BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Surcharge (ISRS)	)))	**Case No. WO-2019-0184**

STATEMENT OF POSITION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Statement of Position,* states as follows:

1. In determining MAWC's ISRS rates in this case, under the applicable statute, may MAWC's accumulated deferred income tax (ADIT) balance in rate base be reduced by the ADIT asset resulting from its net operating loss(es), if any?

No. The Commission ruled on this very issue in Case No. WO-2018-0373, finding that:

> MAWC has not provided evidence to support that it will in fact have an NOL in 2018. On the contrary, the evidence indicates MAWC is generating more revenue for 2018 than it is generating expenses that qualify for deductions. Thus, MAWC is expected to utilize prior NOL carryovers to offset its taxable income in 2018 and 2019, but will not generate a new NOL. Since the IRS Private Letter Rulings only address periods where an NOL is generated, there is no legal support for MAWC's position that an exclusion of an NOL would violate normalization requirements of the IRS Code.
>
> Because MAWC is expected to have taxable income in 2018, it is reasonable to conclude that MAWC is not generating an NOL during the 2018 ISRS Period at issue, either. And in fact, there was no evidence of an NOL being generated during the 2018 ISRS Period. In short, although the ISRS statute requires recognition of ADIT, which might include reflection of an NOL, we cannot allow MAWC to reduce its ADIT balance to reflect an NOL that does not exist.[1]

[1] Report and Order, *In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure Replacement Surcharge (ISRS),* WO-2018-0373, issued December 5, 2018, pg. 8.

The Commission should draw the same conclusions in this case, and approve Staff's recommended ISRS revenues and associated rates for the following reasons:

Since the conclusion of Case No. WO-2018-0373, Missouri-American Water Company's (MAWC) net operating loss carryforward (NOLC) balance has been consistently decreasing on an overall basis, and is expected to continue to do so over the course of 2019.[2] This indicates that MAWC is currently not generating a net operating loss, in the aggregate, and that the ISRS investment in this period has not prevented MAWC from utilizing its past NOLC. MAWC is projecting that it will be able to reflect all of its net accelerated depreciation benefits associated with ISRS plant additions on its books during 2018, 2019, and beyond, without the need to record any new offsetting NOL amount.[3]

Despite the fact that the balance of the NOL deferred tax asset booked by MAWC has been decreasing at a significant rate since January 1, 2018, MAWC again asserts that an amount of additional NOL should somehow be assumed to result from this proceeding in order for MAWC to comply with the IRS tax normalization requirements.[4] However, Staff is not aware of any support in the IRS Code or IRS private letter rulings for claims that the normalization provisions in the IRS code would ever require imputation of hypothetical NOL amounts in rate base in the situation in which no actual NOL is, in fact, being generated or recorded by the utility.[5] Further, the methodology proposed by MAWC to calculate an imputed NOL is improper; its use would create a "hypothetical"

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[2] Direct Testimony of Karen Lyons, at pg. 5 and 6.
[3] *Id.*, at pg. 7; Direct Testimony of Mark L. Oligschlaeger, at pg. 7; Rebuttal Testimony of Mark L. Oligschlaeger, at pg. 4.
[4] Direct Testimony of Mark L. Oligschlaeger, at pg. 8.
[5] *Id.*, at pg. 9.

NOL amount in every instance, regardless of whether or not the utility is actually generating new NOL amounts. This methodology is inconsistent with the intent of, and the theory behind, the IRS Code tax normalization requirements, and would inappropriately deny a rate base reduction for capital provided by utility customers in the form of deferred taxes.[6] This result would be squarely inconsistent with proper ratemaking principles and is not mandated in any fashion by the IRS Code. Thus, it is inappropriate for recovery in an ISRS.[7]

Under Staff's proposed treatment of ADIT in this case, the tax benefits of accelerated depreciation associated with ISRS plant additions in this ISRS period will not be passed on to customers prematurely in a manner that violates the IRS Code, and MAWC will be able to receive the benefit of the full amount of the accelerated depreciation tax deductions available to it related to its ISRS plant additions.[8] Staff recommends the Commission approve Staff's recommended ISRS surcharge revenues in the incremental pre-tax revenue amount of $8,878,845,[9] and approve the following rates for each rate class:

Rate A	*$0.47220*
Rate B	*$0.00851*
Rate J	*$0.00813*[10]

[6] *Id.,* at pg. 7.
[7] Direct Testimony of Karen Lyons, at pg. 4; Rebuttal Testimony of Karen Lyons, at pg. 2; Rebuttal Testimony of Mark L. Oligschlaeger, at pg. 7.
[8] Direct Testimony of Mark L. Oligschlaeger, at pg. 9.
[9] Direct Testimony of Karen Lyons, at pg. 2.
[10] Direct Testimony of Matthew J. Barnes, at pg. 2.

Respectfully submitted,

/s/ Mark Johnson

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and or counsel of record on this 15th day of May, 2019.

/s/ Mark Johnson