

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day
of October, 2007.

In the Matter of the Application of Missouri-American)
Water Company for a Certificate of Convenience and)
Necessity Authorizing it to Install, Own, Acquire,) **Case No. WA-2008-0012, et al.**
Construct, Operate, Control, Manage and Maintain a)
Water and Sewer Utility in Incline Village, Warren)
County, Missouri.)

**ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY**

Issue Date: October 11, 2007

Effective Date: October 21, 2007

Syllabus: This order grants Missouri-American Water Company a Certificate of Public Convenience and Necessity to enlarge and extend its service area, and to construct, install, own, operate, control, manage and maintain a water system and a sewer system in an unincorporated portion of Warren County, Missouri.

Procedural History

On July 13, 2007, Missouri-American Water Company (MAWC) filed applications with the Missouri Public Service Commission, pursuant to Section 393.170, RSMo 2000, requesting that the Commission grant it authority to provide water service and sewer service to an unincorporated portion of Warren County, Missouri. Separate cases were opened to consider certification of the water and sewer systems. Finding that the issues in the water certification case, Case No. WA-2008-0012, were clearly related to those in the sewer certification case, Case No. SA-2008-0019, the Commission issued an order dated

July 18, 2007, consolidating these two cases and designated Case No. WA-2008-0012 as the lead case.

In compliance with Commission Rule 4 CSR 240-3.600, MAWC provided a full legal description of its proposed service area, plat maps, and the names and addresses of all the residents and property owners of the proposed service area. MAWC also asserted that there are no municipalities, public utilities or other government entities operating or rendering service within its proposed service area.

In its applications MAWC requested a waiver of the requirement under 4 CSR 240-3.305(1)(A)5 and 4 CSR 240-3.600(1)(A)5 to file a feasibility study. In support of its waiver request, MAWC stated that a feasibility study, as contemplated by the rules in question, would not be appropriate under the circumstances, because the requested service area is immediately adjacent to and contiguous with its existing certificated area.¹ Specifically, in order to serve these areas, MAWC argued it should not be required to make any additional major investments in facilities in the next three years, but rather it will be able to extend existing mains into these new areas. No party opposed that waiver request.

On July 18, 2007, the Commission issued an Order and Notice which, among other things, directed interested parties to file an application to intervene no later than August 6, 2007. No applications to intervene were filed.

On September 21, 2007, Staff filed its verified recommendation and supporting memorandum recommending that the Commission grant MAWC a certificate of convenience and necessity to provide water and sewer service to a modified proposed

¹ MAWC acquired its existing water and sewer certificates in Commission Case Nos. WM-84-22 and WM-95-150, respectively.

service area.² Staff's recommendation also supports MAWC's waiver request by finding the proposal to be feasible.

On September 26, 2007, the Commission ordered any party wishing to respond to Staff's recommendation to do so no later than October 2, 2007. Both MAWC and the Office of the Public Counsel filed responses supporting Staff's recommendation.

Staff Recommendation

In its September 21, 2007, recommendation and supporting memorandum, Staff stated that it believes the certificates are necessary or convenient for the public service, and recommended that the Commission grant the certificates. Staff also found MAWC's proposal to be feasible without the need for the company to provide a feasibility study. Specifically, "Staff believes that the proposed service area may be served as easily as expansions within the existing service area can be served, which is demonstrably feasible."

Although Staff recommended that the certificates be granted, it recommends that they be authorized for a modified service area. In support of its proposed modified service area Staff states:

Because of what the Staff believes is important with regard to the sewer service area, the Company and the Staff agreed to a modification of the south boundary line of its original proposed watershed to fit better with the natural watershed. This modification still does not include the entire Incline Village Lake watershed. The Staff believes that it is impractical to propose that the entire watershed of the Incline Village Lake be included because to the west, the watershed is very large, extending a number of miles. To the south, while the Staff believes that it is reasonable for MAWC to be available as a utility, some areas of the watershed could overlap with other existing development where service is already provided by Wright City and Foristell, and there is no need for MAWC to include such areas where service is already provided by these utilities. A map and

² The modified proposed service area is identified in Attachments A and B to Staff's Recommendation. Attachments A and B are a map of the modified service area and a boundary description of the modified service area, respectively.

description showing the proposed boundary as modified is included with this memorandum as Attachments A and B.³

In addition to granting MAWC's request for a Certificate of Convenience and Necessity to provide water and sewer service to the modified proposed service area, Staff recommends that the Commission order MAWC to:

- 1) Submit new tariff sheets for its Incline Village water and sewer tariffs to include a map and written description of the revised service area in each; and
- 2) Recognize that nothing in Staff's Memorandum or any Commission order in this case shall bind the Commission on any ratemaking issue in any future rate proceeding.

In their respective responses to Staff's recommendation, MAWC and Public Counsel each state that they do not object to Staff's recommendations.

Decision

The Commission may permit a water corporation or a sewer corporation to operate after determining that the construction and operation are either "necessary or convenient for the public service."⁴ 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.⁵

³ *Staff Recommendation*, Official Case File Memorandum, page 3.

⁴ Section 393.170, RSMo 2000.

⁵ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

Staff has stated that MAWC meets these five criteria and supports the grant of the certificates for the modified proposed service area. After a complete review of MAWC's applications, Staff's verified recommendation and supporting memorandum, and the responses of MAWC and Public Counsel, which are hereby admitted into evidence, the Commission finds it is in the public interest for MAWC to build, construct, operate and maintain a water and sewer system and all other facilities, including the acquisition of easements, rights of way and land necessary for the purpose of furnishing water and sewer services to the public in and around an unincorporated area in Warren County, Missouri as described by the maps and metes and bounds description in Attachments A and B to Staff's Recommendation and Supporting Memorandum. The Commission further finds that good cause exists to grant MAWC's requested waiver of the requirement under 4 CSR 240-3.305(1)(A)5 and 4 CSR 240-3.600(1)(A)5 to file a feasibility study.

Obligations

The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 393.140(6), RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 and an additional \$100 per day that the violation continues. 4 CSR 240-3.640 requires water utilities to file their annual report on or before April 15 of each year. 4 CSR 240-3.335 requires sewer utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000. Because assessments are

facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from \$100 to \$2,000 for each day of noncompliance pursuant to Section 386.570, RSMo 2000.

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo 2000.

D) The obligation to comply with all relevant state and federal laws and regulations, including but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

F) The obligation to keep the Commission informed of its current address and telephone number.

This certificate is granted conditioned upon the compliance of the company with all of these obligations. Moreover, if the Commission finds, upon conducting a hearing, that the company fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission shall petition the circuit court for an order attaching the company assets and placing the company under the control of a receiver, as permitted by Section 393.145, RSMo 2000. As a condition of granting this certificate, the company hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

The company is also placed on notice that Section 386.310.1, RSMo 2000, provides that the Commission can, without first holding a hearing, issue an order in any case “in which the commission determines that the failure to do so would result in the

likelihood of imminent threat of serious harm to life or property.” Furthermore, the company is reminded that, as a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice in Missouri.

IT IS ORDERED THAT:

1. Missouri-American Water Company is granted a waiver of the 4 CSR 240-3.305(1)(A)5 and 4 CSR 240-3.600(1)(A)5 requirement to file a feasibility study.

2. Missouri-American Water Company is granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain water facilities and to render water service for the public located in the unincorporated area of Warren County as described by the maps and metes and bounds description in Attachments A and B to the Commission Staff’s September 21, 2007 Recommendation and Supporting Memorandum.

3. Missouri-American Water Company is granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain sewer facilities and to render sewer service for the public located in the unincorporated area of Warren County as described by the maps and metes and bounds description in Attachments A and B to the Commission Staff’s September 21, 2007 Recommendation and Supporting Memorandum.

4. This certificate is granted upon the conditions listed in this order.

5. Missouri-American Water Company is ordered to comply with all Missouri statutes and Commission rules.

6. Missouri-American Water Company shall submit revised tariff sheets for its Incline Village water and sewer tariffs to include a map and written description of the revised service area in each.

7. The certificates of convenience and necessity referenced in ordered paragraph 1 and 2 shall become effective on the effective date of this order; however, Missouri-American Water Company shall not serve customers in the proposed service area until the Commission approves of its revised tariffs referenced in ordered paragraph 5.

8. Nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.

9. The Commission reserves the right to consider the ratemaking treatment to be afforded the properties herein involved, and the resulting cost of capital, in any later proceeding.

10. This order shall become effective on October 21, 2007.

11. This case may be closed on October 22, 2007.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., Concur.

Voss, Regulatory Law Judge