

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of November, 2016.

In the Matter of the Joint Application of
Missouri-American Water Company and EMC of
St. Charles County, LLC for MAWC to Acquire
Certain Sewer Assets of EMC and, in Connection
Therewith, Certain Other Related Transactions.

)
)
)
)
)

File No. SM-2017-0069

**ORDER APPROVING APPLICATION TO ACQUIRE ASSETS AND
GRANTING CCN**

Issue Date: November 30, 2016

Effective Date: December 10, 2016

On September 8, 2016, Missouri-American Water Company (“Missouri-American”) and EMC of St. Charles County, LLC (“EMC”)(jointly, “Applicants”) filed a *Joint Application and, If Necessary, Motion for Waiver* seeking authorization for Missouri-American to acquire a substantial portion of EMC’s sewer assets, including EMC’s Certificate of Convenience and Necessity (“CCN”). In the alternative, Missouri-American seeks a new certificate authorizing it to provide service in the area currently served by EMC. The Commission issued notice of the Joint Application to the St. Charles County Commission, local newspapers, members of the General Assembly representing residents of St. Charles County, and the General Counsel for the Missouri Department of Natural Resources, and set a deadline for interested parties to intervene. No applications to intervene were filed.

The Commission previously granted EMC a CCN to provide sewer service to Jaxson Estates, a subdivision in St. Charles County, Missouri.¹ EMC's service area also includes an undeveloped area originally proposed for commercial development. EMC installed a sewer treatment facility designed for a population of 400 to 500 residential customers (approximately 1,500 persons). EMC serves about 74 residential customers.

Due to concerns about the ability of the treatment facility to perform adequately with so few customers, the treatment facility was never placed in operation. Instead, EMC uses a tank truck to transfer sewage to a nearby municipal sewer system. EMC charges its sewer customers a flat \$30 monthly rate. In the Joint Application, Missouri-American states that if the transfer is approved it will adopt EMC's Commission-approved tariff and the \$30 monthly rate. Missouri-American would then seek to include rates for the Jaxson Estates service territory in its Small Sewer System District in its next general rate case. American Water Works Co., Inc., is the parent company for both Missouri-American and EMC. Missouri-American currently provides water service for the area at issue in the Joint Application.

On November 8, after conducting an investigation, the Commission's Staff filed its Recommendation. If the transfer is approved, rather than using EMC's current haul and dump method, Missouri-American intends to use EMC's sewage treatment facility. Due to the absence of an operational history for the treatment facility, Staff is unable to perform a detailed analysis of its operating costs. Staff does not recommend a change in rates at this time. Staff states that a detailed evaluation of the operating expense for the treatment facility should be possible after Missouri-American files its next general rate case.

¹ Case No. SA-2007-0373.

Staff points out that as of the date of its report, Joint Applicants have not provided notice to customers of the potential transfer. If approved, the transfer would be largely invisible to customers, who would see the same monthly charge on their existing bill for water service from Missouri-American.

Staff determined that the proposed sale and transfer of assets is not detrimental to the public interest and recommends the Commission approve the Joint Application, with certain conditions and required actions. Staff's recommendation conditions are as follows:

- a. Approve the transfer of sewer utility assets, and a transfer of the CCN from EMC to Missouri-American, to become effective upon Joint Applicants closing on the sewer system assets;
- b. Require EMC or Missouri-American to notify the Commission of closing of the assets within five days after such closing;
- c. Authorize EMC to cease providing sewer service, and Missouri-American to begin providing sewer service immediately after closing on the assets;
- d. Require Missouri-American to file an adoption notice tariff sheet as a 30-day tariff filing within ten days after closing, to adopting the entire tariff currently in effect for EMC and for it to become Missouri-American's sewer tariff applicable to the Jaxson Estates service area;
- e. Authorize Missouri-American to apply EMC's tariff immediately after closing, on an interim basis until the above adoption notice tariff sheet becomes effective;
- f. If closing on the sewer system assets does not take place within thirty days following the effective date of the Commission's order approving such, require

- EMC or Missouri-American to submit a status report within five days after this thirty day period regarding the status of closing, and additional status report within five days after each additional thirty day period, until closing takes place, or until EMC and/or Missouri-American determine that the transfer of the assets will not occur;
- g. If EMC and/or Missouri-American determine that a transfer of the assets will not occur, require EMC or Missouri-American to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made;
 - h. Require Missouri-American to provide an example of its actual communication with the Jaxson Estates service area customers regarding its acquisition and operations of the EMC sewer system assets, and how customers may reach Missouri-American, within ten days after closing on the assets;
 - i. Require EMC to provide, prior to closing, all records and documents to Missouri-American, including, but not limited to, all plant-in-service original cost documentation, along with depreciation reserve balances as per EMC's approved depreciation schedule, documentation of contribution-in-aid-of construction transactions, and capital recovery transactions;
 - j. Require Missouri-American to ensure adherence to Commission Rule 4 CSR-13 with respect to Jaxson Estates sewer customers;
 - k. Require Missouri-American to include the Jaxson Estates sewer customers in its established monthly reporting to Staff's Consumer & Management Analysis Unit ("CMAU") stats on customer service and billing issues;

- l. Require Missouri-American to distribute to EMC's customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 4 CSR 240-13, within ten days of closing on the assets;
- m. Require Missouri-American to provide adequate training for the correct application of rates and rules to all customer service representatives prior to the EMC customers receiving their first bill from Missouri-American including sewer charges;
- n. Require Missouri-American to provide to the CMAU staff a sample of ten billing statements from the first month's billing that includes the sewer service within thirty days of such billing; and,
- o. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting or transfer of the CCN to Missouri-American, including expenditures related to the certificated service area, in any later proceeding.

On November 9, the Office of the Public Counsel submitted a position statement indicating it had no objections to the Joint Application. On November 14, Joint Applicants filed a response indicating they had no objections to Staff's recommended conditions for approval. Since no party requested a hearing in this matter, the Commission may make a determination without conducting a hearing.² Section 393.190.1, RSMo (Cum.Supp. 2013), requires all sewer corporations seeking to sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or part of their franchise, works, or systems to first obtain the approval of the Commission.

² *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Having reviewed the unopposed Joint Application, Staff's recommendation to approve the transfer, and all other filings, the Commission finds the transfer to Missouri-American is not detrimental to the public interest. The Commission will approve the transfer of sewer system assets for the Jaxson Estates system to Missouri-American.

Section 393.170, RSMo (2000), requires a sewer corporation to receive approval from the Commission prior to owning and operating a sewer system. Although the Joint Applicants submitted a request to transfer to Missouri-American the CCN previously granted to EMC, the Commission will instead consider granting a new CCN to Missouri-American in its own name. The Commission may grant a sewer corporation a CCN to operate after determining that the operation is either "necessary or convenient for the public service."³ The Commission has stated five criteria that it will use:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.⁴

Based on the verified application and the verified recommendation of Staff, the Commission finds that granting Missouri-American's application for a CCN to provide sewer service meets the above listed criteria. The application will be granted. The certificate is granted conditioned upon the compliance of Missouri-American with all statutory and regulatory obligations, including the obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo (Cum.Supp. 2013).

³ § 393.170.3 RSMo (2000).

⁴ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

Joint Applicants also filed a request asking that the Commission issue an order to go into effect in less than thirty days. The Joint Applicants wish to close their transaction on December 15, the mid-month period, to allow for a smoother transition for customers to Missouri-American's billing system and to avoid workers' absences around the holidays. No objections were filed to the request for an expedited effective date. Section 386.490, RSMo (Cum.Supp. 2013), states that every order of the Commission shall of its own force take effect thirty days after issuance, except as otherwise provided. Since there are no objections to the Joint Application and an expedited order will allow for a smoother transition for customers, the Commission finds good cause to allow this order to go into effect in less than thirty days.

THE COMMISSION ORDERS THAT:

1. EMC of St. Charles County, LLC is authorized to sell or otherwise transfer to Missouri-American Water Company the sewer system assets, as identified in the Asset Purchase Agreement attached as Appendix B-HC to the Joint Application.
2. EMC of St. Charles County, LLC and Missouri American Water Company shall comply with the recommendations of the Commission's Staff, as detailed in the body of this order.
3. Joint Applicants shall notify the Commission of the closing on the sale of sewer system assets within five days after such closing.
4. If closing of the sale of the sewer system assets does not take place within thirty days of the effective date of this order, the Joint Applicants shall submit a status report within five days of the thirty-day deadline.

5. Missouri-American Water Company is granted permission, approval and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a sewer system for the public in the St. Charles County Jaxson Estates service area, as more particularly described in the body of this order, upon closing of the sale of the sewer system assets.

6. Upon closing of the sale of the sewer system assets, Missouri-American Water Company shall apply the tariff sheet on file with the Commission for EMC of St. Charles County, LLC, on an interim basis until the adoption notice tariff sheet described in paragraph 7 of this order becomes effective.

7. Within ten days after closing, Missouri-American Water Company shall file an adoption notice tariff sheet as a thirty-day tariff filing that adopts the entire tariff currently in effect for EMC of St. Charles County, LLC, and for it to become Missouri-American's sewer tariff applicable to the Jaxson Estates service area.

8. The Certificate of Convenience and Necessity issued to EMC of St. Charles County, LLC, in an Order Granting Certificate of Convenience and Necessity on December 20, 2007, in Case No. SA-2007-0373, shall be canceled in a separate order of the Commission upon notice from Joint Applicants of the closure of transfer of sewer assets.

9. Nothing in this order shall bind the Commission on any ratemaking issues in any future rate proceeding.

10. This order shall become effective on December 10, 2016.

11. This file shall close on January 10, 2017.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Rupp, and Coleman, CC., concur;
Kenney, C., absent.

Burton, Senior Regulatory Law Judge.

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 30th day of November 2016.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 30, 2016

File/Case No. SM-2017-0069

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

James Owen
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

EMC of St. Charles County, LLC

Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

**Missouri Public Service
Commission**

Jacob Westen
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jacob.westen@psc.mo.gov

**Missouri-American Water
Company**

Timothy W Luft
727 Craig Road
St. Louis, MO 63141
Timothy.Luft@amwater.com

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

Sincerely,

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first name "Morris" being the most prominent.

**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.