whether funds should be allocated to employee training or the removal of asbestos-cement and lead-jointed pipe; and
3. whether MAWC has properly asserted privilege with regard to payroll information.²⁹

Local 335 reiterated that it did not oppose the outcome of the case as proposed in the Global Agreement, and that it recognized that the issues it raised may not be outcome determinative for this matter.³⁰

Ultimately, the Commission adopted the revised list of issues submitted on August 29, but also advised the parties that it would consider any record evidence on the issues identified by Local 335 when issuing its decision in this matter.³¹ The Commission will

²⁷ *Amended List of Issues and Motion to Modify Order*, filed August 29, 2007.

²⁸ *Id.*

²⁹ *Advice to the Commission*, filed September 4, 2007.

³⁰ *Id.*

³¹ See *Order Granting Motion to Modify Order and Amend Issues List*, issued August 30, 2007, and *Notice Regarding Issues List*, issued September 5, 2007. The Commission adopts the list of issues with the caveat that the parties’ framing of the issues may not accurately reflect the material issues under the applicable statutes and rules. On September 17, 2007, Local 335 filed proposed findings of Fact and Conclusions of Law pursuant to the Commission’s post-hearing procedural schedule. On September 19, 2007, MAWC

therefore review the competent and substantial evidence on the record as a whole to render decisions on the only issues identified in this matter that require a Commission decision. The Commission will also make all statutorily required findings and conclusions to fulfill its duty to set "just and reasonable" rates for MAWC's water and sewer services.

Findings of Fact and Conclusions of Law

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.

In making its Findings of Fact and Conclusions of Law, the Commission is mindful that it is required, after a hearing, to "make a report in writing in respect thereto, which shall state the conclusion of the commission, together with its decision, order or requirement in the premises."³² Because Section 386.420 does not explain what constitutes adequate findings of fact, Missouri courts have turned to Section 536.090, which applies to "every

moved to strike Local 335's filing asserting that there was no record evidence for the Commission to consider in regard to Local 335's allegedly "live issue," and that, consequently, the Commission should strike Local 335 proposed findings and conclusions. The Commission shall consider this motion in a later part of this Order.

³² Section 386.420.2, RSMo 2000. All further statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

decision and order in a contested case," to fill in the gaps of Section 386.420.³³

Section 536.090 provides, in pertinent part:

Every decision and order in a contested case shall be in writing, and . . . the decision . . . shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.

Missouri courts have not adopted a bright-line standard for determining the adequacy of findings of fact.³⁴ Nonetheless, the following formulation is often cited:

The most reasonable and practical standard is to require that the findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.³⁵

Findings of fact are inadequate when they "leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected."³⁶ Findings of fact are also inadequate that "provide no insight into how controlling issues were resolved" or that are "completely conclusory."³⁷

With these points in mind, the Commission renders the following Findings of Fact and Conclusions of Law. Findings of Fact are sequentially numbered. Conclusions of Law appear in designated sections.

³³ *St. ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of Mo.*, 103 S.W.3d 813, 816 (Mo. App. 2003); *St. ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n*, 24 S.W.3d 243, 245 (Mo. App. 2000).

³⁴ *Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 387 (Mo. App. 1976).

³⁵ *Id.* (quoting 2 Am.Jur.2d *Administrative Law* § 455, at 268).

³⁶ *St. ex rel. Int'l. Telecharge, Inc. v. Mo. Pub. Serv. Comm'n*, 806 S.W.2d 680, 684 (Mo. App. 1991) (quoting *St. ex rel. Am. Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 701 S.W.2d 745, 754 (Mo. App. 1985)).

³⁷ *St. ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 795 (Mo. banc 1986) (relying on *St. ex rel. Rice v. Pub. Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61 (1949)).

Findings of Fact and Conclusions of Law Common to all Issues

Findings of Fact Regarding the Parties

1. Missouri American Water Company (“MAWC”) is a Missouri corporation with its principal office and place of business at 727 Craig Road, St. Louis, Missouri 63141.³⁸

2. MAWC currently provides water service to the public in and around the cities of Brunswick, Jefferson City, Joplin, Mexico, Parkville, Riverside, St. Joseph, Warrensburg, and parts of Lincoln, Platte, St. Charles, St. Louis, and Warren Counties, Missouri.³⁹

3. MAWC currently provides sewer service to the public in and around the cities of Cedar Hill and Parkville and Warren County, Missouri.⁴⁰

4. MAWC provides water service to approximately 459,000 customers and sewer service to approximately 1,000 customers.⁴¹

5. Intervenor Utility Workers Union of America Local 335, AFL-CIO Local 335 (“Local 335”) is a labor organization representing approximately 300 employees of MAWC in two bargaining units, one of which establishes the terms and conditions of employment for the clerical employees, and the other of which establishes the terms and conditions of

³⁸ See *Dione C. Joyner v. Missouri-American Water Company*, Case No. WC-2006-0345, 2006 WL 3610803 (Mo. P.S.C.)

³⁹ See MAWC’s Tariffs: P.S.C. MO. No. 1 (St. Joseph), Tariff Tracking Number JW-2003-0034; P.S.C. MO. No. 2 (Joplin and Vicinity), Tariff Tracking Number JW-2003-1675; P.S.C. MO. No. 2 (Missouri Cities: Brunswick, Mexico, Warrensburg and Adjacent Areas and Certificated Areas in St. Charles and Platte Counties), Tariff Tracking Number JW-2003-1675; P.S.C. MO. No. 3 (Jefferson City), Tariff Tracking Number JW-2003-0024; P.S.C. MO. No. 6 (St. Louis and Jefferson County), Tariff Tracking Numbers JW-2002-0137 and YW-2005-0662, Case Number WO-2005-0286; P.S.C. MO. No. 7 (Incline Village Subdivision and Adjacent Certificated Service Areas, Warren County), Tariff Tracking Number YW-2005-0180, Case Number WM-2004-0122. See also *Dione C. Joyner v. Missouri-American Water Company*, Case No. WC-2006-0345, 2006 WL 3610803 (Mo. P.S.C.).

⁴⁰ See MAWC’s Tariffs: P.S.C. MO. No. 8 (Cedar Hill), Tariff Tracking Number YS-2005-0267, Case Number SM-2004-0275; P.S.C. MO. No. 2 (Parkville, Platte County), Tariff Tracking Number JS-2003-0033; P.S.C. MO. No. 7 (Incline Village Subdivision and Adjacent Certificated Service Areas, Warren County), Tariff Tracking Number YS-2005-0188, Case Number WM-2004-0122.

⁴¹ See MAWC’s Petition to Change its Infrastructure Systems Replacement Surcharge, Case No. WO-2007-0043, p. 2, paragraph 2.

employment for the "physical" employees.⁴² Local 335 is an unincorporated association; however, because labor unions are not required to register their names as fictitious names with the Missouri Secretary of State, Local 335 does not have evidence of any such registration. Further, Local 335 does not have an office or place of business in any traditional sense; however, persons wishing to contact Local 335 may contact the union through its president Clara Faatz at MAWC's offices.⁴³

6. Intervenor City of Joplin, Missouri ("Joplin"), is a municipality located in Jasper County, Missouri, and receives its water service from MAWC. The City of Joplin also represents the interests of its citizens, who likewise receive their water service from MAWC.⁴⁴

7. Intervenor AG Processing, Inc. ("AGP") is an agricultural cooperative and is a large manufacturer and processor of soybean meal, soy-related food products, and other grain products throughout the central and upper Midwest, including the State of Missouri. AGP is the largest cooperative soybean processing company in the world, the third-largest supplier of refined vegetable oil in the United States and the third-largest commercial feed manufacturer in North America.⁴⁵ AGP operates a major processing facility in St. Joseph, Missouri where it is a major industrial water supply customer of MAWC in the St. Joseph

⁴² *Verified Application of UWUA Local 335 to Intervene*, p. 1, paragraph 2, filed January 4, 2007. The "physical" bargaining unit includes all MAWC's production, construction, maintenance, operation and distribution employees. *Id.* at paragraph 2. Note: Commission Rule 4 CSR 240-2.080(7) and Supreme Court Rule 55.03(b) provide that when a party presents a claim, defense, request, demand, objection, contention, or argument in a pleading or other paper filed or submitted to the adjudicatory body, signed by the party or their attorney, that they are certifying to the best of the signer's knowledge, information, and belief that any allegations or factual contentions have evidentiary support.

⁴³ *Id.*, p. 1-2, paragraph 3.

⁴⁴ *Application to Intervene of City of Joplin, Missouri*, p. 1, paragraph 1, filed January 10, 2007.

⁴⁵ *Application to Intervene of AG Processing, Inc., A Cooperative*, p. 1, paragraphs 1, filed January 10, 2007.

District.⁴⁶

8. Intervenor Missouri Energy Group (“MEG”) is an ad hoc group of not-for-profit hospital systems located within the state of Missouri that have purchased substantial amounts of water from MAWC and who have actively participated in previous cases involving MAWC and its predecessor, St. Louis County Water Company.⁴⁷

9. Interveners Public Water Supply District Numbers 1 and 2 of Andrew County and Public Water Supply District Number 1 of DeKalb County (collectively “Water Districts”) are political subdivisions of the State of Missouri who are customers of MAWC, purchasing water from MAWC for distribution and resale to their own customers.⁴⁸

10. Intervenor City of Warrensburg, Missouri (“Warrensburg”) is a third class municipality situated in Johnson County, Missouri. Its City Hall is located at 102 S. Holden, Warrensburg, Missouri 64093. The City receives water service from MAWC.⁴⁹

11. Intervenor City of St. Joseph, Missouri (“St. Joseph”) is a municipality of the State of Missouri located in Buchanan County with its principal place of business address located at City Hall, 1100 Frederick Avenue, St. Joseph, Missouri 64501. St. Joseph is a large consumer of water supplied by MAWC, and it represents the residents and commercial interests of the City of St. Joseph.⁵⁰

12. Intervenor Missouri Industrial Energy Consumers (“MIEC”) is a group of large customers of Missouri-American Water Company. MIEC includes the Boeing Company,

⁴⁶ *Id.* at paragraphs 2.

⁴⁷ *Application to Intervene of the Missouri Energy Group*, p. 1, paragraph 1, filed January 12, 2007.

⁴⁸ *Application to Intervene*, page 2, paragraphs 2-3, filed January 16, 2007.

⁴⁹ *Application to Intervene for City of Warrensburg*, p. 1, paragraph 1, filed January 12, 2007.

⁵⁰ *Application to Intervene*, p. 1, paragraphs 1 and 4, filed January 16, 2007.

DaimlerChrysler, GKN, Hussmann Refrigeration, Monsanto Company and Pfizer.⁵¹

13. Intervenor Metropolitan St. Louis Sewer District ("MSD") is a political subdivision of the State of Missouri and municipal corporation situated in the City of St. Louis, which provides an integrated sewer system for single and multi-family residences and commercial and industrial customers throughout the City of St. Louis and most of St. Louis County. MSD's address is 2350 Market Street, St. Louis, MO 63103.⁵²

14. Intervenor City of Jefferson, Missouri ("Jefferson City") is a municipality of the State of Missouri and a customer of MAWC.⁵³

15. Intervenor City of Parkville, Missouri ("Parkville") is a municipality located in Platte County and the City and its residents and businesses receive water from MAWC through its Parkville District.⁵⁴

16. Intervenor Home Builders Association of Greater St. Louis, and Eastern Missouri, Inc. ("HBA"), from consolidated case ST-2007-0443, is a not-for profit Missouri Corporation with over 1,300 members comprised of builders, developers, and others associated with the development and shelter industry in the St. Louis metropolitan area,

⁵¹ *Application to Intervene of the Missouri Industrial Energy Consumers*, p. 1, paragraph 1 filed January 16, 2007.

⁵² *Metropolitan St. Louis Sewer District's Application to Intervene*, p. 1, paragraph 1, filed January 16, 2007.

⁵³ *Application to Intervene*, p. 1-2, paragraphs 1 and 4, filed January 16, 2007.

⁵⁴ *Application to Intervene of City of Parkville*, p. 1, paragraph 1, filed February 8, 2007. On August 14, 2007, when Parkville entered its appearance on the second day of the evidentiary hearing, its attorney stated that it would also like to enter an appearance for other entities that had joined it. Parkville proceeded to enter an appearance, without objection, for the City of Lake Waukomia, Public Water Supply District No. 6 of Platte County, Park University and the National Golf Club. Transcript p. 99, lines 23-25, p. 100, lines 1-5. Jeremiah Finnegan, Attorney at Law, of the law firm Finnegan, Conrad & Peterson, 3100 Broadway, Suite 1209, Kansas City, Missouri 64111 entered the appearance for these entities. The Commission notes that none of these entities formally sought intervention in this matter, nor were they granted intervention. Mr. Finnegan is a signatory to the Non-Unanimous Stipulation and Agreement, filed in this case on August 9, 2007, in his representative capacity for the City of Parkville. It is unclear if Mr. Finnegan intended to bind the additional entities he entered an appearance for, but none of those entities filed objections to the Agreement. Also, being a non-unanimous agreement, no party is bound by it. Commission Rule 4 CSR 240-2.115(2)(D).

including St. Louis City, and the counties of St. Louis, St. Charles, Jefferson, Franklin, Warren, Lincoln and Washington. HBA's members are directly impacted by the rates, charges, terms and conditions of sewer services provided by MAWC.⁵⁵

17. The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”⁵⁶ Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”⁵⁷

18. The General Counsel of the Missouri Public Service Commission “represent[s] and appear[s] for the commission in all actions and proceedings involving any question under this or any other law, or under or in reference to any act, order, decision or proceeding of the commission . . .”⁵⁸

Conclusions of Law as to Jurisdiction

The record establishes that MAWC provides water and sewer service to a large customer base located throughout various cities and counties in the state of Missouri. The Commission concludes that MAWC is a “water corporation,” a “sewer corporation” and a “public utility” as those terms are defined in Sections 386.020(58), 386.020(48) and

⁵⁵ *Objection and Request for Suspension of Tariff Filings*, p. 1, paragraph 1, filed in Case No. ST-2007-0443 on May 25, 2007; *Motion to Confirm Party Status or, In the Alternative, for Leave to Intervene*, p. 1, paragraph 1, filed June 7, 2007.

⁵⁶ Sections 386.700 and 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(16) and 4 CSR 240-2.040(2).

⁵⁷ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(16) and 4 CSR 240-2.040(2). Public Counsel “shall consider in exercising his discretion the importance and the extent of the public interest involved and whether that interest would be adequately represented without the action of his office. If the public counsel determines that there are conflicting public interests involved in a particular matter, he may choose to represent one such interest based upon the considerations of this section, to represent no interest in that matter, or to represent one interest and certify to the director of the department of economic development that there is a significant public interest which he cannot represent without creating a conflict of interest and which will not be protected by any party to the proceeding.” *Id.*

⁵⁸ Section 386.071, RSMo 2000; Commission Rules 4 CSR 240-2.010(8) and 4 CSR 240-2.040(1).

386.020(42) respectively.⁵⁹ Consequently, MAWC is subject to the jurisdiction, control and supervision of the Commission.⁶⁰ The Commission has jurisdiction over MAWC's services, activities, and rates pursuant to Section 386.250 and Chapter 393.

Conclusions of Law as to Burden of Proof

Section 393.150.2 provides in part, “At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . water corporation . . . and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.” Consequently, MAWC carries the burden of proof to show its requested rate increase is just and reasonable.

Conclusions of Law Regarding the Presumption of Prudence

While a utility has the burden of proof, there is initially a presumption that its expenditures are prudent. The Commission has previously cited the following description of this process as found to apply to the Federal Energy Regulatory Commission:

The Federal Power Act imposes on the Company the “burden of proof to show that the increased rate or charge is just and reasonable.” Edison relies on Supreme Court precedent for the proposition that a utility’s cost are [sic] presumed to be prudently incurred. However, the presumption does not survive “a showing of inefficiency or improvidence.” As the Commission has explained, “utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent . . . However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.”⁶¹

⁵⁹ All statutory references are to RSMo 2000 unless otherwise noted. MAWC is also a “water corporation” as defined in 393.1000(7). See Findings of Fact Numbers 1-4.

⁶⁰ Exhibit MAWC-1, Ahern Direct, p. 16; See also *Dione C. Joyner v. Missouri-American Water Company*, Case No. WC-2006-0345, 2006 WL 3610803 (Mo. P.S.C.).

⁶¹ *In the Matter of Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183, 193 (1985) (quoting *Anaheim, Riverside*,

The Commission has interpreted this process as follows:

“In the context of a rate case, the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were indeed prudent. Prudence is measured by the standard of reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility’s management knew or should have known. In making this analysis, the Commission is mindful that “[t]he company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public.”⁶²

Findings of Fact Regarding MAWC's Operations

19. MAWC is a wholly-owned subsidiary of American Water, the largest water service provider in North America. Headquartered in Voorhees, New Jersey, American Water serves 18 million people in 29 states and in Canada.⁶³

20. Prior to the Commission approved merger in 2001, MAWC consisted of three separate entities: (1) MAWC, which included Brunswick, Joplin, Mexico, Parkville Water and Sewer (Platte County), St. Charles, St. Joseph, and Warrensburg Districts; (2) St. Louis County Water Company; and (3) Jefferson City Water Works Company.⁶⁴

21. MAWC is currently the largest regulated water utility in the state of Missouri, providing water and wastewater services to approximately 1.3 million people in more than

etc. v. Federal Energy Regulatory Commission, 669 F.2d 779, (D.C. Cir. 1981)).

⁶² *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 14 (Mo. banc 1930).” *In the Matter of Missouri-American Water Company’s Tariff Sheets*, Report and Order, Case No. WR-2000-281 (August 31, 2000).

⁶³ Exh. MAWC-6, Grubb Direct, Appendix A, News Releases pp. 70-91; Hearing Exh. Staff-17, Murray Direct, p. 11.

⁶⁴ Exh. MAWC-13, Jenkins Direct, p. 5. See also Case No. WM-2001-309.

100 communities across the state.⁶⁵

22. American Water, MAWC's parent company, initiated a reorganization in late 2003 that was completed at the end of 2004. As a result, the Central Region of America Water was formed, which includes Missouri American, Illinois American, Iowa American, Indiana American, Ohio American and Michigan American. The reorganization reduced direct costs at the operating level by eliminating management positions.⁶⁶

23. MAWC is not a rated entity and consequently has no credit rating.⁶⁷

24. American Water Capital Corporation (AWCC), a wholly-owned subsidiary of American Water serves as the primary funding vehicle for American Water and its subsidiaries, is rated by Standard & Poor's (S&P). Although American Water does not directly provide MAWC debt financing (although it does provide them equity financing), it is also rated by S&P.⁶⁸

25. Currently, Standard & Poor's Corporation assigns a long-term corporate credit rating of A- with a negative CreditWatch for both AWCC and American Water.⁶⁹

26. On April 6, 2004, the Commission addressed MAWC's base rates in Case No.

⁶⁵ Exh. MAWC-1, p. 16, lines 13-18; Exh. MAWC-6, Appendix A, pp. 82-83; Exh. Staff-17, p. 11.

⁶⁶ Exh. MAWC-6, p. 12, lines 12-24. Edward J. Grubb is the Rates and Regulation Manager for the Central Region of American Water and the Assistant Treasurer for MAWC. He holds a Bachelor of Science Degree in Business Administration from Drexel University and a Masters of business Administration from the University Of West Virginia College Of Graduate Studies. He is certified as a Certified Management Accountant and is certified in Financial Management by the Institute of management Accountants.

⁶⁷ Exh. Staff-17, p. 11.

⁶⁸ S & P started providing a direct credit rating for American Water on October 13, 2006. However, it should be noted that AWCC's credit rating has always been based on the consolidated creditworthiness of American Water. AWCC has been rated by S&P since June 19, 2000. Therefore, if American Water had been rated directly in the past along with AWCC, their credit ratings would most likely have been the same since the debt issued by AWCC is rated based on American Water's consolidated creditworthiness. Exh. Staff-17, p. 12.

⁶⁹ This rating currently reflects the stand-alone credit quality of American Water. In the past, American Water was rated one notch higher (A) because of its relationship with its parent company, RWE AG. Exh. Staff-17, p. 12.

WR-2003-0500. The order issued in that case approved a decrease of \$350,000 for MAWC's Joplin District and all other District's total revenues remained unchanged.⁷⁰

27. MAWC has made the following total capital investment expenditures since its last rate case:⁷¹

Location	2003	2004	2005	YTD thru June 2006
Brunswick	172, 485	91,072	178,454	176,454
Cedar Hill	-	-	428, 144	482,890
Jefferson City	797,217	982,040	1,201,483	229,367
Joplin	7,207,214	4,576,821	3,387,106	2,169,669
Mexico	523,599	528,444	620,598	496,281
Platte County	2,164,090	1,462,385	1,669,756	1,059,546
St. Charles	5,894,916	3,387,752	3,428,015	1,618,433
St. Joseph	3,995,133	1,326,938	2,127,930	710,387
St. Louis County	36,503,573	31,240,247	29,631,089	20,856,031
Warrensburg	729,214	513,071	769,366	424,066
Warren County Water	-	(2,975)	935,862	25,583
Warren County Sewer	-	68,153	486,357	447,521
Corporate	23,714	3,129,726	2,385,849	1,257,435
Total	58,011,155	47,303,673	47,250,010	29,953,663

⁷⁰ Exh. MAWC-13, p. 5. See also *In the Matter of Missouri-American Water Company's Tariff to Revise Water and Sewer Rate Schedules*, Case No. WR-2003-0500, Order Approving Stipulations and Agreements, effective April 16, 2004.

⁷¹ Exh. MAWC-4, DeBoy Direct, p. 2 (table).

Findings of Fact Regarding MAWC's Proposed General Rate Increase

28. As filed, MAWC's proposed tariffs sought a general rate increase to produce an additional water revenue \$41,387,823 in gross annual water revenues, (excluding gross receipts and sales taxes), or a 24.8% increase over existing water revenues.⁷²

29. As filed, MAWC's proposed tariffs sought a general rate increase to produce an additional \$73,795 in gross annual sewer revenues (excluding gross receipts and sales taxes), or a 25.7% increase over existing revenues.⁷³

30. The Test Year chosen by the parties and approved for use by the Commission was for the year ending June 30, 2006, trued-up through May 31, 2007.⁷⁴

31. According to Staff's True-Up Accounting Schedules, MAWC's Income Statement for the Test Year ending June 30, 2006, updated though December 31, 2006 was as follows.⁷⁵

MAWC – Updated Test Year Income & Expenses

Description	Test Year as Adjusted
1. Total Operating Revenues	\$167,696,636
2. Total Operation and Maintenance Expense	\$92,512.665
3. Depreciation Expense - Plant	\$21,064,278

⁷² Exh. MAWC-13, p. 3-4, 6 (this accounting schedule was not true-uped through May 31, 2007). See proposed Tariffs, Appendix A to Hearing Exh., MAWC-6.

⁷³ *Id.*

⁷⁴ Recommendation Concerning Test year and Request for True-Up Audit and Hearing, filed by MAWC on December 22, 2006; Exh. MAWC-13, p. 3-4.

⁷⁵ Exh. Staff-29, True-Up Accounting Schedules – Accounting Schedule 9; Exh. Staff-1 Grissum Direct, pp. 6-7. While there is no explanation in Ms. Grissum's testimony as to why these values are not "trued-up" through May 31, 2007, in the True-Up Direct of David Murray, he testifies that he was unable to true up his capital structure and rate of return proposals in a more complete and timely manner due to the timing of production of MAWC's financial statements. Exh. Staff-20, pp. 1-2. The timing of production of these statements is assumed to have affected Staff's remaining accounting schedule. See also Exh. MAWC-16, Petry Direct, Schedule CAS-1.

Description	Test Year as Adjusted
4. Amortization Expense	\$167,316
5. Non-Income Taxes	\$13,609,006
6. Total Other Operating Expense	\$34,840,600
7. Total Operating Expenses	\$127,353,265
8. Net Income Before Taxes	\$40,343,371
9. Current Income Taxes	\$6,277,946
10. Deferred Income Tax Expense	\$2,045,617
11. ITC Amortization	(\$130,740)
12. Total Income Taxes	\$8,192,823
13. Net Operating Income	\$32,150,548

32. According to Staff's True-Up Accounting Schedules, MAWC's Rate Base for the Test Year ending June 30, 2006, updated though December 31, 2006 was as follows:⁷⁶

MAWC – Test Year Rate Base

Description	Total
1. Plant in Service	\$1,183,966,765
2. LESS: Accumulated Depreciation Reserve	\$305,628,234
3. LESS: Accumulated Amortization Reserve	\$0
4. SUBTOTAL: Net Plant in Service	\$878,338,531
5. ADD: Cash Working Capital	\$3,618,603
6. ADD: Materials & Supplies	\$3,373,350
7. ADD: Prepayments	\$687,420
8. ADD: Deferred OPEB Asset	\$936,348
9. SUBTOTAL: Total Additions to Net Plant in Service	\$8,615,721

⁷⁶ Exh. Staff-29, True-Up Accounting Schedules– Accounting Schedule 2. Exh. Staff-8, Began Direct, pp. 3-4. See also Exh. MAWC-16, Schedule CAS-1. See also Footnote 75.

Description	Total
10. DEDUCT: Interest Offset	2,868,561
11. DEDUCT: Federal Income Tax Offset	(481,769)
12. DEDUCT: State Income Tax Offset	29,544
13. DEDUCT: Contributions in Aid of Construction	\$140,200,267
14. DEDUCT: Customer Advances	\$60,478,163
15. DEDUCT: Customer Deposits	0
14. DEDUCT: Pre-71 ITC	\$31,282
15. DEDUCT: Deferred Income Taxes	\$68,656,976
16. DEDUCT: Accrued Pension Liability	\$10,230,361
17. SUBTOTAL: Total Deductions from Net Plant in Service	\$282,013,385
18. TOTAL: Original Cost Rate Base	\$604,940,866

Conclusions of Law as to Rate Making Standards and Practices

The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services,⁷⁷ subject to judicial review of the question of reasonableness.⁷⁸ A "just and reasonable" rate is one that is fair to both the utility and its customers;⁷⁹ it is no more than is sufficient to "keep public utility plants in proper repair for effective public service, [and] . . . to insure to the investors a reasonable return upon funds invested."⁸⁰ In 1925, the Missouri Supreme Court stated:⁸¹

⁷⁷ Section 393.130, in pertinent part, requires a utility's charges to be "just and reasonable" and not in excess of charges allowed by law or by order of the commission. Section 393.140 authorizes the Commission to determine "just and reasonable" rates.

⁷⁸ *St. ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri*, 291 Mo. 432, 236 S.W. 852 (1922); *City of Fulton v. Pub. Serv. Comm'n*, 275 Mo. 67, 204 S.W. 386 (1918), *error dis'd*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; *City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 509, 207 S.W. 799 (1919); *Kansas City v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 539, 210 S.W. 381 (1919), *error dis'd*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348 (1951).

⁷⁹ *St. ex rel. Valley Sewage Co. v. Pub. Serv. Comm'n*, 515 S.W.2d 845 (Mo. App. 1974).

⁸⁰ *St. ex rel. Washington University et al. v. Pub. Serv. Comm'n*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (Mo. banc 1925).

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. * * * These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.

The Commission's guiding purpose in setting rates is to protect the consumer against the natural monopoly of the public utility, generally the sole provider of a public necessity.⁸² "[T]he dominant thought and purpose of the policy is the protection of the public . . . [and] the protection given the utility is merely incidental."⁸³ However, the Commission must also afford the utility an opportunity to recover a reasonable return on the assets it has devoted to the public service.⁸⁴ "There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment."⁸⁵

The Commission has exclusive jurisdiction to establish public utility rates,⁸⁶ and the rates it sets have the force and effect of law.⁸⁷ A public utility has no right to fix its own rates and cannot charge or collect rates that have not been approved by the Commission;⁸⁸ neither can a public utility change its rates without first seeking authority from the Commis-

⁸¹ *Id.*

⁸² *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 48 (1937).

⁸³ *St. ex rel. Crown Coach Co. v. Pub. Serv. Comm'n*, 179 S.W.2d 123, 126 (1944).

⁸⁴ *St. ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979).

⁸⁵ *St. ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 886 (Mo. App. 1981).

⁸⁶ *May Dep't Stores*, *supra*, 107 S.W.2d at 57.

⁸⁷ *Utility Consumers Council*, *supra*, 585 S.W.2d at 49.

⁸⁸ *Id.*

sion.⁸⁹ A public utility may submit rate schedules or “tariffs,” and thereby suggest to the Commission rates and classifications which it believes are just and reasonable, but the final decision is the Commission's.⁹⁰ Thus, “[r]atemaking is a balancing process.”⁹¹

Ratemaking involves two successive processes:⁹² first, the determination of the “revenue requirement,” that is, the amount of revenue the utility must receive to pay the costs of producing the utility service while yielding a reasonable rate of return to the investors.⁹³ The second process is rate design, that is, the construction of tariffs that will collect the necessary revenue requirement from the ratepayers. Revenue requirement is usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.⁹⁴ The calculation of revenue requirement from these four factors is expressed in the following formula:

$$RR = C + (V - D) R$$

where: RR = Revenue Requirement;
 C = Prudent Operating Costs, including Depreciation
 Expense and Taxes;
 V = Gross Value of Utility Plant in Service;

⁸⁹ *Deaconess Manor Ass'n v. Pub. Serv. Comm'n*, 994 S.W.2d 602, 610 (Mo. App. 1999).

⁹⁰ *May Dep't Stores, supra*, 107 S.W.2d at 50.

⁹¹ *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, 622 (Mo. App. 1988).

⁹² It is worth noting here that Missouri recognizes two distinct ratemaking methods: the “file-and-suspend” method and the complaint method. The former is initiated when a utility files a tariff implementing a general rate increase and the second by the filing of a complaint alleging that the subject utility's rates are not just and reasonable. See *Utility Consumers Council, supra*, 585 S.W.2d at 48-49; *St. ex rel. Jackson County v. Pub. Serv. Comm'n*, 532 S.W.2d 20, 28-29 (Mo. banc 1975), *cert. denied*, 429 U.S. 822, 50 L.Ed.2d 84, 97 S.Ct. 73 (1976).

⁹³ *St. ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. 1993).

⁹⁴ *Id.*, citing Colton, “Excess Capacity: Who Gets the Charge From the Power Plant?,” 34 Hastings L.J. 1133, 1134 & 1149-50 (1983).

D = Accumulated Depreciation; and
R = Overall Rate of Return or Weighted Cost of Capital.

The return on the rate base is calculated by applying a rate of return, that is, the weighted cost of capital, to the original cost of the assets dedicated to public service less accumulated depreciation.⁹⁵ The Public Service Commission Act vests the Commission with the necessary authority to perform these functions. Section 393.140(4) authorizes the Commission to prescribe uniform methods of accounting for utilities and Section 393.140(8) authorizes the Commission to examine a utility's books and records and, after hearing, to determine the accounting treatment of any particular transaction. In this way, the Commission can determine the utility's prudent operating costs. Section 393.230 authorizes the Commission to value the property of water and sewer corporations operating in Missouri, that is, to determine the rate base. Section 393.240 authorizes the Commission to set depreciation rates and to adjust a utility's depreciation reserve from time-to-time as may be necessary.

The equation set out above shows that the Revenue Requirement is the sum of two components: first, the utility's prudent operating expenses, and second, an amount calculated by multiplying the value of the utility's depreciated assets by a Rate of Return. For any utility, its fair rate of return is simply its composite cost of capital.⁹⁶ The composite cost of capital is the sum of the weighted cost of each component of the utility's capital structure. The weighted cost of each capital component is calculated by multiplying its cost

⁹⁵ See *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, *supra*.

⁹⁶ Exh. Staff-17, p. 14, lines 19-26. "From a financial viewpoint, a company employs different forms of capital to support or fund the assets of the Company. Each different form of capital has a cost and these costs are weighted proportionately to fund each dollar invested in the assets. Assuming that the various forms of capital are within a reasonable balance and are valued correctly, the resulting total WACC, when applied to rate base, will provide the funds necessary to service the various forms of capital. Thus, the total WACC corresponds to a fair of return for the utility company. *Id.*

by a percentage expressing its proportion in the capital structure. Where possible, the cost used is the "embedded" or historical cost; however, in the case of Common Equity, the cost used is its estimated cost.

Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.⁹⁷ The United States Supreme Court, in two frequently-cited decisions, has established the constitutional parameters that must guide the Commission in its task.⁹⁸ In the earlier of these cases, *Bluefield Water Works*, the Court stated that:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.⁹⁹

In the same case, the Court provided the following guidance as to the return due to equity owners:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain

⁹⁷ Phillips, *The Regulation of Public Utilities*, *supra*, 394; Goodman, 1 *The Process of Ratemaking*, *supra*, 606.

⁹⁸ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943); *Bluefield Water Works & Improv. Co. v. Pub. Serv. Comm'n of West Virginia*, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923).

⁹⁹ *Bluefield*, *supra*, 262 U.S. at 690, 43 S.Ct. at 678, 67 L.Ed. at 1181.

and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.¹⁰⁰

The Court restated these principles in *Hope Natural Gas Company*, the later of the two cases:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.¹⁰¹

Two principal methods have emerged for determining the cost of Common Equity: these are the "market-determined" approach and the "comparable earnings" approach.¹⁰² The market-determined approach relies upon stock market transactions and estimates of investor expectations.¹⁰³ Examples of market-determined methods are the discounted cash flow ("DCF")¹⁰⁴ and the capital asset pricing model ("CAPM").¹⁰⁵ The comparative earnings approach relies upon the concept of "opportunity cost," that is, the return the

¹⁰⁰ *Id.*, 262 U.S. at 692-93, 43 S.Ct. at 679, 67 L.Ed. at 1182-1183.

¹⁰¹ *Hope Nat. Gas Co.*, *supra*, 320 U.S. at 603, 64 S.Ct. 288, 88 L.Ed. 345 (citations omitted).

¹⁰² Phillips, *supra*, 394.

¹⁰³ *Id.*

¹⁰⁴ "The DCF model was introduced by Myron J. Gordon for cost-of-common-equity determinations in 1962. This model, as used in utility ratemaking, is referred to as the dividend growth, Gordon growth and/or dividend discount model, in most college finance textbooks. The use of this model for stock valuation purposes had been introduced before this time." Hearing Exh. Staff-17, p. 7, lines 7-11.

¹⁰⁵ Phillips, *supra*, 394. "Much of the basis for this model was provided in 1964 by William F. Sharpe who received the Nobel Prize in 1990 for much of his work in producing this model." Hearing Exh., p. 7, lines 13-14.

investment would have earned in the next best alternative use.¹⁰⁶ The comparative earnings approach requires a comparative study of earnings on common equity in enterprises of similar risk, regardless of whether the enterprises are regulated or unregulated.¹⁰⁷

An additional method that was used by MAWC witness, Pauline M. Ahern, which does not fall within the boundaries of either of the principal approaches referred to above, is the Risk Premium Method. This method is "relatively straightforward" and requires that the analyst "(1) determine the historic spread between the return on debt and the return on common equity, and (2) add this risk premium to the current debt yield to derive an approximation of current equity return requirements."¹⁰⁸ In the final analysis, it is not the method employed, but the result reached, that is important.¹⁰⁹ The Constitution "does not bind ratemaking bodies to the service of any single formula or combination of formulas."¹¹⁰

The annual form of the **DCF method** of calculating a fair return on common equity can be expressed algebraically by this equation:

$$k = D_1/P_S + g$$

where: k is the cost of equity;
 g is the constant annual growth rate of earnings,
dividends and book value per share;

¹⁰⁶ *Id.*, at 397.

¹⁰⁷ *Id.*, at 397-98.

¹⁰⁸ *Id.*, at 399.

¹⁰⁹ Within a wide range of discretion the Commission may select the methodology. *Missouri Gas Energy v. Public Service Comm'n*, 978 S.W.2d 434 (Mo. App. 1998), *rehearing and/or transfer denied*; *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880, 882 (Mo. App. 1985); *State ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 888 (Mo. App. 1981). It may select a combination of methodologies. *State ex rel. City of Lake Lotawana v. Public Service Comm'n of State*, 732 S.W.2d 191, 194 (Mo. App. 1987).

¹¹⁰ *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 586, 62 S.Ct. 736, 743, 86 L.Ed. 1037, 1049-50 (1942).

D_1 is the expected next period annual dividend; and
 P_S is the current price of the stock.¹¹¹

Assuming that dividends grow at a constant annual rate, g , this equation can be solved for k , the cost of equity. The term D_1/P_S is called the dividend yield component of the annual DCF model, and the term g is called the growth component of the annual DCF model.¹¹² The annual DCF model is only a correct expression for the present discounted value of future dividends if the dividends are paid annually.¹¹³

The **CAPM** describes the relationship between a security's investment risk and its market rate of return.¹¹⁴ This relationship identifies the rate of return that investors expect a security to earn so that its market return is comparable with the market returns earned by other securities that have similar risk.¹¹⁵ The general form of the CAPM is as follows:

$$k = R_f + \beta (R_m - R_f)$$

where:

k	=	the expected return on equity for a specific security;
R_f	=	the risk-free rate;
β	=	beta; and
$R_m - R_f$	=	the market risk premium. ¹¹⁶

¹¹¹ Exh. MAWC-1, pp. 25-38; Exh. Staff-17, Schedules D-1 and D-2; Exh MIEC-1, Gorman Direct, Appendix B pp. 9-10.

¹¹² Exh, Staff-17, Schedules D-1 and D-2.

¹¹³ *In the Matter of the Tariff filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area*, Case No. ER-2006-0315, 2006 WL 3848081 (Mo.P.S.C.), *Slip Copy*, p. 8 "The quarterly DCF model differs from the annual DCF model in that it expresses a company's price as the present discounted value of a quarterly stream of dividend payments. The quarterly DCF equation shows that the cost of equity is: the sum of the future expected dividend yield and the growth rate, where the dividend in the dividend yield is the equivalent future value of the four quarterly dividends at the end of the year, and the growth rate is the expected growth in dividends or earnings per share." *Id.*

¹¹⁴ Exh. Staff-17, Schedule E-1.

¹¹⁵ *Id.*

¹¹⁶ Exh. Staff-17, Schedule E-1; Exh. MIEC-1, Appendix B p. 22.

The **Comparative Earnings Approach (“CEM”)** is derived from the corresponding risk" standard and is consistent with the *Hope* doctrine that the return to the equity investor should be commensurate with returns on investments in other firms having corresponding risks.¹¹⁷ CEM is based upon the concept of opportunity cost which maintains that the true cost of an investment is equal to the cost of the best available alternative use of the funds to be invested.¹¹⁸ The CEM is designed to measure the returns expected to be earned on the book common equity, in this case net worth, of similar risk enterprises.¹¹⁹ The difficulty in application of the CEM is to select a proxy group of companies which are similar in risk, but are not price regulated utilities.¹²⁰

The **“Risk Premium Method”** is based on the principle that investors expect to earn a return on an equity investment in MAWC that reflects a “premium” over and above the return they expect to earn on an investment in a portfolio of bonds.¹²¹ This equity risk premium compensates equity investors for the additional risk they bear in making equity

¹¹⁷ Exh. MAWC-1, p. 57, lines 10-23, p. 58, lines 1-23.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Report and Order issued December 21, 2006 *In the Matter of the Tariff Filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area*, Case No. ER-2006-0315, 2006 WL 3848081 (Mo.P.S.C.), *Slip Copy*, p. 8. The formula for the ex ante risk premium calculation has been expressed as follows:

$$RP_{\text{PROXY}} = DCF_{\text{PROXY}} - I_A$$

Where: RP_{PROXY} = the required risk premium on an equity investment in the proxy group of companies,
 DCF_{PROXY} = average DCF cost of equity on a portfolio of proxy companies, and
 I_A = the yield to maturity on an investment in A-rated utility bonds. *Id.*

In her Direct Testimony, Pauline Ahern characterized this method in the following way: “Risk Premium theory indicates that the cost of common equity capital is greater than the prospective company-specific cost rate for long-term debt capital. In other words, the cost of common equity equals the expected cost rate for long-term debt capital plus a risk premium to compensate common shareholders for the added risk of being unsecured and last-in-line for any claim on the corporation’s assets and earnings.” Exh. MAWC-1, p. 38, lines 15-20.

investments instead of bond investments.

Findings of Fact and Conclusions of Law Regarding Specific Issues

Conclusions of Law Regarding the Proper Treatment of the Global Non-Uniform Stipulation and Agreement

Commission Rule 4 CSR 240-2.115(1)(B) states that the Commission “may resolve all or any part of a contested case on the basis of a stipulation and agreement.” A stipulation and agreement that is entered into by fewer than all parties to a case is deemed to be a nonuniform stipulation and agreement.¹²² Each party is given seven days from the filing of a nonuniform stipulation and agreement to file an objection to the nonuniform stipulation and agreement, and failure to file a timely objection constitutes a full waiver of that party’s right to a hearing.¹²³

“A nonuniform stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it.”¹²⁴ In the instance of a non-uniform stipulation and agreement that has been timely objected to, all issues shall remain for determination after hearing.”¹²⁵ The Commission’s Rules further state that a “party may indicate that it does not oppose all or part of a nonuniform stipulation and agreement.”¹²⁶

In this case, Joplin was the only party to object to the Global Agreement filed by the majority of the parties. Joplin clarified in its Revised List of Disputed Issues, its Amended

¹²² Commission Rule 4 CSR-240-2.115(2)(A).

¹²³ Commission Rule 4 CSR 240-2.115(2)(B).

¹²⁴ Commission Rule 4 CSR 240-2.115(2)(D).

¹²⁵ *Id.*

¹²⁶ Commission Rule 4 CSR 240-2.115(2)(E).

List of Issues and in its Post-Hearing Brief that it objected to the Global Agreement only in part.¹²⁷

Because of Joplin's objection, and in accordance with its rules, the Commission will treat the Global Agreement as a "Joint Recommendation" of the signatories as to all of the issues resolved by the parties in the Global Agreement and those contested by Joplin. Because the Commission may, at its discretion, resolve all or any part of a contested case on the basis of a stipulation and agreement, it may also approve the parties' resolution of any or all of the issues in this case based upon the Global Agreement filed in this matter. It is irrelevant how the Commission characterizes the Global Agreement pursuant to its rules, because the rules allow the Commission to base its decision totally, or in part, upon the Global Agreement. Thus, should the Commission find that the items and terms of the Global Agreement are just and reasonable, the Commission may approve the Joint Recommendation of the parties, as embodied in the Global Agreement, in whole or in part.

Revenue Requirement and Rate Design

As an initial matter the Commission notes that all of the parties have either agreed to, or have not objected to, the annual revenue requirement identified in the Global Non-Uniform Stipulation and Agreement filed on August 9. Consequently, no party contested, or requested a hearing on the determination of, any of the factors involved with the calculation of this revenue requirement, i.e. MAWC's prudent operating costs, including depreciation expense and taxes; MAWC's gross value of utility plant in service; MAWC's accumulated depreciation; and MAWC's overall rate of return or weighted cost of capital.

¹²⁷ See Joplin's Post-Hearing Brief, filed September 7, 2007, p. 3, Fn 1 ("All other issues addressed in the Non-Uniform Stipulation and Agreement, except the two remaining issues, are unobjected to by Joplin and thus unopposed.").

The issues that Joplin disputes involve the allocation factors that are interrelated with how the total revenue requirement is distributed with District Specific rates.

Despite the fact that no party disputes the issues associated with the determination of MAWC's over-all revenue requirement, the Commission has a statutory duty to determine what constitutes just and reasonable rates for MAWC's customers and investors. Consequently, the Commission will address MAWC's revenue requirement and class allocations first. The Commission will next address Joplin's contested issues relating to District Specific allocators to complete its decision on rate design as it relates to the districts that MAWC serves. Finally, the Commission shall address Local 335's issues, and any other items contained in the Global Agreement that have not been contested by any party.

Findings of Fact Regarding Revenue Requirement

33. As noted in Findings of Fact Numbers 28 and 29 MAWC's tariffs sought a general rate increase to produce an additional \$41,387,823 in gross annual water revenues, and an additional \$73,795 in gross annual sewer revenues.

34. Based upon the analysis performed by MAWC's subject matter experts, MAWC requested an over-all rate of return on its rate base investment of 8.52%.¹²⁸

35. MAWC's proposed capital structure is as follows:¹²⁹

Class of Capital	Amount	Percent to Total	Cost Rate	Weighted Cost of Capital
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¹²⁸ Exh. MAWC-13, p. 4-8.

¹²⁹ Exh. MAWC-1, p. 3 and Schedule PMA-1; Exh. MAWC-13, pp. 8-11; and Schedule JMJ-1. Staff's witness David Murray argued that this was inappropriate because: "MAWC no longer issues all of its own debt. This change occurred when American Water created its financing subsidiary American Water Capital Corporation (AWCC). Although there are internal loan documents between MAWC and AWCC, AWCC is the entity that is actually issuing the debt on a consolidated basis for all of the subsidiaries of American Water. Additionally, AWCC is acting as the corporate treasury for American Water, in that it also aggregates all of the cash receipts and disbursement functions for its subsidiaries." Exhibit Staff-18, Murray Rebuttal, pp. 5-6.

Long-Term Debt	\$331,235,000	52.67%	6.04%	3.18%
Preferred Stock	\$2,644,000	0.42%	9.16%	0.04%
Common Equity	\$295,030,381	46.91%	11.30%	5.30%
Total Capitalization	\$628,909,381	100.00%		8.52%

36. MAWC calculated its requested rate on return by adding the component costs of its capital structure, weighted by their respective proportions to total capitalization.¹³⁰

37. MAWC recommended a common equity cost range of 11.025% to 11.575% based upon the use of four cost of common equity models; the Discounted Cash Flow approach (“DCF”), the Risk Premium Model (“RPM”), the Capital Assets Pricing Model (“CAPM”) and the Comparable Earnings Model (“CEM”).¹³¹

38. MAWC applied the results of the four cost of common equity models to proxy groups of six AUS Utility Reports water companies and four Value Line (Standard Edition.) water companies to conclude that a range of common equity cost rate should be 10.95% to 11.50% prior to quantifying a business risk adjustment.¹³²

39. MAWC made a business risk adjustment of 0.075% (7.5 basis points) to the range of indicated common equity cost rate of 10.95% to 11.50% to result in a recommended range of business risk adjust common equity cost rate of 11.025% to 11.575% with a midpoint of 11.30%.¹³³

¹³⁰ Exh. MAWC-13, p. 8, lines 1-10.

¹³¹ Exh. MAWC-1. Pauline M Ahern provided this testimony and she is a Principal of AUS Consultants. She holds a BA Degree in Economics and a Masters Degree in Business Administration. She has prepared and offered subject matter expert testimony before twenty-two state regulatory commissions. *Id.* at p. 1.

¹³² Exh. MAWC-1.

¹³³ *Id.*

40. MIEC's subject matter expert, Michael Gorman, offered a recommendation as to overall rate of return and return on common equity based upon the application of the DCF Model, RPM and CAPM.¹³⁴

41. MIEC did not recommend any adjustments to MAWC's proposed capital structure.¹³⁵

42. MIEC's summary of their analyses is presented in the following table:¹³⁶

Return on Equity Summary Results	
Description	Result
Constant Growth DCF	9.9%
Two-Stage DCF	8.5%
DCF Average	9.2%
Risk Premium	9.9%
CAPM	10.3%

43. Based on the above results, MIEC's recommended an estimated return of equity range for MAWC of 9.2% to 10.1%, with an average of 9.7%.¹³⁷

44. Based upon the return on equity of 9.7%, MIEC proposed a capital structure and rate of return as follows:¹³⁸

Class of Capital	Amount	Percent to Total	Cost Rate	Weighted Cost of Capital
Long-Term Debt	\$331,235,000	52.67%	6.04%	3.18%

¹³⁴ Exh. MIEC-1, p. 2, lines 9-23. Michael Gorman is an energy advisor and consultant and managing principal in the firm of Brubaker & Associates, Inc. He holds a BS Degree in Electrical Engineering and a Masters in Business Administration. He has provided subject matter expert testimony before regulatory commissions in 22 states and in Canada. *Id.* at p. 1 and Appendix A.

¹³⁵ Exh. MIEC-1, Appendix B, p. 5.

¹³⁶ *Id.*, Appendix B, p. 25.

¹³⁷ *Id.*

¹³⁸ Exh. MIEC-1, Appendix B-1.

Preferred Stock	\$2,644,000	0.42%	9.16%	0.04%
Common Equity	\$295,030,381	46.91%	9.70%	4.55%
Total Capitalization	\$628,909,381	100.00%		7.77%

45. Ultimately, MIEC's expert recommended an average overall rate of return of 7.77% and a return on common equity of 9.7% for MAWC.¹³⁹

46. MIEC asserts their recommendation demonstrates a return on equity and overall rate of return for MAWC that provides adequate earnings and cash flow coverage to support an "A" bond rating from Standard & Poor's (S&P), which reflects American Water Capital Corp.'s current bond rating.¹⁴⁰

47. Staff's breakdown of capital structure was based upon the capital structure for American Water as of June 30, 2006 and is presented in the following table:¹⁴¹

Capital Component	Amount in Dollars	Percentage of Capital
Common Equity Stock	\$2,613,695,000	28.18%
Preferred Stock	\$1,779,324,374	19.18%
Long-Term Debt	\$4,300,271,634	46.36%
Short-Term Debt	\$583,010,000	6.28%
Total Capitalization	\$9,276,302,008	100.00%

¹³⁹ Exh. Staff-18, p. 5; Exh. MIEC-1, Appendix B, p. 1-29.

¹⁴⁰ Exh. MIEC-1, p. 2.

¹⁴¹ Exh. Staff-17, pp. 4-5 and Schedule 8. David Murray serves the Commission as a Utility Regulatory Auditor IV. He holds a BS Degree in Business Administration with an emphasis on Finance and Banking and a Masters in Business Administration. He has provided testimony before the Commission in numerous cases.

48. Staff based its proposed capital structure on MAWC's parent company because MAWC does not have a stand-alone credit rating, has centralized most of its financing functions through its affiliate AWCC, can receive equity infusions thorough debt raised at American Water and the debt provided by AWCC is supported by American Water's creditworthiness.¹⁴²

49. Staff proposed weighted cost of capital through the date of May 31, 2007 for MAWC as follows:¹⁴³

Capital Component	Percentage of Capital	Embedded Cost	Weighted Cost of Capital Using Common Equity Return of:		
			8.60%	9.10%	9.60%
Common Equity Stock	45.80%	-----	3.94%	4.17%	4.40%
Preferred Stock	18.15%	5.90%	1.07%	1.07%	1.07%
Long-Term Debt	36.05%	5.72%	2.06%	2.06%	2.06%
Short-Term Debt	0.00%	5.39%	0.00%	0.00%	0.00%
	100.00%		7.07%	7.30%	7.53%

50. Staff's proposed Rate of Return for MAWC, once trued-up through May 31, 2007 ranged as follows 7.07 (Equity Return of 8.60), 7.30% (Equity Return 9.10% and 7.53% (Equity Return of 9.60%).¹⁴⁴

51. Staff based its recommendation on the common equity cost upon the use of the DCF Model and CAPM.¹⁴⁵

¹⁴² Exh. Staff-18, p. 2.

¹⁴³ Exh. Staff-17, Schedule 20. Staff's initial proposed weighted cost of capital, i.e. rate of return, calculated through June 30, 2006, ranged from 6.27% (8.60% Return on equity) to 6.55% (9.60% Return on Equity). Exh. Staff-17, p. 3 and Schedule 20.

¹⁴⁴ Exh. Staff-20, Murray True-Up Direct, pp. 1-5, Schedules 1-4; Exh. Staff-29, True-Up Accounting Schedules, Accounting Schedule 1.

52. The parties' subject matter experts collectively established a range for MAWC's rate of return of 7.07% to 8.52%.

53. The parties' subject matter experts collectively established a range for MAWC's return on equity of 8.60% to 11.30%.

54. Staff's calculations resulted in a total gross annual revenue requirement for MAWC ranging from \$184,931,715 to \$189,448,297.¹⁴⁶

55. Staff's calculations resulted in a proposal to establish an additional increase in MAWC's base rates ranging between \$17,235,079 and \$21,751,661.¹⁴⁷

56. Utilizing Staff's Adjusted Revenue at Current Rates, trued-up through May 31, 2007, and adding MAWC's requested revenue increase for both water and sewer service (\$41,387,823 and \$73,785, respectively) establishes that MAWC sought to establish a total gross annual revenue requirement of approximately \$209,159,254.¹⁴⁸

57. The signatory parties to the Global Agreement sought to establish a gross total annual revenue requirement of \$195,617,595, requiring an increase in MAWC's base rates by approximately \$29,000,000.¹⁴⁹

58. The signatory parties to the Global Agreement further limited the net increase in revenue to \$28,700,000 after imputation of \$300,000 of revenue to St. Joseph to reflect a rate block adjustment.¹⁵⁰

¹⁴⁵ Exh. Staff-17, pp. 3-34 and accompanying Schedules. See also Footnote 141, *supra*.

¹⁴⁶ Exh. Staff-29, True-Up Accounting Schedules, Accounting Schedule 1.

¹⁴⁷ *Id.*

¹⁴⁸ Exh. Staff-29, True-Up Accounting Schedules, Accounting Schedule 1; Finding of Fact Number 33.

¹⁴⁹ The Non-Unanimous Stipulation and Agreement noted that the net increase would be \$28,700,000, after imputation of \$300,000 of revenue to the St. Joseph District. The total revenue requirement of \$195,617,595 includes the reduction of \$300,000 of the St. Joseph district's imputation of revenues.

¹⁵⁰ See *Non-Unanimous Stipulation and Agreement*, filed August 9, 2007, p. 2, paragraph 3.

59. The revenue amounts embodied in the Global Agreement are exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar taxes.¹⁵¹

60. The signatory parties to the Global Agreement further agreed that the current Infrastructure System Replacement Surcharge (“ISRS”) in the St. Louis District would be reset to zero and the property tax surcharge in the St. Joseph District would be terminated for service rendered on and after the effective date of rates in this case.¹⁵²

61. The signatory parties to the Global Agreement did not specifically agree to a rate base, rate of return or return on equity, but rather recommended approval of a \$28,700,000 increase in base rates based upon negotiation, compromise and assessment of the risks of litigation.¹⁵³

62. After adjusting for a chemical expense error that was discovered during the course of the hearing, the Global Agreement proposes a total increase in revenues of \$28,463,584 (*i.e.*, \$28,700,000 less \$236,416) for a total annual revenue requirement of \$195,381,179 (\$195,617,595 less \$236,416).¹⁵⁴

63. In prior cases, the Commission has recognized a range of reasonableness for the return on equity as being 100 basis points, plus or minus, the national average.¹⁵⁵

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See *Non-Unanimous Stipulation and Agreement*, filed August 9, 2007 and *Staff's Response to the Commission's Order Directing Filing of September 10, 2007*, filed on September 17, 2007.

¹⁵⁴ Transcript p. 151; Footnote Number 12, *supra*, and associated text.

¹⁵⁵ *In re Union Elec. Co.*, 257 P.U.R.4th 259, 2007 WL 1597782, Mo.P.S.C., May 22, 2007, Case No. ER-2007-0002; *In re Aquila, Inc.*, 257 P.U.R.4th 424, 2007 WL 1663103, Mo.P.S.C., May 17, 2007, Case No. ER-2007-0004; *In re Aquila, Inc.*, 2007 WL 2284480, Mo.P.S.C., May 17, 2007, Case No. ER-2007-0004; *In re Kansas City Power & Light Co.*, 2007 WL 750149, Mo.P.S.C., Jan 18, 2007, Case No. ER-2006-0314; *In re Empire Dist. Elec. Co.*, 2006 WL 3848081, Mo.P.S.C., Dec 21, 2006, Case No. ER-2006-0315; *In re Kansas City Power & Light Co.*, 2006 WL 4041675, Mo.P.S.C., Dec 21, 2006, Case No. ER-2006-0314.

64. In Surrebuttal Testimony of Staff's witness David Murray, Mr. Murray references a national expert, Dr. Felicia C. Marston, Ph.D. who estimates the current cost of common equity for utilities nationally to be anywhere from 9.15% to 10.10 percent.¹⁵⁶

65. Additionally, Mr. Murray provides testimony regarding the average authorized ROE for American Water's subsidiaries from 2004 through 2006. That average ROE was 10.00%, whether the rate case was settled or fully litigated.¹⁵⁷

66. Utilizing these averages, and the Commission's prior analyses to determine a zone or reasonableness, the Commission determines that a reasonable ROE for MAWC should fall between the range of 8.15% and 11.10% with an average midpoint of 9.64%.

67. No party has objected to the annual revenue requirement as set forth in the Global Agreement.¹⁵⁸

68. No party objected to any component of any calculations, negotiations or compromise resulting in the annual revenue requirement as set forth in the Agreement.

69. No party requested a hearing on any portion of the determination of the annual revenue requirement as set forth in the Agreement.

70. All parties waived cross-examination of any witness with regard to the determination of the annual revenue requirement as set forth in the Agreement.

71. Joplin, the only party objecting to the Global Agreement, has expressly stated that the only contested issues in this matter involve certain aspects of rate design.

¹⁵⁶ Exh. Staff-19, Murray Surrebuttal, p. 20. Felicia C. Marston, Ph.D. is an Associate Professor of Commerce at the McIntire School of Commerce at the University of Virginia.

¹⁵⁷ Exh. Staff-19, p. 25, lines 1-5; Schedules 1- 3.

¹⁵⁸ See *Non-Unanimous Stipulation and Agreement*, filed August 9, 2007; Footnotes 8, 9, 10, 19, 20, 22, and 23, *supra*, and accompanying text. See also the Commission's discussion on the issues pages 14-17 of this Report and Order.

Specifically, those issues concern the allocation factors used for certain expenses resulting in the District Specific revenue requirement for Joplin.¹⁵⁹

Conclusions of Law Regarding Revenue Requirement

MAWC has compromised on its requested revenue requirement by entering into the Global Agreement and recommending to the Commission that its authorized revenue requirement in this case be increased by \$28,463,584. This recommendation is joined by Staff, Public Counsel, AGP, MEG, Warrensburg, Water Districts, MIEC, MSD, Parkville, and the HBA. No party has contested this revenue requirement or demonstrated any inefficiency or improvidence on the part of MAWC.¹⁶⁰ Moreover, subject matter experts Edward J. Grubb, Donald J. Petry and Stephen Rackers attested to the reasonableness of the Global Agreement and all of its elements, including the revenue requirement.¹⁶¹

The Commission concludes that the total revenue requirement of \$195,381,179, increasing MAWC's base rates by \$28,463,584, is a just and reasonable revenue requirement for MAWC that is fair to both the utility and its customers. While the parties to the Global Agreement/Joint Recommendation have not articulated, or specifically agreed upon a rate base, rate of return or return on equity, it is clear that the annual revenue requirement agreed to by, or uncontested by, all of the parties could only be derived by use of a rate of return on a rate base that would fall squarely within the zone of reasonableness as determined by the Commission.

¹⁵⁹ *Id.*

¹⁶⁰ As noted earlier in this order, any parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were indeed prudent.

¹⁶¹ Transcript pp. 178-180 (Testimony of Edward J. Grubb); pp. 230-231 (Testimony of Donald J. Petry); pp. 319-320 (Testimony of Stephen Rackers).

The Commission concludes that this revenue requirement is no more than is sufficient to keep MAWC's utility plants in proper repair for effective public service, and insure to MAWC's investors a reasonable return upon funds invested. The Commission shall approve the Joint Recommendation as to MAWC's annual revenue requirement, in all respects, as encompassed in the Global Agreement.

Rate Design - Class Cost of Service Allocations

Findings of Fact Regarding Class Cost of Service Allocations

72. Rate design for MAWC is composed of two separate components, District Specific Pricing and Class Cost of Service.

73. District Specific Pricing ("DSP") sets different rates for each of MAWC's service areas, based upon the discrete cost of service in each district, as opposed to Single Tariff Pricing ("STP"), a rate design theory under which all customers of a system with multiple service areas, whether interconnected or not, pay the same rate, regardless of differences in the actual cost of providing the service to the various customers.¹⁶²

74. DSP was adopted as the rate design theory to be applied to MAWC in the company's rate case before the Commission in 2000.¹⁶³

75. Class Cost of Service involves allocating costs in proportion to each customer class's use of the commodity, facilities and services involved. Its purpose is to accurately

¹⁶² *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*, , Case No. WR-2000-281, Report and Order, p. 58, Issued August 31, 2000, effective dated of September 14, 2000.

¹⁶³ *Id.* at p. 58-61.

allocate costs on a causal basis. Once costs are allocated to customer classes using this method, rates can be developed to recover the necessary revenue from each class.¹⁶⁴

76. Customer classes commonly used in class cost of service studies for water and sewer utilities are: Residential, Commercial, Industrial, Other Public Authority, Other Water Utilities and Private Fire Protection.¹⁶⁵

77. The subject matter experts providing testimony on Class Cost of Service in relation to rate design for MAWC in this case included: James Russo for the Staff of the Commission; Barbara A. Meisenheimer for OPC; Paul R. Herbert for MAWC; and Donald E. Johnstone for AGP.¹⁶⁶

78. Mr. Russo, Mr. Herbert and Ms. Meisenheimer all utilized the “Base-Extra Capacity Method” whereby various cost components are allocated based upon data pertaining to operating costs, operating revenues, system capacity, customer usage and customer numbers. The results of these allocations demonstrate the relative cost level that should be recovered from each customer class, and rates are then designed to recover the costs allocated to each class.¹⁶⁷

¹⁶⁴ *Id.* at 61.

¹⁶⁵ Exhs.: Staff-25, M. Russo Direct, p. 3; OPC-1, Meisenheimer Direct, p. 6; MAWC-11, Herbert Rebuttal, p. 15-16; AGP-1, Johnstone Direct, pp. 3-7. See also the schedules accompanying the identified testimony for the exact calculations advocated by the parties.

¹⁶⁶ Mr. Russo serves the Commission as a Rate and Tariff Examination Supervisor. He holds a BS Degree in Accounting. He has provided subject matter expert testimony in multiple cases before the Commission. Exh. Staff-25 p. 1-2, and Schedule 1. Ms. Meisenheimer is the Chief Utility Economist for OPC. She holds a BS Degree in Mathematics and has completed comprehensive exams for a Ph.D. in Economics. She has provided subject matter expert testimony in multiple cases before the Commission. Exh. OPC-1, p.1. Mr. Herbert is the President of Valuation and the Rate Division of Gannett Fleming, Inc. He holds a BS Degree in Finance. He has provided subject matter expert testimony before eleven state regulatory commissions. Exh. MAWC-12, pp. 1-2. Mr. Johnstone is the President of Competitive Energy Dynamics. He holds a BS Degree in electrical Engineering and a Masters in Business Administration. He has provided subject matter expert testimony before thirteen state regulatory commissions. Exh. AGP-1, Schedule 1.

¹⁶⁷ Exh. Staff-25, p. 3- 4; OPC-1 p. 4-5; Exh. MAWC-11, pp. 4-8. See also the schedules accompanying the identified testimony for the exact calculations advocated by the parties.

79. In the base-extra capacity method, costs are generally separated into four primary classes of cost: costs related to the number of customers regardless of consumption (customer costs), cost related to the total quantity of water used (base costs), costs related to the various peak water usage such as peak day usage (extra capacity costs), and costs that are related to fire-protection water usage (fire protection costs).¹⁶⁸

80. Edward J. Grubb, another of MAWC's subject matter experts, testified that, based upon a review of the rate design data found in the American Water Works Association Manual of Water Supply Practices, he believed that MAWC's current customer classifications were appropriate based upon the company's current cost structures and rates.¹⁶⁹

81. Mr. Herbert for MAWC noted that Staff and OPC did not refine their class cost of service studies to reflect the use of small mains in several districts, differences in system-wide peak hour ratios, and the benefits resulting from retained contract customers.¹⁷⁰

82. Staff's Witness, Mr. Russo, testified that he believed that revenues should be collected differently on a going forward basis. In particular he noted what he termed significant shifts with the revenue requirements for the class of Private Fire Protection.¹⁷¹

83. Mr. Russo further testified that Staff's rate design for MAWC's sewer operations was based upon the Water and Sewer Departments small company rate design methodology.¹⁷²

¹⁶⁸ *Id.*

¹⁶⁹ Exh. MAWC-6, p. 17.

¹⁷⁰ Exh. MAWC-11, pp. 12-15. See also the schedules accompanying the identified testimony.

¹⁷¹ Exh. Staff-25, p. 5. See also the schedules accompanying the identified testimony.

84. Barbara A. Meisenheimer for OPC performed a class cost of service study and based upon her results she stated: “It appears that district costs shifts and intra-district class shift that occurred following the late rate case have brought the classes closer to cost. While the Commission might decide it is appropriate to focus on aligning certain classes in certain district, I do not believe a comprehensive adjustment is necessary in this case. For example, my studies indicate that for most districts, the Residential Class is reasonably close to its cost of service.”¹⁷³

85. Donald E. Johnstone for AGP advocated a “straight fixed-variable rate design, eliminating the use of customer class designations, i.e. residential, commercial, industrial, public authority and sales for resale.”¹⁷⁴

86. Mr. Johnstone recommended “Volumetric Rates Based on Rate Rationalization” utilizing fixed rates per 1000 gallons usage with four volumetric block classifications.¹⁷⁵

87. The signatory parties to the Global Agreement reached a compromise with regard to allocating costs on a class basis for all of MAWC’s Districts for the following classes: Residential (including Rate A for St. Louis), Commercial (including Rates A and K for St. Louis), Industrial, Private Fire Protection, Public Fire Protection, Other Public Authorities (including Rate A for St. Louis), and Sales for Resale.¹⁷⁶

¹⁷² Exh. Staff-25, p. 6. See also the schedules accompanying the identified testimony.

¹⁷³ Exh. OPC-1, p. 4. See also OPC-3, Meisenheimer Surrebuttal, p. 2. See also the schedules accompanying the identified testimony.

¹⁷⁴ Exh. AGP-1, pp. 3-7. See also the schedules accompanying the identified testimony.

¹⁷⁵ *Id.*

¹⁷⁶ See *Non-Unanimous Stipulation and Agreement* filed on August 9, 2007, pp. 2-3, paragraph 4 and Appendix A-1.

88. The signatory parties to the Global Agreement reached agreement as to the Billing Determinants utilized for purpose of rate design.¹⁷⁷

89. No party has objected to the Class Cost of Service allocation factors or the Billing Determinants utilized for each District as set forth in the Global Agreement.¹⁷⁸

90. No party objected to any component of any calculations, negotiations or compromise resulting in determining the Class Cost of Service allocation factors or the Billing Determinants as set forth in the Global Agreement.

91. No party requested a hearing on any portion of the determination of the Class Cost of Service allocation factors or the Billing Determinants as set forth in the Global Agreement.

92. All parties waived cross-examination of any witness with regard to the determination of the Class Cost of Service allocation factors or the Billing Determinants as set forth in the Global Agreement.

93. Again, Joplin, the only party objecting to the Global Agreement, has expressly stated that the only contested issues in this matter involve allocation factors used for certain expenses resulting in the District Specific revenue requirement for Joplin, not any of the allocation factors or billing determinants that relate to the determination of Class Cost of Service.¹⁷⁹

Conclusions of Law Regarding Class Cost of Service Allocations

The Commission observes that the parties' experts, while primarily using the same methodology (AGP's witness being the exception) identified some variations with the

¹⁷⁷ *Id.*, pp. 2-3, paragraph 5 and Appendix B.

¹⁷⁸ See Footnote Number 158, *supra*.

¹⁷⁹ *Id.*

manner in which they performed their Class Cost of Service analyses and with their ultimate recommendations regarding whether the customer classes were appropriately matched to their cost of service.¹⁸⁰ Despite these variations, the parties providing testimony on these matters reached a compromise in the Global Agreement as to the respective factors to quantify each Class Cost of Service.

No party opposed this portion of the rate design and from all appearances in Appendix A-1 of the Global Agreement, the parties agreed to maintain the status quo as evidenced by repeated references to the terminology of “equal percent class revenue increase/decrease.” The parties’ unanimous agreement to, or lack of opposition to, class cost of service allocation factors and billing determinants demonstrates to the Commission that this portion of rate design is just and reasonable. Moreover, subject matter experts Edward J. Grubb, Donald J. Petry and Stephen Rackers attested to the reasonableness of the Global Agreement and all of its elements, including rate design.¹⁸¹

The Commission notes that the parties to this action represented a wide range of government, commercial, industrial and public interest groups. The fact that this wide representation of competing interests resulted in unanimous agreement to, or lack of opposition to these factors, demonstrates that the agreed upon allocations factors and billing determinants achieve the Commission’s statutory goals of ensuring that just and reasonable rates are set that are fair to the utility and its customers, and in this instance to each class of the utility’s customers. The Commission shall approve the Joint

¹⁸⁰ See also Exh. MIEC-3, Gorman Rebuttal. See also the schedules accompanying the identified testimony.

¹⁸¹ Transcript pp. 178-180 (Testimony of Edward J. Grubb); pp. 230-231 (Testimony of Donald J. Petry); pp. 319-320 (Testimony of Stephen Rackers).

Recommendation as to the class cost of service allocation factors and billing determinants, in all respects, as encompassed in the Global Agreement.

Joplin's Contested Issues – Rate Design – District Specific Pricing

As noted throughout this order, Joplin's contested issues involve certain allocation factors as they relate to the DSP component of rate design. Based upon the competent and substantial evidence on the record as a whole, the Commission makes the following findings of facts and conclusions of laws with regard to the issues raised by Joplin.

Issue 1: What is the proper basis for allocating MAWC's corporate expenses to the various districts, to include administrative and general expenses, customer accounts, depreciation, and other general taxes?

Findings of Fact Regarding Joplin's Issue 1

94. MAWC serves the following operating water and/or sewer districts: Brunswick, Cedar Hill, Jefferson City, Joplin, Mexico, Parkville, St. Charles, St. Joseph, St. Louis, Warren County, and Warrensburg.¹⁸²

95. When determining what portion of MAWC's revenue requirements will be allocated for each operating district, certain costs must be taken into account: (1) those that are directly attributable to each district (e.g., employees, office space, vehicles, etc.) and thus directly assigned to that district; and, (2) general corporate costs not directly attributable to a specific district(s), which therefore must be allocated to the districts.

96. Examples of these general corporate costs include management fees charged by the American Water ("Service Company") to the operating subsidiaries such as

¹⁸² See Findings of Fact 1-4, 19-22, and 27, *supra*; Hearing Exh. Staff-29, Staff True-Up Accounting Schedules.

MAWC.¹⁸³

97. Functions provided by the Service Company include financial services, accounts payable, human resources, purchasing, etc. These costs are consolidated at the Service Company level to achieve economies of scale. They are then allocated by the Service Company to the operating subsidiaries based on the number of customers served by the operating subsidiary as a percentage of total customers served by all operating subsidiaries.¹⁸⁴

98. In addition to Service Company costs, MAWC incurs its own administrative and general expenses, such as corporate employees' salaries, collection agency fees, customer billing expense, postage, rents, office supplies, and janitorial expenses. These administrative and general costs are recorded in a corporate business unit so they can be identified and controlled and are then allocated to the districts for recovery in a rate case.¹⁸⁵

99. Prior to entering the Global Agreement, MAWC proposed to allocate these general corporate costs to the various districts primarily based upon the number of customers served in each district as a percentage of total customers served statewide.¹⁸⁶

100. MAWC's witness Edward J. Grubb, testified that MAWC chose to use customers as its primary allocation factor for most of the general corporate costs because it believes that its focus is serving its customers, and it is the customers that drive the costs incurred by MAWC.¹⁸⁷

¹⁸³ Transcript p. 160-164 (Testimony of Edward J. Grubb). See also Exhs. MAWC-6, 7, 8, 9.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Transcript p. 155 (Testimony of Edward J. Grubb). See also Exhs. MAWC-6, 7, 8, 9.

¹⁸⁷ Transcript p. 178 (Testimony of Edward J. Grubb). See also Exhs. MAWC-6, 7, 8, 9. Edward J. Grubb is MAWC's Manager of Rates and Regulation. He holds a BS Degree in Business Administration with a major

101. MAWC's witnesses Mr. Grubb and Donald Petry testified that exceptions to the general allocation factor of using customer number, as proposed by MAWC, include: (1) workers compensation expense, which MAWC proposed to allocate based on payroll; (2) transportation expense which MAWC proposed to allocate based on vehicles; and, (3) corporate depreciation expense which MAWC proposed to allocate based on plant-in-service.¹⁸⁸

102. The Staff proposed allocating general corporate costs based mainly on the total payroll expense directly attributable to each district as a percentage of the total payroll attributable to all districts. Of the approximately thirty different categories of administrative and general expense at the corporate level, Staff used payroll as its allocation factor on all but one expense.¹⁸⁹

103. Staff's witness Stephen Rackers asserts that payroll is the most appropriate allocation factor because the costs of corporate employees, as well as other costs incurred at the corporate level, are incurred to support the employees in the field and/or at the district level.¹⁹⁰

104. As testified to by witnesses for both Staff and MAWC, there is a correlation

in Accounting and a Masters of business Administration. He has also completed Certification programs in management Accounting and Financial Management. He has prepared rate cases and presented subject matter expert testimony before eight regulatory commissions. Exh. MAWC-6 p. 1 and Schedule EJG-1.

¹⁸⁸ Transcript pp. 159-160 (Testimony of Edward J. Grubb), 216-220 (Testimony of Donald J. Petry). See also Exhs. MAWC-6, 7, 8, 9, 16, 17. Donald J. Petry is MAWC's Senior Financial Analyst. He holds a BS Degree in Accounting and Masters Degree in Business Administration. He has prepared subject matter expert testimony for the Public Utilities Commission of Ohio. Exh. MAWC-16, p. 1 and Schedule DJP-1.

¹⁸⁹ Transcript pp. 310-312 (Testimony of Stephen Rackers). See also Exhs. Staff-5, 6, 7, 28, 29, 30, 31 and 32.

¹⁹⁰ Transcript pp. 284-286, 290, 296, 307-311 and 329 (Testimony of Stephen Rackers). See also Exhs. Staff 5, 6, 7, 28, 29, 30, 31, and 32. Stephen Rackers serves the Commission in the position of Utility Regulatory Auditor V. He has a BS Degree in Business Administration with a major in Accounting and is a CPA. Stephen Rackers has provided subject matter expert testimony in 28 cases before the Commission. Exh. Staff-5, Schedule 1,

between payroll and customers. The amount of employees assigned to a particular district is a function of the number of customers that those employees are required to serve.¹⁹¹

105. Staff also proposed allocating corporate depreciation expense based on payroll which, according to Mr. Rackers, reflects the fact that the general corporate assets, such as vehicles, computers, etc., exist to support the employees or work force assigned to each of the districts.¹⁹²

106. Staff's use of payroll as an allocation factor is consistent with the way in which it has allocated costs in previous MAWC rate cases, and is consistent with the way in which Staff has traditionally allocated corporate type expenses in other utility rate cases.¹⁹³

107. Under MAWC's method of allocating costs, 5.03% of the total, per book corporate costs were allocated to the Joplin District. Under Staff's method of allocating costs, 5.11% of the total, per book corporate costs were allocated to the Joplin District.¹⁹⁴

108. Although Staff used different allocation factors than MAWC, the end result of Staff's allocation was very similar to that of MAWC and within the realm of reasonableness in the opinion of MAWC.¹⁹⁵

109. On the other hand, Joplin's initial proposal was to allocate all corporate costs solely based upon "length of mains" (*i.e.*, the linear feet of mains in a district as a

¹⁹¹ Transcript pp. 157, 181-182 (Testimony of Edward J. Grubb), 215 (Testimony of Donald J. Petry), 320-321 (Testimony of Steve Rackers). See also Exh. MAWC-6, 7, 8, 9, 16, 17, and Staff 5, 6, 7, 28, 29, 30, 31 and 32.

¹⁹² Transcript p. 302-303 (Testimony of Stephen Rackers). These same allocation methods are embodied in the Global Agreement to which Staff and MAWC are both signatories. See also Exhs. Staff-5, 6, 7, 28, 29, 30, 31 and 32.

¹⁹³ Transcript pp. 295 and 320-321 (Testimony of Stephen Rackers); See also *In Re: Union Electric*, 27 Mo. P.S.C. (N.S.) 183, 275 & 290, 66 PUR4th 202(1985). and Exhs. Staff 5, 6, 7, 28, 29, 30, 31 and 32.

¹⁹⁴ Transcript pp. 155-159, 181, 191-192 (Testimony of Edward J. Grubb). See also Exhs. MAWC-6, 7, 8, 9.

¹⁹⁵ Transcript pp. 155-157, 181, 189 (Testimony of Edward J. Grubb). See also Exhs. MAWC-6, 7, 8, 9.

percentage of the total linear feet of mains statewide).¹⁹⁶

110. In her prepared rebuttal testimony, Joplin's witness, Ms. Leslie Jones, unequivocally stated that the "**most appropriate factor**" is length of mains "because the amount of usage of corporate services is directly tied to the actual infrastructure on the ground in an [sic] utilities environment."¹⁹⁷

111. Ms. Jones further testified that "other allocation factors do not accurately reflect the needs and uses of corporate resources to the extent that infrastructure basis would."¹⁹⁸

112. Ms. Jones provided only three pages of pre-filed testimony in this matter addressing these factors, and filed no accounting schedules to corroborate her testimony when it was pre-filed.¹⁹⁹

113. Ms. Jones testified that she had no work papers of any kind to verify her prefiled rebuttal testimony and clarified, "Mostly what I was doing was working off of the schedules that I had and using my adding machine. I was not working in a spreadsheet."²⁰⁰

114. At hearing, Ms. Jones stated that she chose length of mains over any other factor because: "Basically, the infrastructure of the City of Joplin. It -- the City of Joplin has not had any -- any improvements for a long time as -- that's my understanding. And the

¹⁹⁶ Transcript pp. 358-360 (Testimony of Leslie Jones). Exh. Joplin-1, pp. 1-3.

¹⁹⁷ Ex. Joplin-1, p. 2. Ms. Jones holds a BS Degree in Accounting and is a CPA and CMA. Transcript p. 390. Ms. Jones testified that this was the first utility rate case that she had personally been involved with. Transcript p. 407.

¹⁹⁸ Ex. Joplin-1, p. 2.

¹⁹⁹ Ex. Joplin-1.

²⁰⁰ Transcript p. 403 (Testimony of Leslie Jones).

length of mains, I felt, reflected the infrastructure in the City of Joplin, and, therefore, a - a good factor, allocation factor, for corporate expenses.”²⁰¹

115. Ms. Jones provided essentially no documentary support for Joplin’s pre-hearing position regarding using length of mains as the sole allocation factor, only providing 3 pages of accounting spreadsheets entitled “Revenue Requirement” after the hearing and after being ordered by the Commission to provide any and all materials relied upon by Joplin to support its position offered in the prefiled rebuttal testimony of Ms. Jones.²⁰²

116. The amount of mains located within a district; however, is not an appropriate indication of the amount of corporate costs attributable to that district.²⁰³ There is no correlation between the feet of pipe located within a district and the number of customers that the Company serves in that same district.²⁰⁴ Additionally, using length of mains as an allocation factor does not reflect the total plant investment in all districts.²⁰⁵

117. Using length of mains as the sole allocation factor, Joplin proposed to allocate .011% of general corporate costs to the Joplin District.²⁰⁶

118. Prior to Ms. Jones presenting her live testimony at hearing, Staff’s Witness

²⁰¹ Transcript p. 359. (Testimony of Leslie Jones)

²⁰² The Commission’s order essentially compelled Joplin to respond to AGP’s Data Request # 4, Hearing Exh. AGP-4, served on July 20, 2007, to which Joplin responded that it had no documents at that time, but would supplement the data request if the documents were generated. *Order Extending Deadline for Filing Suggestions Regarding Non-Unanimous Stipulation and Agreement, Setting Briefing Schedule, Order Proposed Findings of Fact and Conclusions of Law, Directing the filing of Late-Filed Exhibits and Responses, and Addressing Other Procedural Matters*, issued August 15, 2007; *Order Clarifying Post-hearing Procedural Schedule*, issued August 20, 2007; *Statement of Filing Documents Pursuant to Commission Order of August 15, 2007*, filed August 22, 2007. See also Footnote Numbers 16 through 18, *supra*.

²⁰³ Transcript p. 183 (Testimony of Edward Grubb). See also Exhs. MAWC-6, 7, 8, 9

²⁰⁴ Transcript 165-166, 182-184 (Testimony of Edward Grubb). See also Exhs. MAWC-6, 7, 8, 9.

²⁰⁵ Exh. Staff-7, Rackers Surrebuttal, p. 2.

²⁰⁶ Transcript p. 374, 407-408. Staff’s Witness Stephen Rackers testified that the only position he was aware of Joplin advocating was the length of mains, but that Staff’s correction to the length of main calculation would increase the percentage for that allocator from 0.011% to 7.105%. Transcript p. 332-333.

Stephen Rackers made a correction to the linear feet of mains calculation in the St. Louis County District.²⁰⁷

119. Staff's correction had the effect of changing the allocation of corporate costs to the Joplin District based on length of mains from .011% to 7.105%.²⁰⁸

120. Because Staff used the length of main allocation factor sparingly, this change had an immaterial effect on the Staff's case.²⁰⁹ Staff only uses this factor to allocate distribution expense, which is a relatively minor amount of expense – roughly \$6,000.²¹⁰

121. Using the corrected allocation factor for length of mains in Joplin's originally advocated position; however, would result in a higher allocation of costs to Joplin than Staff (and the Global Agreement) had proposed.²¹¹

122. Staff had informed Joplin of the correction to the length of main calculation on Wednesday, August 8, 2007, two days prior to Joplin filing its revised issues list, where it reiterated its position that linear feet of main was the appropriate allocation factor for corporate and general expenses, and six days prior to the resumption of the evidentiary hearing.²¹²

123. Ms. Jones acknowledged that she was aware of Staff's change in calculations for the length of main allocator on Thursday, August 9, 2007.²¹³

²⁰⁷ Transcript pp. 270-277 (Testimony of Stephen Rackers). See also Exhs. Staff 5, 6, 7, 28, 29, 30, 31, and 32.

²⁰⁸ Transcript pp. 325, 333 (Testimony of Stephen Rackers), p. 408 (Testimony of Leslie Jones). See also Exhs. Staff 5, 6, 7, 28, 29, 30, 31, and 32.

²⁰⁹ Transcript pp. 270-272, 281 (Testimony of Stephen Rackers). See also Exhs. Staff 5, 6, 7, 28, 29, 30, 31 and 32.

²¹⁰ Transcript p. 281 (Testimony of Stephen Rackers). See also Exhs. Staff 5, 6, 7, 28, 29, 30, 31 and 32.

²¹¹ Transcript p. 324.

²¹² See Joplin's "List of disputed Issues," filed August 10, 2007; Transcript pp. 274-275.

²¹³ Transcript p. 370, 396 (Testimony of Leslie Jones).

124. At hearing, after Mr. Rackers' testimony corrected the length of mains allocation factor, Ms. Jones sought to correct her testimony and changed her position as to the proper allocation factor(s) to be used for these expenses.²¹⁴

125. Although Joplin was denied the opportunity to correct its testimony because it went beyond the point of corrections and amounted to a complete change in position, Joplin was permitted to supplement its testimony on the basis of Staff's correction.²¹⁵

126. Joplin's new position, as testified to by Ms. Jones, was to: (1) allocate all of the expenses under customer accounts based on MAWC's customer allocation factor; (2) allocate all corporate benefits, workers compensation, OPEBs and pension expenses based on Staff's payroll allocation factor; (3) allocate other general taxes based on the MAWC's customer allocation factor; (4) allocate Belleville Labs based on Staff's "per test" allocation factor; and, (5) only corporate depreciation expense would be allocated using length of mains.²¹⁶

127. Ms. Jones testified that she was more comfortable using pipe length as an allocation factor when the pipe length percentage ascribed to Joplin was very small, i.e. .011%.²¹⁷

128. Ms. Jones testified that she could not answer the question regarding how Joplin's new positions would affect Joplin's portion of MAWC's revenue requirement.²¹⁸

²¹⁴ Transcript pp. 336-358 (Testimony of Leslie Jones) .

²¹⁵ *Id.*

²¹⁶ Transcript pp. 337-354 (Testimony of Leslie Jones) . Staff calculated that Joplin's portion of MAWC's revenue requirement would be decreased by \$85,113 if Joplin's newly advocated cost allocation methods were utilized. See *Staff's Response to the Commission's Order Directing Filing of September 10, 2007*, filed September 17, 2007.

²¹⁷ Transcript p. 374 (Testimony of Leslie Jones).

²¹⁸ Transcript pp. 400-401, 415, 419 (Testimony of Leslie Jones).

129. Ms. Jones testified that her testimony was going to be “[a]s favorable to Joplin” as possible, “but also as reasonable and a direct correlation as possible.”²¹⁹

130. Ms. Jones also testified that she intended to abandon her prefiled rebuttal testimony prior to 9:00 a.m. on August 14, 2007, (the date and time the hearing resumed from its postponement on August 6, 2007) prior to hearing the testimony of Mr. Rackers and his changes to the length of main allocator.²²⁰

131. Ms. Jones stated various reasons for wishing to change her testimony including: “I’ve had an opportunity to spend more time reviewing the EMS run.” “I’ve listened to the testimony today.” “With allocations, you try to find the best allocation that has the most direct correlation, the most direct relationship to that district so that you can arrive at a district specific cost.” “I’ve had additional time to review the information that’s been coming in literally daily, sometimes two and three times a day.” “I’ve sat here listened to the testimony.” “I don’t think it’s just the testimony that changed my mind.” It’s just looking at how to best properly allocate the administrative and general corporate expenses to every district.”²²¹

132. When asked what information caused Ms. Jones to change her position Ms. Jones testified: “I -- I guess I would have to say I’m -- I don’t think it’s really additional information as much as reviewing the information. And then as more information came in on payroll and the chemical today and -- and then the length of mains, it was just a culmination of all of it.”²²²

²¹⁹ Transcript p. 409 (Testimony of Leslie Jones).

²²⁰ Transcript pp. 363-366 (Testimony of Leslie Jones).

²²¹ Transcript pp. 337, 354, 360, 361 (Testimony of Leslie Jones).

²²² Transcript p. 369 (Testimony of Leslie Jones). With regard to Ms. Jones’s change in position, Counsel for Joplin stated: “I think it’s – based upon what I’ve heard today, it appears to be correcting testimony, based

133. When asked: “Is there anything that you heard today that changed how you were going to testify regarding allocation factors?,” she responded: “Today? No.”

134. When asked, “And can you identify any piece of information, any specific piece of information, that led to your changed testimony?”, Ms. Jones replied, “No. Not one -- not any one piece. No.”²²³

135. Ms. Jones went on to testify that she continued to work on her analysis right up to the start of the hearing on August 14, 2007 and that she had no opportunity to inform the other parties of her changes in position.²²⁴

136. Ms. Jones further testified that the change in Mr. Rackers’ testimony had some effect on her own testimony stating: “Well, obviously, when you’re going to present a 700 percent increase when it has – when that number is going to affect Joplin, you know, I have to stop and re-evaluate the information.”²²⁵

137. Ms. Jones also testified that she had not checked Staff’s length of main calculations; had not performed a study on Joplin’s water main infrastructure; was not familiar with the wells recently drilled in Joplin; had not generated any documents showing the calculation of the impact of her proposed allocator(s); and had not, to her knowledge, followed her normal practice to save any computer generated spreadsheets reflecting any such calculations.²²⁶

138. Ms. Jones further testified that she was not an expert in utility regulation and

upon what the Staff’s testimony was changing the factors.” Transcript p. 338.

²²³ Transcript p. 371 (Testimony of Leslie Jones).

²²⁴ Transcript p. 371-373 (Testimony of Leslie Jones).

²²⁵ Transcript pp. 374-376 (Testimony of Leslie Jones).

²²⁶ Transcript pp. 374, 379, 383-386 (Testimony of Leslie Jones).

not an expert in utility infrastructure.²²⁷

139. When asked, “And what basis are you tendering testimony before the Commission as an expert on?”, Ms. Jones replied “ Well, I'm not sure I've ever said I'm an expert exactly. But, basically, allocations.” Ms Jones clarified that she tendered herself before the Commission as an expert in allocations.²²⁸

140. Ms. Jones also testified that she had not reviewed any previous rate cases for MAWC; had not reviewed any allocation factors previously approved by this Commission; was unaware of the Commission’s approved systems of accounts, and was unaware of the National Association of Regulatory Utility Commissioners’ (“NARUC”) water cost allocation manual.²²⁹

141. In essence, Joplin’s new position was to adopt, for all but one of the corporate expense items, the same allocation factors proposed by the Company or Staff (i.e., customers or payroll).²³⁰

142. After acknowledging that all but one of her newly recommended allocation factors was in line with either Staff’s position or MAWC’s position, Ms. Jones testified that she could not offer an opinion as to whether she was in agreement with any of the compromises these parties had reached in the Global Agreement.²³¹

143. Ms. Jones further testified that while she felt Staff’s allocation methods were “not the best” that she was unable to comment as to whether the application of Staff’s

²²⁷ Transcript p 394 (Testimony of Leslie Jones).

²²⁸ Transcript pp. 394-395 (Testimony of Leslie Jones). See Footnote Number 197, *supra*, for Ms. Jones’s biographical information.

²²⁹ Transcript pp. 395, 406-407 (Testimony of Leslie Jones).

²³⁰ Transcript pp. 411-413 (Testimony of Leslie Jones) .

²³¹ Transcript p. 415 (Testimony of Leslie Jones).

methods produced an unreasonable result.²³²

144. Staff's placed a value of \$85,113 on Joplin's Corporate Allocation issue based upon District Specific Pricing.²³³

Issue 2: What is the proper basis for payroll tax payment as annualized for the Joplin District and certain depreciation issues?²³⁴

Findings of Fact Regarding Joplin's Issue 2

145. There are two aspects to the payroll and payroll tax. First, there is payroll and payroll tax directly attributable to those employees who work within a specific district. That payroll and payroll tax amount is directly assigned to that particular district. Then there is the payroll and payroll tax associated with employees working at the corporate office, which is allocated to the various districts.²³⁵

146. MAWC's witness Donald J. Petry testified that MAWC annualizes payroll and associated payroll tax by determining the number of employees on its payroll at the end of the test period (i.e., June 30, 2006). It adjusts this number for any vacancies or new hires that occurred through the end of the true-up period (i.e., May 31, 2007), and calculates labor rates based on pay rates existing at the time of the true-up. Payroll taxes were based on the annualized payroll for each employee using the appropriate tax rates.²³⁶

147. Staff's witness Lisa Hanneken testified that Staff looks at all employees as of the end of the test year (i.e., June 30, 2006). It includes any employees that were hired subsequent to that date and through the true-up period; and eliminates any employees that

²³² Transcript p 419 (Testimony of Leslie Jones).

²³³ *Staff's Response to the Commission's Order Directing Filing of September 10, 2007*, filed September 17, 2007.

²³⁴ Depreciation issues were addressed in the section covering Joplin's first issue.

²³⁵ Transcript p. 221 (Testimony of Donald J. Petry). See also Exhs. MAWC-16 and 17.

²³⁶ Transcript pp. 219-227 (Testimony of Donald J. Petry). See also Exhs. MAWC-16 and 17.

had been terminated during that period. Staff's annualization takes into effect any union labor rate increases and any changes in positions of the employees that would cause their salary to change. Staff takes an individual's hourly rate and multiplies it by the number of hours given the employee's position (including overtime amounts, shift differentials, etc.) and then arrives at an annualized salary amount for each employee. Staff takes the annualized salary amount for each employee and factors it up for payroll taxes.²³⁷

148. Like the Company, Staff annualized payroll and payroll tax for each employee whether they were working in a specific district, or at the corporate office.²³⁸

149. MAWC's witness Edward Grubb testified that he reviewed Staff's work papers and concluded that Staff properly calculated payroll and payroll tax.²³⁹

150. Ms. Jones again sought to change her prefiled testimony with regard to this issue and stated that she wished to change lines 14 through 17 of her prefiled testimony to read as follows: "The payroll and payroll tax annualization under Administrative and General Expenses does not flow or follow with the payroll annualization contained in the Staff schedules. While I find no problem with the payroll normalization, the payroll and payroll tax annualization should follow directly the payroll annualization since payroll taxes are a direct percentage of payroll."

151. When asked to clarify what her position was on payroll annualization at hearing, Ms. Jones testified: "And that would be on the corporate schedule. Particularly, the

²³⁷ Transcript p. 241-251 (Testimony of Lisa Hanneken). See also Hearing Exhs. Staff-3 and 4. Lisa Hanneken serves the Commission in the position of Utility Regulator Auditor IV. She holds a Bachelors Degree in Accounting and a Masters of Business Administration with an emphasis on Accounting. She has provided subject matter expert testimony in multiple cases before the Commission. Exh. Staff-3, p. 2 and Schedule 1.

²³⁸ Transcript p. 243 (Testimony of Lisa Hanneken). See also Exhs. Staff-3 and 4.

²³⁹ Transcript p. 187-188 (Testimony of Edward Grubb). See also Exhs. MAWC-6, 7, 8 and 9.

salaries line item where the -- the test year number is 200. I'm sorry. I don't have that -- that one on me. But it's 200 and basically nine -- 290,000 for the test year, which is a full year. And the annualized number is much closer to 800,000. And the question is how, by annualizing from a full year, do you increase that much? And then the payroll taxes follow that -- that amount of the payroll annualization.”²⁴⁰

152. Ms Jones provided no accounting schedules to demonstrate her method of payroll annualization and demonstrate how Staff and MAWC had, in any way, miscalculated these values.

153. Ms. Jones did not delineate how her method of payroll annualization would affect Joplin's, or any other District's, portion of MAWC's revenue requirement. In fact, in its Statement of Filing of Calculations (filed August 22, 2007), the City of Joplin states that “there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones' testimony on August 14, 2007.”

Findings of Fact Regarding the Live Testimony of the Witnesses

154. MAWC's witnesses Edward Grubb and Donald Petry, Staff's witnesses Steven Rackers and Lisa Hanneken, and Joplin's witness Leslie Jones all prefiled testimony and presented live testimony before the Commission with regard to Joplin's issues.²⁴¹

155. Mr. Grubb, Mr. Petry, Mr. Rackers and Ms. Hanneken have all served as subject matter experts in numerous utility rate cases.²⁴²

156. Ms. Jones has not served as a subject matter expert in any prior utility rate

²⁴⁰ Transcript p. 355 (Testimony of Leslie Jones).

²⁴¹ See Footnote Numbers 187 (Grubb), 188 (Petry), 190 (Rackers), 197 (Jones) and 237 (Hanneken) for biographical information on these witnesses.

²⁴² See Footnote Number 241, *supra*.

case.²⁴³

157. Mr. Grubb, Mr. Petry, Mr. Rackers and Ms. Hanneken all provided extensive pre-filed testimony in this matter addressing the allocation factors in dispute.²⁴⁴

158. Ms. Jones provided three pages of pre-filed testimony composed of conclusory statements.²⁴⁵

159. Mr. Grubb, Mr. Petry, Mr. Rackers and Ms. Hanneken provided extensive documentary support with regard to their respective positions on the proper allocation factors, via various accounting schedules.²⁴⁶

160. Ms. Jones provided virtually no documentary support for her positions, providing only three pages of calculations when compelled by the Commission to produce them.²⁴⁷

161. While on the witness stand, Mr. Grubb, Mr. Petry, Mr. Rackers and Ms. Hanneken were composed, confident, sincere, and unwavering in their testimony.

162. Ms. Jones demeanor on the witness stand was anxious, defensive, and wavering.

163. Mr. Grubb, Mr. Petry, Mr. Rackers and Ms. Hanneken were articulate and their testimony at the hearing was consistent with their pre-filed testimony.

164. Ms. Jones's testimony at the hearing was inconsistent with her pre-filed testimony; in fact, it represented a complete and sudden change in position.

²⁴³ Ms. Jones testified that this was the first utility rate case that she had personally been involved with. Transcript p. 407.

²⁴⁴ Exhs. MAWC MAWC-6, 7, 8, 9, 16, and 17; Staff-3, 4, 5, 6, 7, 28, 29, 30, 31, and 32.

²⁴⁵ Exh. Joplin-1.

²⁴⁶ See Footnote 241.

²⁴⁷ See *Statement of Filing of documents Pursuant to Commission's Order of August 15, 2007*, filed August 22, 2007.

165. Ms. Jones's testimony at the hearing was also internally inconsistent and contradictory throughout its presentation and duration.²⁴⁸

166. The testimony provided by Mr. Grubb, Mr. Petry, Mr. Rackers and Ms. Hanneken was substantial, credible and unbiased.

167. Ms. Jones's testimony was insubstantial, non-credible, and self-serving.

168. Ms. Jones's testimony was biased by her own admission.²⁴⁹

Conclusions of Law Regarding Joplin's Issues

Allocation of costs is not an exact science or a process that has only a single correct answer. The Missouri Supreme Court has stated that it is "the province and duty of the commission, in determining the questions of reasonable rates, to allocate and treat costs . . . in the way in which, in the commission's judgment, the most sound result is reached."²⁵⁰ As Mr. Grubb appropriately noted in his testimony, the choice of allocation factors should be reasonable and promote consistency.²⁵¹

Noting that "allocation factors are used to allocate those costs which cannot be directly assigned to a particular customer class," the Commission has previously found that the proper method for allocating administrative and general expenses is on the basis of direct payroll (*i.e.*, labor).²⁵² The Commission further stated ". . . that it is through its employees that the coordination and management of all facets of its operations are conducted, and that therefore the proper method to allocate costs associated with those

²⁴⁸ See Findings of Fact Numbers 111-155.

²⁴⁹ *Id.*

²⁵⁰ *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 933 (Mo. banc 1958).

²⁵¹ Transcript p. 178 (Testimony of Edward J. Grubb).

²⁵² *In Re: Union Electric*, 27 Mo. P.S.C.(N.S.) 183, 275 & 290, 66 PUR4th 202(1985).

employees' expenses is by direct labor."²⁵³

Conclusions of Law: Issue 1

Considering the chronology of events surrounding Joplin's last-minute change of position, and the lack of evidentiary support for any of the positions put forth by Joplin, the Commission concludes that Joplin is merely attempting to arbitrarily shift costs away from Joplin to the other districts.²⁵⁴ Joplin was fully advised of Staff's correction to the length of main allocator calculation well in advance of hearing, yet as late as August 10, after being so advised, Joplin steadfastly maintained its position that corporate administrative and general expenses should be allocated based on length of main.

On Tuesday, August 14, following the testimony of MAWC and Staff witnesses and, more importantly, hearing the corrected number of linear feet of main in the St. Louis County District, (a calculation Ms. Jones had not independently confirmed prior to hearing) Ms. Jones took the witness stand, and attempted to "correct" her testimony and her position regarding the proper allocation of corporate costs. Ms. Jones gave dramatically contradictory reasons for having changed her positions further suggesting her change of position was a spur of the moment decision. It is clear to the Commission that Ms. Jones did not change her testimony based upon a belief that her newly selected allocation factors were, in fact, more appropriate allocators, but rather because Staff's correction caused her initially preferred allocation factor (*i.e.*, length of mains) to increase from .011% to 7.105%.

Had Ms. Jones stuck with her initial position that the "amount of usage of corporate

²⁵³ (27 Mo.P.S.C.(N.S.) at 290)

²⁵⁴ It is also important to note that when Joplin proposes to shift costs away from its district, those costs flow to other districts. So while Joplin may get the benefit of a reduced revenue requirement, it has done so at the expense of one or more other districts. As Joplin witness Jones acknowledged in response to questioning from the bench – "... obviously, the revenue requirement for Joplin should go down. By how much, I cannot tell you. And, ... that would make the revenue requirement for some other districts increase." (Tr. 415, 416)

services is directly tied to infrastructure on the ground” (*i.e.*, lengths of mains), and used the corrected allocation factor for length of mains, she would have allocated more costs to the Joplin District than allocating by either Staff or the proposal in the Global Agreement. Ms. Jones revealed the true purpose of changing her testimony when she testified that she was going to be as favorable to Joplin as possible and that she was more comfortable with using pipe length as an allocation factor when the length of main allocator was very small (*i.e.*, .011%).

Joplin provided no credible evidence that its shifting position on these allocation factors was superior to those factors agreed to by the signatory parties to the Global Agreement. Moreover, Joplin provided no evidence that the allocation factors agreed to by the signatory parties to the Global Agreement were in any way unjust or unreasonable.

As a result of the compromises in Global Agreement, the allocation of costs to Joplin is actually less than it would be under a strict application of district-specific costs, resulting in a revenue increase for the Joplin District that is far less than it would be under a strict district-specific cost of service allocation.²⁵⁵ Joplin’s main professed concern with the Global Agreement was that the resulting increase for Joplin was somehow discriminatory. Given that Joplin would receive a much lower revenue increase from the Global Agreement

²⁵⁵ For example, in Staff’s True-Up Accounting Schedule (which at the time it was filed assumed a total revenue increase of \$19,493,370 based on Staff’s mid-point return on equity of 9.10%) Joplin’s revenue increase would be \$4,580,185 using a strict district-specific cost assignment. (Staff True-Up Accounting Schedule 1, Total Company and Joplin District, in Exhibit Staff-29) The Global Agreement proposes an overall revenue increase of \$28,700,000 (Appendix A-1-1), which is approximately \$9 million greater than the Staff’s True-Up Accounting Schedules. Factoring up the Joplin increase to reflect Joplin’s ratable share of the increase in the revenue requirement deficiency on a total company basis between Staff True-Up Schedule and the Global Agreement would add roughly \$670,060 to the Joplin District revenue requirement on a district specific basis. (Revised Reconciliation, filed September 7, 2007) Thus, the total revenue requirement on a district specific basis for Joplin would be \$5,250,245 (\$4,580,185 + \$670,060), prior to correction for chemicals. In contrast, the Global Agreement proposes that Joplin’s share of this stipulated total water revenue requirement deficiency of \$28,579,683 is only \$4,856,240, prior to the correction for chemicals (See FOF Numbers 28-29, 57-62, 107, 126, and 144, *supra*; the Global Agreement, filed August 9, 2007; and Staff’s Revised Reconciliation, filed September 7, 2007.

than it would receive using strict district specific pricing, there is no credible argument that the Global Agreement is discriminatory.

Joplin has not demonstrated that the basis for Staff's allocation factors, as incorporated into the Joint Recommendation/Global Agreement is unreasonable, particularly where it now proposes to use many of the same allocation factors as Staff. Subject matter experts Edward J. Grubb, Donald J. Petry and Stephen Rackers attested to the reasonableness of the Global Agreement and all of its elements, including the chosen allocation factors.²⁵⁶ The Commission concludes that the allocation factors agreed to by the signatories to the Joint Recommendation, as embodied in the Global Agreement, are not only reasonable, but are supported by competent and substantial evidence as being the most reasonable and appropriate methods for allocating the costs in dispute.

Conclusions of Law: Issue 2

The payroll and payroll tax annualization reflects actual employee levels as of the end of the true-up period and reasonably reflects a going-forward level of payroll and payroll tax expense that MAWC will likely incur at the time rates set in this proceeding will become effective.²⁵⁷ Joplin offered no evidence to support its position that the method of payroll and payroll tax annualization executed by Staff is in error. Similarly, it offered no calculation of an alternative payroll and payroll tax annualization amount. Joplin merely offers a conclusory statement that Payroll was inappropriately annualized. Under the circumstances, not only is Staff's calculation of payroll and payroll tax appropriate, there is no credible evidence to suggest otherwise. Moreover, Joplin has affirmatively pled that

²⁵⁶ Transcript pp. 178-180 (Testimony of Edward J. Grubb); pp. 230-231 (Testimony of Donald J. Petry); pp. 319-320 (testimony of Stephen Rackers). Mr. Grubb further testified that there was no "anti-Joplin" animus exhibited by Staff at any time. Transcript pp. 189-190.

²⁵⁷ Transcript pp. 247-259.

“there is no direct revenue impact upon the payroll tax annualization and payroll annualization discussed in Leslie Jones’ testimony on August 14, 2007.” Consequently, it is unclear what, if any, objection Joplin continues to have with the payroll and payroll tax annualization amounts. The Commission concludes that Staff’s payroll and payroll tax annualization, as embodied in the Joint Recommendation/Global Agreement, is accurate and reasonable.

Local 335’s Issues

As noted in the procedural history, Local 335 did not join the other parties in their motion to modify and limit the issues list. Local 335 considers the three issues it raised during the course of this proceeding to be live issues and the Commission issued a notice stating it would consider all record evidence in this matter addressing Local 335’s issues.²⁵⁸

Findings of Fact Regarding Local 335’s Issues

169. The issues raised by Local 335 were:

1. whether MAWC has provided adequate training of its employees in dealing with asbestos-cement and lead-jointed pipe;
2. whether funds should be allocated to employee training or the removal of asbestos-cement and lead-jointed pipe; and
3. whether MAWC has properly asserted privilege with regard to payroll information.²⁵⁹

170. Local 335 affirmatively pled that it did not oppose the outcome of the case as proposed in the Global Agreement, and that it recognized that the issues it raised may not

²⁵⁸ See *Order Granting Motion to Modify Order and Amend Issues List*, issued August 30, 2007, Local 335’s *Advice to the Commission*, filed September 4, 2007, and *Notice Regarding Issues List*, issued September 5, 2007.

²⁵⁹ *Id.*

be outcome determinative for this matter.²⁶⁰

171. Local 335 failed to appear at the evidentiary hearing. Because Local 335 failed to appear at hearing, it is subject to dismissal as a party to this action pursuant to Commission Rule 4 CSR 240-2.116(3).

172. Because Local 335 failed to appear at hearing, it was not present to formally offer the testimony of its witness, Alan Ratterman into evidence, or to defend that offering from objections from the other parties. The mere pre-filing of testimony is not a formal offer of evidence into the record.²⁶¹

173. Mr. Ratterman's testimony was prefiled as "rebuttal" testimony and addressed issues 1 and 2 in Finding of Fact Number 169 above.

174. Mr. Ratterman's rebuttal testimony did not rebut any other witness's direct testimony as required by Commission Rule 4 CSR 240-2.130(7)(B). While a party is not required to file direct testimony, rebuttal testimony must be responsive to direct testimony.²⁶²

175. The objections to Mr. Ratterman's testimony based upon it being improper rebuttal were sustained at hearing and Mr. Ratterman's prefiled rebuttal testimony was excluded from the record.²⁶³

176. The only remaining evidence offered into the record by Local 335 was Mr.

²⁶⁰ Local 335's *Advice to the Commission*, filed September 4, 2007.

²⁶¹ Exh. Local 335-1, Ratterman Rebuttal, filed July 13, 2007. On July 31, 2007, Local 335 filed a motion to refile Mr. Ratterman's testimony to include two exhibits that it had failed to file on July 13, 2007. Also on July 31, 2007, MAWC filed a motion to strike Mr. Ratterman's rebuttal testimony.

²⁶² Commission Rule 4 CSR 240-2.130(7)(B) is not ambiguous and states that "where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct testimony."

²⁶³ Transcript, p. 443 While Local 335 filed a written response to MAWC's objections that were first raised in a Motion to Strike filed on July 31, Local 335's circular arguments that not filing direct testimony negated the rule on rebuttal testimony, or that the Commission should waive its rules, are not persuasive.

Ratterman's live testimony at the local public hearing held in Kirkwood, Missouri on June 13.²⁶⁴

177. The only issue raised by Mr. Ratterman at the public hearing was issue 3 in Finding of Fact Number 169 above regarding whether MAWC properly raised privilege with respect to disclosing certain payroll information.²⁶⁵

178. Mr. Ratterman's statements at the local public hearing were conclusory in nature and did not provide a proper legal basis to support an argument regarding MAWC's exercise of privilege.

179. The Commission has a proper procedure for challenging the classification of information in Rule 4 CSR 240-2.135(2)(B); a procedure that Local 335 elected not to follow.

Conclusions of Law Regarding Local 335's Issues

The evidentiary rules ensure a level playing field for all of the parties and prevent undue surprise and prejudice to any party. If Local 335 wished to present its case-in-chief regarding its issues, the proper procedure would have been to file Mr. Ratterman's testimony as direct testimony. Local 335's failure to follow proper procedure in this matter has essentially left the Commission with only Mr. Ratterman's conclusory statements from the local public hearing in Kirkwood for its review.²⁶⁶ Having no substantial or credible

²⁶⁴ Local Public Hearing, Kirkwood, Missouri, June 13, 2007, Transcript Volume 9, pp. 9-11.

²⁶⁵ *Id.*

²⁶⁶ The pleadings of Local 335's attorneys are also of no consequence, because it is well established legal doctrine that unsworn statements of attorneys or parties, statements in briefs, pleadings, motions, arguments, allegations, or charging documents, as well as articles or exhibits not formally or constructively introduced are not evidence of the facts asserted unless conceded to by the opposing party. *State ex rel. TWA, Inc. v. David*, 158 S.W.3d 232, 236 (Mo. Banc 2005) (Judge White Dissenting), citing to, *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo. App. 1997); *State v. Smith*, 154 S.W.3d 461, 469 (Mo. App. 2005); *Lester v. Sayles*, 850 S.W.2d 858, 864 (Mo. Banc 1993); *State v. Rutter*, 93 S.W.3d 714, 727 (Mo. Banc 2002); *State v. Robinson*, 825 S.W.2d 877, 880 (Mo. App. 1992); *State ex rel. Horn v. Randall*, 275 S.W.2d 758, 763-764 (Mo. App.

evidence in the record upon which to evaluate Local 335's issues, the Commission concludes that Local 335 failed to meet its burden with establishing the need for further training of MAWC's employees or the need to declassify MAWC's salary information.

This is not to say that the Commission does not appreciate, or lacks concern regarding, the issues raised by Local 335. Ensuring the provision of safe and adequate service is of paramount importance to the Commission. These safety issues not only involve MAWC's employees, but also the consumers of the water MAWC provides to its customers. Local 335 has not provided the Commission with evidence in this rate case upon which to fully evaluate these issues, and the rate case may not, in any event, be the appropriate forum to address these issues. Consequently, the Commission will authorize and direct its Staff to conduct an informal investigation case into: (1) whether MAWC provides adequate training of its employees in dealing with asbestos-cement and lead-jointed pipe, (2) whether funds should be allocated to employee training or the removal of asbestos-cement and lead-jointed pipe, and (3) whether MAWC's water customers face health risks in association with the use of asbestos-cement and lead-jointed pipe.

Finally, the Commission notes that while Local 335 has not yet followed proper procedure to challenge the classification of the payroll information it wishes to be made public, there is nothing to prevent Local 335, or Staff, from filing a motion pursuant to

1955). No party has conceded to any of the issues raised by Local 335.

Local 335 did not file a pre or post-hearing brief. Local 335's pleading did include: Application to Intervene, filed January 4; Position on Test Year and True-Up Recommendation, filed January 24; Suggestions in Response to the Non-Unanimous Stipulation and Agreement, filed August 13; Advice to the Commission, filed September 4; and Proposed Findings of Fact and Conclusions of Law, filed September 17. On September 19, 2007, MAWC moved to strike Local 335's Proposed Findings of Fact and Conclusions of Law asserting that there was no record evidence for the Commission to consider in regard to Local 335's allegedly "live issue," and that; consequently, the Commission should strike Local 335 proposed findings and conclusions. The Commission finds no reason to sustain this motion given there is no record evidence to support Local's 335's Proposed Findings of Fact and Conclusions of Law.

Commission Rule 4 CSR 240-2.135(2)(B) to determine whether the requested information may be deemed public.

Capacity Charge Tariffs for Warren and Jefferson Counties

As noted in the procedural history, on April 2, MAWC filed revised sewer tariffs for the purpose of implementing a capacity charge for its Warren County and Jefferson County sewer districts, Tariff File Numbers JS-2007-0713 and JS-2007-0714. These tariff filings were filed outside of the existing rate cases and docketed under Case Number ST-2007-0443. Ultimately ST-2007-0443 was consolidated with this case, and the capacity charge tariffs were suspended to match the suspension date of the rate-case tariffs. Case Number ST-2007-0443 was left open to follow a separate additional procedural schedule and receive filings specifically related to the capacity charge tariffs.

Findings of Fact Regarding Capacity Charge Tariffs

180. In the Global Agreement, the signatories agreed to dispose of all issues in Case Number ST-2007-0443 concerning the capacity charges proposed by MAWC for its sewer districts serving Warren County (Incline Village subdivision) and Jefferson County (Cedar Hill subdivision).²⁶⁷

181. MAWC had originally filed tariffs proposing capacity charges of \$5,500 per new residential customer for those districts.²⁶⁸

182. HBA and the OPC objected to those proposed charges, and the tariffs were suspended by this Commission.²⁶⁹

183. Pursuant to the Global Agreement, the signatories – which include HBA,

²⁶⁷ *Non-Unanimous Stipulation and Agreement*, paragraph 6, filed August 9, 2007.

²⁶⁸ See Tariff filings JS-2007-0713 and JS-2007-0714, filed April 2, 2007.

²⁶⁹ *Order Suspending Tariffs and Scheduling a Conference*, Case No. ST-2007-0443 (May 31, 2007). *Order Suspending Procedural Schedule*, Case No. ST-2007-0443 (Aug. 10, 2007).

OPC, Staff, and MAWC – all agreed that capacity charges of \$1,500 per new residential customer would be appropriate.²⁷⁰

184. Those four parties are the only parties that have entered appearances in case Number ST-2007-0443.²⁷¹

185. A schedule of the agreed-to capacity charges for Single Family Residence, Mobile Home, Multi-Family Apartment and Commercial Premise customer classes are specifically described in the specimen tariffs that were attached to the Global Agreement as Exhibit C.²⁷²

186. The capacity charges proposed in the Global Agreement are acceptable to all concerned parties as evidenced by these parties being signatories to the Agreement.²⁷³

187. No party has objected to the capacity charges proposed in the Global Agreement.

188. No party requested a hearing with regard to the capacity charges proposed in the Global Agreement.

189. All parties waived cross-examination of any and all witnesses with regard to the capacity charges proposed in the Global Agreement.

190. The Global Agreement resulted from extensive negotiations between parties with diverse interests including public consumer groups, large-use industrial customers, municipalities, a labor union, and the Commission's Staff.

²⁷⁰ *Non-Unanimous Stipulation and Agreement*, paragraph 6, filed August 9, 2007.

²⁷¹ See Case Number ST-2007-0443.

²⁷² *Non-Unanimous Stipulation and Agreement*, Appendix C, filed August 9, 2007.

²⁷³ *Id.* at pp. 10-12.

191. Subject matter experts, Edward J. Grubb, Donald J. Petry and Stephen Rackers attested to the reasonableness of the Global Agreement and all of its elements, including the capacity charge tariffs for Warren and Jefferson Counties.²⁷⁴

Conclusions of Law Regarding Capacity Charge Tariffs

After reviewing the proposed capacity charges encompassed in the Global Agreement/Joint Recommendation, and the parties' positions on those charges, the Commission finds the proposed charges to be reasonable.²⁷⁵ The Commission shall allow MAWC to implement its capacity charges in the amount of \$1,500 per new residential customer for the specified districts, and shall require MAWC to file revised tariff sheets in the form attached to the Global Agreement as Exhibit Appendix C.

All Remaining Items in the Global Agreement/Joint Recommendation

The Global Agreement/Joint Recommendation contains several additional items that the Commission must address. These items include the following:

Sewer Rates – The portion of the overall increase to be obtained from MAWC's sewer districts is identified as follows: \$55,465 in the Warren County district, \$57,552 in the Cedar Hill district and \$7,300 in the Parkville district.

Experimental Consolidated Bill Tariff – MAWC proposed in this case tariff sheets that would implement an experimental consolidated bill tariff for the

²⁷⁴ Transcript pp. 178-180 (Testimony of Edward J. Grubb); pp. 230-231 (Testimony of Donald J. Petry); pp. 319-320 (Testimony of Stephen Rackers).

²⁷⁵ At the hearing on Joplin's opposition to the Global Agreement, MAWC's pre-filed testimony in case no. ST-2007-0443 was admitted into evidence as Hearing Exh. MAWC-26 Testimony of Greg A. Weeks (July 10, 2007). See Transcript pp. 116-119. MAWC prepared the testimony to support its initial proposal for higher capacity charges and, the testimony necessarily also supports the much lower capacity charges presented in the Global Agreement. The other parties – HBA, Public Counsel, and Public Service Commission staff – have not yet filed their own testimony, because the procedural schedule in ST-2007-0443 was suspended pending review of the Global Agreement. In the event that the Commission were to refuse to accept the position in the Global Agreement, the parties have reserved the right to put on additional testimony as discussed at the September 6, 2007 prehearing conference and as discussed the day of hearing in this matter, August 14, 2007.

Company's St. Louis district. This would allow consolidation of customer's bills for contiguous, owner-occupied properties to allow for an aggregation of usage. The signatories propose tariff sheets for this purpose. See Appendix D of the Global Agreement.

OPEBs/FAS 106 Tracker Mechanism and Pensions/FAS 87 Tracker Mechanism – "Tracker" mechanisms concerning both MAWC's Other Post-Employment Benefits (OPEB) and pension costs are recommended. See Appendix E of the Global Agreement.

National Call Center and Shared Services Center Transition Costs – It is recommended that the Commission authorize MAWC to create a regulatory asset associated with the net investment that was made to plan, design and implement the National Call Center and National Shared Services Center utilized by MAWC. This asset would be amortized and recovered in rates over a fifty (50) year period. The mechanism would provide MAWC with recovery of its investment, while not requiring the customers to fund a return on the investment.

Tank Painting Tracker – It is recommended that the Commission authorize MAWC to establish a regulatory asset or liability for tank painting and inspection expense. An asset or liability will be recorded on an annual basis in the amount that actual tank painting and inspection expense is greater than or less than \$1,000,000 in that year. This mechanism addresses an issue where there is disagreement as to whether past expense levels are indicative of future expenses.

Depreciation Rates – A comprehensive set of depreciation rates, to be effective as of January 1, 2008, are recommended and attached to the Global Agreement as Appendix F.

ISRS (Infrastructure System Replacement Surcharge) – As required by Commission Rule 4 CSR 240-3.650(17) and Section 393.1006.6(1), RSMo 2000, MAWC's current ISRS shall be reset to zero upon the effective date of the new rates in this proceeding. The Signatories agree that for any ISRS filings implemented between the date new rates are established in this proceeding and the effective date of new rates established in MAWC's next general rate increase, the overall rate of return shall be computed by utilizing a 10% return on common equity and the Company's capital structure filing in this case.

Customer Service Reports – It is recommended that MAWC be required to provide certain reports concerning its Call Center performance.

Consumer Service – The Company agrees to respond to Commission Staff inquiries/complaints within specified time periods in a specified form.

Cost Allocation Manual – MAWC agrees to provide an updated cost allocation manual on an annual basis in a specified form.

Weather Reporting – The Company agrees to provide certain billing cycle data in a specified form.

Findings of Fact Regarding Remaining Items in Global Agreement

192. The remaining items proposed in the Global Agreement/Joint Recommendation, as outlined above, are acceptable to all concerned parties as evidenced by these parties either being signatories to the Agreement, or by having not objected to these items.²⁷⁶

193. No party has objected to the remaining items, as outlined above, proposed in the Global Agreement.

194. No party requested a hearing with regard to the remaining items, as outlined above, proposed in the Global Agreement.

195. All parties waived cross-examination of any and all witnesses with regard to the remaining items, as outlined above, proposed in the Global Agreement.

196. The Global Agreement resulted from extensive negotiations between parties with diverse interests including public consumer groups, large-use industrial customers, municipalities, a labor union, and the Commission's Staff.

197. Extensive Local Public Hearings were held to receive public comment on the proposed rate increases.²⁷⁷

²⁷⁶ *Non-Unanimous Stipulation and Agreement*, pp. 10-12, filed August 9, 2007.

²⁷⁷ See procedural history section of this Report and Order. See also Transcript, Volumes 3-11.

198. Subject matter experts, Edward J. Grubb, Donald J. Petry and Stephen Rackers attested to the reasonableness of the Global Agreement and all of its elements, including all of the items listed above.²⁷⁸

Conclusions of Law Regarding Remaining Items in Global Agreement

After reviewing the remainder of the items encompassed in the Global Agreement/Joint Recommendation, as outlined above, and the parties' and public's positions on, or lack of position on, those items, the Commission finds the proposed items to be reasonable as adjunctive provisions of the Global Agreement/Joint Recommendation. The Commission shall approval all of the above items as encompassed in the Joint Recommendation.

Final Decision

Joplin was the only party to this action that opposed the Global Agreement. Joplin's opposition was limited to two issues related to District Specific Pricing. The Commission has determined that the positions of the joint signatories with regard to those issues were supported by substantial and credible evidence on the record as a whole. The Commission further discharged its statutory duty with regard to determining what constituted just and reasonable rates for MAWC. The Commission went to great lengths to ensure that all due process requirements were satisfied and that all parties had an opportunity to fully litigate any issue identified in this matter.

Having found in favor of the joint signatories with regard to the only issues in dispute, and having found all of the components of the Joint Recommendation to be just and reasonable, the Commission will adopt the Joint Recommendation of the signatory

²⁷⁸ Transcript pp. 178-180 (Testimony of Edward J. Grubb); pp. 230-231 (Testimony of Donald J. Petry); pp. 319-320 (Testimony of Stephen Rackers).

parties, as embodied in the Global Agreement, in its entirety. The Commission shall direct the parties to comply with the terms of the Global Agreement in all respects.

IT IS ORDERED THAT:

1. The Joint Recommendation, as embodied in the Non-Unanimous Stipulation and Agreement, filed on August 9, 2007, is approved in its entirety.
2. The signatory parties shall comply with the terms of the Non-Unanimous Stipulation and Agreement, filed on August 9, 2007. A copy of the Agreement is attached to this order.
3. The proposed water service tariff sheets submitted under Tariff File Nos. YW-2007-0407, YW-2007-0409, YW-2007-0410, YW-2007-0411, YW-2007-0412, and YW-2007-0413 on December 15, 2006, by Missouri-American Water Company for the purpose of increasing rates for water service to customers are rejected. The specific sheets rejected are:

P.S.C. Mo. No. 6

**13th Revised Sheet No. RT 1.0, Canceling 12th Revised Sheet No. RT 1.0
13th Revised Sheet No. RT 2.0, Canceling 12th Revised Sheet No. RT 2.0
13th Revised Sheet No. RT 2.1, Canceling 12th Revised Sheet No. RT 2.1
13th Revised Sheet No. RT 2.2, Canceling 12th Revised Sheet No. RT 2.2
10th Revised Sheet No. RT 2.3, Canceling 9th Revised Sheet No. RT 2.3
12th Revised Sheet No. RT 2.6, Canceling 11th Revised Sheet No. RT 2.6
10th Revised Sheet No. RT 3.0, Canceling 9th Revised Sheet No. RT 3.0
9th Revised Sheet No. RT 3.1, Canceling 8th Revised Sheet No. RT 3.1
11th Revised Sheet No. RT 4.0, Canceling 10th Revised Sheet No. RT 4.0
13th Revised Sheet No. RT 5.0, Canceling 12th Revised Sheet No. RT 5.0
13th Revised Sheet No. RT 5.1, Canceling 12th Revised Sheet No. RT 5.1
13th Revised Sheet No. RT 5.2, Canceling 12th Revised Sheet No. RT 5.2
13th Revised Sheet No. RT 6.0, Canceling 12th Revised Sheet No. RT 6.0
13th Revised Sheet No. RT 7.0, Canceling 12th Revised Sheet No. RT 7.0
13th Revised Sheet No. RT 8.0, Canceling 12th Revised Sheet No. RT 8.0
2nd Revised Sheet No. RT 10.0(a), Canceling 1st Revised Sheet No. RT 10.0(a)**

P.S.C. Mo. No. 3

11th Revised Sheet No. 1, Canceling 10th Revised Sheet No. 1
7th Revised Sheet No. 2, Canceling 6th Revised Sheet No. 2
4th Revised Sheet No. 2A, Canceling 3rd Revised Sheet No. 2A
9th Revised Sheet No. 3, Canceling 8th Revised Sheet No. 3
11th Revised Sheet No. 1, Canceling 10th Revised Sheet No. 1
10th Revised Sheet No. 4, Canceling 9th Revised Sheet No. 4
2nd Revised Sheet No. 5A, Canceling 1st Revised Sheet No. 5A

P.S.C. Mo. No. 2

12th Revised Sheet No. 3, Canceling 11th Revised Sheet No. 3
7th Revised Sheet No. 5, Canceling 6th Revised Sheet No. 5
9th Revised Sheet No. A-1, Canceling 8th Revised Sheet No. A-1
6th Revised Sheet No. A-2, Canceling 5th Revised Sheet No. A-2
6th Revised Sheet No. A-3, Canceling 5th Revised Sheet No. A-3
9th Revised Sheet No. B-1, Canceling 8th Revised Sheet No. B-1
6th Revised Sheet No. B-2, Canceling 5th Revised Sheet No. B-2
6th Revised Sheet No. B-3, Canceling 5th Revised Sheet No. B-3
9th Revised Sheet No. C-1, Canceling 8th Revised Sheet No. C-1
6th Revised Sheet No. C-2, Canceling 5th Revised Sheet No. C-2
6th Revised Sheet No. C-3, Canceling 5th Revised Sheet No. C-3
10th Revised Sheet No. D-1, Canceling 9th Revised Sheet No. D-1
6th Revised Sheet No. D-2, Canceling 5th Revised Sheet No. D-2
6th Revised Sheet No. D-3, Canceling 5th Revised Sheet No. D-3
8th Revised Sheet No. E-1, Canceling 7th Revised Sheet No. E-1
6th Revised Sheet No. E-2, Canceling 5th Revised Sheet No. E-2
6th Revised Sheet No. E-3, Canceling 5th Revised Sheet No. E-3
6th Revised Sheet No. E-4, Canceling 5th Revised Sheet No. E-4

P.S.C. Mo. No. 1

12th Revised Sheet No. 1, Canceling 11th Revised Sheet No. 1
1st Revised Sheet No. 1b, Canceling Original Sheet No. 1b
8th Revised Sheet No. 2, Canceling 7th Revised Sheet No. 2

P.S.C. Mo. No. 7

1st Revised Sheet No. 4, Canceling Original Sheet No. 4

4. The proposed sewer service tariff sheets submitted under Tariff File Nos. YS-2007-0415, YS-2007-0416, and YS-2007-0417 on December 15, 2006, by Missouri-American Water Company for the purpose of increasing rates for sewer service to customers are rejected. The specific sheets rejected are:

P.S.C. Mo. No. 8

3rd Revised Sheet No. 4, Canceling 2nd Revised Sheet No. 4

P.S.C. Mo. No. 2

3rd Revised Sheet No. 4, Canceling 2nd Revised Sheet No. 4

P.S.C. Mo. No. 7

1st Revised Sheet No. 9, Canceling Original Sheet No. 9

5. The proposed capacity charge tariff sheets submitted under Tariff File Nos. JS-2007-0713, and JS-2007-0714 on April 2, 2007, by Missouri-American Water Company for the purpose of increasing rates for sewer service to customers are rejected. The specific sheets rejected are:

PSC Mo. - No 8

Jefferson County (Cedar Hill) District

Original Sheet No. 4a

Original Sheet No. 16a

Original Sheet No. 16b

Original Sheet No. 16c

PSC Mo. - No 7

Warren County (Incline Village et al.) District

Original Sheet No. 9a

Original Sheet No. 9b

Original Sheet No. 9c

6. Missouri American Water Company may file proposed water service tariff sheets in compliance with this Report and Order.

7. Missouri American Water Company may file proposed sewer service tariff sheets in compliance with this Report and Order.

8. Missouri American Water Company may file proposed capacity charge service tariff sheets in compliance with this Report and Order.

9. Pursuant to Commission Rule 4 CSR 240-3.650(17) and Section 393.1006.6(1), RSMo 2000, MAWC's current Infrastructure System Replacement Surcharge is reset to zero upon the effective date of the new rates in this proceeding. Any new ISRS filings implemented between the dates the new rates are established in this proceeding and the effective date of new rates established in Missouri American Water Company's next rate case proceeding shall follow the terms established for said filing in the Joint Recommendation, as embodied in the Non-Unanimous Stipulation and Agreement filed on August 9, 2007.

10. The Staff of the Missouri Public Service Commission is hereby authorized and directed to conduct an informal investigation into the issues raised by Utility Workers Union of America Local 335, AFL-CIO Local 335 as directed in the body of this order. The Staff shall file a report of this informal investigation with the Commission under this case number, WR-2007-0216.

11. All pending motions, not otherwise disposed of herein, are hereby denied.

12. Any witness not finally excused by the Commission prior to the issuance of this Report and Order is hereby finally excused.

13. This Report and Order shall become effective on October 14, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint, larger signature.

**Colleen M. Dale
Secretary**

(S E A L)

Davis, Chm., Clayton, Appling, and
Jarrett, CC., concur;
Murray, C., concurs, with separate
concurring opinion attached;
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 4th day of October, 2007.