

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

In the Matter of the Application of Missouri-American)
Water Company for a Certificate of Convenience and)
Necessity Authorizing it to Install, Own, Acquire,)
Construct, Operate, Control, Manage and Maintain a)
Water System and Sewer System in and Around the)
City of Eureka, Missouri)

Case No. WA-2021-0376

STAFF’S STATEMENTS OF POSITION

COMES NOW Staff of the Missouri Public Service Commission (Staff), through counsel, and files *Staff’s Statements of Position* in satisfaction of the Commission’s November 2, 2021 *Procedural Schedule*.

1. Is MAWC’s provision of water and wastewater service associated with its proposed purchase of the City of Eureka water and wastewater systems “necessary or convenient for the public service” within the meaning of the phrase in Section 393.170, RSMo?

Staff’s Position: No. The transfer of the City of Eureka’s water and wastewater systems and CCNs to MAWC is not necessary or convenient for the public service, and the Commission should reject MAWC’s request.¹ MAWC seeks to purchase the Eureka systems pursuant to the appraisal statute, §393.320, RSMo,² which would establish rate base as the systems’ appraised value, plus reasonable closing and transition costs,³ and incorporate the Eureka systems into MAWC’s existing service areas.⁴ MAWC’s appraisal

¹ “The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo.E.D. 1980) (citing *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 73 S.W.2d 393, 400 (Mo.Banc 1934)).

² MAWC’s Response to Staff Recommendation, ¶¶8 and MAWC response to DR 14.

³ §393.320.5., RSMo.

⁴ §393.320.6., RSMo and MAWC’s Response to Staff Recommendation, ¶¶21-22.

is substantially above Staff's net book value, because MAWC's appraisal is based upon an engineering study, prepared by Flinn Engineering,⁵ that avoids consideration of known deficiencies. This is not in the public interest. Contrary to what MAWC claims,⁶ the appraisal statute does not abrogate the Commission's statutory duty to determine whether the transaction is in the public interest.

According to Missouri Department of Natural Resources (DNR) records, the water system is in compliance with DNR's regulatory requirements.⁷ If its application is approved, MAWC intends to use the system's six wells as only emergency back-up and construct a pipe from St. Louis at a cost between \$9 million and \$10.5 million. Part of the City of Eureka's motivation to sell its water system is to obtain a different source of water.⁸ Other investments MAWC anticipates making in the first three years include meter replacements and conversions (\$1.1 million).⁹

Staff disagrees with Flinn Engineering's conclusion that the sewer system is well-maintained and in good condition,¹⁰ because Flinn Engineering failed to consider DNR compliance issues and did not visit the site. DNR reports, which are readily available through an open DNR resources request, indicate that the system has mechanical failures, its collection system needs significant repairs, and portions of its infrastructure

⁵ Valuation Report, City of Eureka, Missouri Water Delivery and Wastewater Systems, P. 10, attached as Appendix A to MAWC's Application.

⁶ MAWC's Response to Staff Recommendation, ¶10. ("Through the enactment of §393.320, RSMo, the General Assembly has already addressed the public interest. The Staff should not be allowed to add its own layers of analysis on a statute that is clear in its intents and execution.")

⁷ Schedule CBG-r2, P. 17, attached to Rebuttal Testimony of Curt B. Gateley.

⁸ MAWC response to DR3 and Schedule CBG-r2, P. 21-22, attached to Rebuttal Testimony of Curt B. Gateley.

⁹ MAWC response to DR4 and Schedule CBG-r2, P. 18, attached to Rebuttal Testimony of Curt B. Gateley.

¹⁰ Flinn Engineering Report, P. 4-5 (Jan 18, 2020) and Flinn Engineering Report, P. 4-5 (March 16, 2020), attached to Staff's Response to December 29, 2021 Order Re The Flinn Engineering Report.

are past its useful life.¹¹ DNR reports show that the Eureka system failed to meet permit effluent limitations for biochemical oxygen demand (BOD) going back to at least October 2016. Additionally, the sewer system's deteriorating pipes create problems with excessive inflow and infiltration (I&I) and sanitary sewer overflows (SSOs). Excessive I&I from groundwater can overwhelm the collection system's capacity and impair performance of the sewage treatment plant, creating health and environmental hazards.¹² SSOs are discharges of untreated sewage from the collection system that back up into basements and out of manholes, endangering public health and the environment. SSOs are most often created by damaged collection system components. Some of Eureka's SSO discharges were due to flooding, while others were due to excessive I&I overwhelming the collection system or failures of collection system components.¹³

MAWC is aware that the sewer system requires substantial investment. The City of Eureka has been working with DNR to meet new ammonia limits, and its compliance deadline is October 1, 2022.¹⁴ In 2018 the City of Eureka notified DNR that it planned to construct a new treatment plant to meet ammonia limits.¹⁵ MAWC stated that if it acquires the Eureka sewer system, it may invest \$18 million in upgrades to meet these new DNR ammonia limits, but it will first operate the existing treatment system to

¹¹ Rebuttal Testimony of Curt B. Gateley, 5:16-18.

¹² *Id.* at 3:15-4:3.

¹³ *Id.* at 4:6-4:11.

¹⁴ Schedule CBG-r2, P. 18-19, attached to Rebuttal Testimony of Curt B. Gateley.

¹⁵ *Id.* at 19.

determine if it is capable of meeting the effluent limits. Other improvements MAWC would make include \$2.65 million for lift station replacement, upgrades, and repairs.¹⁶

In addition to the engineers not considering DNR compliance issues, Flinn Engineering did not visit the site before preparing its reports and made assumptions about condition and functionality.¹⁷ This runs counter to Staff's experience. Staff's experience is that in preparing its reports, consulting engineers review a system's physical condition and compliance history, because whether a system mechanically functions as it should is a crucial part of an engineer's determination. Similarly, whether the utility provides safe and adequate service and meets DNR standards is also a critical part of an engineer's determination.¹⁸

By not reviewing publically-available DNR compliance history and not physically inspecting the systems to verify their condition, Flinn Engineering did not consider information that influences appraised value. The engineering report fails to acknowledge known, significant deficiencies and blanketly states the systems are in "good" condition.¹⁹ In turn, the appraisers relied upon a defective engineering report in preparing their appraisal. MAWC's appraisal is for a functioning water system, not an obsolete backup system, and a sewer system requiring significant repairs is not indicative of a system in "good" condition. Using the cost and sales comparison approaches of appraising, the

¹⁶ MAWC response to DR4 and Schedule CBG-r2, P. 20, attached to Rebuttal Testimony of Curt B. Gateley.

¹⁷ Flinn Engineering Report, P. 5 (Jan 18, 2020) and Flinn Engineering Report, P. 5 (March 16, 2020), attached to Staff's Response to December 29, 2021 Order Re The Flinn Engineering Report.

¹⁸ Rebuttal Testimony of Curt B. Gateley, 5:21-6:2.

¹⁹ Flinn Engineering Report, P. 7 (Jan 18, 2020) and Flinn Engineering Report, P. 7 (March 16, 2020), attached to Staff's Response to December 29, 2021 Order Re The Flinn Engineering Report. Other deficiencies with the engineering report include it not being signed and stamped and that two versions of the report exist, but neither report acknowledges the existence of the other. Schedule CBG-r2, P. 28, attached to Rebuttal Testimony of Curt B. Gateley.

appraisers valued the Eureka water system at \$18 million and the sewer system at \$10 million, or \$28 million combined.²⁰

In contrast, Staff's net book value valuation is based upon the traditional method of calculating net book value for ratemaking purposes. Staff's estimate of net book value is based upon cost data associated with actual plant that is used and useful. Staff's estimate is based on its field observations, assets' descriptions and ages, as well as information from MAWC's appraisal and feasibility study. Staff determined the net book value for the Eureka assets by studying documentation related to the cost of constructing plant, determined depreciation rates for each Uniform System of Accounts (USOA) category of plant-in-service, and considered whether there was contributed plant.²¹ Staff estimates a net book value for the water system of \$10,709,736 and \$7,096,878 for the sewer system, for a combined total of \$17,806,614.²²

If the Commission approves this transaction, MAWC will ask its other customers – in addition to its new Eureka customers – to pay for the systems inflated rate base and their necessary upgrades. The appraisal statute's purpose is to encourage the purchase of small troubled systems by providing large companies with a financial incentive. However, the transaction must still be necessary or convenient for the public service. MAWC's proposed transaction is not necessary or convenient for the public service, because its appraisal is deficient and because of the disparity (approximately \$10 million) between MAWC's appraisal and Staff's estimated net book value. A difference

²⁰ Valuation Report, City of Eureka, Missouri Water Delivery and Wastewater Systems, P. 74-75, attached as Appendix A to MAWC's Application.

²¹ Rebuttal Testimony of Amanda C. McMellen, 2:6-13, 4:1-8 and Schedule CBG-r2, P. 23-24, attached to Rebuttal Testimony of Curt B. Gateley.

²² Rebuttal Testimony of Amanda C. McMellen, 2:1-5 and Schedule CBG-r2, P. 21, attached to Rebuttal Testimony of Curt B. Gateley.

of 45% between appraised value and net book value is beyond the financial incentive reasonably intended by the appraisal statute. While Eureka citizens voted to sell their water and sewer utilities and receive substantial payment for them, other MAWC ratepayers did not have this opportunity. Considering the entirety of the public interest, approving this transaction at a rate base significantly higher than its net book value is not necessary or convenient for the public interest, and the Commission should not approve these acquisitions.

2. If the Commission grants MAWC's application for the CCNs:

A. What conditions, if any, should the Commission impose?

Staff's Position: Should the Commission approve the Application, Staff recommends, the following conditions:

1. Grant MAWC CCNs to provide water and sewer service in the proposed Eureka service areas, as modified and outlined herein;
2. Approve existing Eureka water and sewer rates applicable to customers in MAWC's St. Louis approved service areas;
3. Require MAWC to submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area;
4. Require MAWC to notify the Commission of closing on the assets within five (5) days after such closing;
5. If closing on the water and sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving

such, require MAWC to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;

6. If MAWC determines that a transfer of the assets will not occur, require MAWC to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel service area map, legal descriptions, and rate sheets applicable to the Eureka area in its sewer tariff;

7. Require MAWC to develop a plan to book all of the Eureka plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within 60 days after closing on the assets;

8. Require MAWC to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

9. Adopt for Eureka water and sewer assets the depreciation rates ordered for MAWC in Case No. WR-2020-0344;

10. Require MAWC to provide to the Customer Experience Department an example of its actual communication with the Eureka service area customers regarding its acquisition and operations of the Eureka water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

11. Require MAWC to obtain from Eureka, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;

12. Except as required by §393.320, RSMo, make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;

13. Require MAWC to distribute to the Eureka 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 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

14. Require MAWC to provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets.

15. Require MAWC to provide training to its call center personnel regarding rates and rules applicable to the Eureka customers;

16. Require MAWC to include the Eureka customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and

17. Require MAWC to file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.²³

B. Of which existing service areas should the Eureka water and wastewater systems become a part?

Staff's Position: If the Commission approves MAWC's application, Staff is not opposed to the Eureka water system becoming a part of the St. Louis County customer base and the wastewater system becoming a part of the MAWC's "Other Missouri" sewer rate category.

3. Does Section 393.320, RSMo, require the Commission to establish the ratemaking rate base in this case for the Eureka water and wastewater systems? If so, what is the ratemaking rate base that should be established?

Staff's Position: If the Commission finds that MAWC's appraisal meets the requirements of §393.320, RSMo, and if the Commission approves MAWC's application according to the process described in §393.320, RSMo, the Commission must establish rate base at the systems' appraised value of \$28,000,000, plus reasonable closing and transition costs.²⁴ However, the appraisal performed for the Eureka water and wastewater systems is deficient and should not trigger the requirements of §393.320, RSMo. In addition, §393.320, RSMo, does not override the Commission's independent decision whether to approve a CCN under §393.170, RSMo, and for the reasons explained above, approving the transaction at MAWC's appraised value is not necessary or convenient for the public service, and Staff recommends that the Commission reject

²³ Schedule CBG-r2, P. 29-31, attached to Rebuttal Testimony of Curt B. Gateley.

²⁴ §393.320.5., RSMo.

MAWC's application. If the Commission denies the acquisitions, there is no need to establish a rate base.

Respectfully submitted,

/s/ Karen E. Bretz

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 10th day of January, 2022.

/s/ Karen E. Bretz