

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF THE PETITION
OF MISSOURI-AMERICAN WATER
COMPANY FOR APPROVAL TO CHANGE
ITS INFRASTRUCTURE SYSTEM REPLACEMENT
SURCHARGE (ISRS), MISSOURI
PUBLIC SERVICE COMMISSION**

RESPONDENTS,

**v.
OFFICE OF PUBLIC COUNSEL**

APPELLANT.

DOCKET NUMBER WD78792

DATE: March 8, 2016

Appeal From:

Public Service Commission

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Attorneys:

Jennifer L. Heintz, Jefferson City, MO, for respondents.

Dustin J. Allison and Timothy J. Opitz, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD78792

Public Service Commission

Before Division One: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

The Office of Public Counsel ("OPC") appeals the Missouri Public Service Commission's ("Commission") order approving the petition of Missouri-American Water Company ("MAWC") to change its "Infrastructure System Replacement Surcharge" ("ISRS"). The OPC contends that the Commission's order was unlawful because it approved an ISRS for St. Louis County ("County") even though the County lacked one million inhabitants at the time of the last census, as required by the ISRS statute. The OPC further argues that the Commission's order was unlawful because it set an ISRS rate which would recover above the ten-percent limit set by the statute.

WE REVERSE AND REMAND

Division One holds:

- (1) The Commission erred in approving MAWC's ISRS petition because the County lacked one million inhabitants at the time of the last census. The applicable ISRS statutes only allow recovery for a water corporation providing service in a first class charter county with more than one million inhabitants. Because the County lacked sufficient population, MAWC could not petition for recovery under the ISRS statutes.
 - a. The phrase "as of August 28, 2003" in the ISRS statute, section 393.1003.1, did not create a "snapshot" test under which the County's population was determined as of August 28, 2003, and could never decrease.
 - b. Missouri's general statute governing the determination of population to be applied by other statutory provisions, section 1.100, contains no "grandfathering" clause protecting a political subdivision from a decline in population except for the protection expressly granted to "a city not located in a county."

- c. Section 1.100.1 requires that the federal census be used to determine population of a political subdivision. Such determination does not allow for Missourians living abroad to be proportionally allocated to a county for a recalculation of population.

Because we find that MWAC should not have been permitted to seek ISRS recovery, we need not address OPC's contention that the recovery exceeded the ten-percent ISRS cap.

Opinion by Gary D. Witt, Judge

March 8, 2016

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