

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 20, 2001**

CASE NO: WA-2001-288

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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 20th
day of February, 2001.

In the Matter of the Application of St. Louis)
County Water Company, doing business as)
Missouri-American Water Company, for Restate-)
ment and Clarification of Its Certificate of)
Convenience and Necessity for St. Louis)
County, Missouri.)

Case No. WA-2001-288

**ORDER APPROVING STIPULATION AND AGREEMENT,
GRANTING CERTIFICATE OF CONVENIENCE AND
NECESSITY AND GRANTING CONTINUANCE**

Procedural History:

On October 31, 2001, St. Louis County Water Company, doing business as Missouri-American Water Company (MAWC or Company), filed its application for restatement and clarification of its Certificate of Convenience and Necessity for St. Louis County, Missouri.

The Missouri Public Service Commission (the Commission) issued its Order Directing Notice on November 14, 2000. Therein, the Commission established an intervention period of 30 days, ending on December 14, 2000, and directed MAWC to serve its application on each affected municipality and to file proof of service in this case on or before November 24, 2000. MAWC filed proof of service on November 22, 2000.

Thereafter, the Cities of Winchester and Maryland Heights (Winchester) jointly moved for leave to intervene and moved for a hearing on December 12. The City of Chesterfield (Chesterfield) moved for leave to intervene on December 13. The City of St. Ann (St. Ann) applied to intervene on December 14. On December 15, the Cities and Villages of

Ballwin, Bel-Nor, Bel-Ridge, Bella Villa, Bellerive, Bellefontaine Neighbors, Breckenridge Hills, Bridgeton, Clayton, Cool Valley, Crestwood, Des Peres, Green Park, Hazelwood, Manchester, Maplewood, Normandy, Pasadena Hills, Pine Lawn, Richmond Heights, Riverview, Rock Hill, Town and Country, University City, Velda City, and Wildwood (Cities and Villages) jointly filed their application to intervene out-of-time. On December 21, 2000, counsel for Company filed a copy of a letter that Company sent to each proposed intervenor herein. On January 11, 2001, the Commission granted intervention to all applicants, set a prehearing conference for January 25, 2001, and directed that a proposed procedural schedule be jointly developed and filed by February 1, 2001.

On January 25, 2001, the prehearing conference was held as scheduled. On February 1, 2001, the parties did not file a proposed procedural schedule. Rather, MAWC filed a Motion for Continuance, requesting that the due date for the proposed procedural schedule be reset to February 15. On the same day, the Staff of the Missouri Public Service Commission (Staff) filed its concurrence with MAWC's motion. However, before the Commission had an opportunity to take up and rule on MAWC's motion and Staff's concurrence, MAWC filed its Unanimous Stipulation and Partial Settlement and Continuance of Remaining Issues (Stipulation) on February 7, 2001. The Stipulation is attached hereto as Attachment 1 and incorporated by reference herein.¹

Discussion:

This case arises out of MAWC's proposed acquisition of the water distribution assets of the City of Valley Park (Valley Park) in St. Louis

¹ The Stipulation includes, as Exhibit A, the franchise granted to MAWC by the City of Valley Park in November 2000. Exhibit A is not attached to this order.

County, Missouri, and MAWC's corresponding need for legal authority to operate that system.

In its application, MAWC states that its predecessor in interest obtained in 1902 a perpetual franchise from the no-longer-existing County Court of St. Louis County, Missouri, to provide public water service in the county. In the six existing incorporated cities of the county, Kirkwood, Webster Groves, Ferguson, Bridgeton, Pacific, and Florissant, a municipal franchise was also required. Likewise, a municipal franchise was also required in any subsequently incorporated city except to the extent that MAWC's predecessor served the residents of that city prior to its incorporation. With the creation of this Commission in 1913, a certificate of convenience and necessity from the Commission was also required for MAWC's predecessor to expand its services.

Valley Park was incorporated in 1917, subsequent to the County Court franchise granted in 1902. At that time, MAWC's predecessor did not serve any customers in Valley Park. In 1982, MAWC's predecessor sought and obtained limited authority which authorized it to serve a single housing development in Valley Park. Case No. WA-82-141. Since 1982, Valley Park has annexed certain unincorporated sections of the county served by MAWC. Today, MAWC provides all of the water used by the residents of Valley Park and directly serves some of those residents. However, MAWC believes that it needs a certificate of convenience and necessity in order to operate the water distribution system previously belonging to the City of Valley Park and, thereby, to serve the whole of that city. It is noted that Valley Park granted the requisite municipal franchise to MAWC on November 20, 2000.

The Valley Park acquisition is not the only issue in this case. MAWC explains, in its application, that "[i]n discussions between the Company and the Commission Staff over the years, it has often been

suggested that the Company should seek to restate and clarify its grandfather authority." The benefits of this undertaking are identified as "permit[ting] the Applicant's authority to be represented in the Commission's records in a manner that is traditional for other utilities within the state" and "eliminat[ing] administrative confusion and uncertainty with respect to the interpretation of the perpetual County Court franchise[.]" Additionally, it would eliminate "the pragmatic necessity for piecemeal applications[.]" It is this aspect of the application that has resulted in the intervention herein of numerous St. Louis County municipalities.

In the Unanimous Stipulation and Partial Settlement and Continuance of Remaining Issues filed on February 7, 2001, the parties seek to bifurcate this matter. They propose that the Commission grant the necessary certificate of public convenience and necessity to MAWC so that the acquisition of the Valley Park distribution system may be consummated. They further propose that the due date for the proposed procedural schedule be set off for 90 days so that they may attempt to resolve the remaining issues by negotiation.

Certificate of Convenience and Necessity:

Section 393.170, RSMo 2000, subsections 2 and 3, authorizes the Commission "to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary and convenient for the public service."

Commission Rule 4 CSR 240-2.060(4) concerns applications for a certificate of convenience and necessity:

(4) In addition to the requirements of section (1), applications for a certificate of convenience and necessity by a gas, electric, water, sewer or heating company shall include the following information:

(A) If the application is for a service area:

1. A statement as to the same or similar utility service, regulated and nonregulated, available in the area requested;

2. If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

3. The legal description of the area to be certificated;

4. A plat drawn to a scale of one-half inch ($\frac{1}{2}$ "') to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

5. A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations;

* * *

(C) When no evidence of approval of the affected governmental bodies is necessary, a statement to that effect.

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired; and

2. A certified copy of the required approval of other governmental agencies; and

(E) The facts showing that the granting of the application is required by the public convenience and necessity.

MAWC's application contains all of the information required by Commission Rule 4 CSR 240-2.060, (1) and (4). The parties hereto have

unanimously stipulated and agreed that the Commission should issue a certificate of convenience and necessity to MAWC such that it is authorized to operate the water distribution assets belonging to the City of Valley Park and to serve such residents of that city as it does not already serve. Since all of the parties agree that the requested certificate be granted and since there are no requests for a hearing, the Commission determines that no hearing is necessary. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

The application states, and the Commission finds, that St. Louis County Water Company lawfully does business as Missouri-American Water Company and is a water corporation, subject to the jurisdiction of this Commission. The Commission further finds that MAWC presently serves some 300,000 customers in St. Louis County and a portion of Jefferson County pursuant to authorization by this Commission and various other governmental bodies. MAWC is the largest water utility in St. Louis County. MAWC proposes to provide water service in Valley Park under the same rates and conditions as its existing customers.

Based on the foregoing, the Commission concludes that the Stipulation and Agreement should be approved and the requested certificate of convenience and necessity granted. MAWC already provides all water to Valley Park and directly serves some of its residents. The Commission concludes that it is both convenient and necessary that it serve the remainder as well.

Motion for Continuance:

The Commission agrees that the parties should have an opportunity to resolve the remaining issues short of litigation. Therefore, the motion for continuance, which is unopposed, shall be granted.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed by the parties on February 7, 2001, is approved.

2. That St. Louis County Water Company, doing business as Missouri-American Water Company, is granted a certificate of public convenience and necessity to own, operate, control, manage, and maintain public drinking water facilities and to render drinking water service to the public within the City of Valley Park, Missouri, located in St. Louis County, Missouri.

3. That the parties' motion for a continuance is granted.

4. That the parties shall file a proposed procedural schedule, as previously directed herein, on or before May 31, 2001.

5. That this order shall become effective on March 2, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray,
and Simmons, CC., concur.
Schemenauer, C., absent.

Thompson, Deputy Chief Regulatory Law Judge

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

FILED²
FEB 07 2001

Missouri Public
Service Commission

In the Matter of the Application of St. Louis)
County Water Company, d/b/a Missouri-)
American Water Company, for Restatement)
And Clarification of its Certificate of)
Convenience and Necessity for St. Louis)
County, Missouri)

Case No. WA-2001-288

**UNANIMOUS STIPULATION AND MOTION FOR
PARTIAL SETTLEMENT AND CONTINUANCE OF REMAINING ISSUES**

Come now St. Louis County Water Company, d/b/a Missouri-American Water Company ("Applicant"), the Staff of the Missouri Public Service Commission ("Staff"), the Office of Public Counsel ("OPC"), the Intervenor Cities of Winchester and Maryland Heights, the City of Chesterfield, the City of St. Ann, and the Cities and Villages of Ballwin, Bel-Nor, Bel-Ridge, Bella Villa, Bellerive, Bellefontaine Neighbors, Breckenridge Hills, Clayton, Cool Valley, Crestwood, Des Peres, Green Park, Hazelwood, Manchester, Maplewood, Normandy, Pasadena Hills, Pine Lawn, Richmond Heights, Riverview, Rock Hill, Town and Country, University City, Velda City, and Wildwood ("Intervenor Cities") all of whom shall be referred to herein collectively as "the Parties", and herewith file the following Unanimous Stipulation and Motion for Partial Settlement and Continuance of Remaining Issues, to wit:

1. All parties were represented by counsel at the prehearing conference in the above cause on January 25, 2001. The instant motion is the product of negotiations at that prehearing conference.
2. Certain of the Parties have expressed concerns with regard to settlement of the Applicant's Application for various reasons, perhaps the most significant of which being the absence of municipal franchise agreements with various

Intervenor Cities and the impact the Commission's grant of Applicant's prayer might have on that issue; and

3. The Parties believe, that given adequate time, these concerns may be resolved by, inter alia, the negotiation of franchise agreements with some or all Intervenor Cities acceptable to Applicant and those respective Cities; and

4. The Parties agree that ninety days will be necessary to determine whether the expressed concerns of the various parties can be sufficiently addressed to permit them to withdraw their concerns to Applicant's prayer as it relates to a Certificate of Convenience and Necessity for the entirety of St. Louis County; and

5. As stated in Applicant's Application (paragraphs 4 and 5), the reason the Application was filed at this time is the impending purchase of the water utility assets of the City of Valley Park, Missouri, the consummation of which is dependent on the acquisition of a Certificate of Convenience and Necessity for that City; and

6. Applicant has heretofore represented by its verified Application that it has reached agreement in principle to the terms of sale with the City of Valley Park, and the City has granted Applicant a municipal franchise dated November 20, 2000, a copy of which is attached hereto as Exhibit A.

7. The Parties agree that their above mentioned concerns do not affect Applicant's alternative prayer in its Application which states:

....Applicant prays for a Certificate of Convenience and Necessity for the entirety of the City of Valley Park, Missouri so that it may complete the acquisition of the water distribution system assets presently operated by the City.

and that accordingly, no party has any opposition to the immediate grant of Applicant's prayer for a Certificate of Convenience and Necessity for the City of Valley Park and the filing of tariff sheets depicting such service area.

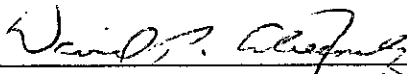
8. If the concerns of all Parties can be met within the ninety-day continuance herewith requested, the preparation and filing of the information required in ORDERED 3 of the Commission's Order of January 11, 2001 will be unnecessary. If the concerns of all Parties cannot be met which would permit

them to endorse the remainder of Applicant's prayer, Applicant indicates that there is some question as to whether or not Applicant will proceed further with the Application.

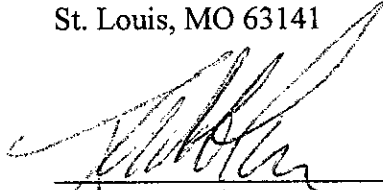
WHEREFORE, the Parties herewith move the Commission by the instant unanimous stipulation that: 1) There is no opposition to the immediate grant of Applicant's prayer for a Certificate of Convenience and Necessity for the City of Valley Park, Missouri and no opposition to the filing of appropriate tariff sheets; and, 2) that the Commission should continue the requirements of ORDERED 3 of the Commission's Order of January 11, 2001 for ninety days following the Commission's ruling on this motion to permit the Parties to resolve all remaining issues in this Application

Respectfully submitted,

ST. LOUIS COUNTY WATER COMPANY,
d/b/a Missouri-American Water Company

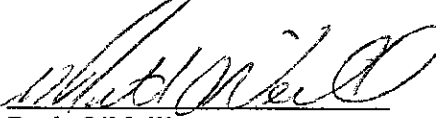


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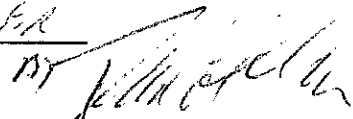


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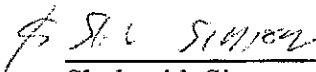
Cities of Winchester, et al



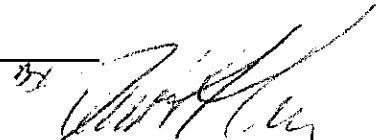
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BY 
PER AUTHORIZATION
2/5/01

City of St. Ann



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BY 
PER AUTHORIZATION
2/5/01

City of Chesterfield



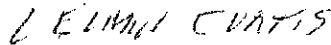
Douglas R. Beach



Frank B. Curtis

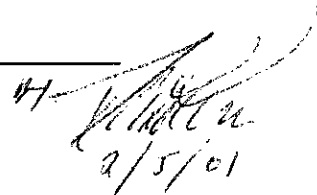
Beach, Stewart, et al
222 South Central Ave, Suite 900
St. Louis, MO 63105

Cities of Ballwin, et al.



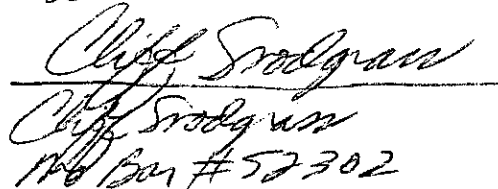
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Curtis, Oetting, et al.
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01-11-01
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Staff of the Missouri Public Service Commission.



Cliff Srodgman
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ALJ/Sec'y:

Thompson, Jope

2-16
Date Circulated

WA-2001-288
CASE NO.

LX p 1, 2, 5, 6
Lumpe, Chair

will
Drainer, Vice Chair

Don
Murray, Commissioner

RS als
Schemenauer, Commissioner

KS
Simmons, Commissioner

OK

2-20
Agenda Date

Action taken:

4-OAS

Must Vote Not Later Than

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 20th day of February 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

