

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

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

**STAFF’S POST-HEARING BRIEF**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through the undersigned counsel, and for its *Brief*, states the following:

**Introduction**

Missouri-American Water Company (“MAWC”) filed a petition to change its Infrastructure Replacement Surcharge (“ISRS”) and tariffs associated therewith on February 27, 2015, in accordance with Commission rule 4 CSR 240-3.650. On March 3, 2015 the Commission issued its *Order Suspending Tariff, Setting Dates for Filing, and Directing Publication: and Notice of Contested Case*. Subsequently on March 5, 2015, MAWC filed its *Motion for Reconsideration* which this Commission granted the same day in its *Order Granting Reconsideration and Lifting Suspension, Setting Dates for Filing, and Directing Publication*.

Staff filed its *Staff Recommendation to Reject Tariff and Proposed Increase to the Infrastructure Replacement Surcharge* on April 28, 2015, citing that the proposed increase in requested revenues sought by MAWC in its ISRS filing was in violation of the 10% cap placed on ISRS revenues that could be authorized by the Commission

pursuant to RSMo. §393.1003(1).<sup>1</sup>

MAWC filed its *Response and Objection to Staff Recommendation, Request for Regulatory Asset, and Motion to Establish Procedural Schedule* on May 4, 2015. An Order was issued on May 7, 2015, setting forth an expedited procedural schedule with a hearing scheduled on June 3, 2015. The hearing took place as scheduled, during which the parties presented evidence and testimony for the record.

### **Statement of Facts Not in Controversy by the Parties**

Based upon the testimony filed in the case there are several key facts that are not in controversy and have been agreed upon by the parties. Those facts not in controversy and agreed to by the parties are as follows:

- That the amount of revenues that can be authorized by the Commission in total annualized ISRS revenues, which is capped at 10% from MAWC's last general rate proceeding, is \$25,892,662;<sup>2</sup> and
- That MAWC's current ISRS petition includes \$1,665,202 of reconciled previously unrecovered ISRS revenues;<sup>3</sup> and
- That the ISRS is cumulative in nature, meaning that newly authorized ISRS revenues are added to previously authorized ISRS revenues to produce a cumulative total of authorized ISRS revenues until either the ISRS expires or until the qualifying utility files a general rate proceeding zeroing out the ISRS;<sup>4</sup> and

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<sup>1</sup> RSMo. 393.1003(1) states in pertinent part "provided that an 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>2</sup> Ex. 3 Direct Testimony of Mark Oligschlaeger page 4 line 14 and Ex. 2 Rebuttal Testimony of Jeanne Tinsley page 1 line 15.

<sup>3</sup> Ex. 3 Direct Testimony of Mark Oligschlaeger page 5 line 4 and Ex. 2 Rebuttal Testimony of Jeanne Tinsley page 1 line 15 and 16.

<sup>4</sup> Ex. 3 Direct Testimony of Mark Oligschlaeger page 4 lines 15-22, Ex. 4 Rebuttal Testimony of Mark Oligschlaeger page 3 lines 17-19, Hearing Transcript page 53, line 15, Hearing Transcript page 78 lines 10-17.

- That the ISRS is an additional revenue requirement authorized by the Commission to permit the qualifying utility the ability to seek recovery both on and of its qualifying investment.<sup>5</sup>

As was stated at the hearing, the facts themselves are not in controversy, rather the application of law to the reality of those facts.

### **List of Issues Filed by Staff**

Staff filed the parties' joint *List of Issues, Witnesses, and Order of Cross-Examination* on May 22nd, which presented two issues to be determined at the hearing:

1. Should the amount of ISRS revenues authorized by the Commission associated with reconciliation of prior under or over collections be included or excluded from the ISRS revenue cap calculation for MAWC in this proceeding?
2. If MAWC is prohibited from recovering ISRS amounts due to the application of the ISRS cap, should it be authorized to record its under recovery in a regulatory asset account for consideration in MAWC's next rate case, or next ISRS filing after its ISRS has been set to zero?

Subsequent to the hearing the Commission directed the parties to brief the following two questions:

3. How the ISRS is annualized?
4. How the ISRS, on an annualized basis, will produce ISRS revenues not in excess of \$25,892,662?

Staff respectfully recommends the Commission include the amounts of reconciled revenues from an ISRS when calculating the 10% ISRS cap on additional revenue requirement as being consistent with the language of the statute and the purpose of the ISRS. Furthermore, Staff recommends to the Commission that it deny

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<sup>5</sup> Ex. 3 Direct Testimony of Mark Oligschlaeger page 8 lines 3-5, Hearing Transcript page 43, line 23-25 and page 44 lines 1-2, Hearing Transcript page 65 lines 18-25, page 66 lines 1-25, and page 67 lines 1-16, Hearing Transcript page 70 lines 20-22.

permitting MAWC from booking any under reconciled amounts as a regulatory asset as being an unauthorized exercise of authority not granted to the Commission by the statute. Finally, Staff sets forth its explanation and calculations of arriving at the appropriate authorized annualized revenue requirement for the ISRS which are consistent with Staff's filing in its *Recommendation* in this case, and recommends the Commission adopt that position.

### **1. Overview of the Infrastructure Replacement Surcharge in General**

The concept of an ISRS had its beginning in the state of Pennsylvania, when the legislature enacted the Distribution System Improvement Charge.<sup>6</sup> The surcharge is designed to be a mechanism to pass through to customers the return on (rate of return) and return of (depreciation expense) the capital needed to replace water or wastewater company infrastructure on a periodic basis without filing a full rate case.<sup>7</sup> In simplistic terms, the ISRS provides for an additional revenue requirement<sup>8</sup> stream, adding to the utilities revenue requirement found in its last general rate case. Currently there are 8 states that have enacted some type of ISRS for qualifying water or sewer corporations, all of which have caps on the amount of revenues that can be added to the utilities base revenue requirement under these surcharge mechanisms and all of which have required

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<sup>6</sup> See American Water presentation, Benefits of Infrastructure Replacement Surcharges to the National Association of Regulatory Utility Commissioners, 120th Annual Convention, November 17, 2008 found at <http://www.narucmeetings.org/Presentations/WLynch%20-%20NARUC%2011-17-08.pdf>, checked June 8, 2015.

<sup>7</sup> *Id.*

<sup>8</sup> Revenue requirement is defined as the total annual revenue required by a public utility to recover the cost of providing utility service to its customers, including a fair return on its investment. See ***Energy Utility Rate Setting***, Lowell E. Alt Jr. (2006).

annual reconciliations of authorized revenues.<sup>9</sup> According to American Water Company, “Surcharges are limited to a maximum, relatively small, percentage of revenues (5% - 10%), with small impact on customer bills.<sup>10</sup>”

## **2. History of the Infrastructure Replacement Surcharge in Missouri**

In 2003, the Missouri Legislature enacted §§ 393.1000, 393.1003 and 393.1006 (“the ISRS statutes”) as part of House Bill 208. Those statutes provide a method, outside of a general rate proceeding, for a qualifying water corporation to recover the cost of certain eligible infrastructure system replacements.<sup>11</sup> Specifically, the ISRS itself acts as a mini-revenue requirement, with approximately 74% of the authorized amount going toward return on investment in this proceeding.<sup>12</sup> In determining legislative intent, it is important to review the information the House and Senate had before it when the bill was perfected. One of the pieces of information provided to legislators and reviewed is the fiscal note evaluation for the proposed bill. This information provides a great resource in discerning the legislative intent behind the language in the statute as it was evaluated during the time of its passage. This information should be used when construing the language of the statute for it sheds light on what the legislature intended.

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<sup>9</sup> See American Water presentation, *Infrastructure Replacement Programs TRA Presentation*, to the Tennessee Regulatory Authority, January 9, 2012 found at <http://www.tn.gov/tra/misc/2012/TNAMercianWaterInfraReplace.pdf>, checked June 8, 2015.

<sup>10</sup> See American Water presentation, *Benefits of Infrastructure Replacement Surcharges* to the National Association of Regulatory Utility Commissioners, 120th Annual Convention, November 17, 2008 found at <http://www.narucmeetings.org/Presentations/WLynch%20-%20NARUC%2011-17-08.pdf>, slide 21, checked June 8, 2015.

<sup>11</sup> “Eligible infrastructure system replacements” is a defined term in the statute found at RSMo. 393.1000(3). For the present case the parties are in agreement that based on the limited examination by Staff as directed in 393.1006(2)(2) of the projects submitted in the present ISRS petition, those projects constitute ISRS eligible recoverable items.

<sup>12</sup> See *Petition of Missouri American Water Company*, WO-2015-0211, appendix A1, Total Revenue Requirement on Capital.

In reviewing the Committee on Legislative Research's fiscal note evaluation for HB 208<sup>13</sup> submitted on May 21, 2003, several assumptions were analyzed based on input from several parties including the Department of Economic Development, Public Service Commission, Office of Public Counsel, and Office of the Attorney General related to the ISRS. The assumptions at all times acknowledged the presence of a single ISRS and a single source of ISRS revenues which were to be capped at 10% of the water corporations base revenues. Nowhere in the assumptions in the fiscal note is there any indication that the parties intended for there to be more than one single ISRS in effect at any point in time, including any amounts related to over or under collection of revenue. This assumption that there is only one ISRS in effect at any one point in time and therefore, a single source for construing what is to be factored into the ISRS revenues, was later adopted by the Missouri Western District Court of Appeals in the case of *In the Matter of the Application of Laclede Gas Company v. Office of Public Counsel*, 417 S.W.3d 815 (Mo. App., W.D. 2014), which will be discussed in more detail later in this brief. It is also of relevance to note that the assumptions in the fiscal note evaluation lacked any discussion related to the concept of tracking excess ISRS costs should the 10% cap be hit, only that the ISRS would be zeroed out during the general rate case proceeding.

### **3. How the ISRS is calculated, including annualization of ISRS revenues?**

As set forth in § 393.1003(1), the amount of ISRS revenues that can be authorized by the Commission cannot exceed 10% of the base revenues ordered by the

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<sup>13</sup> This evaluation can be found at <http://www.moga.mo.gov/Oversight/OVER03/fishtm/0941-14T.ORG.htm>, checked on June 8, 2015.

Commission in the water corporation's last general rate case.<sup>14</sup> MAWC's base revenue level established in its most recent general rate proceeding (Case No. WR-2011-0337) is \$258,926,618.<sup>15</sup> The next step is to determine what 10% of base revenues from MAWC's recent general rate proceeding is for the purpose of calculating the annualized revenues that MAWC can be authorized to receive in accordance with the 10% cap. Ten percent of the base revenue level is \$25,892,662.<sup>16</sup> This 10% figure represents the most this Commission can authorize MAWC to receive in additional revenue requirement, on an annual basis, for up to three years, before MAWC must come in and file a general rate proceeding pursuant to the ISRS statute.<sup>17</sup> Before this proceeding, no utility has actually invested enough in eligible infrastructure system replacements to seek to receive an amount of additional revenue requirement equal to the ISRS cap.<sup>18</sup>

After a general rate proceeding, an eligible utility seeking to establish an ISRS files a petition to establish an initial ISRS.<sup>19</sup> Per the statute, "a water corporation may effectuate a change in its rate pursuant to this section no more often than two times

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<sup>14</sup> Ex. 3, *Direct Testimony of Mark L. Oligschlaeger*, page 3, lines 13-14.

<sup>15</sup> *Id.* at page 4, lines 8-10.

<sup>16</sup> *Id.* at line 14.

<sup>17</sup> RSMo. 393.1003(2) sets out the requirement that "a water corporation in a county with a charter form of government and with more than one million inhabitants that has not had a general rate proceeding decided or dismissed by issuance of a commission order ***within the past three years***, unless the water corporation has filed for or is the subject of a new general rate proceeding." The bold, italicized language above sets forth the 3 year maximum life of the ISRS before an eligible utility must come in for a general rate proceeding. As found by the Western District Court of Appeals in *In the Matter of the Application of Laclede Gas Company v. The Office of Public Counsel*, 417 S.W. 3d 815, 821 (2014) relating to a gas ISRS application "Under this provision, an approved ISRS can be collected only for three years at the most, at which point it then terminates (unless a new rate case is pending). Thereafter, the gas corporation has to file revised rate schedules to reset the ISRS to zero upon resolution of a general rate case. § 393.1015.6(1). The gas corporation may then seek to establish a new ISRS by filing a petition pursuant to section 393.1012."

<sup>18</sup> Ex. 3, *Direct Testimony of Mark L. Oligschlaeger*, page 7, lines 12-18.

<sup>19</sup> Rule 4 CSR 240-3.650. That provision defines an initial ISRS as the first ISRS granted to the subject utility or an ISRS established after an ISRS is reset to zero.

every twelve months.” RSMo. 393.1006(3). And as demonstrated in MAWC’s ISRS filings since its last general rate proceeding, MAWC is utilizing the option of filing for a change to its ISRS revenues two times in a twelve month period. It is significant to point out that the purpose of the ISRS is to produce an addition to the revenue requirement of the company with the requirement that an 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<sup>20</sup>” approved during its last general rate proceeding.

The term “annualized basis” is used in the statute but is not specifically defined by the statute. During the hearing, there were a significant number of questions directed toward understanding the intent behind this undefined term.<sup>21</sup> In a general sense, the term “annualized basis” has been defined as “the return earned by an investment over the course of a year. Projections containing the phrase ‘on an annual basis’ have usually used less than a year’s worth of data to project a full year’s worth of returns.”<sup>22</sup> This definition is consistent with Staff Witness’s Mark Oligschlaeger’s response to Commissioner Hall’s question regarding his understanding of the 10% cap.<sup>23</sup> As testified to at the hearing, “the 10% cap, it is intended to be a limit on the amount of annual revenues a qualifying utility is authorized to recover through an ISRS rate.”<sup>24</sup> The amount of annual revenues is the sum of the composite total of the instant petition and the sum of the prior ISRS filings since its establishment after the last general rate

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<sup>20</sup> RSMo. 393.1003(1) emphasis added.

<sup>21</sup> Transcript pages 53-75.

<sup>22</sup> Investopedia, <http://www.investopedia.com/terms/a/annual-basis.asp>.

<sup>23</sup> Transcript page 78, lines 8-17.

<sup>24</sup> *Id.*



proceeding. A chart summarizing the amount of authorized annual revenues for MAWC's ISRS since its last general rate proceeding is contained below. These authorized ISRS revenue amounts build upon each other after each additional ISRS change request is filed to produce a current annual authorized revenue requirement of \$25,637,873.

#### MAWC's CURRENT ISRS

New ISRS (ISRS 10) WO-2012-0401	\$3,736,587
ISRS change (ISRS 11) WO-2013-0406	\$5,827,176
ISRS change (ISRS 12) WO-2014-0055	\$2,973,943
ISRS change (ISRS 13) WO-2014-0237	\$4,113,382
ISRS change (ISRS 14) WO-2015-0059	<u>\$8,986,785</u>
MAWC's total current annual ISRS revenue	\$25,637,873

This composite total of annual revenue requirement that MAWC is currently authorized to receive from the ISRS is supported by the testimony at the hearing in response to questions by Chairman Kenney of MAWC witness Jeanne Tinsley.<sup>25</sup> In response to the Chairman's questions related to the "annual cap" Ms. Tinsley pointed out correctly that the authorized amounts of ISRS revenues are added together each time they are approved. Chairman Kenney also correctly deduced that the ISRS itself does not reflect the sum total of dollar investment in actual, physical plant.<sup>26</sup> Rather the ISRS is simply an annual recovery of and on that investment.<sup>27</sup> When the current authorized cumulative ISRS revenue total of \$25,637,873 is subtracted from the 10% cap on base revenues of \$25,892,662 ( $\$25,892,662 - \$25,637,873 = \$254,789$ ) you

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<sup>25</sup> See Hearing Transcript page 62, lines 1-25 and page 63, lines 1-7.

<sup>26</sup> For this current ISRS petition, MAWC's actual rate base for purposes of calculating the ISRS is \$14,971,216 which reflects costs associated with ISRS eligible items. See, *Petition*, Appendix A1.

<sup>27</sup> See Hearing Transcript page 71, lines 13-15.

derive the amount this Commission can legally authorize, \$254,789, in additional annual ISRS revenue requirement without exceeding the 10% cap on ISRS surcharges set forth in the statute.

**4. Should the amount of ISRS revenues authorized by the Commission associated with reconciliation of prior under or over collections be included or excluded from the ISRS revenue cap calculation for MAWC in this proceeding?**

Yes, the entire amount of ISRS revenues authorized by the Commission at any point in time, including revenues associated with reconciliation of prior ordered ISRS amounts, should be included in the ISRS revenue cap calculation. The inclusion of reconciled revenue amounts is consistent with both the legislative intent behind the ISRS as well as a plain reading of the ISRS statute. When interpreting a statute, we begin with the language chosen by the legislature.<sup>28</sup> If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then we are bound by that intent and cannot resort to any statutory construction in interpreting the statute.<sup>29</sup> The rules of statutory interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result. Instead, the canons of statutory interpretation are considerations made in a genuine effort to determine what the legislature intended.<sup>30</sup> The Commission's primary role in interpreting a statute is to give effect to legislative intent as reflected in the plain language of the statute at issue.

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<sup>28</sup> See *State ex rel. Union Electric Company v. Public Service Commission*, 399 S.W. 3d 467, 479 (2013).

<sup>29</sup> *Id.* at 480.

<sup>30</sup> See, *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).

Section 393.1003(1) states:

Notwithstanding any provisions of chapter 386 and this chapter to the contrary, as of August 28, 2003, a water corporation providing water service in a county with a charter form of government and with more than one million inhabitants may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the water corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements made in such county with a charter form of government and with more than one million inhabitants; provided that ***an 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. (emphasis added).

The term “an ISRS,” while not defined in the statute, has been used in the statute in a manner that refers to the initial ISRS and all changes thereto as being a ***single entity***. The Missouri Court of Appeals held such in ***the Matter of the Application of Laclede Gas Company v. The Office of Public Counsel***,<sup>31</sup> when it found “this usage indicates that ‘***an ISRS***’ begins to exist when the first ISRS rate is approved, that there is only ever one ISRS at a time, and that ***subsequent changes are simply incorporated into that single ISRS***.” (emphasis added). The Court’s holding also supports Staff’s position that reconciled amounts be included in the total ISRS revenues authorized by the Commission since there is only ever one ISRS contemplated at any one point in time, including changes and adjustments to the ISRS. Staff’s interpretation is also consistent with the plain language of the statute as section 393.1003(1) further

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<sup>31</sup> 417 S.W.3d 815, 824 (Mo. App., W.D. 2014).

provides that “**An ISRS** and **any future changes** thereto shall be calculated and implemented in accordance with the provisions of sections 393.1000 to 393.1006.” (emphasis added). Finally, it is worth repeating that the ISRS statutes never refer to more than one ISRS, and, “no matter how many times the ISRS is changed between rate cases, there is only one ISRS rate for each customer class and the ISRS surcharge is recovered via a single rate element on the customer's bill.”<sup>32</sup>

MAWC attempts to support its position on this issue by contending that revenues associated with the ISRS reconciliation process should somehow be considered to be separate and apart from other ISRS revenues for purposes of determining whether the ISRS cap has been exceeded. However, this argument fails. As testified to by Staff witness Oligschlaeger, all ISRS revenues are intended to allow a utility to recover ISRS costs (depreciation expense, return and property taxes associated with qualifying ISRS capital projects)<sup>33</sup>. The only difference between non-reconciliation ISRS revenues and reconciliation ISRS revenues is that the latter represent an attempt to adjust the initial usage assumptions made in determining ISRS rates in order to allow the utility to recover no more, or no less, than its authorized level of revenues. If customers are ordered to pay more than initially assumed in order to allow a utility to recover its authorized ISRS revenues, then it is only fair and appropriate that the full amount of those higher customer charges be counted toward the ISRS revenue cap.

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<sup>32</sup> See *In the Matter of the Application of Laclede Gas Company v. The Office of Public Counsel*, 417 S.W.3d 815, 824 (2014).

<sup>33</sup> See Ex. 4 Rebuttal Testimony of Mark Oligschlaeger, page 2 lines 9-20.

The current ISRS rate allowed for MAWC was designed to produce a total of \$25,637,872 in annual revenues. If the full amount of MAWC's current ISRS rate request is allowed, \$1,919,991, then it is a matter of simple mathematics that it will be authorized to collect an amount of annual ISRS revenues considerably in excess of the ISRS cap amount agreed to by all parties to this case ( $\$25,637,873 + \$1,919,991 = \$27,557,863$ ). This result would be inconsistent with a plain reading of the ISRS statute.

**5. If MAWC is prohibited from recovering ISRS amounts due to the application of the ISRS cap, should it be authorized to record its under recovery in a regulatory asset account for consideration in MAWC's next rate case, or next ISRS filing after its ISRS has been set to zero?**

In the event the Commission rules in the Staff's favor in regard to the ISRS cap calculation issue, MAWC requests that the Commission authorize it to record the amount of revenues it seeks above the ISRS cap amount as a regulatory asset. MAWC cites to section 4 CSR 240.3.650(17) of the ISRS rule in support of this deferral request. This treatment would allow MAWC to seek recovery of the excess amount in a subsequent general rate proceeding or ISRS application. Staff takes the position that treating ISRS costs in excess of the cap amount as a regulatory asset is not consistent with the language of the statute and that nothing in the Commission's rules authorize such treatment as well. Rather that section of the Commission rule simply acknowledges a reality that during the pendency of the general rate proceeding where an ISRS is zeroed out, there may be a lag between the reconciliation of the ISRS revenues still in effect at that time, and inclusion of qualifying ISRS expenses into rate base and the effective date of new rates.

To further illustrate the point above regarding 4 CSR 240.3.650(17), the ISRS statute and rule require an annual reconciliation process to ensure as much as possible that customers pay no more and no less than the authorized amount of ISRS revenues authorized by the Commission over time. However, the timing of when a utility files a general rate case, and accordingly resets the ISRS charge to “zero,” may interfere with the normal operation of the ISRS reconciliation process. Assume that a utility’s new general rates go into effect six months after its last ISRS rate increase has been authorized. The ISRS rate is reset to zero at that time. However, six months of ISRS revenues have not been reconciled at that point, and a final reconciliation process for the final six months of the now expired ISRS cannot be done in the context of the general rate proceeding as that reconciliation process has to take into account all ISRS revenues received up to the date of new general rates. Therefore, by necessity, the comparison of the utility’s actual billed revenues for the last six months of the prior ISRS and its authorized level of ISRS revenues over those same six months is held over for the first new ISRS filing made by the utility following its general rate proceeding. Any over or under-recovery of prior ISRS revenues would then be netted against or added to the new ISRS costs incurred by the utility since the time of its last general rate case. This interpretation of the Commission rule most closely aligns with the realities of its current application. So in essence these revenues are being “tracked” but not through a formal tracker mechanism as was suggested during the hearing.

If a utility reaches the ISRS cap level, its rates cannot be increased on account of any new ISRS-qualifying plant until it files for a general rate case. MAWC wants to avoid any loss of earnings during the interim between rate proceedings if the Commission

finds the Staff's cap valuation position is correct. Regulatory assets and liabilities are expenses, revenues, gains or losses that would be normally recognized in net income in one period, but for an order of a regulatory commission specifying a different potential recovery period for purposes of setting retail rates. It could be argued that "regulatory assets" are better described as prior period costs, which the regulator may allow the utility to recover through higher retail rates in the future.

If the Commission were to permit any costs deemed in excess of the ISRS cap to be treated as a regulatory asset the costs associated with qualified ISRS additions would be charged to MAWC's balance sheet and not immediately charged to income. By booking a regulatory asset, MAWC could avoid the temporary loss in earnings that would otherwise occur associated with plant additions until MAWC obtains new rates from its next rate case. Of course, MAWC's customers would have to pay higher rates in that case when the ISRS cap regulatory asset is amortized to expense, if regulatory asset treatment is authorized. In this manner, if MAWC's regulatory asset proposal is approved, the Company can avoid, or "get around" the intended effect of the ISRS rate cap limitation<sup>34</sup>.

However, allowing a regulatory asset to be booked is inconsistent with the language of the statute which can be reasonably interpreted as setting out the ISRS cap mechanism as a means to limit a utility's ability to recover amounts from customers through use of this "single-issue" rate mechanism without further examination of other material financial factors affecting its overall profitability including expenses, O&M costs,

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<sup>34</sup> See Ex. 3 Direct Testimony of Mark Oligschlaeger, page 9 lines 13-17.

interest expense, etc. MAWC is totally free to seek rate recovery of its excess ISRS cap costs through filing of a general rate application, and in fact has filed notice of an intent to do so.<sup>35</sup> A policy of requiring a utility, that has already increased its customer revenues by 10% since its last general rate proceeding through use of single-issue rate mechanisms, to submit to an “all relevant factors” rate review before receiving any additional rate relief is both appropriate on its own terms and completely consistent with the ISRS statute and rule.

### **Conclusion**

It remains Staff’s position that for the Commission to authorize the full amount of the ISRS revenues requested in MAWC’s current petition would violate the 10% cap provision found in section 393.1003. Staff recommends that the Commission may allow an additional \$254,789 in ISRS revenues in this current petition to prevent authorization of ISRS revenues in excess of the 10% cap. It also remains Staff’s position to deny the booking of over or under collections as a regulatory asset. As set forth above, the statute contemplates one ISRS and one ISRS surcharge and subsequent changes and adjustments thereto. It does not authorize the Commission to impact future surcharges by changing the regulatory treatment of a past surcharge.

**WHEREFORE**, Counsel for Staff submits this Post-Hearing Brief to the Missouri Public Service Commission for consideration in the above stated case, and respectfully recommends the Commission grant \$254,789 for this ISRS petition and deny MAWC’s request to establish a regulatory asset.

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<sup>35</sup> See EFIS Case No. WR-2015-0301, filed 5/15/15.



Respectfully submitted,

**/s/ Cydney D. Mayfield**

Cydney D. Mayfield

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this 12<sup>th</sup> day of June, 2015, 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/ Cydney D. Mayfield**