

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

In the Matter of the petition of Missouri- )	
American Water Company for Approval to )	<b><u>Case No. WR-2025-0345</u></b>
Establish a Water and Sewer Infrastructure )	
Rate Adjustment (WSIRA) )	

**POST-HEARING BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”),  
by and through counsel, and files its Post-Hearing Brief:

**Background and Introduction**

On September 3, 2025, Missouri-American Water Company (“MAWC” or “Company”) filed its *Petition to Establish a Water and Sewer Infrastructure Rate Adjustment (WSIRA)*. The Missouri Water and Sewer Infrastructure Act, Section 393.1560, RSMo, states:

A water or sewer corporation that provides water or sewer service to more than eight thousand customer connections may file a petition and proposed rate schedules with the commission to establish or change a WSIRA that will provide for the recovery of the appropriate pretax revenues associated with the eligible infrastructure system projects, less the appropriate pretax revenues associated with any retired utility plant that is being replaced by the eligible infrastructure system projects. The WSIRA shall not produce revenues in excess of fifteen percent of the water or sewer corporation’s base revenue requirement approved by the commission in the water or sewer corporation’s most recent general rate proceeding; provided, however, that neither WSIRA revenues attributable to replacement of customer-owned lead service lines, nor any reconciliation amounts described in subdivision (2) of subsection 5 of section 393.1509, shall count toward the program cap.

This allows eligible water and sewer corporations to recover certain infrastructure system replacement costs between general rate cases. This is MAWC’s first WSIRA filing since its most recent general rate case, File No. WR-2024-0320. As part of the approved Stipulation and Agreement in WR-2024-0320, parties, including the Office of

Public Counsel (“OPC”), agreed to an overall post-tax weighted average cost of capital of 7% and agreed to using this for WSIRA purposes. OPC’s position of excluding the tax-gross-up factor changes the post-tax return to 6.73%, less than the 7% Commission-approved post-tax return.<sup>1</sup>

The tax gross-up factor, an essential part of calculating a revenue requirement, is used to calculate additional taxes needed on the overall revenue requirement in both general rate cases and WSIRA cases. Taxes included in Staff’s WSIRA recommendation include both current and deferred income taxes.<sup>2</sup> It is Staff’s position that if taxes are to be included in rates, there should be a tax gross-up applied to the overall revenue requirement, whether in a general rate case or a WSIRA case. Including taxes in the revenue requirement is not dependent on whether MAWC is currently making tax payments to the Internal Revenue Service (“IRS”).<sup>3</sup>

**The Single Issue to be Decided by the Commission: Should the gross-up on income taxes be included in the WSIRA revenue requirement?**

Yes, as explained above, Staff’s position is that the gross-up on income taxes should be included in the WSIRA revenue requirement regardless of whether or not MAWC is currently making tax payments to the IRS. There are three questions to answer in debunking OPC’s position of excluding the tax-gross up:

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<sup>1</sup> Ex. 201, Rebuttal Testimony of Amanda C. McMellen, p. 3, l. 15-19.

<sup>2</sup> *Id.* at p. 2, l. 24-26.

<sup>3</sup> *Id.* at p. 3, l. 1-3.

## 1. Does the timing difference affect MAWC's ability to be made whole?

No. OPC's position relies on the assumption that there is a meaningful difference in whether MAWC pays taxes now or if taxes are deferred and paid at a later date.

As explained in the Direct Testimony of MAWC witness Linda Schlessman:

Tax expense includes both current and deferred taxes. The absence of current tax expense does not mean the Company is not in a taxable situation. The Company has deferred tax expense which it must pay to the government in the future and therefore has taxes to collect from customers. The gross-up on tax expense ensures that the Company is made whole...<sup>4</sup>

What Ms. Schlessman is saying here, and at hearing,<sup>5</sup> is that MAWC's income tax expense is driven primarily by timing differences created by accelerated depreciation and repair deductions, which give rise to deferred tax expense and corresponding Accumulated Deferred Income Tax (ADIT) balances. These deferred taxes represent taxes payable in the future and are reflected as a reduction to rate base, thereby providing an immediate benefit to customers.

In contrast to this, OPC witness John Riley states "[t]he Commission should not include the additional amount in this case because MAWC **never** pays the amount it collects to pay taxes"<sup>6</sup> (emphasis added). Mr. Riley does not have any support for this statement, nor is there any way to know for certain when MAWC will have a current tax expense. OPC's argument focuses exclusively on current cash income tax payments while ignoring deferred income tax expense. This selective focus provides an incomplete and misleading picture of the Company's income tax costs and is inconsistent with normalized ratemaking. The Commission should not remove the gross-up on income

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<sup>4</sup> Ex. 3, Direct Testimony of Linda Schlessman, p. 5, l. 2-6.

<sup>5</sup> Transcript Vol. II p. 29-32.

<sup>6</sup> Ex. 301, Direct Testimony of John R. Riley, p. 8, l. 12-14.

taxes from MAWC's revenue requirement due to a misinformed belief that the Company's current tax situation will never change.

**2. Is the tax gross-up methodology applied differently in ISRS or other cases?**

No. The tax gross-up factor is a part of determining revenue requirement. It is used in general rate cases, WSIRA cases, and Infrastructure System Replacement Surcharge ("ISRS") cases. ISRS cases are akin to WSIRA cases in that they offer eligible gas corporations the opportunity to recover the costs of certain infrastructure replacements between general rate cases.<sup>7</sup>

During the evidentiary hearing the following exchange occurred between counsel for MAWC and Staff witness Keith Majors:

Q: Mr. Majors, would you agree with me that Staff, in prior WSIRA cases or – and before that ISRS cases, applied the same tax gross-up methodology that's used by the Company and Staff in this case?

A: Yes, that's my understanding. I'm much more familiar with the ISRS, Infrastructure System Replacement Surcharge, cases that are filed before the Commission, but that's my general understanding, that the income tax gross-up methodology is the same for both surcharge mechanisms.

Q: And is there any part of that methodology that considers the actual revenues or deductions reported on federal or state income tax returns?

A: No, they do not.<sup>8</sup>

Shortly after this, Mr. Majors had an exchange with Commission Kolkmeyer further reiterating the similarity between the ISRS and WSIRA:

Q: I want to go back and talk about the question that Mr. Cooper just asked. And basically what's the way Staff calculated this is the same way that they have in all other cases similar to this. Correct?

A: Yes. The same general principle in the tax gross-up is the same that we use in major rate cases and Staff's accounting schedules.

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<sup>7</sup> Sections 393.1009-393.1015 RSMo.

<sup>8</sup> Transcript Vol. II p. 42-43.

Q: So nothing has changed the way the Staff calculated this?

A: That's correct, nothing has changed.<sup>9</sup>

Nothing has changed. Using a tax-gross up factor is not a new or novel approach to calculating a total revenue requirement in a rate case, an ISRS case, or a WSIRA case.

### **3. Are MAWC customers harmed by the inclusion of the tax gross-up?**

No, customers are not harmed by the inclusion of the tax- gross up. As explained by MAWC witness Linda Schlessman "...customers are not harmed by the fact that [MAWC] includes a gross-up in revenue requirement because they're receiving a credit for those taxes that haven't been remitted."<sup>10</sup> OPC witness John Riley alleges that including the tax gross-up in the revenue requirement means that MAWC's "...ratepayers have provided it with an interest free loan on its deferred tax and when those deferred taxes reverse, its ratepayers will be charged those taxes when become due. Any income tax actually owed on future earnings will have a gross-up calculation added."<sup>11</sup> It appears that Mr. Riley does not fully understand how the tax gross-up is applied. In direct responses to Mr. Riley, Ms. Schlessman states:

I disagree that customers are charged taxes when they become due and I disagree with the characterization that deferred taxes represent an interest free loan from customers. First, customers pay taxes in the revenue requirement when the legal obligation associated with the taxes arises, not based on when they are paid to the government. Second, deferred taxes represent an interest free loan from the government to the company, not a loan from the customer to the company resulting from federal tax policy.<sup>12</sup>

Customers pay taxes, through the revenue requirement, in the time period they are incurred, and the tax gross-up is applied in that same time period. OPC's argument that

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<sup>9</sup> Transcript Vol. II p. 47-48.

<sup>10</sup> Transcript Vol. II p. 32.

<sup>11</sup> Ex. 301, Direct Testimony of John S. Riley, p. 10, l. 12-15.

<sup>12</sup> Ex. 4, Rebuttal Testimony of Linda Schlessman, p. 8, l. 11-16.

taxes should be collected in the time period they are incurred but the tax gross-up should be applied at some point in the future when taxes are paid to the government would not protect customers. In fact, OPC's argument would allow current customers to receive the benefit of deferred taxes without paying the corresponding tax component associated with the authorized return. The inevitable result is that future customers—when deferred taxes become payable—would bear a disproportionate share of the tax burden without having received the earlier rate base benefit. Missouri ratemaking has long sought to avoid outcomes like this by adhering to normalization principles that match tax costs and benefits across customer generations. OPC's proposal breaks that symmetry by flowing through tax benefits to current customers while deferring recovery of the associated tax costs to future ratepayers. In short, there is nothing to protect customers from in this instance; they are merely paying, through the revenue requirement, the taxes needed to make MAWC whole.

### **Conclusion**

Consistent with past general rate cases, ISRS cases, and WSIRA cases, the Commission should order that the tax-gross up on income taxes be included in the current WSIRA revenue requirement. OPC's argument that the gross-up must be excluded is not persuasive: timing in tax payments does not affect the gross-up, the gross-up is universally applied in calculating revenue requirements, and customers are not harmed by the inclusion of the gross-up factor.

Respectfully submitted,

**/s/ Casi Aslin**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all parties and or counsel of record on this 9<sup>th</sup> day of February, 2026.

**/s/ Casi Aslin**