

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of February, 2023.

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

File No. WR-2022-0303

**ORDER GRANTING OPC MOTION FOR PRODUCTION
OF DOCUMENTS PURSUANT TO SECTION 386.450**

Issue Date: February 16, 2023

Effective Date: February 16, 2023

On February 3, 2023, the Office of the Public Counsel (OPC) filed a Motion for Production of Documents Pursuant to Section 386.450. OPC wishes to evaluate the financing arrangements between American Water Works Company, Inc. (American Water) and its subsidiaries, including Missouri American Water Company (MAWC). OPC claims this information will assist it in developing its position regarding MAWC's capital structure for ratemaking purposes. The capital structure, in turn, affects the return on equity and the overall rate of return MAWC will receive.

OPC asks the Commission to order American Water to provide certain information to OPC no later than February 16, 2023¹. MAWC objects, stating that it does not have the ability to produce the documents, and that OPC has failed to show good cause for receiving the documents. American Water has not responded.

¹ This information was attached to OPC's motion as Exhibit A, and is attached to this order, also as Exhibit A.

Discovery versus Section 386.450

Section 386.450 is set out in full below:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.

As the Commission has previously discussed, neither relevance nor personal jurisdiction are required for OPC to invoke Section 386.450.² Section 386.450 RSMo is broader than the general right to discovery allowed under Missouri's rules of civil procedure. The Commission has consistently interpreted this statute broadly, given the unique grant of investigative power bestowed upon OPC and the Commission by the Missouri General Assembly via this statute.³

In addition, the Commission also finds the information OPC requests to be relevant. Relevance can be established by a showing of the connection of OPC's requested information to this file, which is a rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure.

Good cause

Before the Commission can grant OPC relief, the Commission must determine whether good cause has been shown. Good cause "generally means a substantial

² *In Re Elm Hills' Request for a Water and Sewer Rate Increase*, Commission File No. WR-2020-0275, *Order Granting Motion for Production* (October 28, 2020).

³ See, e.g., *In re Croasdell*, File No. WC-2008-0331, *Order Denying Objection to Order and Motion to Dismiss of Universal Utilities*, July 15, 2008 (stating that the statute applies to any corporation, not just public utilities); *In re Missouri-American Water Company*, File No. WR-2003-0500, *Order Concerning Motion to Compel*, (December 2, 2003) (acknowledging the statute includes non-parties).

reason amounting in law to a legal excuse for failing to perform an act required by law.”⁴ Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁵

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁶ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁷

The Commission finds that OPC has shown good cause in that the information it wishes to receive is pertinent to what appears to be a disputed issue; namely, what MAWC’s capital structure should be for ratemaking purposes. The Commission is statutorily required to ensure that MAWC’s rates are just and reasonable.⁸

Multi-layered corporate relationships with holding companies make it difficult for the Commission to know where the capital funding is coming from. Knowing the source and type of capital directly addresses the risk that the capital structure is being manipulated to increase equity, which might, in turn, unjustly increase rates. The information OPC requests goes to the heart of MAWC’s rate increase request.

OPC states that it cannot verify MAWC’s claims that it is financially independent from its parent company without access to American Water’s books and records. In fact, the Commission is expressly required to examine the dealings of regulated entities with

⁴ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁵ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁶ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁷ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

⁸ Section 393.130, RSMo.

their unregulated affiliates, and specifically to “inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses.”⁹

Thus, in finding good cause, the Commission finds not only that OPC is entitled to the information pursuant to Section 386.450, but also that the information is relevant to OPC’s position of what MAWC’s capital structure and overall rate of return should be. What is more, the Commission further notes that Section 386.450 states that upon the request of OPC, upon good cause shown, the Commission shall require production of the requested books, accounts, papers or records.

The Commission notes that American Water or MAWC may seek a protective order or other remedies should they believe OPC’s request is unreasonable.

THE COMMISSION ORDERS THAT:

1. The Motion for Production of Documents Pursuant to Section 386.450 is granted.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Pridgin, Regulatory Law Judge

⁹ *In re Elm Hills*, Order Granting Motion for Production, p. 4.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 16th day of February, 2023.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

February 16, 2023

File/Case No. WR-2022-0303

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.