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Issue:	*Net Operating Loss*
Witness:	*Mark L. Oligschlaeger*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Direct Testimony*
Case No.:	*WO-2019-0184*
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MISSOURI PUBLIC SERVICE COMMISSION

COMMISSION STAFF DIVISION

AUDITING DEPARTMENT

FILED

MAY 2 1 2019

Missouri Public Service Commission

DIRECT TESTIMONY

OF

MARK L. OLIGSCHLAEGER

MISSOURI-AMERICAN WATER COMPANY

CASE NO. WO-2019-0184

Jefferson City, Missouri
May 2019

Staff Exhibit No. 8
Date 5/17/19 Reporter LMB
File No. WO-2019-0184

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DIRECT TESTIMONY OF

MARK L. OLIGSCHLAEGER

MISSOURI-AMERICAN WATER COMPANY

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DIRECT TESTIMONY

OF

MARK L. OLIGSCHLAEGER

MISSOURI-AMERICAN WATER COMPANY

CASE NO. WO-2019-0184

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

Q. Please describe your educational background and work experience.

A. I attended Rockhurst College in Kansas City, Missouri, and received a Bachelor of Science degree in Business Administration, with a major in Accounting, in 1981. I have been employed by the Missouri Public Service Commission ("Commission") since September 1981 within the Auditing Department.

Q. What is your current position with the Commission?

A. In April 2011, I assumed the position of Manager of the Auditing Department, Commission Staff Division, of the Commission.

Q. Are you a Certified Public Accountant ("CPA")?

A. Yes, I am. In November 1981, I passed the Uniform Certified Public Accountant examination and, since February 1989, have been licensed in the State of Missouri as a CPA.

Q. Have you previously filed testimony before this Commission?

A. Yes, numerous times. A listing of the cases in which I have previously filed testimony before this Commission, and the issues I have addressed in testimony in cases from 1990 to current, is attached as Schedule MLO-d1 to this direct testimony.

Q. What knowledge, skills, experience, training and education do you have in the areas of which you are testifying as an expert witness?

A. I have been employed by this Commission as a Regulatory Auditor for over 37 years and have submitted testimony on ratemaking matters numerous times before the Commission. I have also been responsible for the supervision of other Commission employees in rate cases and other regulatory proceedings many times. I have received continuous training at in-house and outside seminars on technical ratemaking matters since I began my employment at the Commission.

EXECUTIVE SUMMARY

Q. Please summarize your direct testimony in this proceeding.

A. In this testimony, I will provide support for Staff's recommendation filed in this proceeding on April 22, 2019, regarding the proposal made by Missouri-American Water Company ("MAWC") that its Infrastructure System Replacement Surcharge ("ISRS") rate base be increased to reflect an amount representing the impact of a purported income tax "net operating loss" ("NOL") associated with ISRS plant in service additions. I will explain from a policy perspective the reasons for Staff's recommendation that the Commission reject MAWC's NOL proposal in this proceeding.

Q. Are other witnesses filing direct testimony on behalf of Staff in this case?

A. Yes. Staff witness Karen Lyons of the Auditing Department is submitting direct testimony on the NOL issue as well.

TAX NORMALIZATION AND NOL CONCEPTS

Q. Please provide an overview of the concepts of income tax normalization.

A. Under the Internal Revenue Service Code ("IRS Code"), a company is allowed to deduct certain costs against income at different times for tax purposes than timing of when it is allowed to reflect the same costs as a reduction to income for financial reporting purposes. The existence of these book/tax timing differences ("timing differences") usually provide a net tax benefit to business entities, in that most timing differences serve to reduce a business entity's taxable income levels below the level of its reported financial income. An example of a timing difference that results in significant financial benefits to companies is the ability of the companies to use "accelerated depreciation" deductions for tax purposes under the IRS Code, in contrast to the straight-line book depreciation methods companies rely upon in determining their financial income.

Q. How is the financial impact of tax timing differences treated for ratemaking purposes for regulated utilities?

A. For rate purposes, the tax benefits associated with timing differences can either be assigned to ratepayers upfront by reducing the amount of income tax expense the utility would otherwise recover from its customers (i.e., the "flow-through" method of ratemaking for income taxes), or that benefit can be retained by the utility for a period of time before being passed on to ratepayers (the "normalization" method of ratemaking for income taxes). For utility ratemaking, the concept of tax normalization is applied by collecting income tax expense amounts in rates calculated as if the particular tax deduction or treatment was not available to the utility.

Q. Who determines whether flow-through or normalization treatment is provided to utilities in setting rates for income taxes?

A. For most timing differences, that decision would be made by the utilities' regulatory commissions. However, in regard to the specific timing differences associated with use of accelerated depreciation methods for tax purposes, the IRS Code effectively mandates that regulatory commissions normalize the benefits of the accelerated depreciation tax deductions in setting rates.[1] If the regulatory commissions do not allow for such normalization treatment, that action could result in loss of the entire accelerated depreciation deduction by the utility.

Q. Please summarize the impact of the tax normalization provisions in the IRS Code regarding accelerated depreciation on utility ratemaking.

A. In essence, the tax normalization requirements of the IRS Code mandate that utility rates be set so that customers do not receive the tax benefit of accelerated depreciation deductions any faster than over the estimated straight-line book lives authorized for the utilities' assets.

Q. When the tax normalization approach is used in setting rates, how is the financial impact of this approach on utilities accounted for?

A. With use of the tax normalization approach, customers will in almost all circumstances pay an amount of income tax expense in rates that exceeds the utilities' actual current income tax liabilities to federal and state taxing authorities. The portion of the expense collected from customers that is actually paid to taxing authorities in the short-term is charged to *current* income tax expense accounts. The portion of the income tax expense collected from customers that will be retained by the utility until later periods is charged to *deferred* income tax expense accounts. Because the amounts paid in by customers for

[1] Treasury Regulation 1.167(l)-1(h)(1)(iii).

deferred income tax expense represents capital paid in by ratepayers that the utilities can use for a period of time, it is appropriate to provide customers a return on this capital contribution. This is accomplished by reducing the utility's rate base by the balance of its net collection of accumulated deferred income taxes ("ADIT") at a point in time.

Q. Are deferred income taxes taken into account in ISRS rate calculations?

A. Yes, as required by statute. The purpose of the ISRS process is to allow for single-issue rate recovery of costs associated with certain gas and water plant infrastructure projects. Through the ISRS process, a utility is able to recover a return on qualifying plant additions outside of a general rate proceeding. However, the amount of the required return on rate base for ISRS net plant additions is required to be netted against the amount of booked deferred income taxes associated with the ISRS additions, to recognize that customers as well as the utility have invested capital related to the plant additions.

Q. What is a "net operating loss?"

A. An NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled. When this situation occurs, the amount of the unused deductions is referred to as an "NOL" and is booked to a deferred tax asset account.

Q. Does the existence of an NOL represent a permanent loss to a company?

A. No. Once an NOL is booked, it can be used as a "carry-forward" amount to offset any positive taxable income amounts in future years.

Q. Why would a utility find itself in an NOL situation?

A. Since the time of the financial crisis that occurred approximately ten years ago, and through the end of 2017, the IRS Code allowed business entities very generous accelerated depreciation deductions. These deductions were commonly referred to as "bonus depreciation." Largely because of the availability of bonus depreciation tax benefits, some utilities, including MAWC, have been in NOL situations for a number of years.

Q. How would NOLs be taken into account as part of tax normalization ratemaking for accelerated depreciation tax timing differences?

A. Utilities have argued that the rate base reduction for ADIT must be offset by amounts related to NOLs, to reflect that the companies were not able to currently use all of the tax deductions available to them and for which deferred taxes were booked. The utilities claim that failure to recognize the NOL offset for ratemaking purposes would constitute a violation of the normalization provisions of the IRS Code, by effectively passing accelerated depreciation deduction benefits on to customers prematurely.

Staff generally agrees with this position, though the affected utilities would need to demonstrate that the NOLs resulted from regulated activity, and that they were not able to receive any actual cash flow benefit from the depreciation deductions giving rise to the NOLs, before NOLs are included in utility rate base.

Q. At this time, are utilities still able to utilize bonus depreciation deductions?

A. No. Due to the provisions of the Tax Cuts and Jobs Act, utilities are not allowed to claim bonus depreciation deductions past 2017.

<u>**NET OPERATING LOSS ISSUE**</u>

Q. What is the issue in this proceeding regarding NOLs?

A. MAWC has taken the position that an NOL amount should be offset against the ADIT balance in rate base for purposes of determining ISRS rates in this case.

Q. What is the ISRS period in this case?

A. The ISRS period extends from October 1, 2018, through March 31, 2019. Only costs directly associated with qualifying ISRS plant that became in-service during those six months should be reflected in ISRS rates resulting from this proceeding.

Q. Has MAWC generated any amount of net NOL to date in 2018 and 2019?

A. No. In fact, according to its response to Staff Data Request No. 0004, MAWC expects to use prior booked amounts of NOL as carry-forwards to offset taxable income in 2018, 2019, and beyond. This means that MAWC is projecting that it will be able to reflect all of its net accelerated depreciation benefits on its books associated with ISRS plant additions from January 1, 2018, forward without the need to record any new offsetting NOL amount. In other words, MAWC is no longer "generating" an NOL as it was prior to 2018; it is instead in the position of "using" the NOL booked in prior years to reduce taxable income in 2018, 2019, and in the future.

Staff witness Lyons has attached MAWC's response to Staff Data Request No. 0004 to her direct testimony as Schedule KL-d2, and is further addressing quantification of the ongoing MAWC NOL balance amounts in more detail in that testimony.

Q. If MAWC has not generated any net NOL amounts thus far in 2018 and 2019, what is the basis for its position that an NOL amount should be reflected in its ISRS rate base?

A. Given the absence of any incurred NOL amount on MAWC's books in 2018 and 2019, MAWC is actually recommending in this case that a "hypothetical" NOL amount allegedly associated with ISRS plant additions be imputed into rate base in this case.

MAWC argues that such an imputation is required in order to comply with the accelerated depreciation normalization requirements in the IRS Code. Staff does not agree.

Q. What is the theoretical basis for MAWC's position on this matter?

A. MAWC's position on this issue in the previous ISRS case, No. WO-2018-0373, was that the ISRS process in 2018 and succeeding years had and will result in a delay in the rate at which it can use the prior accumulated NOL as a carry-forward against future taxable income. This is because the addition of ISRS plant to MAWC's rate base without immediate receipt of new revenues reduces its taxable income amount below the level that would result if the ISRS plant addition had not been made.

Q. Does Staff agree that this is a valid argument?

A. No. MAWC engages in a multitude of financial transactions over time that will result in either increases or decreases to its taxable income. In this case, MAWC is arguing that one, and only one, such category of transaction potentially affecting a utility's NOL status be singled-out for analysis (ISRS plant additions). MAWC takes the position that an amount of additional NOL should somehow be assumed to result from stand-alone operation of the ISRS rate process during 2018 and 2019, even though the balance of the NOL deferred tax asset booked by MAWC is decreasing at a significant rate since January 1, 2018. If no new NOL was generated by MAWC in this ISRS period, then there is no amount of new generated NOL to assign to the ISRS process for ratemaking purposes.

Staff witness Lyons will further address the problems with MAWC's calculation of the hypothetical NOL in her direct testimony.

Q. Has MAWC cited any sources for its belief that imputation of a hypothetical NOL in this case is necessary or appropriate in this instance?

A. Yes. In its response to Staff Data Request No. 0007 submitted in Case No. WO-2018-0373 (attached as Schedule MLO-d2), MAWC generally referred to both the normalization provisions in the IRS Code as well as to certain "private letter rulings" issued by the IRS in recent years as supporting its NOL position in that case. The same rationale would appear to apply in this case as well from MAWC's perspective.

Staff has reviewed both the relevant sections of the IRS Code and the private letter rulings referenced by MAWC, and has found nothing therein that would even remotely require an imputation of an NOL for tax normalization reasons in the situation in which no actual NOL is, in fact, being generated by a utility.

Q. If Staff's position on the NOL issue is adopted in this case, could that potentially lead to a violation of the normalization requirements for accelerated depreciation benefits in the Code?

A. As previously stated, Staff has seen no support for this contention, based upon its review of the IRS Code and the private letter rulings cited by MAWC. Further, Staff's position on this issue is fully consistent with what it understands to be the intent of the accelerated depreciation normalization requirements in the IRS Code. Under Staff's proposed treatment of ADIT in this case, the tax benefits of accelerated depreciation associated with ISRS plant additions in this ISRS period will not be passed on to customers prematurely in a manner that violates the IRS Code. Rather, MAWC will be able to receive the benefit of the full amount of the accelerated depreciation tax deductions available to it relating to its ISRS plant additions. Given receipt of the full amount of tax benefits, it would be most inequitable not to reflect the full amount of capital provided by customers to MAWC as an offset to rate base.

Q. What would be the consequences if MAWC's position on this issue in this case were adopted?

A. Acceptance of MAWC's position in this proceeding would result in an overstatement of both ISRS rate base and ISRS customer rates and, in addition, fail to compensate customers appropriately for the capital they provide to MAWC in rates on an ongoing basis due to ISRS plant additions.

Q. Does this conclude your direct testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In The Matter of Petition of Missouri-American Water Company for Approval to Change an Infrastructure System Replacement Surcharge (ISRS)	))))	**Case No. WO-2019-0184** Tariff No. YW-2019-0018

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

State of Missouri)
) ss.
County of Cole)

COMES NOW, Mark L. Oligschlaeger, and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Direct Testimony*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

Mark L. Oligschlaeger

Mark L. Oligschlaeger

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 7th day of May, 2019.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2020
Commission Number: 12412070

D Suzie Mankin

NOTARY PUBLIC

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
Spire Missouri, Inc., d/b/a Spire	GU-2019-0011	**Rebuttal:** Commission Assessment AAO
The Empire District Electric Company	EA-2019-0010	**Rebuttal Report:** Economic Feasibility
Missouri-American Water Company	WO-2018-0373	**Direct:** Net Operating Loss
The Empire District Electric Company	ER-2018-0366	**Rebuttal:** Tax Reform
Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company	ER-2018-0145 and ER-2018-0146	**Surrebuttal:** Tax Cuts and Jobs Act
Union Electric Company, d/b/a Ameren Missouri	ET-2018-0132	**Rebuttal:** Accounting and Ratemaking
Empire District, a Liberty Utilities Company	EO-2018-0092	**Rebuttal:** Ashbury Regulatory Asset; Affiliate Transaction Variance
Liberty Utilities (Midstates Natural Gas) Corp., d/b/a Liberty Utilities	GR-2018-0013	**Rebuttal:** Tracker Proposals **Surrebuttal:** Tracker Proposals; Pensions/OPEBs
Missouri-American Water Company	WR-2017-0285	**Direct:** Future Test Year **Rebuttal:** Future Test Year New Tax Legislation
Spire Missouri, Inc., d/b/a Spire (Laclede Gas Company / Missouri Gas Energy)	GR-2017-0215 and GR-2017-0216	**Rebuttal:** Tracker Proposals; Other Policy Proposals; Software Costs
Missouri-American Water Company	WU-2017-0351	**Rebuttal:** Property Tax AAO **Surrebuttal:** Property Tax AAO
Missouri Gas Energy and Laclede Gas Company	GO-2016-0332 and GO-2016-0333	**Rebuttal:** ISRS Updates; Capitalized Incentive Compensation; Hydrostatic Testing
Kansas City Power & Light Company	ER-2016-0285	**Rebuttal:** Tracker Proposals; Use of Projected Expenses; Expense Trackers in Rate Base
Laclede Gas Company and Missouri Gas Energy	GO-2016-0196 and GO-2016-0197	**Rebuttal:** ISRS True-ups

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
Union Electric Company, d/b/a Ameren Missouri	ER-2016-0179	**Rebuttal:** Transmission Tracker; Noranda Deferral; Regulatory Reform
KCP&L Greater Missouri Operations Company	ER-2016-0156	**Rebuttal:** Tracker Proposals; Use of Projected Expenses; Tracker Balances in Rate Base; Deferral Policy
Missouri-American Water Company	WR-2015-0301	**Rebuttal:** Environmental Coast Adjustment Mechanism; Energy Efficiency and Water Loss Reduction Deferral Mechanism Tracker
Laclede Gas Company	GO-2015-0178	**Direct:** ISRS True-ups
Kansas City Power & Light Company	EU-2015-0094	**Direct:** Accounting Order – Department of Energy Nuclear Waste Fund Fees
Union Electric Company, d/b/a Ameren Missouri (2018)	EO-2015-0055	**Rebuttal:** MEEIA Accounting Conditions
Union Electric Company, d/b/a Ameren Missouri (2015)	EO-2015-0055	**Rebuttal:** Demand-Side Investment Mechanism
Kansas City Power & Light Company	ER-2014-0370	**Rebuttal:** Trackers **Surrebuttal:** Trackers; Rate Case Expense
Kansas City Power & Light Company	EO-2014-0255	**Rebuttal:** Continuation of Construction Accounting
Union Electric Company, d/b/a Ameren Missouri	EC-2014-0223	**Rebuttal:** Complaint Case – Rate Levels
Kansas City Power & Light Company	EO-2014-0095	**Rebuttal:** DSIM
Union Electric Company, d/b/a Ameren Missouri	ET-2014-0085	**Surrebuttal:** RES Retail Rate Impact
Kansas City Power & Light Company & KCP&L Greater Missouri Operations Co.	EU-2014-0077	**Rebuttal:** Accounting Authority Order
Kansas City Power & Light Company	ET-2014-0071	**Rebuttal:** RES Retail Rate Impact **Surrebuttal:** RES Retail Rate Impact
KCP&L Greater Missouri Operations Company	ET-2014-0059	**Rebuttal:** RES Retail Rate Impact **Surrebuttal:** RES Retail Rate Impact
Missouri Gas Energy, A Division of Laclede Gas Company	GR-2014-0007	**Surrebuttal:** Pension Amortizations

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
The Empire District Electric Company	ER-2012-0345	**Direct (Interim):** Interim Rate Request **Rebuttal:** Transmission Tracker, Cost of Removal Deferred Tax Amortization; State Income Tax Flow-Through Amortization **Surrebuttal:** State Income Tax Flow-Through Amortization
KCP&L Greater Missouri Operations Company	ER-2012-0175	**Surrebuttal:** Transmission Tracker Conditions
Kansas City Power & Light Company	ER-2012-0174	**Rebuttal:** Flood Deferral of off-system sales **Surrebuttal:** Flood Deferral of off-system sales, Transmission Tracker conditions
Union Electric Company, d/b/a Ameren Missouri	ER-2012-0166	**Responsive:** Transmission Tracker
Union Electric Company, d/b/a Ameren Missouri	EO-2012-0142	**Rebuttal:** DSIM
Union Electric Company, d/b/a Ameren Missouri	EU-2012-0027	**Rebuttal:** Accounting Authority Order **Cross-Surrebuttal:** Accounting Authority Order
KCP&L Greater Missouri Operations Company	EO-2012-0009	**Rebuttal:** DSIM
Missouri Gas Energy, a Division of Southern Union	GU-2011-0392	**Rebuttal:** Lost Revenues **Cross-Surrebuttal:** Lost Revenues
Missouri-American Water Company	WR-2011-0337	**Surrebuttal:** Pension Tracker
The Empire District Electric Company	ER-2011-0004	**Staff Report on Cost of Service: Direct:** Report on Cost of Service; Overview of the Staff's Filing **Surrebuttal:** SWPA Payment, Ice Storm Amortization Rebasing, S02 Allowances, Fuel/Purchased Power and True-up
The Empire District Electric Company	ER-2010-0130	**Staff Report Cost of Service: Direct** Report on Cost of Service; Overview of the Staff's Filing; Regulatory Plan Amortizations; **Surrebuttal:** Regulatory Plan Amortizations
Missouri Gas Energy, a Division of Southern Union	GR-2009-0355	**Staff Report Cost of Service: Direct** Report on Cost of Service; Overview of the Staff's Filing; **Rebuttal:** Kansas Property Taxes/AAO; Bad Debts/Tracker; FAS 106/OPEBs; Policy; **Surrebuttal:** Environmental Expense, FAS 106/OPEBs
KCP&L Greater Missouri Operations Company	EO-2008-0216	**Rebuttal:** Accounting Authority Order Request

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
The Empire District Electric Company	ER-2008-0093	Case Overview; Regulatory Plan Amortizations; Asbury SCR; Commission Rules Tracker; Fuel Adjustment Clause; ROE and Risk; Depreciation; True-up; Gas Contract Unwinding
Missouri Gas Utility	GR-2008-0060	Report on Cost of Service; Overview of Staff's Filing
Laclede Gas Company	GR-2007-0208	Case Overview; Depreciation Expense/Depreciation Reserve; Affiliated Transactions; Regulatory Compact
Missouri Gas Energy	GR-2006-0422	Unrecovered Cost of Service Adjustment; Policy
The Empire District Electric Company	ER-2006-0315	Fuel/Purchased Power; Regulatory Plan Amortizations; Return on Equity; True-Up
Missouri Gas Energy	GR-2004-0209	Revenue Requirement Differences; Corporate Cost Allocation Study; Policy; Load Attrition; Capital Structure
Aquila, Inc., d/b/a Aquila Networks-MPS-Electric and Aquila Networks-L&P-Electric and Steam	ER-2004-0034 and HR-2004-0024 (Consolidated)	Aries Purchased Power Agreement; Merger Savings
Laclede Gas Company	GA-2002-429	Accounting Authority Order Request
Union Electric Company	EC-2002-1	Merger Savings; Criticisms of Staff's Case; Injuries and Damages; Uncollectibles
Missouri Public Service	ER-2001-672	Purchased Power Agreement; Merger Savings/Acquisition Adjustment
Gateway Pipeline Company	GM-2001-585	Financial Statements
Ozark Telephone Company	TC-2001-402	Interim Rate Refund
The Empire District Electric Company	ER-2001-299	Prudence/State Line Construction/Capital Costs
Missouri Gas Energy	GR-2001-292	SLRP Deferrals; Y2K Deferrals; Deferred Taxes; SLRP and Y2K CSE/GSIP
KLM Telephone Company	TT-2001-120	Policy
Holway Telephone Company	TT-2001-119	Policy
Peace Valley Telephone	TT-2001-118	Policy
Ozark Telephone Company	TT-2001-117	Policy

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
IAMO Telephone Company	TT-2001-116	Policy
Green Hills Telephone	TT-2001-115	Policy
UtiliCorp United & The Empire District Electric Company	EM-2000-369	Overall Recommendations
UtiliCorp United & St. Joseph Light & Power	EM-2000-292	Staff Overall Recommendations
Missouri-American Water	WM-2000-222	Conditions
Laclede Gas Company	GR-99-315 (remand)	Depreciation and Cost of Removal
United Water Missouri	WA-98-187	FAS 106 Deferrals
Western Resources & Kansas City Power & Light	EM-97-515	Regulatory Plan; Ratemaking Recommendations; Stranded Costs
Missouri Public Service	ER-97-394	Stranded/Transition Costs; Regulatory Asset Amortization; Performance Based Regulation
The Empire District Electric Company	ER-97-82	Policy
Missouri Gas Energy	GR-96-285	Riders; Savings Sharing
St. Louis County Water	WR-96-263	Future Plant
Union Electric Company	EM-96-149	Merger Savings; Transmission Policy
St. Louis County Water	WR-95-145	Policy
Western Resources & Southern Union Company	GM-94-40	Regulatory Asset Transfer
Generic Electric	EO-93-218	Preapproval
Generic Telephone	TO-92-306	Revenue Neutrality; Accounting Classification
Missouri Public Service	EO-91-358 and EO-91-360	Accounting Authority Order
Missouri-American Water Company	WR-91-211	True-up; Known and Measurable
Western Resources	GR-90-40 and GR-91-149	Take-Or-Pay Costs

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

COMPANY NAME	CASE NUMBER
Kansas City Power and Light Company	ER-82-66
Kansas City Power and Light Company	HR-82-67
Southwestern Bell Telephone Company	TR-82-199
Missouri Public Service Company	ER-83-40
Kansas City Power and Light Company	ER-83-49
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power and Light Company	EO-84-4
Kansas City Power and Light Company	ER-85-128 & EO-85-185
KPL Gas Service Company	GR-86-76
Kansas City Power and Light Company	HO-86-139
Southwestern Bell Telephone Company	TC-89-14

DATA INFORMATION REQUEST
Missouri American Water Company
WO-2018-0373

Requested From: Brian LaGrand
Date Requested: 9/28/18

Information Requested:

Please provide any specific support available within the IRS code or other relevant documentation for MAWC's proposed method of quantifying the amount of NOL attributable to ISRS plant additions from January 1, 2018 forward. Does the IRS code allow other quantification methods for this purpose? If so, please describe these alternative methods.

Requested By: Jason Kunst – Jason.Kunst@psc.mo.gov

Information Provided:

Internal revenue code section 168 and former section 167(l) require that a normalization method of accounting be used in order for a utility to claim accelerated depreciation. Regulations issued under former section 167(l) provide guidance on normalization and specifically address limits on the inclusion of the accumulated deferred income tax reserve in rate base (or as zero cost capital in the capital structure).

Specifically, regulation section 1.167(l)-1(h)(1)(iii) makes clear that the effects of an NOLC must be taken into account for normalization purposes. Section 1.167(l)-1(h)(1)(iii) provides generally that, if, in respect of any year, the use of other than regulatory depreciation for tax purposes results in an NOLC carryover (or an increase in an NOLC which would not have arisen had the taxpayer claimed only regulatory depreciation for tax purposes), then the amount and time of the deferral of tax liability shall be taken into account in such appropriate time and manner as is satisfactory to the district director.

While that section provides no specific mandate on methods, it does provide that the IRS has discretion to determine whether a particular method satisfies the normalization requirements.

With that authority granted by the IRS, they have consistently ruled that a "with and without" method is to be used in order to determine how to quantify the reduction to the deferred income taxes resulting from an NOL.

Per PLR 201426037 (and repeated in both PLR 201519021 and PLR 201709008), under the Law and Analysis section it states,

> The "with or without" methodology employed by Taxpayer is specifically designed to ensure that the portion of the NOLC attributable to accelerated depreciation is correctly taken into account

by maximizing the amount of the NOLC attributable to accelerated depreciation. This methodology provides certainty and prevents the possibility of "flow through" of the benefits of accelerated depreciation to ratepayers. Under these facts, any method other than the "with and without" method would not provide the same level of certainty and therefore the use of any other methodology is inconsistent with the normalization rules.

IRS Letter Ruling 201519021 comes to the same conclusion but uses a different phrase to describe the "with and without" method. This ruling calls it "last dollar deducted" method. In simple terms in any given rate proceeding accelerated depreciation is considered the last dollar deducted. While this term is essentially the same as "with and without" it gives insight that again the amounts are evaluated on their own in any given rate making.

The application of these methods in this context is simple:

- Both Consolidated and MAWC are in a Net Operating Loss Carryforward position
- The property included in MO's Infrastructure System Replacement Surcharge generate tax deductions. "With" these deductions, there is an increase to the NOLC.
- "Without" these deductions the property would reduce the NOLC
- Therefore based upon the "with and without" methodology there is increased NOLC that must be included in rate base.

In addition PLR 201718015 discusses that when there are estimate and true up rate filings, they are treated as separate and distinct filings. So an ISRS case and a rate case, or an ISRS estimate and ISRS true up, are separate and distinct filings when looking at the normalization requirements.