

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

In the Matter of the Joint Application of)
Missouri-American Water Company and DCM)
Land, LLC, for a Variance from the Company’s) **File No. WE-2021-0390**
Tariff Provisions Regarding the Extension of)
Company Mains.)

MAWC BRIEF

COMES NOW Missouri-American Water Company (“MAWC”) and, as its *Brief*, states as follows to the Missouri Public Service Commission (“Commission”). This *Brief* will address the issues described in the *Stipulation of Facts and List of Issues* filed this same date:

INTRODUCTION

MAWC and DCM Land, LLC (“DCM”) (collectively, the “Joint Applicants”) filed a *Joint Application for Variance and Motion for Waiver* (“*Joint Application*”) seeking a variance from the Company’s Commission-approved Tariff Sheet, 1st Revised Sheet No. R 48, Rule 23 Extension of Company Mains, A.2. and 3., to allow changes to the connection time and funding percentage requirements for new applicants that seek to connect to an extension of the Company’s water mains into the Cottleville Trails development.

DCM is currently developing Cottleville Trails for residential use. 355 single family residences, and 175 apartment units are planned for the initial development (“Phase 1”). (Stip., para. 4) 217 additional attached, single-family residences are planned for future development (“Phase 2”). *Id.*

The Joint Applicants request the Commission allow a variance from the definition of new applicants provided in Rule 23A.2, specifically, to increase the one hundred twenty (120) day deadline currently provided by the tariff. The Joint Applicants request the Commission allow the estimated average annual revenue from new Applicant(s) for Cottleville Trails to be calculated

using "...those who commit to purchase water service for at least one year, and guarantee to the Company that they will take water service at their premises within **five (5) years** after the date the Company accepts the main and determines it ready for Customer service."

Further, the Joint Applicants request the Commission allow a variance from the 95:5 funding ratio for the St. Louis Metro District provided in Rule 23A.3 and 23 C.6, and allow use of the 86:14 (i.e., 86% Applicant funded and 14% Company funded) ratio that applies to all other of the Company's districts, for Cottleville Trails.

ISSUE 1

Should the Commission waive the 60-day notice required by Rule 20 CSR 4240-4.017 to file a case given that no party opposes the grant of such waiver?

Yes. Through the verifications attached to the application the Joint Applicants declared that they had had no communication with the Office of the Commission (as defined by Commission Rule 20 CSR 4240-4.015(10)) within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record; and that failure to waive the 60 day requirement could result in a delay of the development of Cottleville Trails. The Parties have agree that good cause has been shown for a waiver of the 60-day notice requirement of Rule 20 CSR 4240-4.017(1). (Stip, para. 23).

ISSUE 2

Does the Commission have the authority to grant a waiver or variance from the Company's Tariff?

Yes. The application in this case is filed pursuant to Commission Rule 20 CSR 4240-2.060(4). Commission Rule 20 CSR 4240-2.060(4) provides a mechanism to seek "variances or waivers from commission rules and tariff provisions." (emphasis added) Certain information is required by the rule, which was supplied by the Joint Applicants in this case.

Contrary to the Commission's Rule, the Staff has taken the position that the Commission does not have the authority to grant a waiver or variance from a filed and approved tariff. This position is based on a single court case from 1931 - *State ex rel. Kennedy v. Public Service Commission*, 42 S.W2d 349 (Mo. 1931).

Kennedy predates the enactment of Section 386.250(6), RSMo. which authorized the Commission to adopt rules that prescribe the conditions for billing for public utility service, was first adopted in 1939. *See* Revised Statutes of Missouri 1929, §5136. The Commission's adoption of 20 CSR 4240-2.060(4), thereafter, codified the procedure by which the Commission would exercise the Commission's authority, as described by the *Kennedy* court, to grant a variance or waiver, rather than requiring each and every tariff to include a statement that would allow for the Commission to grant such a waiver.

Certainly, the Commission has believed that it had such authority for many years. Numerous examples of the Commission granting waiver or variances from tariff provisions may be found, to include in the following cases – GE-2016-0142, WO-2008-0301, EE-2006-0124, EE-2003-0282, GR-2001-461, GR-2000-520, and, GO-98-500.

However, should the Commission believe that it is unable to waive or vary an existing tariff, but that otherwise good cause exists for the proposed treatment of DCM's project, the Commission certainly could order MAWC to file a tariff permitting the requested treatment.

ISSUE 3

If the Commission does have the authority to grant a waiver or variance from the Company's tariff, should the Commission grant a variance allowing MAWC to:

- a. Extend in this case the 120-day period for connecting customers to qualify for reimbursement from the Company to 5 years; and**

b. Apply the upfront 86:14 cost sharing ratio from the Company's other districts to Cottleville Trails, rather than the 95:5 cost sharing ratio that otherwise applies in the Company's St. Louis Metro District.

The Commission has traditionally examined requests for waivers and variances of tariffs as to whether there is “*good cause* for granting the variance [or waiver].” See *In the Matter of Missouri Public Service's Purchased Gas Adjustment Factors to be Reviewed in its 2000-2001 Actual Cost Adjustment*, 2001 Mo. PSC LEXIS 179, Case No. GR-2001-461 (April 19, 2001) (emphasis added).

Good cause exists in this case because the requested variance presents an opportunity to expand MAWC's customer base in a significant manner to the benefit of MAWC's other customers.

MAWC estimates its average annual revenue per residential customer connection in its St. Charles District to be \$446.04. (Stip., para. 17). Once full build out is complete, MAWC estimates its annual revenue from Phase 1 to be \$158,344, and its Phase 2 annual revenue to be \$96,791. (Stip., para. 18). In addition, MAWC estimates its annual revenue from the anticipated 175 unit apartment complex to be \$50,000, for an aggregate development annual revenue of \$305,135. (Stip., para. 19).

Staff has determined that if the request for variance from PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. was granted the total difference in cost for Phase 1 would be \$189,000. (Stip., para. 21). The impact of this cost difference is more than offset by the benefits to existing customers of the incremental increase in revenue that would otherwise be borne by those existing customers.

Additionally, as part of the water main extension needed for the development, DCM is installing a 12” main in place of an existing 4” main in Old Town Cottleville. (Stip., para. 22).

That replacement would improve fire protection in the area and provide water main access to several additional properties nearby. *Id.*

Accordingly, given the customer benefits, MAWC believes good cause exists to allow the requested variances from the one hundred twenty (120) day requirement and 95:5 funding ratio in Rules 23A.2. and 3. and 23 C.6, respectively, for Cottleville Trails, because: (i) Phase 1 will have 519 homes (i.e., 354 single family residences and 175 apartments), and the build-out of a development of such magnitude may not reasonably be expected to occur in 120 days, but is reasonably anticipated to occur over a 5-year period; and, (ii) Phase 2 will have an estimated additional 217 homes, and the build-out of a development of such magnitude similarly may not reasonably be expected to occur in 120 days, but is reasonably anticipated to occur over a 5-year period.

WHEREFORE, Missouri-American respectfully requests the Commission consider its *Brief*.

Respectfully submitted,



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**ATTORNEYS FOR MISSOURI-AMERICAN
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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 16th day of September 2021, to:

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