

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

In the Matter of Missouri-American Water	)	
Company's Request for Authority to Implement	)	Case No. WR-2011-0337
A General Rate Increase for Water and Sewer	)	SR-2011-0338
Service Provided in Missouri Service Areas.	)	

**NONUNANIMOUS STIPULATION AND AGREEMENT  
AS TO SPECIAL CONTRACT**

COME NOW Missouri-American Water Company (MAWC or Company) and The Empire District Electric Company (Empire), and respectfully state to the Missouri Public Service Commission (Commission) that, as a result of negotiations, the undersigned parties (Signatories) have reached the stipulations and agreements contained herein in order to settle the certain issues specified below.

1. **Issue Settled.** This Stipulation and Agreement is intended to settle among the Signatories the issue of the appropriate rate to be applied to the interruptible water service provided to Empire. The Signatories recommend that the Commission accept this Stipulation and Agreement as a fair compromise of their respective positions as to this issue.

**STIPULATION AND AGREEMENT**

2. Attached as **Appendix A** is an Interruptible Industrial Water Supply Agreement (Agreement) between MAWC and Empire. The Agreement is designed to supersede and replace a 2001 Agreement between the Signatories, as was amended in 2004. The Agreement addresses service characteristics, point of delivery, facilities, interruptible nature of the supply and rates and charges, among other things.

3. MAWC and Empire ask that the Commission approve this Stipulation and Agreement and incorporate the result in the determination of just and reasonable rates to be ordered in this case.

4. The Agreement essentially provides for a continuation of the existing arrangement whereby Empire is charged the lower of the Company's fully loaded production costs (covering the operating expenses, taxes, and capital cost of producing water for the Joplin District), or the Company's rate for manufacturers, industrials and large quantity users of water as approved by the Commission and applicable to the Joplin District. The term of the Agreement is extended for twenty-five (25) years from its effective date, which roughly coincides with the life expectancy of Empire's State Line Combined Cycle Plant electric production facility for which the water service is intended.

5. **Revenue Requirement.** The settlement of the issue identified in this Stipulation and Agreement concerns rate design and should have no impact on the revenue requirement to be ordered in this case.

**Contingent Waiver of Rights**

6. This Stipulation and Agreement is being entered into solely for the purpose of settling the identified issue in this case listed above. Unless otherwise explicitly provided herein, none of the Signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any other method of cost determination or cost allocation or revenue-related methodology. Other than explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this

Stipulation and Agreement in this or any other proceeding regardless of whether this Stipulation and Agreement is approved.

7. This Stipulation and Agreement has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, then this Stipulation and Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

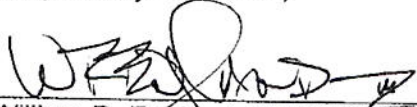
8. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, and notwithstanding the provision herein that it shall become void; neither this Stipulation and Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

9. In the event the Commission unconditionally accepts the specific terms of this Stipulation and Agreement without modification, the Signatories waive their respective rights to present oral argument and written briefs pursuant to §536.080.1


RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to RSMo §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §536.500 RSMo 2000; and their respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission order unconditionally approving this Stipulation and Agreement issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding or any matters not explicitly addressed by this Stipulation and Agreement.

WHEREFORE, for the foregoing reasons, the undersigned Signatories respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation and Agreement.

Respectfully submitted,

  
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**ATTORNEYS FOR THE EMPIRE DISTRICT  
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## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 19<sup>th</sup> day of January, 2012, to:

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**Interruptible Industrial Water Supply Agreement**

This Agreement is made by and between Missouri-American Water Company, a Missouri corporation hereinafter referred to as "Water Company", and The Empire District Electric Company, a Kansas corporation, hereinafter referred to as "Empire".

Whereas, Water Company and Empire on December 14, 2001 entered into an Agreement to Sell and Deliver Water for Retail, by which Water Company supplied Empire with potable water for use at Empire's electric production facility located at 2299 South State Line Road, Joplin, Missouri; and

Whereas, said December 14, 2001 Agreement was amended by an Addendum on April 25, 2004, incorporating an interruptible service rate for Water Company approved by the Missouri Public Service Commission in Case No. WR-2003-0500; and

Whereas, Water Company has requested changes to its water supply rate structure in Missouri Public Service Commission Case No. WR-2011-0337; and

Whereas, Water Company and Empire desire to replace the 2001 Agreement, as amended in 2004, in its entirety, with this Agreement;

NOW THEREFORE: for and in consideration of the mutual covenants, agreements, and conditions contained herein, it is agreed by and between Water Company and Empire as follows:

1. **Effective Date:** The effective date of this Agreement shall be the effective date of the Missouri Public Service Commission's order approving this Agreement, which will be presented for approval by the Parties hereto in the Commission's Case No. WR-2011-0337. Upon becoming effective, this Agreement will completely supersede and replace the 2001 Agreement, as amended in 2004, which Agreement will then be terminated.
2. **Service Characteristics:** Water Company shall supply Empire at the point of delivery with potable water, with a minimum supply delivery capacity rate of not less than Two Thousand Gallons (2000) per minute and with supply pressure being within the Missouri Department of Natural Resources regulations.
3. **Point of Delivery:** The Point of Delivery shall continue to be on fee

property owned by Empire, approximately Fifty (50) feet East of the intersection of Night Hawk Lane and 20<sup>th</sup> Street and approximately Twelve Thousand Seven Hundred (12,700) feet West of the intersection of Black Cat Road and 20<sup>th</sup> Street.

4. Facilities: Water Company shall provide all facilities on its side of the point of delivery, including but not limited to a sixteen (16) inch water main and appurtenant facilities, beginning at a point approximately Fifty (50) feet East of the intersection of Night Hawk Lane and 20<sup>th</sup> Street on the fee property of Empire, thence commencing eastward along the south side of 20<sup>th</sup> Street for approximately Twelve Thousand Seven Hundred (12,700) feet and ending at an approximate location near the intersection of Black Cat Road and 20<sup>th</sup> Street and; a twenty (20) inch water main and appurtenant facilities, beginning where the aforesaid sixteen (16) inch water main ends, at an approximate location near the intersection of Black Cat Road and 20<sup>th</sup> Street, thence commencing eastward along the side of 20<sup>th</sup> Street for approximately Eight Thousand Three Hundred (8,300) feet with a point of ending located approximately at the intersection of Roosevelt Avenue and 20<sup>th</sup> Street, (hereinafter "additional water facilities"). At the point of delivery Water Company shall maintain an adjacent gate valve, controlling the entire supply, and a meter or meters capable of, and providing accurate measurement of the water delivered to Empire.

Empire shall maintain a meter vault and connecting piping for said meter or meters, and back flow prevention devices preventing water in Empire's water system from flowing into Water Company's system. Empire shall not permit any physical connections in its water supply system to that of any other pipe system or equipment outside Empire's own system, where such other pipe system or equipment in any manner receives all or any part of its supply of water directly or indirectly from wells, streams or any source other than that of the water system of Water Company. Empire shall maintain appropriate backflow prevention devices, as directed by Water Company and shall also be responsible for compliance with the cross-connection regulations of the Missouri Department of Natural Resources or its successor agency.

Empire further agrees to allow Water Company to inspect for possible cross-connections. If cross-connections are found to exist, Empire shall assume the responsibility of eliminating the cross-connections immediately upon the demand by and to the satisfaction of Water Company. If cross-connections are not eliminated immediately and to the satisfaction of Water Company, said Water Company shall discontinue water service to Empire in accordance with its approved tariffs, and with the

regulations of the Missouri Department of Natural Resources or its successor agency.

5. Interruptible Supply

The Parties agree that Empire's electric production facility has water storage and an alternative supply source which, coupled with its water usage volume history make Empire eligible for Water Company's Interruptible Water Service.

In accordance with the Interruptible service for the Water Company's Joplin District, it is agreed that during the first year beginning with the effective date of this Agreement, and for each subsequent year commencing on successive anniversaries of the effective date, Water Company can "interrupt" i.e., partially or completely shutoff water supply to Empire at the electric production facility for up to a total of 504 hours in that year, if necessary for Water Company to meet total water supply obligations in excess of Water Company's supply capacities. The total interruption period may be imposed by Water Company consecutively in one period, or by separate interruption periods. Water Company will endeavor to provide at least 24 hours advance written notice of its intent to interrupt the supply of water to Empire, and written notice of the end of each interruption, specifying the time commenced and ended.

Notwithstanding the foregoing, the Water Company shall not be required by this Agreement to provide or maintain water pressures to Empire, except as provided for in section 2, service characteristics. The obligation of the Water Company to supply water hereunder is limited by the understanding that the Water Company shall undertake to use reasonable care and diligence in order to prevent and avoid interruptions and fluctuations in the supply beyond the 504 hours referenced above, but that it cannot and does not guarantee that such interruptions and fluctuations will not occur and, there may be periods during which the supply may be further interrupted because of emergencies due to breaks, leaks, defects or necessary repairs in its facilities, or caused by fires, strikes, acts of God, or other causes beyond its control; i.e., "unforeseeable interruptions." In addition, the Water Company does not warrant or guarantee domestic or fire protection supply greater than that required by law, rules, tariffs, or regulations.

6. Rates and Charges

At Empire's electric production facility, Empire has water storage



facilities, alternative supply source, and usage volume requirements that qualify Empire for interruptible water service. The Commodity Charge component for such interruptible water service shall be a rate per thousand gallons or CCF of water consumed, comprised of the lesser of the Water Company's (a) fully loaded production costs covering the operating expenses, taxes, and capital costs of producing water for the Joplin district, or (b) rate for manufacturers, industrials and large quantity users of water, which is approved by the Commission and applicable to the Joplin district. This Commodity Charge component shall be in addition to any Customer Charge component and may be further adjusted in accordance with the minimum annual consumption as set forth below.

In addition to the monthly billing, based on monthly consumption, Empire guarantees to consume, and if not consumed, to pay Water Company for, an annual minimum consumption of 360,000 CCF of water. Absent said unforeseeable interruptions, if the water supply is interrupted by mutual agreement for more than 504 hours during any one yearly period, the Water Company agrees to adjust the level of annual minimum consumption to be taken by Empire per this Agreement for that year, on a pro rata basis in respect to the number of hours in which the aforesaid amount of supply should be available, but is not.

7. Billing and payment.

Billing by Water Company and payment by Empire shall be in accordance with the billing and payment cycles, and such other terms and conditions, as are established by Water Company in accordance with the tariffs, rules and regulations on file, and in effect from time to time, with the Missouri Public Service Commission for water service in the City of Joplin and surrounding vicinity.

8. Term

Empire agrees to contract, and does hereby contract with the Water Company, its successors and assigns, for a supply of water to Empire for the purpose aforesaid, to be delivered to Empire at the point(s) of connection herein above specified for and during an initial term of twenty-five (25) years from the effective date of this Agreement. Thereafter this Agreement shall automatically be renewed for successive one year renewal terms. This Agreement will be terminated if either Party, during the last year of the initial term, or any time thereafter, gives the other no less than one year's advance written notice of termination, specifying the effective date of termination which must be no less than one year after the date of said notice, in which case this Agreement will

terminate on said specified date.

9. Reopening of Agreement

Notwithstanding anything herein to the contrary, this Agreement may be reopened for renegotiation, and the implementation of an amendment or amendments for the remainder of the term, rate or conditions if any of the following events occur:

a. In any rate proceeding of Water Company before the Missouri Public Service Commission said Commission increases Water Company's fully loaded production costs covering the operating expenses, taxes, and capital costs of producing water for the Joplin district to exceed \$2.00 per CCF of water; or

b. Empire determines the water supplied hereunder does not meet its minimum water quality requirements and/or Empire cannot meet environmental laws, rules, or regulations by using water supplied by Water Company; or

c. The appropriate regulatory authority determines Water Company's use of the water plant supplying the water which is the subject of this Agreement must be terminated for non-compliance with environmental laws, rules, or regulations; or

d. The Missouri Public Service Commission determines Empire's electrical production facility which is the subject of this Agreement must be taken out of service as said plant is no longer useful, or may no longer be used.

If any such event occurs, this Agreement may be reopened by either Party delivering a written request to the other to reopen the Agreement. Thereafter, the Parties shall cooperate in good faith to attempt to reach mutual agreement to so amend this Agreement. If mutual agreement and executed amendment or amendments do not occur within ninety (90) days of the date of the written request to reopen the Agreement, either Party may petition the Missouri Public Service Commission to resolve the disputes, and determine the appropriate amendments, if any. The effective date of any such amendment determined by the Commission shall be the date of the filing of the petition with the Commission, and any adjustments to rates shall be made retroactively to that date; unless such amendment occurs as a result of the event described in Section a.

above. In that case, any amendment or adjustment shall be made at the time new rates for water service become effective in Water Company's next general rate proceeding before the Missouri Public Service Commission.

10. General

a. applicable law

This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri without reference to conflict of law rules or principles.

b. taking

Should all or any part of the water works plant and facilities of Water Company which are used in the rendition of the water supply to Empire hereunder be acquired through condemnation by a municipal corporation or other governmental body or entity, then Water Company shall be relieved of its obligations under this Agreement and in such event Empire shall look to such municipal corporation or other governmental body or entity for the performance of the provisions of this Agreement.

c. entire agreement

This Agreement constitutes the entire Agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof or not. There are no agreements, warranties, or representations express or implied, except those expressly set forth herein.

d. non-waiver.

The failure of either Party to insist upon the performance of any of the terms of this Agreement or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or the futures exercise of such right.

e. assignment.

This Agreement cannot be assigned by either Party without the signed consent of the other, which consent shall not be unreasonably withheld. The rights, duties and obligations herein provided for shall be binding upon Empire and its successors and assigns, and upon Water Company and its successors and assigns.

f. notices

All notices provided for herein shall be in writing and shall be given by ordinary mail, and any notice to Empire shall be addressed to:

The Empire District Electric Company  
602 Joplin Street  
P.O. Box 127  
Joplin, MO 64801  
Attention: Vice President — Energy Supply

Any notice to Water Company shall be addressed to:


Missouri-American Water Company  
Creekside Plaza  
2650 E. 32<sup>nd</sup> Street, Suite 121  
Joplin, MO 64803-3090  
Attention: Manager

With a copy to:  
Missouri-American Water Company  
Attention: Legal Department  
727 Craig Road  
St. Louis, MO 63141

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized officers the day and year first above written.

MISSOURI-AMERICAN WATER COMPANY

Attest:

By   
FRANK L. KARYMANN

name

PRESIDENT

Office/Capacity

1/18/12

date



THE EMPIRE DISTRICT ELECTRIC COMPANY

By Kelly S. Walters  
Kelly S. Walters

name

VP + COO

Office/Capacity

1/19/12

date

Attest:

Jamie L. [Signature]