

**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-2019-0389 |
| Approval to Change its Infrastructure |) | |
| System Replacement Surcharge (ISRS) |) | |

PARTIAL STIPULATION AND AGREEMENT

COME NOW Missouri-American Water Company (MAWC and the Staff of the Missouri Public Service Commission (Staff), and submit this Partial Stipulation and Agreement:

BACKGROUND

1. On August 26, 2019, MAWC filed a *Petition to Change its Infrastructure System Replacement Surcharge & Motion For Approval of Customer Notice*. By this filing, MAWC requested an adjustment to its ISRS rates and charges for ISRS-eligible infrastructure system replacements and relocations.

2. The Parties have held discussions concerning the Deferred Tax Asset (Net Operating Loss (NOL)) issue that was also present in Commission Files No. WO-2018-0373 and WO-2019-0184. MAWC has requested a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS) concerning this issue. The PLR request was filed with the IRS on June 5, 2019, and June 6, 2019.

3. The Office of the Public Counsel, while not a signatory, has affirmatively indicated that it does not oppose this Partial Stipulation and Agreement, such that it may be treated as unanimous in accordance with Commission Rule 20 CSR 4240-2.115.

RESOLUTION OF ISSUE

4. As a result of the above discussions and events, the Parties have agreed to the following Partial Stipulation and Agreement to resolve the Deferred Tax Asset (NOL) issue:

- a) ISRS Rates will be set in this case without recognition of the Deferred Tax Asset (NOL) proposed by MAWC;
- b) If the IRS PLR indicates that the Commission's treatment of the Deferred Tax Asset (NOL) has created a normalization violation, MAWC will file an application for an Accounting Authority Order (AAO), and Staff and OPC agree to support such AAO application, to permit MAWC to record a regulatory asset to capture the rate differential in an amount as may be necessary to cure such normalization violation, if any, identified by the PLR.
- c) The AAO differential would continue to be recorded through the effective date of ISRS rates for MAWC that fully reflect the IRS decision. However, MAWC will not book any amounts to such regulatory asset until, and unless, an IRS Private Letter Ruling is received indicating that a normalization violation exists.

GENERAL PROVISIONS

5. Unless otherwise explicitly provided herein, none of the Parties to this Partial Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation to, any other method of cost determination or cost allocation or revenue-related methodology. Other than as explicitly provided herein, none of the Parties shall be prejudiced or bound in any manner in this or any other proceeding by the terms of this Partial Stipulation and Agreement regardless of whether this Partial Stipulation and Agreement is approved.

6. This Partial Stipulation and Agreement has resulted from negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Partial Stipulation and Agreement unconditionally and without modification, then this Partial Stipulation and Agreement shall be void and no Party shall be bound by any of the agreements or provisions hereof.

7. If the Commission does not unconditionally approve this Partial Stipulation and Agreement without modification, and notwithstanding the provision herein that it shall become void, neither this Partial 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 Party has for a decision in accordance with §536.080 RSMo or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Partial 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 Partial 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.

8. In the event the Commission unconditionally accepts the specific terms of this Partial Stipulation and Agreement without modification, the Parties waive the following rights only as to the issues resolved herein: 1) their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo; 2) their respective rights to seek rehearing, pursuant to §536.500 RSMo; and 3) their respective rights to judicial review pursuant to §386.510 RSMo. This waiver applies only to a final unappealed Commission order unconditionally approving this Partial 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 Partial Stipulation and Agreement.

WHEREFORE, for the foregoing reasons, the undersigned Parties respectfully request that the Commission issue its Order approving the terms and conditions of this Partial Stipulation

and Agreement.

Respectfully submitted,

| | |
|---|--|
|  <hr/> <p>Dean L. Cooper Mo. Bar 36592 BRYDON, SWEARENGEN & ENGLAND P.C. 312 East Capitol Avenue P.O. Box 456 Jefferson City, MO 65102-0456 Telephone: (573) 635-7166 dcooper@brydonlaw.com</p> <p>Timothy W. Luft, Mo Bar 40506 MISSOURI-AMERICAN WATER COMPANY 727 Craig Road St. Louis, MO 63141 (314) 996-2279 (314) 997-2451 (telefax) Timothy.Luft@amwater.com</p> <p>ATTORNEYS FOR MISSOURI-AMERICAN WATER COMPANY</p> | <p><u>//S// Alexandra L. Klaus by dlc</u> Alexandra L. Klaus Senior Counsel Missouri Bar No. 67196</p> <p>ATTORNEY FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION</p> <p>P.O. Box 360 Jefferson City, MO 65102 573-751-1854 (Voice) 573-751-9285 (Fax) lexi.klaus@psc.mo.gov</p> |
|---|--|

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 22nd day of October, 2019, to:

Alexandra Klaus
Staff Counsel's Office
lexi.klaus@psc.mo.gov

Lera Shemwell
Office of the Public Counsel
lera.shemwell@opc.mo.gov

