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 and Sewer Service Provided in Missouri Service Areas	)))))	File No. WR-2015-0301

APPLICATION FOR REHEARING OF THE CITY OF JOPLIN, CITY OF ST. JOSEPH, THE MIEC AND CITY OF WARRENSBURG

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COME NOW the City of Joplin, City of St. Joseph, the City of Warrensburg, and the MIEC, pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160, RSMo, and respectfully seek rehearing of the May 26, 2016 Report and Order issued in this case on the following grounds:

I. Introduction

The Report and Order issued by the Missouri Public Service Commission on May 26, 2016, is contrary to 393.130, RSMo.; arbitrary, capricious and unreasonable; contains findings of fact not supported by competent and substantial evidence; and contradicts the Commission's own prior Order in this case by addressing the District Allocation issue which the parties resolved by stipulation, accepted by the Commission on April 6, 2016. The Commission's Order is directly contrary to 393.130, RSMo., by creating undue and unreasonable prejudices and disadvantages to some MAWC customers while bestowing undue and unreasonable preferences and advantages upon other MAWC customers through the creation of subsidies within each of the larger districts paid for by the so-called anchor districts of each larger district. The decision of the Commission on District Consolidation is arbitrary, capricious and unreasonable in that the Commission provides only two, flimsy justifications: one which is based on hope and speculation and the second which completely lacks evidence to support it. The Report and Order includes eleven different so-called "Findings of Fact" not supported by competent and substantial evidence as

required by Missouri law. Lastly, the Commission contradicted itself by improperly addressing the District Allocation issue which was resolved by the parties through the March 16, 2016, Stipulation which was properly approved by the Commission on April 6, 2016. Regarding the District Consolidation issue, in addition to the arguments set forth directly herein, Movants incorporate by reference the Application for Rehearing of Public Water Supply District Nos. 1 and 2 of Andrew County filed on June 23, 2016, as if fully set forth herein.

II. The Report and Order is Contrary to Section 393.130, RSMo

Current Missouri law, specifically section 393.130, gives this Commission guidance on setting water rates but does not use terms such as "Single Tariff Pricing" ("STP"), "Consolidated Tariff Pricing" ("CTP"), or "District Specific Pricing" ("DSP"). It does not enumerate specifically authorized or forbidden ratemaking theories, but it does provide the underlying principles with which to judge the legality of the end result, regardless of which theory the Commission employs. All rates ordered by the Commission "**shall be just and reasonable**" and may not "**make or grant any undue or unreasonable preference or advantage to any ... locality.**"[1].

The Commission correctly states that *State ex rel. Laundry v. Public Service Commission*[2], "does not say that **only** cost differences can be considered when the Commission decides whether there is any undue or unreasonable preference."[3] But the Commission fails to look further into the Court's decision; specifically, the Court determined that equal rates were appropriate for similarly situated customers. Here, the Commission has unlawfully ordered the opposite: equal rates for customers that are not similarly situated.

[1] Section 393.130 RSMo (emphasis added)
[2] 34 S.W.2d 37 (Mo. 1931).
[3] Report and Order, p. 22.

Next the Commission points to *State ex rel. City of Cape Girardeau v. Public Service Commission*,[4] specifically, that the Missouri Court of Appeals held that the Commission "emphasize(d) equity to the individual user by maintaining a rate system designed on the basis of cost to a class of customer rather than to an area."[5] The Commission's Order in the present case may be under the guise of similar costs to a class of customer, but the Order completely ignores equity to the vast majority of individual users when customers in St. Joseph, Warrensburg and St. Louis Metro (who constitute the vast majority of Missouri American's customers) will be forced to bear the undue burden of double digit percentage rate increases so that customers in Platte County, Brunswick, Mexico, Jefferson City, Spring Valley and Ozark Mountain may enjoy double digit percentage rate decreases.

The Commission is correct that *State ex rel. City of West Plains v. Public Service Commission*[6] holds that the Commission is not bound to a particular theory of ratemaking. However, the Commission conveniently glosses over the most important precedent of the case relative to this matter: Taxes (costs) which were passed on to customers in municipalities which did not impose (or cause the utility to incur) those costs was ruled an unjust discrimination in violation of section 393.130. While the Order of the Commission in the present case does not specifically address taxes, it does specifically allow MAWC to spread costs incurred to serve customers in one district to customers in other districts in violation of section 393.130 as announced by the Court in *West Plains.*

[4] 567 S.W.2d 450, 454 (Mo. App., 1978).
[5] *Id. at 453.*
[6] 310 S.W.2d 925 (Mo. *banc* 1958).

The Commission's discussion of *State ex rel. City of Joplin v. Public Service Commission,*[7] is off the mark. While that decision did not mandate the use of District Specific Pricing because the Commission's decision was remanded on different grounds, the Court's discussion of unjust discrimination in rates is no less harmful to the Commission today. In that case, the Commission required the water customers in the Joplin district to subsidize the rates of the customers in other districts in the amount of $880,000 per year in order to prevent "rate shock" to the customers in those other districts. Relying on § 393.130.3, the court rejected the subsidy:

> Under section 393.130.3, water corporations are forbidden from granting undue preference or advantage to any ratepayer, just as they may not unduly or unreasonably prejudice or disadvantage any ratepayer in the provision of services. Hence, the Commission lacks statutory authority to approve discriminatory rates, and its approval of the rates herein, required Joplin ratepayers to pay significantly more than the actual cost of service in that district for the express purpose of subsidizing the services provided in other Company districts that were only paying for the actual cost of service arguably exceeded its authority.[8]

Here, worse than preventing large increases in rates for the subsidized customers, the Commission's subsidy results in rate shock for customers of the host or "anchor" districts so that the subsidized districts **can enjoy rate decreases**.

The Commission fails to address *State ex rel. City of Grain Valley v. Public Service Commission,*[9] but that does not minimize its significance. There, the Court reviewed rates that were the reverse of the consolidation ordered in the present case. There, the court found that Southwestern Bell's rates for Grain Valley and Blue Springs violated the anti-discrimination statute applicable to telephone companies, § 392.200, RSMo, where the company provided the same service under the same conditions to customers in the two localities but charged customers

[7] 186 S.W.3d 290 (2005).
[8] *Id. at 296.*
[9] 778 S.W.2d 287 (Mo. App. W.D. 1989).

in the two localities different rates. While the facts in *Grain Valley* provide a different angle than the present case, the legal principle still applies. There, the company charged different rates for providing the same service under the same conditions. Here, CTP, as proposed by MAWC, Staff, and Riverside, and ordered by the Commission, would charge the same rate for providing a different service under completely different cost conditions. Thus, CTP would subject some districts to undue or unreasonable prejudice or disadvantage while granting undue or unreasonable preferences to other districts in violation of § 393.130.3, RSMo.

III. The Decision on Water District Consolidation is Arbitrary, Capricious or Unreasonable

After deciding in 2000 to move away from single-tariff pricing, and toward district specific pricing, the Commission, this case, flips again, deciding to return toward single-tariff pricing. The unreasonableness of this Report & Order on the issue of Water District Consolidation is evident on its face.

The Commission offers only two justifications for moving toward consolidated pricing: (1) it will help struggling small water and sewer companies;[10] and (2) that "consolidated pricing can significantly reduce" regulatory expense. Even assuming the Staff's evidence is correct, a decision to move toward consolidation on these justifications is unreasonable. Examining who benefits from the first justification, Staff has explained that there are currently 1,000 customers served by non-MAWC water systems in receivership.[11] Nevermind that there is no guarantee or pledge by MAWC to acquire even one struggling district, this figure represents less than a

[10] The Commission also notes consolidation will better promote improved water quality (¶ 31) but this is part and parcel of helping shape small water systems.
[11] Busch Surrebuttal, Ex. Staff-12, 13:3-4.

quarter of one percent (0.21%) of MAWC's current customer base[12] (or .03% of Missouri's households[13]).

The second justification, "significantly reduce[d]" regulatory expense, is even more troublesome because it lacks evidence to support it. Any benefit to ratepayers is *de minimis*. The current figure for rate case expense is $384,742.[14] Total Operating Expenses for the Company are $175,676,792.[15] Rate case expense represents less than a quarter of one percent (0.22%) of the company's Total Operating Expenses. Even if Staff could show that consolidated pricing reduced rate case expense by 25% ($96,185.50), it would only reduce rate case expense to 0.16% of Total Operating Expense, or a savings for each customer of twenty cents annually.

This is in contrast to the actual impacts to ratepayers. The more than **28,000** ratepayers in St. Joseph will see a **9.49%** increase in rates (rather than a .74% increase under the district specific plan[16]). The more than **6,000** ratepayers in Warrensburg will see an **18.27%** increase in rates (rather than a 1.38% increase under the district specific plan[17]). The more than **340,000** ratepayers in St. Louis will see a **16.67%** increase in rates (rather than a 14.87% increase under the district specific plan[18]). For what? To potentially help the 1,000 customers in struggling water and sewer districts? To potentially save each customer twenty cents annually in regulatory expense? The signatories do not disagree that in some instances there are reasons to diverge from pure cost of service principles. But, under these facts, based on these justifications, the unreasonableness of the Report and Order is patent.

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[12] 1000/(459,429 Water Customers + 11,790 Sewer Customers) = .0021.
[13] https://www.census.gov/quickfacts/table/PST045215/29
[14] See Staff Ex. 4, 2:80.
[15] Staff Ex. 4, 4:171.
[16] See MAWC Ex-50R1, p. 4
[17] See MAWC Ex-50R1, p. 4
[18] See MAWC Ex-50R1, p. 4

Moreover, the Commission itself is inconsistent when it comes to consolidation. For sewer district consolidation, it states that:

> Arnold is by far Missouri-American largest sewer system with 6,877 customers, far outpacing the second largest sewer district, Jefferson City, with 1,374 customers. As Such, it is reasonable for Arnold to be separated into its own district.[19]

Nevertheless, for water district consolidation purposes, the Commission felt obliged to consolidate the St. Louis Metro District with the districts of Mexico, Jefferson City, Anna Meadows, Redfield, and Lake Carmel. The St. Louis Metro District has 355,437 residential customers, more than 80 percent of all Missouri-American residential customers and over twelve times more than the next largest district, St. Joseph (28,813).[20] Applying the Arnold standard to the water district consolidation issue would lead to the conclusion that the St. Louis Metro District should not be further consolidated.

IV. The Findings of Fact on the Issue of Water District Consolidation are Not Supported by Competent and Substantial Evidence

The Findings of Fact on the Issue of Water District Consolidation[21] are not based upon competent and substantial evidence on the whole record, and are unreasonable, unjust, unlawful, and arbitrary and capricious.

Section 393.150.2, RSMo, provides, in pertinent 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** or sewer corporation[.]"[22]

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[19] Report and Order, p. 18, ¶ 39.
[20] Herbert Rebuttal, MAWC Ex-9, Schedule PRH-6.
[21] Report and Order, pp. 5-17, ¶¶1- 36.
[22] Section 393.150.2, RSMo. See also *Office of Pub. Counsel v. Mo.Pub. Serv. Comm'n*, 409 S.W.3d 371, 378 (Mo. banc 2013) (emphasis added).

The Company also seeks district consolidation and bears the burden of proving the rates under a consolidated plan would be just and reasonable. In SW-2011-0103, Staff correctly explained:

> Any Commission decision, including those involving single tariff versus district-specific pricing, must be supported by competent and substantial evidence adduced in the case in which the decision is rendered[.][23]

"[S]ubstantial evidence is evidence which, if true, would have a probative force upon the issues."[24]

Both the Company and Staff have offered general, policy justifications for consolidation. The Report and Order cites those policy justifications as the basis for its conclusion. However, Missouri Courts have previously required more than justifications, claims or rationales offered in testimony. *See State ex rel. Pub. Counsel v. Missouri Pub. Serv. Comm'n*, 289 S.W.3d 240, 251 (Mo. App. W.D. 2009). Those justifications, claims, or rationales must be substantiated or supported by evidence proving such claims to constitute competent and substantial evidence.[25] While policy justifications and general claims of the benefits of consolidation abound in this case, noticeably absent is any evidence which would substantiate those claims that is specific to this company, its service territories, or this case.

In addition, the Commission's failure to resolve conflicting evidence and failure to make findings or conclusions concerning important issues that were raised in the testimony and at the hearing renders its decision arbitrary and unreasonable. "As a general rule, where an administrative body's decision is based on substantial evidence, it is not arbitrary and

[23] Brief and Scenarios of the Staff, SW-2011-0103 (September 1, 2010), p. 15.
[24] *State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 713 S.W.2d 593, 595 (Mo. App. W.D. 1986).
[25] *Id.*

unreasonable. One exception to the general rule occurs when an agency completely fails to consider an important aspect or factor of an issue before it."[26]

The Western District Court of Appeals recently reinforced this rule. In *Stewart v. Division of Employment Security*,[27] the Employment Security Division claimed that the employee had been paid for certain dates. The employee testified that she had not been paid for those dates and at least one document in the record supported her claim.[28] The Western District found, "[D]espite [employee's] testimony, and the apparent conflict in the employer's records, the Commission made no findings with regard to the conflicting evidence."[29] The court stated the rule: that a decision is arbitrary and unreasonable if an agency fails to consider an important aspect or factor of an issue before it.[30] The court, in reversing the decision of the Labor Commission and remanding for findings and conclusions that would reconcile the conflicts, stated:

> We cannot conclude that the Commission's findings were supported by sufficient competent evidence where the Division's own evidence conflicts and, in part, supports [employee's] contentions, and the Commission failed to address or even acknowledge, the conflict in any fashion.[31]

In *State ex rel. GS Technologies Operating Co., Inc. v. The Public Service Commission*,[32] a utility customer filed a petition with the Commission to investigate the reasonableness of prices charged by the utility following an explosion that destroyed a generating unit. The Western

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[26] *Stewart v. Division of Employment Security*, 2014 WL 462303 (Mo. App. W.D. 2014) (citing *Chipperfield v. Mo. Air Conservation Comm'n*, 299 S.W.3d 226, 248 (Mo. App. 2007)).
[27] 2014 WL 462303, *4 (Mo. App. W.D. 2014),
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] 116 S.W.3d 680 (Mo. App. W.D. 2003).

District explained the necessity of requiring an agency to make findings of fact and conclusions of law in a contested case:

> The Commission's findings 'must be sufficiently specific to enable the reviewing court to assess the agency decision intelligently, and to ascertain whether the facts furnish a reasonable basis for the decision……
>
> [T]he reviewing court must not be "left 'to speculate as to what part of the evidence the court found true or what was rejected'"… In particular, the findings of fact must be sufficiently specific to perform the following functions:
>
> > Findings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the parties and the circuit court of the factual basis upon which the commission reached its conclusions and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided [.][33]
>
> When the agency's order indicates that the agency failed 'to consider an important aspect or factor of the issue before it,' this court may find that the agency acted arbitrarily and capriciously. *Barry Serv. Agency Co. v. Manning,* 891 S.W.2d 882, 892 (Mo. App. 1995).[34]

In *State ex rel. GST*, the court found that the question raised by an expert concerning whether the utility was imprudent for failing to place a hold on the gas valves was a dispositive issue in the case.[35] The Commission's counsel argued before the court that the Commission did not find the expert's testimony credible and "chose to reject it." But, the court pointed out "There is no indication of this in the Commission's Report and Order."[36] The Western District remanded the case to the Commission for "findings on this evidence" stating:

> [T]he Commission's failure to address the issue of whether KCPL should have placed a hold on the gas valves after the flooding … and its failure to do so triggered the … explosion precludes this court from being able to adequately assess the Commission's conclusion that GST failed to show that KCPL's imprudence caused the … explosion. [37]

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[33] *St. Louis County v. State Tax Comm'n*, 515 S.W.2d 446, 448 (Mo. 1974).
[34] *Id.* at 691-92.
[35] *Id.* at 692.
[36] *Id.*
[37] *Id.*

Here, while the Commission found the testimony of Mr. Busch "very credible" it did not resolve his own conflicting statements. Likewise, the Commission made no finding as to the conflicting statements made by Mr. Herbert. It appears from the Report and Order that the Commission completely dismissed the testimony of OPC's witness Dr. Marke, but this is not indicated in the Report and Order itself and no justification for discrediting Dr. Marke's testimony is offered. The Commission's failure to address the specific arguments raised by the consumers in their briefing precludes any reviewing court from being able to review its ultimate conclusion. As addressed in detail below, the Report & Order is arbitrary and unreasonable because it is not based on competent and substantial evidence, fails to address the issues raised by the signatories to this Application, and fails to address or even acknowledge the conflicting evidence presented.

Findings of Fact, ¶ 5

While the Commission concludes: "Other costs…are allocated…*in a less definite manner,*" the testimony cited as authority for this finding only indicates the costs are allocated in an "appropriate manner." [38] The Commission also makes the following finding: "As a result, the company's cost to serve a particular system is not a definite or unquestionable number." There is no citation in the Report and Order to the record for this finding, and indeed, there is no substantial and competent evidence for this finding.

Finding of Fact, ¶ 12

The finding in Paragraph 12 that "the water systems in the various districts share many of the same labor and management personnel and operating characteristics, and thus share similar corporate costs" is not supported by a citation to the record. In addition, the statement "labor

[38] Busch Direct, Ex. Staff-9, 4:8-12.

costs will **tend to be similar** in each of the three Districts proposed by Staff" is not supported by the testimony cited. In fact, Staff's witness testified just the opposite: "One area where costs **may not be equal** is labor. Employees who work in the various districts may actually receive different pay. This could be due to union contracts or other factors that impact salaries in the different areas that MAWC operates."[39]

Finding of Fact, ¶ 21

In Paragraph 21, the Commission concludes "Missouri-American's annual cost to serve a residential customer is fairly **consistent** across the existing districts" **despite also finding that** the cost to serve a residential customer ranges from $400 to more than $1,000. The dictionary defines consistent as: "showing no significant change, unevenness or contradiction."[40] While Company's consolidation proposals tended to group the districts by price, Staff's proposal did not. Specifically, "District 2" combines St. Joseph (at $418.39 annual cost per residential customer) with Brunswick and Platte County (at $937.23 and $1031.48 annual cost per residential customer, respectively).[41] It is outside the bounds of reasonableness to describe costs which are more than double that of another district as "fairly consistent." One would be hard pressed to find a ratepayer who paid $418.39 in one year (or $34.86 monthly) for water, and $1031.48 (or $85.95 monthly) the next year, who would describe their water bill as "fairly consistent."

The finding that "For most districts, the annual cost to serve a customer is in the $400 to $500 range" is misleading. It ignores that three of the company's largest districts all have an annual cost per residential customer in **excess of $500**, specifically Mexico (with 4,294 customer

[39] Busch Surrebuttal, Ex. Staff-12, 9:20-22.
[40] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 484 (1993).
[41] Herbert Rebuttal, Ex. MAWC-9, Schedule PRH-6.

accounts) at $578.35, Jefferson City (with 9,033 customer accounts) at $535.78 and Platte County (with 5,484 customer accounts) at $1,031.48.[42]

Finding of Fact, ¶ 22

The Commission states "The consistency in costs to serve customers between districts is attributable to the fact that most of the costs of providing service to Missouri-American customers are very similar, if not the same[.]"

First, this statement is contradicted by Finding of Fact, ¶ 21 in which the Commission acknowledges that the cost to serve customers in some districts is more than double the cost to serve customers in other districts. The statement is also contradicted by the competent and substantial evidence in the record that the cost drivers (water supply source, water treatment process, proximity of supply source, aggregate demand and customer density) in the districts differ significantly. There are differences in the sources of supply between the districts.[43] There are different treatment and processing requirements for surface water when compared with ground water.[44] The costs in treating ground water versus surface water are also different.[45] Mr. Busch, who this commission found "very credible," [46] testified that "the southwest part of the state is a…rocky part of the state. It's much more difficult to place a meter there…than it is in St. Louis or here in Jefferson City or maybe up in Platte County."[47] Company Witness Mr. Herbert agreed the costs of providing service are different.[48] The Report and Order does not

[42] *Id.*
[43] Marke Direct, OPC Ex. 9, 11, Table 1; Tr. 412:11-1; Tr. 419:1-3.
[44] Tr. 369:1-6; Tr. 412:17-20; Tr. 419:3-6.
[45] Tr. 369:7-10.
[46] Report and Order, p. 14, ¶ 29.
[47] Tr. 808:19-24.
[48] Tr. 372:8-15.

resolve this conflicting evidence, much less acknowledge it, rendering the decision arbitrary and unreasonable.

Finding of Fact, ¶ 25

Paragraph 25 begins, "The fragmentation of the industry with many small systems serving very few customers creates affordability problems." There is no citation to the record to support this finding. The statement is also contradicted by present rates for customers on a 5/8 meter using 5,000 Gallons/Month.[49] Three of the company's smaller districts are the most affordable: Emerald Point ($14.62), Tri-States ($23.00), and Maplewood, Stonebridge, Riverside ($33.91).[50]

The next statement, that "The Federal and State governments imposed many new regulations designed to protect public and environmental health" also contains no citation to the record. Also missing is any citation to such regulations.[51] The real error is the conclusion that such regulations "impose a heavy burden on small systems with few customers" based on the following finding:

> [T]he Environmental Protection Agency estimates that compliance with the Safe Drinking Water Act costs an average of $4 per household per year for systems serving more than 500,000 people. But for systems serving no more than 100 customers, that annual cost rises to $400 per household.[52]

The Report and Order cites "McDermott Direct, Ex. MAWC-12, Pages 7-8, Lines 17, 1-3." McDermott's Testimony is based on a 2002 study,[53] which is based on a 1995 study,[54] which is

[49] MAWC-48R, 1.
[50] Herbert Rebuttal, Ex. MAWC-9, Schedule PRH-6.
[51] The same is true for Finding of Fact, ¶ 31.
[52] Report and Order, p. 13, ¶ 31, 25.
[53] See McDermott Direct, Ex. MAWC-12, Pages 7-8, Lines 17, 1-3 (citing "Congressional Budget Office, "Future Investment in Drinking Water and Wastewater Infrastructure", November

based on a survey that "asked cities and counties to report the expenditures they had made in fiscal year 1993 to comply with each of the existing rules ... and to report the total expenditures that they expected to make to comply ... for five additional years -- 1994 through 1998[.]"[55] How a municipality estimated the cost with respect to a municipally owned and operated system to comply with the Safe Drinking Water Act more than twenty years ago is not evidence that "Federal and state governments have **recently** imposed many new regulations ... [which] impose a heavy burden on small [**investor-owned**] systems with few customers."

Finding of Fact, ¶ 27

The Report and Order states, "Missouri has many struggling small water and sewer companies." While Mr. Busch did testify there were seven small water or sewer systems in receivership, he also testified that these systems serve approximately 1,000 customers.[56] This represents less than a quarter of one percent (0.0021%) of MAWC's current customer base.[57] Considering Missouri has 2.746 million housing units,[58] this is an issue that potentially affects 0.03% of Missouri's households. Moreover, Dr. Marke testified that 84% of all water systems are municipal owned.[59] The likelihood that a significant number of additional privately owned systems would fall into receivership is extremely small. Dr. Marke also testified that the number

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2002. http://www.cbo.gov/sites/default/files/11-18-watersystems.pdf [link broken - actually available here: https://www.cbo.gov/sites/default/files/107th-congress-2001-2002/reports/11-18-watersystems.pdf]).

[54] See The Safe Drinking Water Act: A Case Study of an Unfunded Federal Mandate (September 1995), pp. 16-17. https://www.cbo.gov/sites/default/files/104th-congress-1995-1996/reports/entirereport_8.pdf.

[55] *Id.*

[56] Busch Surrebuttal, Ex. Staff-12, 13:3-4.

[57] 1000/(459,429 Water Customers + 11,790 Sewer Customers) = .0021.

[58] https://www.census.gov/quickfacts/table/PST045215/29

[59] Tr. 221: 23-25.

of systems in receivership is "historically small" and that the "problem appears to be improving."[60] The Report and Order fails to acknowledge or address this conflicting evidence.

Finding of Fact, ¶ 28

The Commission states "Through those interactions [with owners and managers of utilities], Staff has become aware that 'consolidated pricing is a major consideration in the decision to own and operate systems in Missouri and on whether or not to expand.'"

But Staff's evidence also shows that, despite district specific pricing, since the last rate case (2012), the company has acquired seven water and seven wastewater systems.[61] At the hearing, Mr. Busch confirmed that the Company hadn't "indicated one way or the other if they will be more aggressive or not [with respect to its acquisition strategy]."[62] Mr. Busch testified at the hearing that regardless of the outcome of this case, he had no reason to believe Missouri American would cease acquiring troubled districts.[63] Where a witness' own testimony conflicts, such conflict must be expressly resolved. The Report and Order fails to do so.

Finding of Fact, ¶ 31

This paragraph claims, without citation to the record, that consolidated pricing will involve "spreading out the cost of mandated environmental upgrades[.]" This statement begs two questions: (1) what mandated environmental upgrades? (2) to the extent there are mandated environmental upgrades, at what cost? The signatories to this Application are unable to locate the answer to either of those questions in the record. Indeed, the conclusion that consolidation will "promote improved and uniform water and environmental quality" because it will spread out

[60] Marke Rebuttal, Ex. OPC-11, 6:14-19.
[61] Staff Report, Revenue Requirement Cost of Service, Staff Ex. 1, 3:19-32.
[62] Tr. 474:22-24.
[63] Tr. 433:11-21.

the cost of mandated environmental upgrades is not supported by substantial and competent evidence.

At the hearing, Company witness McDermott admitted that under the present (district specific) rate structure, the Company is already able to recover costs associated with government mandated investment.[64] Similarly, McDermott confirms that he does not claim that Missouri is currently suffering from poor water quality.[65] McDermott admitted that he had not performed a study which shows improved water quality after a shift toward consolidation.[66]

Mr. Busch testified that a "bigger company has the ability to bring a better standard of water quality to the districts being acquired." [67] But district consolidation has no impact, one way or the other on the company's size. And while this might generally be the rule (or the hope), it is not supported by the evidence here. There is absolutely **no** evidence that any of the fourteen recently acquired districts were failing to provide safe, reliable water prior to being acquired by Missouri American and there is no evidence in this case of any other small district failing to provide safe, reliable water. There is no evidence of poor water quality in the seven districts currently in receivership. The only evidence in this case regarding potentially unsafe and unreliable water quality is by that of Missouri American itself. The City of Riverside provided extensive evidence about the poor water quality provided by Missouri American.[68] The issues with water quality and the resulting damage to homes were confirmed at the Hearing by

[64] Tr. 635:15-19.
[65] Tr. 637:23-638:2.
[66] Tr. 638-3-6.
[67] Tr. 657: 15-17.
[68] *See* Rose Direct, Riverside Ex. 1; Local Public Hearing, February 1, 2016 (Riverside), Volume 15.

the Company.[69] In addition, the public comments filed in this case suggest poor water quality in other areas.[70] If anything, the evidence shows the risk is that water quality will be diminished if a system is acquired by Missouri-American.

Finding of Fact, ¶ 34

The Commission concludes, based on company witness McDermott's testimony, that consolidated pricing will "tend to reduce administrative and regulatory costs … by reducing regulatory costs of having to calculate and file multiple rates within a rate case." At the Hearing, McDermott could offer no estimates of such reduced costs.[71] When pressed, he admitted he did not study the potential for lowered billing and collections or reduced costs of regulatory filings.[72] General claims or justifications must be substantiated to constitute competent and substantial evidence.

This finding also suggests that Staff believes consolidated pricing "can **significantly** reduce the cost of preparing a future rate case." Mr. Busch only testified that "Staff's recommended approach **may** benefit the customers through reduced rate case expense" and that Staff's work is "labor intensive." [73] At the Hearing, Mr. Busch could not offer an estimate of such reduction and had no evidence to support this claim.[74] There is no testimony or evidence in the record that other utilities in Missouri with consolidated pricing have lower rate case expense. There is nothing in the record to suggest that consolidated pricing will significantly reduce the

[69] Tr. 121:3 - 122:23.
[70] See Tr. 106:6:10; P201601153, Warrensburg ("[W]e have NEVER experienced water quality this POOR[.]"); Local Public Hearing, January 28, 2016 (Warsaw), Volume 6, 13:14-15 ("[A] lot of times I have to buy drinking water. It's not fit to drink.")
[71] Tr. 639:12-16.
[72] Tr. 639:12-16.
[73] Busch Direct, Ex. Staff-9, 8:7-8; Busch Surrebuttal, Ex. Staff-12, 15:5:15.
[74] Tr. 423:13-21.

cost of a future rate case, much less an attempt to quantify any potential for reduced rate case expense.[75]

Finding of Fact, ¶ 35

The Commission concludes "If the cost of making those [large capital investments] is spread among the consolidated districts, in the long term any perceived short-term unfairness will be balanced out." First, there is no citation to the record supporting this conclusion.

Second, this conclusion ignores the ratepayer. While short-term "unfairness" might be balanced out in the long term **on paper**, it does not balance out for the **ratepayer**.

The Commission justifies the conclusion with the finding that all water systems will "**eventually** require large capital investments." The evidence in the record shows that while most systems will be retired and need to be significantly upgraded or replaced in the next fifteen years, it will be 42 and 52 years, respectively for St. Joseph and Joplin, before another major capital investment is required.

	Structures and Improvements Power and Pumping	
	Probable Retirement Date	Years Remaining
Platte	2018	2
Tri-States	2022	6
Maplewood/Stonebridge/Riverside	2025	9
Rankin Acres	2025	9
Whitebranch	2025	9

[75] Even if Staff could show that consolidated pricing could **significantly** reduce the cost of preparing a future rate case, the potential benefit to customers is *de minimis*. The current figure for rate case expense is $384,742. See Staff Ex. 4, 2:80. Total Operating Expenses for the Company are $175,676, 792. Staff Ex. 4, 4:171. Regulatory expense represents less than a quarter of one percent (0.22%) of Total Operating Expenses. Even if Staff could show that consolidated pricing reduces rate case expense by 25% ($96,185.50), it would take rate case expense to 0.16% of Total Operating Expense, or savings for each customer of twenty cents annually.

Warrensburg	2026	10
Mexico	2026	10
Ozark Mountain/Lake Taneycomo	2030	14
Lakewood Manor/Spring Valley	2030	14
St. Louis Metro	2031	15
Brunswick	2035	19
Jefferson City	2049	33
St. Joseph	2058	42
Joplin	2068	52

Spanos Direct, Ex. MAWC-32, Schedule JJS-1

The Commission's conclusion ignores that 14.8% of Joplin residents are 65 years and older.[76] Under the consolidation plan, a 65 year old resident (assuming a life expectancy of 80) in Joplin will be forced to help pay for all of the upgrades that are needed to Tri-States, Maplewood, Stonebridge, Riverside, Rankin Acres, Whitebranch, Warrensburg, Ozark Mountain, Lake Taneycomo, Lakewood Manor, and Spring Valley. At the same time, the resident will not experience any personal benefit from these upgrades, as the Joplin system is not interconnected with any of the other systems. But unfortunately, barring a scientific miracle, this resident will be long dead before Joplin will see a new system, in 2068 (when she would turn 117). The unfairness for the elderly Joplin resident does not "balance out." With an average life expectancy of 80 years, anyone over the age of 28 will not live to see the retirement of the current system (or a new system) in Joplin. These are not just numbers on a spreadsheet, they are real people, with real lives, and real concerns about affordability and fairness.

Similarly, the conclusion ignores the fact that ratepayers are transient. They may live in one community for a short while, and then move to another community. The resident who has

[76] http://www.census.gov/quickfacts/table/PST045215/2937592.

lived in St. Joseph since 2000, who has already been paying higher rates for a new plant, and will now help fund the new Parkville Plant, moves to Jefferson City in 2030. That resident now helps fund the upgrades to St. Louis Metro and ends up on the over-paying-subsidizing end of the equation for the duration of his or her lifetime. The unfairness **never** balances out. Where residents in each community pay their cost of service, there is no "lag" in attempting to balance the unfairness scale. When people move, while they may pay higher or lower rates, they are paying their cost of service and do not have to stick around for forty or more years in hopes that the unfairness they are currently experiencing will "balance out."

Finding of Fact, ¶ 36

While the Commission recognized that "Joplin and St. Joseph have incurred costs for major infrastructure projects that have not been spread among other districts," it made the following finding: "However, rate payers do not pay all the expenses for a major capital project immediately. Instead, those costs are amortized over many years and recovered by the company through rates over that extended period of time." There is no citation to the record to support such finding.

The Commission concludes "Thus, capital projects completed in recent years have not been fully paid for through rates, and because of consolidation, the remaining balance of those costs will be spread to other districts." This conclusion ignores the fact that the capital projects completed in other districts will also be spread on Joplin and St. Joseph. For example, Warrensburg had $772,237.06 in costs in 2000 for Water Treatment, of which only $263,242 has accrued.[77] Although the remaining balance of the costs of capital improvements to the Joplin system will be spread to other districts, so will the remaining balance of improvements to the

[77] Spanos Direct, Ex. MAWC-32, IX-16.

many other systems now consolidated with Joplin. Not only have the elderly fixed-income residents in St. Joseph been paying significantly higher rates since 2000 for the new plant in St. Joseph, these residents will now share in the remaining balance of costs related to structures and improvements in Platte and Brunswick, and within two years, be sharing in the cost of a second new plant in Parkville (Platte), from which they receive no benefit.

Moreover, the record shows that customers of the St. Louis Metro District, the large majority of the "anchor" customers, have been paying almost $26,000,000 a year under the ISRS for infrastructure improvements to that District.[78] And, if the ISRS is reapproved by the General Assembly, it expressly provides that the surcharge cannot be socialized to customers not served by the plant that is surcharged. *See* Section 393.1006.5(1) ("The commission shall, however, only allow such surcharges to apply to classes of customers receiving a benefit from the subject water utility plant projects or shall prorate the surcharge according to the benefit received by each class of customers"). In other words, under district consolidation, St. Louis Metro customers will have to pay for plant that does not serve them, but the customers of the districts consolidated with St. Louis Metro will pay none of the surcharge for plant serving only St. Louis Metro customers.

Thus, the record in this case does not support the Commission's findings.

V. The Commission Improperly Addressed The District Allocation "Issue" After It Was Resolved by Stipulation Dated March 16, 2016 And Approved by The Commission On April 6, 2016

The Company initially proposed to limit the allocation of Company "corporate and joint and common costs" to $20 per customer for small water and sewer districts to subsidize those smaller districts, with larger districts paying for the subsidy. Staff opposed that limitation. The

[78] MAWC-52.

parties resolved this "District Allocations" issue by Stipulation dated March 16, 2016. *See* Stipulation, page 2. Although the Stipulation could be clearer, it was clear to the parties who negotiated the Stipulation that this issue was resolved in favor of Staff's position, which was to impose no cap on the allocation of these expenses. The Stipulation was unopposed and was approved by the Commission on April 6, 2016. The Order approving the Stipulation expressly acknowledges that "17) district allocations" was one of the issues that "were resolved." *See* Order, page 2. Even before the Stipulation was entered and approved, the Company had withdrawn its position on this issue. *See* March 11, 2016 Company Statement of Position, page 4 ("Staff opposes any cap on the allocation of these costs to the smaller districts and, for purposes of this case, the Company does not object to Staff's proposal to allocate a full share of the joint and common costs to the smaller districts.")

Nevertheless, the Commission decided the District Allocations issue even though the parties had removed it from the case ("The Commission will adopt Missouri-American's limitation on the allocation of corporate expense to small water and sewer companies.") Order, page 29. By deciding that "issue" the Commission ran the risk that the Stipulation on revenue requirement is null and void and a hearing thus required on revenue requirement. *See* Stipulation, page 7, paragraph 14. Moreover, the Stipulation contemplated a certain revenue requirement for water and a separate revenue requirement for sewer, the total of which is $30.6 million higher than under current rates. The Commission's decision on this already-resolved issue effectively undoes the Stipulation in that respect by allocating more of an increase to water customers than contemplated. The decision to reject part of what legally is a unanimous stipulation is arbitrary, capricious and unreasonable.

CONCLUSION

WHEREFORE, the City of Joplin, the City of St. Joseph and the City of Warrensburg, and the MIEC respectfully request that the Commission grant rehearing for the reasons stated above.

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing were sent by email this 24th day of June, 2016, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Jeffrey R. Lawyer