

**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-2019-0184  
Approval to Change an Infrastructure )  
System Replacement Surcharge (ISRS). )

**RESPONSE TO COMMISSION REQUEST**

**COMES NOW** Missouri-American Water Company (“MAWC” or “Company”), and, in response to the Commission’s request, states as follows to the Missouri Public Service Commission (“Commission”):

1. During the evidentiary hearing on May 17, 2019, the Regulatory Law Judge requested that MAWC provide a copy of the February 1, 2019 letter sent to the Internal Revenue Service (“IRS”) on behalf of the Company alerting the IRS to a potential violation. (Tr. 48)
2. Attached hereto as **Appendix A** is a copy of the requested letter.

**WHEREFORE**, MAWC submits the attached letter in response to the Commission’s request.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN WATER COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing document was sent via electronic mail on this 21<sup>st</sup> day of May, 2019, to:

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AMERICAN WATER

February 1, 2019

Department of the Treasury  
Internal Revenue Service  
Ogden, UT 84201-0012

Re: Notification to IRS pursuant to Treas. Reg. § 1.167(l)-1(h)(5)  
Missouri American Water Company (EIN 44-0578460)

Internal Revenue Service:

American Water Works Company Inc. (EIN 51-0063696) ("AWK") is the parent of a group of corporations filing a consolidated federal income tax return. This consolidated return group (the "AWK Group") includes Missouri American Water Company ("MAWC").

MAWC is a public utility that provides water and sewer services to customers within Missouri. MAWC is regulated by the Missouri Public Service Commission ("MoPSC"). MAWC uses a normalization method of regulated accounting for its public utility property pursuant to section 168(i)(9) of the Internal Revenue Code of 1986, as amended (the "Code") and related Treasury regulations.

This letter is intended to provide a notification to the Internal Revenue Service ("IRS") pursuant to Treas. Reg. § 1.167(l)-1(h)(5). Treas. Reg. § 1.167(l)-1(h)(5) states: The taxpayer shall notify the district director of a change in its method of regulated accounting, an order by a regulatory body or court that such method be changed, or an interim or final rate determination by a regulatory body which determination is inconsistent with the method of regulated accounting used by the taxpayer immediately prior to the effective date of such rate determination. Such notification shall be made within 90 days of the date that the change in method, the order, or the determination is effective.

On December 5, 2018 (effective December 15, 2018), the MoPSC issued an order in case number WO-2018-0373 authorizing an Infrastructure System Replacement Surcharge (“ISRS”) that was developed in a manner that MAWC believes is potentially inconsistent with its normalization method of regulated accounting and, as such, this order setting the ISRS rate potentially represents a change in its method of regulatory accounting.

The ISRS is a cost of service rate mechanism that involves the computation of rate base and the resulting revenue requirements inclusive of the effects of income taxation as to eligible infrastructure system replacements, as defined by the applicable Missouri statutes. The MoPSC order revised MAWC’s original calculations to include the full Deferred Tax Liability (“DTL”) related to accelerated tax-over-book deductions that are subject to a normalization method of accounting, without including any Deferred Tax Asset (DTA) related to the MAWC Net Operating Loss Carryover (“NOLC”) balance

On December 14, 2018, MAWC filed an Application for Rehearing and Motion to Defer Ruling, asking the Commission for the time to seek a private letter ruling or some other form of guidance from the IRS to address any uncertainties regarding the application of the deferred tax normalization requirements to the rate base treatment of the DTA in computing the ISRS revenue requirement. On January 3, 2019, the MoPSC denied MAWC’s request for rehearing.

MAWC filed a notice of appeal on February 1, 2019, that will initiate an appeal of the order in case number WO-2018-0373 to the Missouri Court of Appeals.

AWK and MAWC intend to seek guidance on these uncertainties from the IRS through a private letter ruling. AWK and MAWC anticipate receiving IRS guidance prior to the Missouri Court of Appeals issuing a final opinion in MAWC’s appeal of the MoPSC’s denial of MAWC’s Motion for Rehearing. Therefore, if the IRS rules the MoPSC’s decision in MAWC’s ISRS case ordered a method of regulatory accounting that is inconsistent with the tax normalization rules (including Treas. Reg. § 1.167(1)(h)(1)(iii) regarding NOLCs) then the MoPSC and MAWC can correct this inconsistency in a timely fashion, thus avoiding the sanctions for violation of the normalization requirements.

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Note that the text of the notification requirement of Treas. Reg. § 1.167(1)-1(h)(5) provides that any such notice must be provided to the applicable IRS District

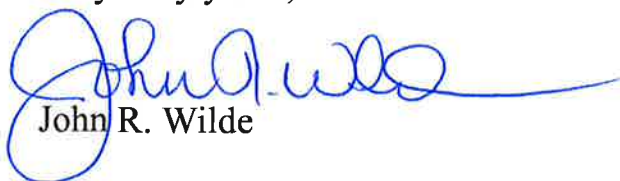
Director. Subsequent to the promulgation of this regulation, the offices of the various District Directors were eliminated in a reorganization of the IRS. Notice 2003-19, 2003-1 C.B. 703, provides that a notification pursuant to Treas. Reg. § 1.167(1)-1(h)(5) should be addressed to the Cincinnati Submission Processing Center. Notice 2003-19 has been revoked by Notice 2010-53, 2010-31 I.R.B. 182, which announced that the information contained in Notice 2003-19 regarding the proper addresses for the mailing of various statements and elections would henceforth be contained on the IRS's website or in the instructions to certain forms. However, the proper mailing address for statement pursuant to Treas. Reg. § 1.167(1)-1(h)(5) does not appear to be contained on the IRS's website (in particular, <https://www.irs.gov/filing/where-to-file-certain-elections-statements-returns-and-other-documents>) or in any IRS form; thus, MAWC informally requested assistance the IRS's Office of Chief Counsel, and was directed to send notice to the address used for this letter.

MAWC, is the entity providing notice pursuant to Treas. Reg. § 1.167(1)-1(h)(5), as MAWC is the only member of the AWK Group subject to the regulation of the MoPSC, and that is impacted by the following MoPSC order.

The issues surrounding computations of NOLC are complex. Further the interaction between these computations and the effects of these computations on the deferred income tax liability in a single item rate making process are even more complex. The IRS has never issued any formal guidance and as such there is uncertainty as to whether the positions taken by the Commission in their order are or are not inconsistent with a normalization method of accounting. As a result, MAWC is filing this notice within the relevant 90 days as a protective measure because we believe that it is prudent to do so in case a determination by the IRS is ultimately made in the ruling process that the method ordered by the MoPSC is inconsistent with the tax normalization rules, and the MoPSC is either unable or unwilling to cure the inconsistency in a manner satisfactory to the IRS.

Please call me at (856) 955-4513 if you would like to discuss this matter. MAWC will provide updated information as significant developments occur.

Very truly yours,

  
John R. Wilde