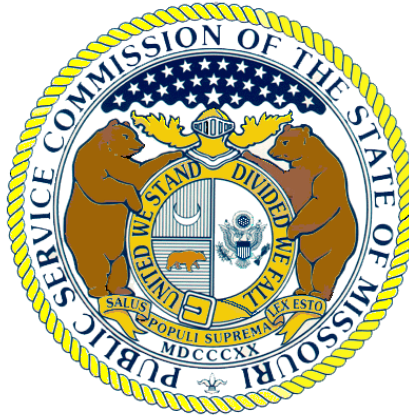


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the matter of the Petition of )  
Missouri-American Water Company for )  
Approval to Change its Infrastructure )  
System Replacement Surcharge (ISRS) )

File No. WO-2015-0211  
Tracking No. YW-2015-0267

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**REPORT AND ORDER**

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**Issue Date: June 17, 2015**

**Effective Date: June 27, 2015**

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the Petition of )  
Missouri-American Water Company for ) File No. WO-2015-0211  
Approval to Change its Infrastructure ) Tracking No. YW-2015-0267  
System Replacement Surcharge (ISRS) )

## REPORT AND ORDER

Issue Date June 17, 2015

Effective Date June 27, 2015

The Missouri Public Service Commission is granting the petition and approving the tariff.<sup>1</sup> The tariff proposes to increase the Infrastructure System Replacement Surcharge for St. Louis County customers of Missouri-American Water Company by 0.7 percent.

### Procedural History

Missouri-American Water Company (“MAWC”) filed the petition and tariff.<sup>2</sup> Staff filed its recommendation to deny the petition and reject the tariff.<sup>3</sup> MAWC filed a reply to the recommendation.<sup>4</sup> The Commission issued notice of a contested case.<sup>5</sup> MAWC and Staff filed a list of issues.<sup>6</sup> The Commission received position statements from MAWC,<sup>7</sup>

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<sup>1</sup> As used in Commission practice, a tariff is a schedule governing rates, charges, and other terms of public utility service. The term may refer to such document as approved by the Commission or as proposed by the utility. It may also refer to all such documents, or the subset addressing one subject matter, or a single page.

<sup>2</sup> EFIS No. 1 (February 27, 2015) *MAWC’s Petition to Change its Infrastructure Replacement Surcharge*.

<sup>3</sup> EFIS No. 7 (April 28, 2015) *Staff Recommendation to Reject Tariff and Proposed Increase to the Infrastructure Replacement Surcharge*.

<sup>4</sup> EFIS No. 8 (May 4, 2015) *Response and Objection to Staff Recommendation, Request for Regulatory Asset, and Motion to Establish Procedural Schedule*.

<sup>5</sup> EFIS No. 14 (May 7, 2015) *Notice of Contested Case*.

<sup>6</sup> EFIS No. 21 (May 22, 2015) *List of Issues, List and Order of Witnesses, Order of Opening and Order of Cross-Examination*.

Staff,<sup>8</sup> and OPC.<sup>9</sup> The Commission convened an evidentiary hearing on the petition and tariff.<sup>10</sup> The parties filed post-hearing briefs.<sup>11</sup>

### **ISRS**

The petition and tariff seek an increase in MAWC's Infrastructure System Replacement Surcharge ("ISRS"). The ISRS produces revenue in addition to compensation set in a general rate action.<sup>12</sup> In Commission practice, a general rate action typically compensates MAWC only for expenses based on an historical test year, occurs only every few years, and takes eleven months to decide. The ISRS recovers eligible costs between general rate actions, so it constitutes an incentive for MAWC to pursue infrastructure projects. An ISRS lasts no more than three years ("ISRS cycle") with some flexibility for a general rate action to address infrastructure system replacement costs.<sup>13</sup>

The statutes prescribe the mechanics and limitations of the ISRS. Those provisions:

- Describe the projects and the expenses eligible for compensation through the ISRS ("eligible costs"),<sup>14</sup>

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<sup>7</sup> EFIS No. 24 (May 26, 2015) *MAWC's Statement of Position*.

<sup>8</sup> EFIS No. 23 (May 26, 2015) *Staff Statements of Position*.

<sup>9</sup> EFIS No. 22 (May 26, 2015) *The Office of the Public Counsel's Position Statement*.

<sup>10</sup> EFIS No. 25 (June 5, 2015) *Transcript-Volume 1*.

<sup>11</sup> EFIS No. 32 (June 12, 2015) *Staff's Post-Hearing Brief*; EFIS No. 33 (June 12, 2015) *MAWC's Brief*; EFIS No. 34 (June 12, 2015) *The Office of the Public Counsel's Statement in Support of Staff*.

<sup>12</sup> Section 393.1006.7, RSMo Supp. 2013.

<sup>13</sup> Section 393.1003.2 and .3, RSMo Supp. 2013.

<sup>14</sup> Section 393.1006(4), RSMo Supp. 2013.

- Require MAWC to bill customers who benefit from the projects per gallon of water (“billing determinants”),<sup>15</sup> and
- Cap the revenue that the ISRS produces (“maximum revenue”).<sup>16</sup>

The maximum revenue is ten percent of MAWC’s base level revenue as determined in MAWC’s most recent general rate action.<sup>17</sup>

To keep the ISRS on target, the statutes provide that MAWC may file a new ISRS tariff every six months,<sup>18</sup> and that MAWC’s ISRS revenue is subject to a reconciliation every twelve months<sup>19</sup> (“reconciliation period”). The reconciliation determines whether any over-production or under-production (“reconciliation amount”) has occurred and adjusts the next ISRS tariff by the reconciliation amount.<sup>20</sup> If the reconciliation amount is an over-recovery, the amount projected for the upcoming reconciliation period is decreased by the reconciliation amount.<sup>21</sup> If the reconciliation amount is an under-recovery, the amount projected for the upcoming reconciliation period is increased by the reconciliation amount.<sup>22</sup> No over-recovery is at issue in this action, but under-recoveries are at issue.

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<sup>15</sup> Section 393.1006.5, RSMo Supp. 2013

<sup>16</sup> Section 393.1003.1, RSMo Supp. 2013; 4 CSR 240-3.650.

<sup>17</sup> Section 393.1003(1), RSMo Supp. 2013.

<sup>18</sup> Section 393.1006.3, RSMo Supp. 2013.

<sup>19</sup> Section 393.1006.5(2), RSMo Supp. 2013.

<sup>20</sup> Section 393.1006.5(2), RSMo Supp. 2013.

<sup>21</sup> Section 393.1006.5(2), RSMo Supp. 2013.

<sup>22</sup> Section 393.1006.5(2), RSMo Supp. 2013.

## Standards of Proof

MAWC has the burden of proving the allegations in its petition<sup>23</sup> and the propriety of the tariff.<sup>24</sup> The quantum of evidence by which MAWC must carry its burden is the preponderance of the evidence.<sup>25</sup> The preponderance means the evidence that weighs more in favor<sup>26</sup> than against<sup>27</sup> the petition and tariff.

The Commission does not specifically discuss matters that are not dispositive. The Commission makes each ruling on consideration of each party's allegations and arguments, and has considered the substantial and competent evidence on the whole record. Where the evidence conflicts, the Commission must determine which is most credible and may do so implicitly.<sup>28</sup> The Commission's findings reflect its determinations of credibility, and no law requires the Commission to make any statement as to which portions of the record the Commission believes or disbelieves.<sup>29</sup>

Under that standard, the Commission makes the following findings of fact.

## Findings of Fact

1. MAWC sells water and service for gain in Missouri.<sup>30</sup> MAWC's base level revenue, as set in MAWC's most recent general rate action,<sup>31</sup> is \$258,926,618 and ten percent of that amount is \$25,892,662.<sup>32</sup>

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<sup>23</sup> *Heidebur v. Parker*, 505 S.W.2d 440, 443 (Mo. App., St.L.D. 1974).

<sup>24</sup> Section 393.150.1, RSMo 2000.

<sup>25</sup> *Spencer v. Zobrist*, 323 S.W.3d 391, 398 (Mo. App., W.D. 2010).

<sup>26</sup> *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

<sup>27</sup> *Hager v. Director of Revenue*, 284 S.W.3d 192, 197 (Mo. App., S.D. 2009).

<sup>28</sup> *Stone v. Missouri Dept. of Health & Senior Services*, 350 S.W.3d 14, 26 (Mo. banc 2011).

<sup>29</sup> *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

<sup>30</sup> EFIS No. 1, (February 27, 2015) *Missouri-American Water Company's Petition to Change its*

2. MAWC's ISRS became effective on September 25, 2012.<sup>33</sup> The ISRS assumed more customer usage than occurred, so the ISRS generated less revenue than expected, so reconciliations determined under-recoveries. The Commission included those reconciliation amounts in ISRS revenues that the Commission authorized MAWC to recover.<sup>34</sup>

3. As of the reconciliation period ending in September 2014, under-recoveries totaled \$1,665,202; and the Commission authorized MAWC's ISRS to produce \$25,637,873. But, due to declining sales, MAWC recovered only \$23,972,670 in ISRS revenues as of September 2014. That amount is \$1,919,991 short of \$25,892,662.<sup>35</sup>

4. Between October 1 and March 31, 2015, MAWC incurred enough in eligible costs for an ISRS that produces more than \$25,892,662.

### **Conclusions of Law**

The Commission has jurisdiction to rule on the petition and must determine the propriety of the tariff.<sup>36</sup> Generally, any tariff's propriety depends on whether it will support service that is "safe and adequate"<sup>37</sup> at rates that are "just and reasonable [.]"<sup>38</sup>

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*Infrastructure System Replacement Surcharge and Tariff Revision*, page 1 to 2, paragraph 1, incorporated into EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 3.

<sup>31</sup> File No. WR-2011-0337, *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*.

<sup>32</sup> EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 3; EFIS No. 30 (June 8, 2015) Exhibit 3, *Direct Testimony of Mark L. Oligschlaeger*, page 4.

<sup>33</sup> EFIS No. 25 (June 5, 2015) *Transcript-Volume 1*, page 58.

<sup>34</sup> EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 7.

<sup>35</sup> EFIS No. 28 (June 8, 2015) Exhibit 1, *Direct Testimony of Jeanne M. Tinsley on Behalf of [MAWC]*, page 7.

<sup>36</sup> Sections 393.1003, RSMo Supp. 2014 and 393.150, RSMo 2000.

<sup>37</sup> Section 393.130.1, RSMo Supp. 2013.

That standard is subject to many considerations of law, fact, and policy in a general rate action but, in this action, the considerations are simplified.

Authorized, Produced, Recovered

The General Assembly has set forth the just and reasonable rates for safe and adequate service in the context of infrastructure system replacement. The ISRS statutes compensate infrastructure system replacement through a surcharge that produces revenue between a minimum and a maximum:

[A]n ISRS, on an annualized basis, must produce ISRS revenues of at least one million dollars but not in excess of ten percent of the water corporation's base revenue level approved by the commission in the water corporation's most recent general rate proceeding. [<sup>39</sup>]

MAWC and Staff have shown without dispute that the maximum revenue is \$25,892,662, and that MAWC has invested enough in infrastructure system replacement to earn the maximum revenue. Therefore, MAWC and Staff agree that the maximum revenue is the target.

But, on the way to that target, MAWC and Staff part ways. MAWC asks for authorization to produce the difference between the maximum revenue and the revenue it has recovered so far.

*Maximum Revenue - Revenue Produced to 09-14 = Tariff Revenue*

$$\text{\$25,892,662} - \text{\$23,972,670} = \text{\$1,919,991}$$

That amount authorizes over-production of revenue, Staff notes.

*Revenue Authorized to 09-14 + Tariff Revenue = MAWC's Total*

$$\text{\$25,637,873} + \text{\$1,919,991} = \text{\$27,557,864}$$

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<sup>38</sup> Section 393.130.1, RSMo Supp. 2013; and Section 393.150.2, RSMo 2000.

<sup>39</sup> Section 393.1003.1, RSMo Supp. 2013; 4 CSR 240-3.650.

$\$27,557,864 > \$25,892,662$

*MAWC's Total > Maximum Revenue*

Staff argues that the Commission must authorize revenue only to the maximum revenue. Staff also argues that the maximum revenue is the sum of the amount of revenue collected by MAWC through the ISRS as of September 2014, the amounts under-recovered from prior ISRS filings, and the new ISRS eligible costs:

*Maximum Revenue - Revenue Authorized to 09-14 = Staff's Proposal*

$\$25,892,662 - \$25,637,873 = \$254,789$

MAWC has consistently experienced declining sales that result in it recovering less than its Commission authorized ISRS revenues. However, Staff is correct that, if sales increase, MAWC will produce more; and if sales increase enough, the tariff will authorize MAWC to recover more than the maximum revenue.

The Commission is persuaded by MAWC's argument and calculation in this matter for the following reasons. The statutes provide that the ISRS must:

. . . allow for the adjustment of the water corporation's rates and charges to provide for the **recovery** of costs for eligible infrastructure system replacements. [<sup>40</sup>]

The statute further provides:

If the commission finds that a petition complies with the requirements of sections 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to **recover** appropriate pretax revenues, as determined by the commission pursuant to the provisions of sections 393.1000 to 393.1006. [<sup>41</sup>]

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<sup>40</sup> Section 393.1003.1, RSMo Supp. 2013 (emphasis added).

<sup>41</sup> Sections 393.1006(4), RSMo Supp. 2013.



MAWC also cites the Missouri Court of Appeals' opinion in In re Laclede Gas Co.<sup>42</sup>

[T]he obvious legislative intent . . . is to permit the . . . company to timely **recover** its costs for government-mandated infrastructure system replacement projects via a rate adjustment outside of a general rate case for a limited period of time.<sup>[43]</sup>

Staff's proposal does not meet that standard.

*Revenue Recovered to 09-14 + Staff's Proposal = Staff's Total*

$\$23,972,670 + \$254,789 = \$24,227,459$

$\$24,227,459 < \$25,892,662$

*Staff's Total < Maximum Revenue*

Staff's proposal includes reconciliation amounts, which according to the statute should not be included.

Staff offers a variety of aids to statutory construction, including presentations for professional associations and a fiscal note review, but there is no ambiguity in the provisions that guide this report and order. "Proper statutory construction starts with the words of the statute. In most cases, it ends there, as well."<sup>44</sup> Staff offers no persuasive authority to count the reconciliation amounts toward the maximum revenue, which is how the parties frame their dispute, as follows.

#### Authorized Surcharge v. Reconciliation Amounts

MAWC and Staff differentiate their arguments by their treatment of reconciliation amounts. Staff's proposal uses revenue authorized, of which the components include reconciliation amounts, so Staff's proposal "includes" reconciliation amounts. MAWC

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<sup>42</sup> In re Laclede Gas Co., 417 S.W.3d 815 (Mo. App., W.D. 2014).

<sup>43</sup> In re Laclede Gas Co., 417 S.W.3d 815, 823 (Mo. App., W.D. 2014) (emphasis added).

<sup>44</sup> In re M.D.R., 124 S.W.3d 469, 472 (Mo. banc 2004).

“excludes” reconciliation amounts because reconciliation amounts are—by definition—amounts not recovered, and the tariff uses the term “recovered.”

From this perspective, also, MAWC’s arguments are more persuasive because they stand on the plain language of the statutes. The statutes describe the two components of an ISRS—eligible costs and reconciliation amounts—separately. The statutes also prescribe differing treatments for each component during the ISRS cycle and at the ISRS cycle’s end.

The first component is the eligible costs. The statutes initially establish an ISRS based on eligible costs:

At the time that a water corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation.<sup>[45]</sup>

The statutes list eligible costs but do not include reconciliation amounts in that list:

“ISRS costs”, depreciation expenses and property taxes that will be due within twelve months of the ISRS filing [<sup>46</sup>]

During the ISRS cycle, the statutes allow “changes” in that initially established ISRS:

A water corporation may effectuate a change in its rate pursuant to this section no more often than two times every twelve months.<sup>[47]</sup>

At the end of the ISRS cycle, the statutes treat eligible costs as part of rates in the next general rate action:

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<sup>45</sup> Section 393.1006.1(1), RSMo Supp. 2013.

<sup>46</sup> Section 393.1000(5), RSMo Supp. 2013.

<sup>47</sup> Section 393.1006.3, RSMo Supp. 2013.

An eligible water utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that **incorporates eligible costs** previously reflected in an ISRS **into** the subject utility's **base rates**. [<sup>48</sup>]

The eligible costs, initially established or changed, under that plain language do not include reconciliation amounts.

The second component is any reconciliation amount—positive or negative. The statutes define reconciliation amounts as:

. . . the **differences** between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period [<sup>49</sup>]

During the ISRS cycle, the statutes provide for an under-recovery or subtract an over-recovery respectively by requiring MAWC to:

. . . submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through **adjustment** of an ISRS. [<sup>50</sup>]

These differences show that reconciliation amounts are separate from, not a part of, the eligible costs of which recovery counts toward maximum revenue.

Moreover, the statutes' provisions for treatment during the ISRS cycle show the flaw in Staff's proposal:

. . . recover or refund the difference, as appropriate, through **adjustment** of an ISRS. [<sup>51</sup>]

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<sup>48</sup> Section 393.1006.6(1), RSMo Supp. 2013 (emphasis added).

<sup>49</sup> Section 393.1006.5(2), RSMo Supp. 2013 (emphasis added).

<sup>50</sup> Section 393.1006.5(2), RSMo Supp. 2013 (emphasis added).

<sup>51</sup> Section 393.1006.5(2), RSMo Supp. 2013 (emphasis added).

That language shows that the “appropriate . . . adjustment” for an under-recovery is for MAWC to “recover” the difference by increasing the ISRS in the next tariff. Staff’s proposal accomplishes the reverse by counting the under-recovery toward the maximum revenue, thus decreasing the ISRS in the next tariff. Decreasing the ISRS in the next tariff is the treatment provided by statute for an over-recovery to “refund” the difference to customers. As MAWC notes, Staff’s proposal compounds the under-recovery instead of applying the “appropriate” remedy that the General Assembly prescribed.

Staff also cites *In re Laclede Gas Co.*<sup>52</sup> That opinion addresses only the time in which the Commission may establish an ISRS and the time in which the Commission may approve changes after that. *In re Laclede Gas Co.* does not address the components of an ISRS or the reconciliation process.

Therefore, the Commission will grant the petition and approve the tariff.

#### Over-Recovery and Deferred Recording

The Commission emphasizes that Staff’s concern with over-recovery is thoroughly justified because the risk of over-recovery under the ISRS statutes is real. The Commission’s conclusions in this case do not diminish that concern. This case highlights that, in certain circumstances, there is no mechanism built into the ISRS statutes that both allows MAWC a real opportunity to recover the maximum revenue the statute prescribes and also prevents MAWC from recovering more than the maximum revenue. The one mechanism to address over or under recovery in the ISRS rules

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<sup>52</sup> *In re Laclede Gas Co.*, 417 S.W.3d 815 (Mo. App., W.D. 2014).

applies only to recovery of amounts above or under the Commission-approved ISRS revenues, including ordered refunds.

. . . If an over or under recovery of ISRS revenues, including any commission ordered refunds, exists after the ISRS has been reset to zero, the amount of over or under recovery shall be tracked in an account and considered in the water utility's next ISRS filing that it submits pursuant to the provisions of section (2) of this rule.<sup>[53]</sup>

This does not explicitly cover a situation where it was necessary to authorize ISRS rates that could eventually recover more than the maximum revenue in order to be sure those rates can produce revenues up to the maximum amount.

Therefore, in order to effectuate the intent of the ISRS statutes and allow MAWC a real opportunity to recover the maximum revenue but not allow MAWC to recover more than the maximum revenue, the Commission will order that MAWC track its ISRS revenues.<sup>54</sup> No later than 60 days before MAWC expects to reach the maximum revenue allowed under the ISRS statutes, which is \$25,892,662 in this instance, MAWC must file a new tariff designed to discontinue any ISRS charges associated with the revenues the Commission is authorizing in this case

The Commission's determination renders MAWC's alternative request for relief moot. A matter is moot when it seeks a ruling that would have no practical effect on any

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<sup>53</sup> 4 CSR 240-3.650(17)

<sup>54</sup> Section 393.140(8), RSMo 2000, authorizes the Commission to prescribe by order, after hearing, the accounts in which MAWC shall record particular outlays and receipts. No statute or regulation restricts, or sets any standard for, the Commission's exercise of that authority vis-à-vis the uniform system of accounts that the Commission has prescribed for all water companies under Section 393.140(8), RSMo 2000, at Regulation 4 CSR 240-2.030(1), which otherwise governs deferred recording. The facts as described constitute good cause to require MAWC to track ISRS revenue that MAWC recovers in excess of maximum revenue.

then-existing controversy.<sup>55</sup> MAWC's alternative request is to defer recording of any revenue denied, and no revenue is denied, so no deferred recording is possible. Therefore, the Commission will make no ruling on MAWC's request for deferred recording.

#### Effective Date

The Commission will set an effective date for this report and order less than 30 days after issuance.<sup>56</sup> Also, that effective date is part of the procedural schedule to which MAWC and Staff agreed, the Commission set, and no party objected to. Those facts show good cause for an effective date less than 30 days after issuance of this report and order.<sup>57</sup>

#### **THE COMMISSION ORDERS THAT:**

1. The relief requested in *MAWC's Petition to Replace its Infrastructure Replacement Surcharge* is granted.
2. The tariff assigned tracking no. YW-2015-0267 is approved. The approved tariff sheet is:

#### **P.S.C. MO NO. 13**

6th Revised Sheet No. RT 10 Canceling 5<sup>th</sup> Revised Sheet No. RT 10

3. ISRS revenues resulting from this order shall be recorded as described in this report and order.

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<sup>55</sup> *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001) (quoting *Shelton v. Farr*, 996 S.W.2d 541, 543 (Mo. App. W.D. 1999)).

<sup>56</sup> *Harter v. Missouri Pub. Serv. Comm'n*, 361 S.W.3d 52, 58 (Mo. App., W.D. 2011).

<sup>57</sup> Section 386.490.3, RSMo Supp. 2013.

4. No later than 60 days before MAWC expects to reach the maximum revenue amount of \$25,892,662, MAWC must file a new tariff designed to discontinue all ISRS charges associated with the revenues resulting from this order.

5. This order shall be effective on June 27, 2015.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
Hall, and Rupp, CC., concur;  
and certify compliance with  
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 17<sup>th</sup> day of June, 2015.

## Appearances

For Missouri-American Water Company:

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Christina L. Baker, Deputy Public Counsel  
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Daniel Jordan, Senior Regulatory Law Judge.