

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of November, 2019.

In the Matter of the Petition of Missouri-American)	
Water Company for Approval to Change an)	<u>File No. WO-2019-0389</u>
Infrastructure System Replacement Surcharge)	Tariff No. YW-2020-0035
(ISRS))	

**ORDER APPROVING PARTIAL STIPULATION AND AGREEMENT AND
APPROVING INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE**

Issue Date: November 21, 2019

Effective Date: December 7, 2019

Procedural History

On August 26, 2019, Missouri-American Water Company (Missouri-American) filed a petition requesting that the Commission authorize it to change its Infrastructure System Replacement Surcharge (ISRS), for eligible replacements and relocations made during the period of April 1, 2019, through September 30, 2019 (ISRS Period). A *Partial Stipulation and Agreement* was filed on October 22, 2019, signed by Missouri-American and Staff, which disposed of the net operating loss issue for the ISRS Period.

Staff filed its recommendation on October 25, 2019, which calculates an incremental ISRS surcharge revenue in the amount of \$6,112,222, which is a decrease from the amount requested by Missouri-American. On November 4, 2019, Missouri-American filed its response expressing no objection to the Staff recommendation, as long as the *Partial Stipulation and Agreement* is approved by the Commission. The Office of the Public Counsel (Public Counsel) did not object to the Staff recommendation.

The Commission gave the statutorily required notice to appropriate governing bodies, local media, the parties in Missouri-American's most recent rate case, and set a filing deadline of September 25, 2019, for interested parties to request intervention. No applications to intervene were received.

Approving the *Partial Stipulation and Agreement*

Commission rule 20 CSR 4240-2.115 allows the *Partial Stipulation and Agreement* to be considered as unanimous as seven days have passed and no other party has objected to the *Partial Stipulation and Agreement*. The *Partial Stipulation and Agreement* resolves a single contested issue, which was also present in Missouri-American's prior two ISRS cases, whether a net operating loss exists within an ISRS project. The prior two cases are currently on appeal.

Missouri-American filed a request for a private letter ruling from the Internal Revenue Service regarding the net operating loss issue. The *Partial Stipulation and Agreement* provides that ISRS rates will be set in this case without recognition of a deferred tax asset (net operating loss). The *Partial Stipulation and Agreement* also states that should the Internal Revenue Service find a normalization violation was created by the Commission's treatment of the deferred tax asset, Missouri-American will file an application for an Accounting Authority Order, which Staff will support, to record a regulatory asset to capture the rate differential to cure such normalization violation.

The Commission has considered the unanimous *Partial Stipulation and Agreement*, finds it to be reasonable and will approve it.

Approving ISRS surcharge revenues of \$6,112,222

Missouri-American's application meets all statutory and regulatory requirements. After receiving final documentation, Missouri-American's requested ISRS revenue requirement was \$6,782,250. Based upon its review and analysis, Staff recommended a revenue requirement of \$6,122,222. The difference between Missouri-American's request and Staff's recommendation is due to replacement of estimated costs with actual costs, and removal of the claimed net operating loss included in Missouri-American's application (addressed above).

Staff's recommended calculations reflect: the overall weighted average cost of capital of 9.44 percent (tax grossed up rate of return); Missouri-American's current depreciation rates; actual ISRS eligible investment placed in service during the ISRS Period; and property taxes on plant placed in service prior to December 31, 2018, which will be due within 12 months of this ISRS filing. Staff further provided a breakdown of the increase per customer class. The largest customer class, residential, will see an increase of 0.18912 cents per 1,000 gallons. Missouri-American had no objection to Staff's recommended increase in ISRS revenues or the customer class breakdown.

Decision

The Commission finds that Missouri-American has complied with the requirements of the applicable ISRS statutes to authorize its use of an ISRS, and pursuant to the *Partial Stipulation and Agreement*, the recovery will not include net operating loss. The Commission concludes that Missouri-American shall be permitted to change its ISRS to recover ISRS revenues for this case in the amount of \$6,122,222. Since the revenues and rates authorized in this order differ from those contained in the tariff sheet Missouri-American first submitted, the Commission will reject that tariff sheet. The Commission

will allow Missouri-American an opportunity to submit a new tariff sheet consistent with this order.

Section 393.1006.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is December 24, 2019. The presumed thirty day effective date of Commission orders may be otherwise provided for under Section 386.490.2. Giving this *Order* a thirty day effective date would set the effective date at *Order* as December 21, 2019, allowing only three days for Missouri-American to file a compliance tariff and for the other parties to review and issue a recommendation. There are thirty-three calendar days between the issuance date of this *Order* and the statutory deadline to issue an order effective by December 24, 2019. The Commission will approximately halve the number of days and set the effective date of this *Order* to be in sixteen days, December 7, 2019.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is authorized to change its Infrastructure System Replacement Surcharge (ISRS) sufficient to recover ISRS revenues in the amount of \$6,122,222. Missouri-American Water Company is authorized to file an ISRS rate for each customer class as described in Attachment 2 of Staff's Memorandum.
2. The tariff sheet filed by Missouri-American Water Company on August 26, 2019, and assigned Tariff Tracking No. YW-2020-0035, is rejected.
3. Missouri-American Water Company is authorized to file new tariffs to recover the revenue authorized in this Order.
4. The *Partial Stipulation and Agreement*, attached hereto as Attachment A, is

approved, and the signatories shall comply with its terms.

5. This order shall become effective on December 7, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, and
Coleman, CC., concur.

Hatcher, Regulatory Law Judge

**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></p> <p>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>
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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 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



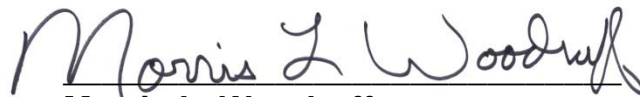
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 21st day of November 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 21, 2019

File/Case No. WO-2019-0389

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.