

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

In the Matter of the Petition of) Missouri-American Water Company) for Approval to Change an) Infrastructure System Replacement) Surcharge (ISRS))	Case No. WO-2020-0190
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**MOTION TO CHALLENGE CONFIDENTIALITY AND MOTION FOR
EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Motion to Challenge Confidentiality and Motion for Expedited Treatment*, states as follows:

Challenge of Confidentiality

1. In the publicly available application filed in this case, Missouri American Water Company (“MAWC”)¹ acknowledged that it “requested guidance from the Internal Revenue Service (“IRS”) on the proper treatment of net operating losses.”
2. The same application publicly acknowledges that “[o]n December 3, 2019, the IRS issued a Private Letter Ruling.”
3. The same application further publicly acknowledges that said private letter ruling is the one that MAWC has included as Appendix M of its application, which it has marked as confidential.

¹ It is undisputedly public knowledge that MAWC is a water utility.

4. A private letter ruling issued by the IRS on December 3, 2019, related to the treatment of net operating loss (“NOL”) requested by a taxpayer who is identified as a water utility is publicly available from the IRS’s website and may be found at this link: <https://www.irs.gov/pub/irs-wd/202010002.pdf>. It is private letter ruling number 202010002.

5. The private letter ruling found on the IRS’s website does not identify the name of the taxpayer who requested it; however, that information is easily discernable.

6. If one searches for “PLR search engine” in any readily available generic internet search engine (such as Google) then one of the first items will be Legalbitstream’s private letter ruling search engine. Legalbitstream is a tax law research website that provides searchable databases of United States federal income tax and estate tax law. The website for this search engine is found here: http://www.legalbitstream.com/irs_materials.asp?pl=i9.

7. If one is to search the Legalbitstream data base for the terms “water utility and NOL” for all available dates (from 1979 to 2020) then **one and only one** response will be provided. That response is private letter ruling 202010002. It was issued on December 3, 2019, and was made publicly available on March 6, 2020.²

² Alternatively, if one searches for “surcharge and NOL” for all available dates then the **one and only** result will still be private letter ruling 202010002. Searching for “water utility and net operating loss” also send back **only one** result, which is again private letter ruling 202010002. Searching for “surcharge and net operating loss” will return two possible private letter rulings, but **only one** – private letter ruling 202010002 – issued on December 3, 2019. Searching for just “water and NOL” will provide seven (7) possible private letter rulings; however, **only one** – private letter ruling 202010002 – was issued on December 3, 2019. Searching for “water and surcharge” will provide fourteen (14) possible private letter rulings, but again, **only one** – private letter ruling 202010002 – was issued on December 3, 2019. Finally, if one searches for just “net operating loss” but reduces the

8. Private letter ruling 202010002, the **one and only** private letter ruling issued to a water utility regarding NOLs on December 3, 2019, ** _____

_____ **

9. Because MAWC has already publicly identified that (1) it is a water utility, (2) that it requested a private letter ruling “on the proper treatment of net operating losses” from the IRS, and (3) that the IRS issued a private letter ruling to MAWC on December 3, 2019, then it has become readily and easily discernable public knowledge that the **one and only** private letter ruling issued by the IRS on December 3, 2019, to a water utility seeking guidance on the proper treatment of net operating losses – which can be quickly and easily identified through a basic internet search as private letter ruling 202010002 – ** _____

_____ **

10. Given the foregoing, the OPC challenges the confidentiality of the following information pursuant to 20 CSR 4240-2.135(11) and asks that said information be deemed non-confidential:

a. ** _____

_____ **

Motion for Expedited Treatment

_____ available dates from 2019 through 2020, then one will get back eighteen (18) possible private letter rulings, but still only one – private letter ruling 202010002 – was issued by the IRS on December 3, 2019.

11. The foregoing request by the OPC is effectively made under protest.

12. When MAWC filed its application in this case, it clearly and correctly identified Appendix M of its application as confidential.³ However, at no point in the application and at no point since the application but prior to the filing of the OPC's direct testimony did MAWC identify the fact that ** _____

_____ ** was also confidential.

13. The OPC did not consider ** _____
_____ ** to be confidential for the reasons set forth herein. Consequently, the OPC filed direct testimony in this case that ** _____

_____ **

14. Shortly after doing so, MAWC contacted the OPC to inform the OPC that it was expanding its original claim of confidentiality regarding Appendix M of its application to include the fact that ** _____

_____ ** and demanded the OPC withdraw and mark portions of the filed direct as confidential.

³ Appendix M of MAWC's application includes company specific numbers and the OPC is not challenging the confidentiality of those numbers.

15. While the OPC disagreed with MAWC contentions for the reasons stated throughout this motion, the OPC nevertheless acquiesced to withdrawing and marking confidential portions of the direct testimony it filed in this case.

16. The OPC has now filed this motion in order to resolve this disagreement so that it may re-file the direct testimony as public.

17. This filing was made as soon as its necessity was made aware to the OPC.⁴

18. Due to the statutorily imposed time limitations of an ISRS case as well as the current procedural schedule, the normal time provided by the Commission's rules for responding to motions will likely result in the Commission being unable to rule on this motion prior to when the OPC will offer its direct testimony into evidence. The harm that will be avoided, or the benefit that will accrue, from expediting this motion is thus the ability of the Commission to consider all the arguments in a public forum and thereby reduce administrative burden.

19. The OPC therefore request that the Commission issue an order requiring parties to respond to this motion and then further consider and rule on this motion on an expedited basis; preferably by May 27th the day that rebuttal testimony in this matter is due to be filed.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission find the fact that **_____

⁴ MAWC made the OPC aware of its expanded confidentiality on May 22, 2020, the day the OPC filed direct testimony. This motion was filed on the next immediate business day.

_____ ** is non-confidential as soon as is reasonably possible.

Respectfully submitted,

By: _____ /s/ John Clizer
John Clizer (#69043)
Senior Counsel
Missouri Office of the Public
Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5324
Facsimile: (573) 751-5562
E-mail: john.clizer@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-sixth day of May, 2020.

_____/s/ John Clizer